The Cotton Corporation of India Ltd.

(A Govt .of India undertaking)

Kapas Bhawan, Plot No. 3A, Sector10, CBD Belapur, Navi Mumbai,400614 Phone Number:022-27579217, Fax Number: 022-27576030,27579219

Tender Notice

The Cotton Corporation of India Ltd., invites sealed tender in Two Bid System from reputed Individuals /company/ firms/ freight terminal operating agencies/ container train operators /Joint Venture/ Consortium for Operation, Maintenance and Management of existing CCI Warehousing Complex infrastructure including private railway siding & open plot and/or covered area of Godowns situated at CCI warehousing complex, Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai 410 218 Maharashtra State on "As is where is basis". Detailed document (RfP) alongwith the terms and conditions can be be obtained from CCI website http://www.cotcorp.org.in. and govt.portal for tender web site http://www.eprocure.gov.in. Interested parties may submit their sealed tender up to 15:00 Hrs on or before 6th September,2018 in the Tender Box placed at 4th Floor, Kapas Bhawan, Plot No. 3A, Sector 10, CBD Belapur, Navi Mumbai, 400614.

General Manager (Purchase)

REQUEST FOR PROPOSALS

for

Operation, Maintenance and Management of Certain Assets forming part of the Warehousing Complex of the Cotton Corporation of India Limited

(RfP No.: 1 Date 17/08/2018)

THE COTTON CORPORATION OF INDIA LIMITED
(A Government of India Undertaking)

Kapas Bhavan, Plot No. 3A, Sector-10,
CBD Belapur, Navi Mumbai, 400614,
Maharashtra

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Glossary

Addendum/ Addenda	As defined in Clause 2.9.1
Agreement	As defined in Clause 1.1.2
Asset 1	As defined in Clause 1.1.1(a)
Asset 2	As defined in Clause 1.1.1(b)
Associate	As defined in Clause 2.1.9
Authorised Signatory	As defined in Clause 2.1.3
Bid	As defined in Clause 1.2.2
Bid Due Date	As defined in Clause 1.1.6
Bid Parameter	As defined in Clause 3.6.1
Bid Security	As defined in Clause 2.19.1
Bidder	As defined in Clause 2.1.8(a)
Bidding Documents	As defined in Clause 1.1.6
Bidding Process	As defined in Clause 1.1.1
Coercive practice	As defined in Clause 4.3(c)
Combined Assets	As defined in Clause 1.1.1
Conflict of Interest	As defined in Clause 2.1.9
Consortium	As defined in Clause 2.1.8(a)
Control	As defined in Clause 2.1.9
Corporation	As defined in Clause1.1.1
Corrupt practice	As defined in Clause 4.3(a)
Damages	As defined in Clause 2.1.9
Financial Bid	As defined in Clause 2.1.4(a)
First Renewed Term	As defined in Clause 1.1.3(a)
First round of bidding	As defined in Clause 3.4.7(a)
Fraudulent practice	As defined in Clause 4.3(b)
Highest Bidder	As defined in Clause 3.6.2
Joint Bidding Agreement	As defined in Clause 2.1.11(e)
Lead Member	As defined in Clause 2.1.11(c)
LoA	As defined in Clause 3.4.8
O&M Charges	As defined in Clause 1.1.4
O&M Plan	As defined in Clause 3.4.8
Payment Periods	As defined in Clause 1.1.3
Restrictive practice	As defined in Clause 4.3(e)
RfP	As defined in the Disclaimer
SPV	As defined in Clause 3.4.9
Scope of Work	As defined in Clause 1.1.2

Second Renewed Term	As defined in Clause 1.1.3(b)
Second round of bidding	As defined in Clause 3.4.7(a)
Selected Bidder	As defined in Clause 3.4.4(c)
Subject Person	As defined in Clause 2.1.9
Technical Bid	As defined in Clause 2.1.4(b)
Term	As defined in Clause 1.1.3
Third round of bidding	As defined in Clause 3.4.7(c)
Tie Bidders	As defined in Clause 3.4.6
Undesirable practice	As defined in Clause 4.3(d)

The words and expressions beginning with capital letters and defined in this document shall, unless repugnant to the context, have the meaning ascribed thereto herein above. The words and expressions beginning with capital letters and not defined herein, but defined in the Agreement, shall, unless repugnant to the context, have the meaning ascribed thereto therein.

Disclaimer

The information contained in this Request for Proposals document (the "**RfP**") or subsequently provided to Bidder, whether verbally or in documentary or any other form by or on behalf of the Corporation or any of its employees or advisors, is provided to Bidder on the terms and conditions set out in this RfP and such other terms and conditions subject to which such information is provided.

This RfP is not an agreement and is neither an offer nor invitation by the Corporation to the prospective Bidders or any other person. The purpose of this RfP is to provide interested parties with information that may be useful to them in making their Bids pursuant to this RfP. This RfP includes statements, which reflect various assumptions and assessments arrived at by the Corporation in relation to the Scope of Work. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require. This RfP may not be appropriate for all persons, and it is not possible for the Corporation, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RfP. The assumptions, assessments, statements and information contained in the Bidding Documents may not be complete, accurate, adequate or correct. Each Bidder should, therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RfP and obtain independent advice from appropriate sources.

Information provided in this RfP to the Bidders is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. The Corporation accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

The Corporation, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RfP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of this RfP and any assessment, assumption, statement or information contained therein or deemed to form part of this RfP or arising in any way for participation in the Bidding Process.

The Corporation also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this RfP.

The Corporation 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 RfP.

The issuance of this RfP does not imply that the Corporation is bound to select a Bidder or to appoint the Selected Bidder(s), and the Corporation reserves the right to reject all or any of the Bidders or Bids without assigning any reason whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by the Corporation or any other costs incurred in connection with or relating to its Bid. All such costs and expenses shall remain with the Bidder, and the Corporation shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

1. INTRODUCTION

1.1 Background

1.1.1 The Cotton Corporation of India Limited (the "**Corporation**") has decided to carry out an international competitive bidding process (the "**Bidding Process**") for selecting a third-party entity to undertake the operation, maintenance and management of the following assets:

(a) Existing covered area of godowns and watch- and ward-rooms in administrative blocks(admeasuring an area of approximately 227208.87 sq. ft.)situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra("**Asset- 1 as per description of Asset-1 set out in Schedule-A to the draft Agreement enclosed**");

(b) Existing private railway siding alongwith loading and unloading platform on rear side of godown, covered area of godown (admeasuring an area of approximately 55497.67 sq. ft) and open plot (admeasuring an area of 1,12,408.44 sq.ft.)situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra("**Asset 2 as per description of Asset-2 set out in Schedule-A to the draft Agreement enclosed**");

(c) Existing covered area of godowns and watch- and ward-rooms in administrative blocks(admeasuring an area of approximately 2,82,706.54 sq. ft.), and existing private railway siding alongwith loading and unloading platform on rear side of go-down, and open plot (admeasuring an area of 1,12,408.44 sq. ft.) situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra (the "**Combined Assets**").

A detailed description of Asset 1, Asset 2 and the Combined Assets is set out in *Schedule A* to the draft Agreement enclosed herewith.

1.1.2 The Selected Bidder, or the SPV, as the case may be, shall be responsible for operation, maintenance and management of Asset 1 or Asset 2 or the Combined Assets, as the case may be (the "**Scope of Work**"), under and in accordance with the detailed terms and conditions to be set forth in an operation, maintenance and management agreement (the "**Agreement**") that will be entered into between the Corporation and the Selected Bidder, or the SPV, as the case may be, in the form provided by the Corporation as part of the Bidding Documents pursuant hereto. It is clarified that Asset 1 or Asset 2 or the Combined Assets, as the case may be, shall be handed over to the Selected Bidder, or the SPV, as the case may be, on an 'as is where is' basis subject to the terms and conditions set out in the Agreement.

1.1.3 The term of the Agreement (the "**Term**") shall be from the date of its execution until the expiry of a period of 55 (fifty five) months from the O&M Commencement Date (as defined in the Agreement).

(a) No later than 3 (three) months prior to the expiry of the Term, the Corporation and the Selected Bidder, or the SPV, as the case may be, may mutually agree to renew the Term for an additional period of 55 (fifty five) months ("**First Renewed Term**").

(b) No later than 3 (three) months prior to the expiry of the First Renewed Term, the Corporation and Selected Bidder, or the SPV, as the case may be, may mutually agree to renew the First Renewed Term for an additional period of 55 (fifty five) months ("**Second Renewed Term**").

(c) No later than 3 (three) months prior to the expiry of the Second Renewed Term, the Corporation and Selected Bidder, or the SPV, as the case may be, may mutually agree

to renew the Second Renewed Term for an additional period of 55 (fifty five) months ("**Third Renewed Term**").

(D) No later than 3 (three) months prior to the expiry of the Third Renewed Term, the Corporation and Selected Bidder, or the SPV, as the case may be, may mutually agree to renew the Third Renewed Term for an additional period of 55 (fifty five) months ("**Fourth Renewed Term**").

The Term, First Renewed Term, Second Renewed Term, Third Renewed Term or Fourth Renewed Term as the case may be, shall each be divided into 5 (five) periods of 11 (eleven) months each (the "**Payment Periods**").

1.1.4 The Selected Bidder, or the SPV, as the case may be, shall be liable to pay to the Corporation, in respect of each Payment Period, the consolidated operation, maintenance and management charges (the "**O&MCharges**") as quoted by the Selected Bidder(s) pursuant to this RfP and as revised from time to time in the manner set forth below:

(a) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period of the Term.

(b) Upon renewal of the Term for the First Renewed Term:

(i) The O&M Charges payable in the first Payment Period of the First Renewed Term shall be subject to an increase of 15% (fifteen percent)at the time of renewal, on the amount payable in the last Payment Period of the Term; and

(ii) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the First Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

(c) Upon renewal of the First Renewed Term for the Second Renewed Term:

(i) The O&M Charges payable in the first Payment Period of the Second Renewed Term shall be subject to an increase of 15% (fifteen percent) at the time of renewal, on the amount payable in the last Payment Period of the First Renewed Term; and

(ii) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Second Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

(d) Upon renewal of the Second Renewed Term for the Third Renewed Term:

(i) The O&M Charges payable in the first Payment Period of the Third Renewed Term shall be subject to an increase of 15% (fifteen percent) at the time of renewal, on the amount payable in the last Payment Period of the Second Renewed Term; and

(ii) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Third Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding

Payment Period.

(e) Upon renewal of the Third Renewed Term for the Fourth Renewed Term:

(i) The O&M Charges payable in the first Payment Period of the Fourth Renewed Term shall be subject to an increase of 15% (fifteen percent) at the time of renewal, on the amount payable in the last Payment Period of the Third Renewed Term; and

(ii) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Second Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

1.1.5 The statements and explanations contained in this RfP are intended to provide a better understanding to the Bidders about the subject matter of this RfP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Selected Bidder, or the SPV, as the case may be, as set forth in the Agreement, or the Corporation's rights to amend, alter, change, supplement or clarify the Scope of Work or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents, including this RfP, are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by the Corporation.

1.1.6 The Corporation shall receive, open and evaluate Bids, and award the Scope of Work pursuant to and in accordance with the terms of this RfP in accordance with the terms set forth in this RfP, the draft Agreement enclosed herewith, any addenda issued subsequent to this RfP, and other documents to be provided by the Corporation pursuant to this RfP, as modified, altered, amended and clarified from time to time by the Corporation (collectively the "**Bidding Documents**"), and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "**Bid Due Date**").

1.2 Brief description of Bidding Process

1.2.1 The Corporation has adopted a two-envelope single-stage Bidding Process for appointment of the Selected Bidder(s). Details of the process to be followed during Bidding Process and the terms thereof are spelt out in this RfP.

1.2.2 Bidders(which expression shall, unless repugnant to the context, apply to both a single entity and a Consortium, and include Members of the Consortium) who determine that they meet the eligibility criteria set forth in the Bidding Documents are called upon to submit their detailed proposals for undertaking the Scope of Work (the "**Bids**") in accordance with the terms specified in the Bidding Documents.

1.2.3 During the Bidding Process, Bidders are invited to examine the Combined Assets in greater detail, and to undertake, at their cost:

(a) An assessment of actual costs for undertaking the Scope of Work, and

(b) Such studies as may be required for submitting their respective Bids.

1.2.4 Bidders are invited to quote the Bid Parameter in their Financial Bids. Generally, the Highest Bidder shall be the Selected Bidder.

1.3 Schedule of Bidding Process

The Corporation shall endeavour to adhere to the following schedule:

Last date for receiving queries	24th August,2018
Pre-Bid Conference	27th August,2018
Corporation response to queries latest by	30th August,2018
Bid Due Date	06th September,2018
Opening of Technical Bids	06th September,2018
Opening of Financial Bids	06th September,2018 or within three Days of Opening the Technical Bid
Letter of Award (LoA)	Upon Approval of O&M Plan
Signing of Agreement	Within 15 (Fifteen) days of submission of Performance Security

2. INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General terms of Bidding

2.1.1 No Bidder shall submit more than one Bid for the Scope of Work. A Bidder bidding individually or as a member of a Consortium ("**Member**") shall not be entitled to submit another Bid either individually or as a Member of any other Consortium, as the case may be.

2.1.2 Notwithstanding anything to the contrary contained in this RfP, the detailed terms specified in the draft Agreement shall have overriding effect:

Provided, however, that any conditions or obligations imposed on the Bidder hereunder shall continue to have effect in addition to its obligations under the Agreement.

2.1.3 The Bid should be furnished in the formats set forth in this RfP, and signed by the person authorised to sign the Bid in terms of Clause 2.1.4(iii) ("**Authorised Signatory**").

2.1.4 The Bid shall comprise the following:

(a) The financial bid (the "**Financial Bid**") as per the format at Appendix–VI, setting out the Bid Parameter to be quoted by the Bidder as per the terms and conditions of this RfP, clearly indicating the amount in both figures and words, in Indian Rupees only. In the event of any difference between figures and words, the amount indicated in words shall be taken into account; and

(b) The other detailed submissions as per the requirements of this RfP (the "**Technical Bid**"), namely:

(i) The Technical Bid submission form as per the format at Appendix–I, along with necessary enclosures;

(ii) The Bid Security as per the format at Appendix–II, in accordance with the provisions of this RfP;

(iii) A power of attorney as per the format at Appendix–III, authorising the Authorised Signatory to commit the Bidder:

Provided that in case of a sole proprietorship, if the sole proprietor is to be the Authorised Signatory, such power of attorney need not be submitted;

(iv) In case the Bidder is a Consortium:

(aa) A power of attorney as per the format at Appendix–IV, furnished by the Members thereof in favour of the Lead Member;

(bb) The Joint Bidding Agreement as per the format at Appendix–V, entered into by all the Members thereof ;and

(v) A copy of the Agreement with each page initialed by the Authorised Signatory.

2.1.5 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.6 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English.

2.1.7 The documents, including this RfP, and all attached documents, provided by the Corporation are and shall remain or become the property of the Corporation and are transmitted to the Bidders solely for the purpose of preparation and submission of a Bid in accordance herewith. Bidders are to treat all information as strictly confidential and shall not use it for any purpose other than for preparation and submission of their Bid. The provisions of this Clause 2.1.7 shall also apply, *mutatis mutandis*, to Bids and all other documents submitted by the Bidders, and the Corporation will not return to the Bidders any Bid, document or any information provided along therewith.

2.1.8 (a) A bidder ("**Bidder**")may be a single entity or a group of entities (the "**Consortium**"), coming together to undertake the Scope of Work.

(b) A Bidder may be a (i) sole proprietorship, or (ii) a private or government-owned partnership firm, private limited company, public limited company, or limited liability partnership, or (iii) any combination of them with a formal intent to form a Consortium.

(c) Bidders must satisfy themselves that they are qualified to bid, and should give an undertaking to this effect in the form at Appendix–I.

2.1.9 A Bidder (or, in case a Bidder is a Consortium, each Member of such Consortium) shall not have a conflict of interest (the "**Conflict of Interest**") that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. In the event of disqualification, the Corporation shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Corporation and not by way of penalty for, *inter alia*, the time, cost and effort of the Corporation, including consideration of such Bidder's Bid (the "**Damages**"), without prejudice to any other right or remedy that may be available to the Corporation under the Bidding Documents and/ or the Agreement or otherwise. Without limiting the generality of the above, a Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:

(a) The Bidder, its Member or Associate (or any constituent thereof) and any other Bidder, its Member or any Associate thereof (or any constituent thereof) have common controlling shareholders or other ownership interest:

Provided that this disqualification shall not apply in cases where the direct or indirect shareholding of a Bidder, its Member or an Associate thereof (or any shareholder thereof having a shareholding of more than 5% (five percent) of the paid up and subscribed share capital of such Bidder, Member or Associate, as the case may be) in the other Bidder, its Member or Associate, is less than 5% (five percent) of the subscribed and paid up equity share capital thereof:

Provided further that this disqualification shall not apply to any ownership by a bank, insurance company, pension fund or a public financial institution referred to in sub-section (72) of section 2 of the Companies Act, 2013.

For the purposes of this Clause 2.1.9, indirect shareholding held through one or more intermediate persons shall be computed as follows:

(i) Where any intermediary is controlled by a person through management

control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "**Subject Person**") shall be taken into account for computing the shareholding of such controlling person in the Subject Person; and

(ii) Subject always to sub-clause (i) above, where a person does not exercise control over an intermediary, which has shareholding in the Subject Person, the computation of indirect shareholding of such person in the Subject Person shall be undertaken on a proportionate basis:

Provided, however, that no such shareholding shall be reckoned under this sub-clause (ii) if the shareholding of such person in the intermediary is less than 26% (twenty six percent) of the subscribed and paid up equity shareholding of such intermediary; or

(b) A constituent of such Bidder is also a constituent of another Bidder; or

(c) Such Bidder, its Member or any Associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder, its Member or Associate, or has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Associate thereof; or

(d) Such Bidder has the same legal representative for purposes of this Bid as any other Bidder, or is the legal representative of any other Bidder; or

(e) Such Bidder, or any Associate thereof, has a relationship with another Bidder, or any Associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Bid of either or each other; or

(f) Such Bidder or any Associate thereof has participated as a consultant to the Corporation in the preparation of any documents, design or technical specifications in relation to the Combined Assets.

Explanation: For purposes of this RfP, "**Associate**" means, in relation to the Bidder/ Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Member. As used in this definition, the expression "**control**" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.

2.1.10 In order to be eligible for submitting a Bid, a Bidder shall:

(a) Have a minimum average annual turnover of Rs.25,00,00,000 (Rupees Twenty Five Crore) in the financial years 2014-2015, 2015-16 and 2016-17 (as certified by a Chartered Accountant's certificate); and

(b) Submit a solvency certificate for Rs. 2,00,00,000 (Rupees Two Crore) issued by a Scheduled Commercial Bank (other than a Co-operative Bank).

In case of a Consortium, the combined turnover of its Members may be used to meet the minimum average annual turnover as aforementioned, subject to the condition that the Lead Member shall have at least 50% (fifty percent) of the minimum average annual turnover as

aforesaid. However, it is clarified that the solvency certificate shall be issued with respect to the Lead Member only.

2.1.11 In the event that the Bidder is a Consortium, it shall comply with the following additional requirements:

(a) The number of Members shall not exceed 2(two);

(b) The Bid should contain the information required for each Member;

(c) The Members shall nominate one member as the lead member (the "**Lead Member**"). The nomination shall be supported by a power of attorney, as per the format at Appendix–IV, signed by all the other Members;

(d) The Bid should include a brief description of the roles and responsibilities of individual Members, particularly with reference to the Scope of Work;

(e) The Members shall enter into a binding Joint Bidding Agreement, substantially in the form specified at Appendix–V (the "**Joint Bidding Agreement**"), for the purpose of submitting a Bid. The Joint Bidding Agreement, to be submitted along with the Bid, shall, *inter alia*:

(i) Clearly outline the proposed roles and responsibilities, if any, of each Member; and

(ii) Include a statement to the effect that all Members shall be liable jointly and severally for all obligations and liabilities relating to the Scope of Work.

(f) Except as provided in the Bidding Documents, there shall be no amendment to the Joint Bidding Agreement without the prior written consent of the Corporation.

2.1.12 A Bidder shall be liable for disqualification and forfeiture of its Bid Security if any legal, financial or technical adviser of the Corporation in relation to the Combined Assets is engaged by the Bidder, its Members or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Combined Assets during the Bidding Process or subsequent to the (a) issuance of the LoA or (b) execution of the Agreement. In the event any such adviser is engaged by the Selected Bidder, or the SPV, as the case may be, after issuance of the LoA or execution of the Agreement for matters related or incidental to the Scope of Work, then notwithstanding anything to the contrary contained herein or in the LoA or the Agreement and without prejudice to any other right or remedy of the Corporation, including the forfeiture and appropriation of the Bid Security or Performance Security, as the case may be, which the Corporation may have thereunder or otherwise, the LoA or the Agreement, as the case may be, shall be liable to be terminated without the Corporation being liable in any manner whatsoever to the Selected Bidder, or the SPV, as the case may be, for the same. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder, its Member or Associate in the past but its assignment expired or was terminated prior to the Bid Due Date. Nor shall this disqualification apply where such adviser is engaged after a period of 3 (three) years from the date of execution of the Agreement.

2.1.13 The Government of India has issued guidelines (see Appendix–VII of this RfP) for qualification of bidders seeking to acquire stakes in any public sector enterprise through the process of disinvestment. These guidelines shall apply, *mutatis mutandis*, to this Bidding Process. The Corporation shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process.

2.1.14 Any entity which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project (BOT or otherwise), and the bar subsists as on the Bid Due Date, would not be eligible to submit a Bid, either individually or as Member of a Consortium.

2.1.15 A Bidder, including any Member or Associate thereof, should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder, Member or Associate, as the case may be, nor have been blacklisted by any public entity, nor have been expelled from any project or contract by any public entity nor have had any contract terminated by any public entity for breach by such Bidder, Member or Associate, as the case may be. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.1.15 is such that it does not reflect any:

(a) Malfeasance on its part in relation to such cause or event;

(b) Wilful default or patent breach of the material terms of the relevant contract;

(c) Fraud, deceit or misrepresentation in relation to such contract; or

(d) Rescinding or abandoning of such contract,

it may make a representation to this effect to the Corporation for seeking a waiver from the disqualification hereunder and the Corporation may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Scope of Work.

2.1.16 This RfP is not transferable.

2.2 Change in composition of the Consortium

2.2.1 Where the Bidder/ Selected Bidder is a Consortium, a change in composition of the Consortium may be permitted by the Corporation post submission of the Bid or execution of the Agreement, only where:

(a) The Lead Member continues to be the Lead Member of the Consortium;

(b) The modified Consortium shall continue to meet the eligibility criteria set forth in the Bidding Documents; and

(c) The new Member expressly adopts the Bid already made on behalf of the Consortium as if party to it originally, and does not suffer from a Conflict of Interest.

2.2.2 Approval for change in the composition of a Consortium shall be at the sole discretion of the Corporation and must be approved by the Corporation in writing. The Bidder/ Selected Bidder must submit its application to the Corporation for change in composition of the Consortium.

2.2.3 The modified/ reconstituted Consortium shall submit a revised Joint Bidding Agreement, in the form at Appendix–V, and a power of attorney, in the form at Appendix–IV, within 30 (thirty) days of written approval being received from the Corporation.

2.2.4 The option of change in composition of the Consortium which is available under Clause 2.2.1 may be exercised by any Bidder/ Selected Bidder who is either a Consortium or a single entity. In the case of a single entity Bidder adding a Consortium Member, the single entity Bidder shall be the Lead Member of such Consortium, and no Member of such Consortium shall suffer from a Conflict of Interest.

2.3 Change in Ownership

No Change in Ownership (as defined in the Agreement) shall be permissible during the Term (as may be extended from time to time in accordance with the Agreement)without the prior approval of the Corporation, save and except any changes in ownership as may be required pursuant to operation of law.

2.4 Cost of Bidding

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Corporation shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

2.5 Site visit and verification of information

2.5.1 Bidders are encouraged to submit their respective Bids after visiting the site of the Combined Assets and ascertaining for themselves the site conditions, traffic, location, surroundings, climate, availability of power, water and other utilities for construction, access to site, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them. Bidders may visit the site of the Combined Assets between 1100 and1700 hours on any working day prior to the Bid Due Date.

2.5.2 It shall be deemed that by submitting a Bid, the Bidder has:

(a) Made a complete and careful examination of the Bidding Documents;

(b) Received all relevant information requested from the Corporation;

(c) Accepted the risk of inadequacy, error or mistake in the information provided in the Bidding Documents or furnished by or on behalf of the Corporation relating to any of the matters referred to in Clause 2.5.1 above;

(d) Satisfied itself about all matters, things and information including matters referred to in Clause 2.5.1 hereinabove necessary and required for submitting an informed Bid, execution of the Scope of Work in accordance with the Bidding Documents and performance of all of its obligations thereunder;

(e) Acknowledged and agreed that inadequacy, lack of completeness or incorrectness of information provided in the Bidding Documents or ignorance of any of the matters referred to in Clause 2.5.1 hereinabove shall not be a basis for any claim for compensation, damages, extension of time for performance of its obligations, loss of profits etc. from the Corporation, or a ground for termination of the Agreement by the Selected Bidder, or the SPV, as the case may be;

(f) Acknowledged that it does not have a Conflict of Interest; and

(g) Agreed to be bound by the undertakings provided by it under and in terms hereof.

2.5.3 The Corporation shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the Bidding Documents or the Bidding Process, including any error or mistake therein or in any information or data given by the Corporation.

2.6 Verification and Disqualification

2.6.1 The Corporation reserves the right to verify all statements, information and documents submitted by the Bidder in response to the Bidding Documents and the Bidder shall, when so required by the Corporation, make available all such information, evidence and documents as may be necessary for such verification. Any such verification, or lack of such verification, by the Corporation shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Corporation thereunder.

2.6.2 The Corporation reserves the right to reject any Bid and appropriate the Bid Security if:

(a) At any time, a material misrepresentation is made or uncovered, or

(b) The Bidder does not provide, within the time specified by the Corporation, the supplemental information sought by the Corporation for evaluation of the Bid.

Such misrepresentation/ improper response shall lead to the disqualification of the Bidder. If the Bidder is a Consortium, then the entire Consortium and each Member may be disqualified/ rejected. If such disqualification/ rejection occurs after the Bids have been opened and the Highest Bidder(s) get disqualified/ rejected, then the Corporation reserves the right to:

(i) Invite the remaining Bidders to submit their Bids in accordance with Clause 3.4.7; or

(ii) Take any such measure as may be deemed fit in the sole discretion of the Corporation, including annulment of the Bidding Process.

2.6.3 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility criteria set forth in the Bidding Documents have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Selected Bidder, and if the Selected Bidder, or the SPV, as the case may be, has already been issued the LoA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RfP, be liable to be terminated, by a communication in writing by the Corporation to the Selected Bidder, or the SPV, as the case may be, without the Corporation being liable in any manner whatsoever to the Selected Bidder, or the SPV, as the case may be. In such an event, the Corporation shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Corporation under the Bidding Documents and/ or the Agreement, or otherwise.

B. DOCUMENTS

2.7 Contents of the RfP

2.7.1 This RfP comprises the Disclaimer set forth hereinabove, the contents as listed below, and shall additionally include any Addenda issued in accordance with Clause 2.9.

Invitation for Bids

Section 1 Introduction

Section 2 Instructions to Bidders

Section 3 Evaluation of Bids

Section 4 Fraud and Corrupt Practices

Section 5 Pre-Bid Conference

Section 6 Miscellaneous

Appendices

I. Technical Bid Submission Form

II. Bank Guarantee for Bid Security

III. Power of Attorney for signing of Bid

IV. Power of Attorney for Lead Member of Consortium

V. Joint Bidding Agreement

VI. Financial Bid Submission Form

VII. Guidelines of the Department of Disinvestment

2.7.2 The draft Agreement provided by the Corporation as part of the Bidding Documents shall be deemed to be part of this RfP.

2.8 Clarifications

2.8.1 Any queries or request for additional information or clarification concerning this RfP shall be submitted by Bidders in writing by speed post/ courier/ special messenger and by e-mail so as to reach the officer designated in Clause 2.11.5 on or before the date mentioned in the Schedule of Bidding Process specified in Clause 1.3. The envelopes/ communication shall clearly bear the following identification/ title:

"Queries/Request for Additional Information: RfP for [*Insert Details of Scope of Work*]".

2.8.2 The Corporation shall endeavour to respond to the queries within the period specified herein. All the queries and its responses thereto shall be made available by the Corporation on its website http://www.cotcorp.org.in without identifying the source of queries.

2.8.3 The Corporation shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, the Corporation reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring the Corporation to respond to any question or to provide any clarification.

2.8.4 The Corporation may also on its own motion, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Corporation shall be deemed to be part of the Bidding Documents, and shall be made available by the Corporation on its website http://www.cotcorp.org.in.

2.8.5 Verbal clarifications and information given by the Corporation or its employees or representatives shall not in any way or manner be binding on the Corporation.

2.9 Amendment of RfP

2.9.1 At any time prior to the Bid Due Date, the Corporation may, for any reason, whether at its own initiative or in response to clarifications requested by a Bidder, modify this RfP by the issuance of an addendum or addenda, as the case may be ("**Addendum/ Addenda**").

2.9.2 Any Addendum issued hereunder shall deemed to be part of the Bidding Documents, and shall be made available by the Corporation on its website http://www.cotcorp.org.in.

2.9.3 In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, the Corporation may, in its sole discretion, extend the Bid Due Date.

C. PREPARATION AND SUBMISSION OF BIDS

2.10 Format and Signing of Bid

2.10.1 The Bidder shall provide all the information sought under this RfP. The Corporation shall evaluate only those Bids that are received in the required formats and are complete in all respects.

2.10.2 The Bid and its copy shall be typed or written in indelible ink and signed by the Authorised Signatory who shall also initial each page, in blue ink. In case of printed and published documents, only the cover page shall be initialed. All the alterations, omissions, additions or any other amendments made to the Bid shall be initialed by the person(s) signing the Bid. Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Appendices is insufficient.

2.11 Sealing and Marking of Bids

2.11.1 The Bidder shall submit the Financial Bid in the format specified at Appendix–VI, and seal it in an envelope and mark the envelope as: "Financial Bid for [*Insert Details of Scope of Work*]".

2.11.2 The Technical Bid shall be placed in a separate envelope and marked as: "Technical Bid for [*Insert Details of Scope of Work*]".

2.11.3 A true copy of the Technical Bid shall be bound together in hard cover and the pages shall be numbered serially. Each page thereof shall be initialed in blue ink by the Authorised Signatory. This copy of the Technical Bid shall be placed in a separate envelope and marked as: "Copy of the Technical Bid for [*Insert Details of Scope of Work*]".

2.11.4 The 3 (three) envelopes specified in Clauses 2.11.1, 2.11.2 and 2.11.3 shall be placed in an outer envelope, which shall be sealed and marked as: "Bid for [*Insert Details of Scope of Work*]".

2.11.5 Each of the 4 (four) envelopes specified in Clauses 2.11.1, 2.11.2, 2.11.3 and 2.11.4shall:

(a) Clearly indicate the name and address of the Bidder;

(b) Indicate the Bid Due Date on the right hand top corner;

(c) Be marked with the inscription "Do not open before the Bid Due Date"; and

(d) Be addressed to:

ATTN. OF:	Mr. Atul Kala
DESIGNATION:	General Manager (Purchase)
ADDRESS:	KapasBhavan, Plot No. 3A, Sector-10, CBD Belapur, Navi Mumbai, 400614, Maharashtra
E-MAIL ADDRESS:	gmpur@cotcorp.com

2.11.6 If the envelopes are not sealed and marked as instructed above, the Corporation assumes no responsibility for the misplacement or premature opening of the contents of the Bid submitted and consequent losses, if any, suffered by the Bidder.

2.11.7 Bids submitted by fax, telex, telegram or e-mail shall not be entertained and shall be rejected.

2.12 Bid Due Date

2.12.1 Bids should be submitted before 15:00 hours IST on the Bid Due Date i.e 06.09.2018 at the designated tender box located on the fourth floor at the address provided in Clause 2.11.5 in the manner and form as detailed in this RfP. A receipt thereof may be obtained from the person specified at Clause 2.11.5.

2.12.2 The Corporation may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

2.13 Late Bids

Bids received by the Corporation after the specified time on the Bid Due Date shall not be eligible for consideration and shall be summarily rejected.

2.14 Modifications/ Substitution/ Withdrawal of Bids

2.14.1 The Bidder may modify, substitute or withdraw its Bid after submission, provided that written notice of the modification, substitution or withdrawal is received by the Corporation prior to the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder on or after the Bid Due Date.

2.14.2 The modification, substitution or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with Clause 2.11, with the envelopes being additionally marked "MODIFICATION", "SUBSTITUTION" or "WITHDRAWAL", as appropriate.

2.14.3 Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Corporation, shall be disregarded.

2.15 Rejection of Bids

2.15.1 Notwithstanding anything contained in this RfP, the Corporation reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without incurring any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons therefor. In the event that the Corporation rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.15.2 The Corporation reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.

2.15.3 However, in the event that a Bidder enquires into the reasons for the rejection of its Bid, the Corporation shall provide reasons therefor in writing.

2.16 Validity of Bids

The Bids shall be valid for a period of not less than 120 (one hundred and twenty) days from the Bid Due Date. The validity of Bids may be extended by mutual consent of the respective Bidders and the Corporation.

2.17 Confidentiality

Information relating to the examination, clarification, evaluation and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the Bidding Process or is not a retained professional advisor advising the Corporation in relation to, or matters arising out of, or concerning the Bidding Process. The Corporation shall treat all information, submitted as part of the Bid, in confidence and shall require all those who have access to such material to treat the same in confidence. The Corporation may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or the Corporation or as may be required by law or in connection with any legal process.

2.18 Correspondence with the Bidder

Save and except as provided in this RfP, the Corporation shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.

2.19 Bid Security

2.19.1 A Bidder shall furnish, as part of its Bid, a bid security of Rs. 2,00,000 (Rupees Two Lakh) (the "**Bid Security**"), refundable not later than 60 (sixty) days from the Bid Due Date, except in the case of the Selected Bidder whose Bid Security shall be retained till it, or the SPV, as the case may be, has provided a Performance Security (as defined in the Agreement)in accordance with the provisions of the Agreement. The Bidders shall have an option to provide Bid Security in the form of:

(a) A demand draft issued by a Scheduled Bank, drawn in favour of the Corporation and payable at Mumbai; or

(b) A bank guarantee acceptable to the Corporation issued by a Scheduled Bank, in favour of the Corporation as per the format at Appendix–II.

In case the bank guarantee is issued by a foreign bank outside India, confirmation of the same by any Scheduled Bank in India is required.

For the avoidance of doubt, 'Scheduled Bank' shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934, but shall not include any co-operative bank.

2.19.2 The validity period of the Bank Guarantee shall not be less than 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, and may be extended as may be mutually agreed between the Corporation and the Bidder from time to time.

Where a demand draft is provided, its validity shall not be less than 80 (eighty) days from the Bid Due Date, for the purposes of encashment by the Corporation.

2.19.3 Any Bid not accompanied by the Bid Security shall be summarily rejected by the Corporation as non-responsive.

2.19.4 Save and except as provided in this RfP, the Bid Security shall be refundable as promptly as possible on acceptance of the Bid of the Selected Bidder or when the Bidding Process is cancelled by the Corporation, and in any case within 60 (sixty) days from the Bid Due Date.

(a) The Corporation shall not be liable to pay any interest on the Bid Security so made and the same shall be interest free.

(b) Where Bid Security has been paid by demand draft, the refund thereof shall be in the form of an account payee demand draft in favour of the unsuccessful Bidder(s). Bidders may by specific instructions in writing to the Corporation give the name and address of the person in whose favour the said demand draft shall be drawn by the Corporation for refund, failing which it shall be drawn in the name of the Bidder and shall be mailed to the address given on the Bid.

(c) The Selected Bidder's Bid Security shall be returned, without any interest, upon signing the Agreement and furnishing the Performance Security in accordance with the provisions thereof. The Corporation may, at the option of the Selected Bidder, or the SPV, as the case may be, adjust the amount of Bid Security in the amount of the Performance Security.

2.19.5 The Corporation shall be entitled to forfeit and appropriate the Bid Security as Damages, *inter alia*, upon the happening of any of the events specified in Clause 2.19.6 herein below. The Bidder, by submitting its Bid pursuant to this RfP, shall be deemed to have acknowledged and confirmed that the Corporation shall suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RfP. No relaxation of any kind on Bid Security shall be given to any Bidder.

2.19.6 The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to the Corporation under the Bidding Documents and/ or under the Agreement, or otherwise, if

(a) A Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 4 of this RfP; or

(b) A Bidder withdraws its Bid during the period of Bid validity as specified in this RfP and as extended by mutual consent of the respective Bidder(s) and the Corporation.

3. EVALUATION OF BIDS

3.1 Opening of Technical Bids

3.1.1 The Corporation shall, in the first instance, open the Technical Bids only at 15:30 hours on the Bid Due Date, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.1.2 The Corporation shall subsequently examine and evaluate the Technical Bids in accordance with the provisions set out in this Section 3.

3.1.3 To facilitate evaluation of Bids, the Corporation may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Technical Bid.

3.2 Evaluation of Technical Bids

3.2.1 Prior to evaluation of the Technical Bids, the Corporation shall determine whether each Technical Bid is responsive to the requirements of this RfP. A Technical Bid shall be considered responsive if:

(a) It is received as per the formats provided in this RfP;

(b) It is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;

(c) It is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;

(d) It is accompanied by the Bid Security as specified in Clause 2.19;

(e) It is accompanied, as applicable, by the power(s) of attorney as specified in Clause 2.1.4;

(f) It contains all the information (complete in all respects) as requested in the Bidding Documents (in formats same as those specified);

(g) It does not contain any condition or qualification; and

(h) It is not non-responsive in terms hereof.

3.2.2 The Corporation reserves the right to reject any Technical Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Corporation in respect of such Technical Bid:

Provided, however, that the Corporation may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Technical Bid.

3.2.3 The Technical Bids which are adjudged as responsive in terms of Clause 3.2.1 shall be evaluated by the Corporation to determine if the Bidder meets the eligibility criteria set forth in the Bidding Documents including, without limitation, the criteria set forth in Clause 2.1.10.

3.3 Opening of Financial Bids

3.3.1 The Corporation shall open the Financial Bids of only those Bidders who are determined to meet the eligibility criteria set forth in the Bidding Documents pursuant to the evaluation as

aforesaid.

3.3.2 The Corporation shall open the Financial Bids at 16:00 hours on the date specified in this regard in Clause 1.3, at the place specified in Clause 2.11.5 and in the presence of the Bidders who choose to attend.

3.3.3 The Corporation shall subsequently examine and evaluate the Financial Bids in accordance with the provisions set out in this Section 3.

3.3.4 To facilitate evaluation of the Financial Bids, the Corporation may, at its sole discretion, seek clarifications in writing from any Bidder regarding its Financial Bid.

3.4 Evaluation of Financial Bids and Selection of Bidder(s)

3.4.1 Prior to evaluation of the Financial Bids, the Corporation shall determine whether each Financial Bid is responsive to the requirements of this RfP. A Financial Bid shall be considered responsive if:

(a) It is received as per the format provided in this RfP;

(b) It is received by the Bid Due Date including any extension thereof pursuant to Clause 2.12.2;

(c) It is signed, sealed, bound together in hard cover and marked as stipulated in Clauses 2.10 and 2.11;

(d) It contains all the information (complete in all respects) as requested in the Bidding Documents (in formats same as those specified);

(e) It does not contain any condition or qualification; and

(h) It is not non-responsive in terms hereof.

3.4.2 The Corporation reserves the right to reject any Financial Bid which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by the Corporation in respect of such Financial Bid:

Provided, however, that the Corporation may, in its discretion, allow the Bidder to rectify any infirmities or omissions if the same do not constitute a material modification of the Financial Bid.

3.4.3 The Financial Bids which are adjudged as responsive in terms of Clause 3.4.1 shall be evaluated by the Corporation to determine the highest quoted Bid Parameter, if any, for each of:

(a) Asset 1;

(b) Asset 2; and

(c) The Combined Assets.

3.4.4 (a) In the event that the aggregate of the highest quoted Bid Parameters respectively for Asset 1 and Asset 2 is higher than the highest quoted Bid Parameter for the Combined Assets, or if no Bidder quotes the Bid Parameter for the Combined Assets:

(i) The Bidder quoting the highest Bid Parameter for Asset 1 shall ordinarily be declared as the selected Bidder in respect of Asset 1; and

(ii) The Bidder quoting the highest Bid Parameter for Asset 2shall ordinarily be declared as the selected Bidder in respect of Asset 2.

(b) In the event that the aggregate of the highest quoted Bid Parameters respectively for Asset 1 and Asset 2 is lower than the highest quoted Bid Parameter for the Combined Assets, or if no Bidder quotes the Bid Parameters for Asset 1 and/ or Asset 2, the Bidder quoting the highest Bid Parameter for the Combined Assets shall ordinarily be declared as the selected Bidder in respect of the Combined Assets:

Provided that, in such an event, i.e., receipt of Bids in the manner as aforesaid, any decision by the Corporation shall be taken in view of the commercial interests of the Corporation. The Corporation reserves the right to reject all such Bid(s) and to annul the Bidding Process without incurring any liability or any obligation for such rejection or annulment, and without assigning any reasons therefor. The decision of the Corporation in this regard shall be final and binding.

(c) For the purpose of this RfP, the "**Selected Bidder(s)**" shall be the Bidder(s) declared as the selected bidder(s) for Asset 1 and Asset 2, or the Combined Assets, as the case may be, pursuant to Clause 3.4.4, 3.4.6 or 3.4.7, as the case may be.

3.4.5 In the event that the Corporation rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

3.4.6 In the event that 2 (two) or more Bidders quote the same Bid Parameter (the "**Tie Bidders**"), the Corporation shall invite all the Tie Bidders to revalidate or extend their respective Bid Security, as necessary, and submit fresh Financial Bids subject to the condition that the Bid Parameter to be quoted in such fresh Financial Bids shall not be lower than that which was quoted in their original Financial Bids. The Bidder quoting the highest Bid Parameter pursuant to the resubmission of the Financial Bids shall ordinarily be declared as the selected bidder for Asset 1 and Asset 2, or the Combined Assets, as the case may be.

3.4.7 (a) In the event that the Highest Bidder withdraws or is not selected for any reason in the first instance (the "**first round of bidding**"), the Corporation may invite all the remaining Bidders who have quoted the Bid Parameter in respect of Asset 1, or Asset 2 or the Combined Assets, as the case may be, to revalidate or extend their respective Bid Security, as necessary, and match the Financial Bid of the aforesaid Highest Bidder (the "**second round of bidding**").

(b) If in the second round of bidding, only 1 (one) Bidder matches the Highest Bidder, it shall be the selected bidder in respect of Asset 1, or Asset 2 or the Combined Assets, as the case may be. If 2 (two) or more Bidders match the said Highest Bidder in the second round of bidding, then the Bidder whose Financial Bid was higher as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder. For example, if the third and fifth highest Bidders in the first round of bidding offer to match the said Highest Bidder in the second round of bidding, the said third highest Bidder shall be the Selected Bidder.

(c) In the event that no Bidder offers to match the Highest Bidder in the second round of bidding, the Corporation may, in its discretion, invite fresh Financial Bids (the "**third round of bidding**") from all Bidders (who have quoted the Bid Parameter in respect of Asset 1, or Asset 2 or the Combined Assets, as the case may be) except the Highest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be.

In case of the third round of bidding:

(i) Only such Financial Bids shall be eligible for consideration in respect of which the Bid Security has been extended or revalidated as necessary, and which are higher than the Bid of the second highest Bidder in the first round of bidding; and

(ii) The Bidder quoting the highest Bid Parameter shall be the selected bidder for Asset 1 and Asset 2, or the Combined Assets, as the case may be.

3.4.8 The Selected Bidder shall, within 30 (thirty) days of the Corporation directing the Selected Bidder, by a written communication, to do so, submit to the Corporation, for its approval, a detailed operation, maintenance and management plan (the "**O&M Plan**").

(a) The Corporation shall either communicate its approval of the O&M Plan, or direct the Selected Bidder to modify the same, pursuant to which the Selected Bidder shall, within 15 (fifteen) days of the communication from the Corporation directing such modification, resubmit the modified O&M Plan to the Corporation for its approval; and

(b) The procedure under sub-clause (a) shall continue to apply, *mutatis mutandis*, until the O&MPlan is approved by the Corporation.

Upon approval of the O&M Plan, a Letter of Award (the "**LoA**") shall be issued, in duplicate, by the Corporation to the Selected Bidder, and the Selected Bidder shall, within 7 (seven) days of the receipt of the LoA, sign and return the duplicate copy of the LoA in acknowledgement thereof.

3.4.9 After acknowledgement of the LoA as aforesaid by the Selected Bidder, it(or the Lead Member, in case of a Consortium) shall furnish the Performance Security within 30 (thirty) days of the award of the LoA, and execute the Agreement within the period prescribed in Clause 1.3:

Provided that, in case the Selected Bidder is a foreign entity, such Selected Bidder (or the Lead Member, in case of a Consortium) shall incorporate a special purpose vehicle ("**SPV**") under the Companies Act, 2013 which SPV will enter into the Agreement, undertake the Scope of Work, and furnish the Performance Security.

The Selected Bidder or the SPV, as the case may be, shall not be entitled to seek any deviation, modification or amendment in the Agreement.

3.4.10 The Corporation shall be entitled to withdraw the LoA, and forfeit the Bid Security as Damages without prejudice to any other right or remedy that may be available to the Corporation under the Bidding Documents and/ or under the Agreement, in the event that the Selected Bidder, or the SPV, as the case may be, fails to:

(a) Submit to the Corporation the O&M Plan, or modified O&M Plan, as the case may be, within the specified time limit (or such extension thereof permitted by the Corporation); or

(b) Sign and return the duplicate copy of LoA within the specified time limit (or such extension thereof permitted by the Corporation); or

(c) Sign the Agreement within the specified time limit (or such extension thereof permitted by the Corporation); or

(d) Furnish the Performance Security within 30 (thirty) days of the award of the LoA (or such extension thereof permitted by the Corporation).

3.5 Contacts during Bid Evaluation

Bids shall be deemed to be under consideration immediately after they are opened and until such time the Corporation makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, the Corporation and/ or their employees/ representatives on matters related to the Bids under consideration.

3.6 Bid Parameter

3.6.1 The Financial Bid shall comprise the O&M Charges payable for the first Payment Period of the Term (the "**Bid Parameter**") in respect of Asset 1 only, or Asset 2 only, or the Combined Assets only. It is clarified that:

(a) The Bid Parameter so quoted shall be exclusive of all applicable taxes, which shall be payable by the Selected Bidder, or the SPV, as the case may be, over and above the amount so quoted (and as revised from time to time);

(b) The Bid Parameter shall be quoted in Indian Rupees only; and

(c) A Bidder may quote the Bid Parameter in respect of:

(i) Asset 1 only, or

(ii) Asset 2 only, or

(iii) The Combined Assets only.

3.6.2 In this RfP, the term "**Highest Bidder**" shall mean the Bidder quoting the highest Bid Parameter for Asset 1 or Asset 2 or the Combined Assets, as the case may be.

3.6.3 The Bid Parameter shall constitute the sole criteria for evaluation of Financial Bids. Subject to the provisions of Clause 2.15 and Clause 3.4, the Scope of Workshall be awarded to the Highest Bidder.

4. FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issuance of the LoA and during the subsistence of the Agreement. Notwithstanding anything to the contrary contained herein, or in the LoA or the Agreement, the Corporation may reject a Bid, withdraw the LoA, or terminate the Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or Selected Bidder or the SPV, as the case may be, if it determines that the Bidder or Selected Bidder or the SPV, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, the Corporation shall be entitled to forfeit and appropriate the Bid Security or Performance Security, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Corporation under the Bidding Documents and/ or the Agreement, or otherwise.

4.2 Without prejudice to the rights of the Corporation under Clause 4.1 hereinabove and the rights and remedies which the Corporation may have under the LoA or the Agreement, or otherwise if a Bidder or Selected Bidder or the SPV, as the case may be, is found by the Corporation to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, or after the issuance of the LoA or the execution of the Agreement, such Bidder or Selected Bidder or the SPV shall not be eligible to participate in any tender or RfP issued by the Corporation during a period of 2 (two) years from the date such Bidder or Selected Bidder or the SPV, as the case may be, is found by the Corporation to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.

4.3 For the purposes of this Clause 4, the following terms shall have the meaning hereinafter respectively assigned to them:

(a) "**Corrupt practice**" means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Corporation who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LoA or has dealt with matters concerning the Agreement or arising therefrom, before or after the execution thereof, at any time prior to the expiry of 1 (one) year from the date such official resigns or retires from or otherwise ceases to be in the service of the Corporation, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under the Clause 2.1.12 of this RfP, engaging in any manner whatsoever, whether during the Bidding Process or after the issuance of the LoA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Scope of Work or the LoA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Corporation in relation to any matter concerning the Scope of Work;

(b) "**Fraudulent practice**" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

(c) "**Coercive practice**" means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person's participation

or action in the Bidding Process;

(d) "**Undesirable practice**" means (i) establishing contact with any person connected with or employed or engaged by the Corporation with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and

(e) "**Restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process.

5. PRE-BID CONFERENCE

5.1 A pre-Bid conference of the Bidders shall be convened on and at the following date, time and venue:

Date: 27/08/2018

Time: 15:00 hours

Venue: Conference Hall, 6th Floor,
Kapas Bhavan, Plot No. 3A, Sector-10,
CBD Belapur, Navi Mumbai, 400614,
Maharashtra.

5.2 A maximum of 3 (three) representatives of each Bidder shall be allowed to participate in the pre-Bid conference on production of a duly signed authority letter from the Bidder.

5.3 During the course of the pre-Bid conference, the Bidders shall be free to seek clarifications and make suggestions for consideration of the Corporation. The Corporation shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process.

6. MISCELLANEOUS

6.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India and the Courts in Mumbai shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process.

6.2 The Corporation, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

(a) Suspend and/ or cancel the Bidding Process and/ or amend and/ or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;

(b) Consult with any Bidder in order to receive clarification or further information;

(c) Retain any information and/ or evidence submitted to the Corporation by, on behalf of, and/ or in relation to any Bidder; and/ or

(d) Independently verify, disqualify, reject and/ or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

6.3 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Corporation, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/ or performance of any obligations hereunder, pursuant hereto and/ or in connection with the Bidding Process and waives, to the fullest extent permitted by applicable laws, any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or in future.

6.4 The Bidding Documents are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this RfP, in the event of any conflict between them the priority shall be in the following order:

(a) The Agreement;

(b) Any clarifications or Addenda;

(c) This RfP.

i.e., the Agreement at (a) above shall prevail over the clarifications or Addenda and RfP at (b) and (c) above, and the clarifications or Addenda at (b) above shall prevail over this RfP at (c) above.

APPENDIX–I[1]:
Technical Bid Submission Form

Dated:_____

To,
The General Manager (Purchase),
The Cotton Corporation of India Limited,
KapasBhavan, Plot No. 3A, Sector-10,
CBD Belapur, Navi Mumbai, 400614,
Maharashtra.

Sub: Technical Bid for the Operation, Maintenance and Management of Certain Assets forming part of the Warehousing Complex of the Cotton Corporation of India Limited ('Scope of Work')

Dear Sir,

1. With reference to your RfP document dated 17/08/2018, I/ we, having examined the Bidding Documents and understood their contents, hereby submit my/ our Technical Bid for the aforesaid Scope of Work. The Technical Bid is unconditional and unqualified.

2. I/ We acknowledge that the Corporation shall be relying on the information provided in the Technical Bid for selection of the entity for undertaking the aforesaid Scope of Work, and I/ we certify that all information provided herein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Technical Bid are original copies or true copies thereof.

3. This statement is made for the express purpose of my/ our selection for the award of the aforesaid Scope of Work.

4. I/ We shall make available to the Corporation any additional information it may find necessary or require to supplement or authenticate the Technical Bid.

5. I/ We acknowledge the right of the Corporation to reject my/ our Technical Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, my/ our right to challenge the same on any account whatsoever.

6. I/ We certify that in the last 3 (three) years, I/ we/ any of the Consortium Members[2]or my/ our/ their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been blacklisted by any public entity, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on my our/ their part.

7. I/ We declare that:

   (a) I/ We have examined and have no reservations to the Bidding Documents, including any clarifications and/ or Addendum issued by the Corporation; and

   (b) I/ We do not have any conflict of interest in accordance with Clauses 2.1.9 and

[1] To be printed on the letterhead of the Bidder.
[2] If the Bidder is not a Consortium, the provisions applicable to Consortium may be omitted.

2.1.12of the RfP document; and

(c) I/ We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 4.3 of the RfP document, in respect of any tender or request for proposals issued by or any agreement entered into with the Corporation or any other public sector enterprise or any government, Central or State; and

(d) I/ We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 4 of the RfP, no person acting for me/ us or on my/ our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.

8. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Scope of Work, without incurring any liability to the Bidders, in accordance with Clause 2.15 of the RfP document.

9. I/ We believe that I/ we/ our Consortium satisfy(ies) the eligibility criteria and meet(s) the requirements as specified in the RFP document. Requisite details in this regard are set out in the Annex hereto, with necessary enclosures.

10. I/ We declare that I/ we/ any Member of the Consortium, or my/ our/ its Associates am/ are not a Member of any other Consortium submitting a Bid for the Scope of Work.

11. I/ We certify that in regard to matters other than security and integrity of the country, I/ we/ any Member of the Consortium or any of my/ our/ their Associates have not been convicted by a Court of Law or indicted or had adverse orders passed by a regulatory authority which could cast a doubt on my/ our ability to undertake the Scope of Work or which relates to a grave offence that outrages the moral sense of the community.

12. I/ We further certify that in regard to matters relating to security and integrity of the country, I/ we/ any Member of the Consortium or any of my/ our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.I/ We further certify that neither I/ we nor any of our Members have been barred by the Central Government, any state government, a statutory body or any public sector undertaking, as the case may be, from participating in any project or bid, and that any such bar, if any, does not subsist as on the date of this RfP.

13. I/ We further certify that no investigation by a regulatory authority is pending either against me/ us or against my/ our Associates or against our CEO or any of my/ our directors/ managers/ employees.[3]

14. I/ We further certify that I/ we are not disqualified in terms of the additional criteria specified by the Department of Disinvestment in their OM No. 6/4/2001-DD-II dated July 13, 2001, a copy of which forms part of the RfP at Appendix–VII thereof.

15. I/ We undertake that in case due to any change in facts or circumstances during the Bidding

[3] In case the Bidder is unable to provide certification regarding any pending investigation as specified in paragraph 13, it may precede the paragraph by the words viz. "Except as specified in Schedule ……. hereto". The exceptions to the certification or any disclosures relating thereto may be clearly stated in a Schedule to be attached to the Application. The Corporation will consider the contents of such Schedule and determine whether or not the exceptions/disclosures are material to the suitability of the Bidder for award hereunder.

Process, I/ we are attracted by the provisions of disqualification in terms of the guidelines referred to above, I/ we shall intimate the Corporation of the same immediately.

16. I/ We hereby irrevocably waive any right or remedy which I/ we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by the Corporation in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above mentioned Scope of Work and the terms and implementation thereof.

17. In the event of my/ our being declared as the Selected Bidder, I/ we/ our Lead Member agree(s) to [enter into the Agreement/ incorporate a special purpose company under the Companies Act, 2013 to enter into the Agreement][4] in accordance with the draft that has been provided as part of the Bidding Documents. I/ We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

18. I/ We have studied all the Bidding Documents carefully. I/ We understand that, except to the extent as expressly set forth in the Agreement, I/ we shall have no claim, right or title arising out of any documents or information provided to me/ us by the Corporation or in respect of any matter arising out of or relating to the Bidding Process including the award of the Scope of Work.

19. I/ We offer a Bid Security of Rs 2,00,000/- (Rupees Two Lakh only) to the Corporation in accordance with the RfP Document.

20. The Bid Security in the form of a Demand Draft/ Bank Guarantee (strike out whichever is not applicable), and the other documents specified in Clause 2.1.4(b), are attached.

21. I/ We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case shall I/ we have any claim or right of whatsoever nature if the Scope of Work is not awarded to me/ us or my/ our Bid is not opened or rejected.

22. I/ We agree and undertake to abide by all the terms and conditions of the RfP document.

23. We, the Consortium Members agree and undertake to be jointly and severally liable for all the obligations under the Agreement.

24. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RfP document.

25. In witness thereof, I/ we submit this Technical Bid under and in accordance with the terms of the RfP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised signatory)

Place: Name and seal of Bidder/Lead Member

[4]Delete whichever is not applicable.

Annex to Appendix–I

<table>
<tr><th>S. No.</th><th>Information Required</th><th>Response</th></tr>
<tr><td>1.</td><td>Name of Bidder
(Self-attested copy of registration/ incorporation certificate to be enclosed)</td><td></td></tr>
<tr><td>2.</td><td>Registered Address</td><td></td></tr>
<tr><td>3.</td><td>Contact Details</td><td>Tel.:
Mob.:
Email:</td></tr>
<tr><td>4.</td><td>Permanent Account Number
(Self-attested copy of PAN Card to be enclosed)</td><td></td></tr>
<tr><td>5.</td><td>GST Registration Number
(Self-attested copy of registration certificate to be enclosed)</td><td></td></tr>
<tr><td>6.</td><td>EPF Code
(Self-attested code allotment letter to be enclosed)</td><td></td></tr>
<tr><td>7.</td><td>ESI Registration Number
(Self-attested copy of registration certificate to be enclosed)</td><td></td></tr>
<tr><td>8.</td><td>Average annual turnover (in Rupees Crore)
(Following documents to be enclosed: (a) Chartered Accountant’s certificate certifying the average annual turnover; and (b) solvency certificate for Rs. 2,00,00,000 (Rupees Two Crore) issued by a Scheduled Commercial Bank(other than a Co-Operative Bank)</td><td>
<table>
<tr><th></th><th>FY
2014-15</th><th>FY
2015-16</th><th>FY
2016-17</th></tr>
<tr><td>Annual Turnover</td><td></td><td></td><td></td></tr>
<tr><td colspan="3">Average Annual Turnover for FYs 2014-15, 2015-16 &2016-17</td><td></td></tr>
<tr><td colspan="3"></td><td></td></tr>
</table>
</td></tr>
</table>

S. No.	Information Required	Response
9.	Whether the Bidder wants to Restructure/ Modify the existing design of the Warehousing Complex within the permissible FSI Limits	Yes/No
10.	Please inform whether the Restructure / Modification of the existing design of the Warehousing Complex within the permissible FSI limits includes demolition of any of the Existing Godowns	Yes/ No
11.	Whether the Bidder wishes to Convert the Private Railway Siding to the PFT	Yes / No

Notes:

- References to Bidder in this Annex-I shall be deemed to include references to each Member of the Consortium. However, only the Lead Member will be required to furnish the information/ documents against S. Nos. 4-7.

- In case of a Consortium, the combined turnover of its Members may be used to meet the minimum average annual turnover, subject to the conditions that the Lead Member shall have at least 50% (fifty percent) of the minimum average annual turnover. However, it is clarified that the solvency certificate shall be issued with respect to the Lead Member only.

- The Bidder shall indicate 'Not Applicable' against the relevant entry if any of the information/ documents are not applicable to a Bidder pursuant to the laws governing such Bidder.

APPENDIX–II[5]:
Bank Guarantee for Bid Security

B.G. No. Dated:

1. In consideration of you, the Cotton Corporation of India Limited, having its office at Kapas Bhavan, Plot No. 3A, Sector-10, CBD Belapur, Navi Mumbai, 400614, Maharashtra, (hereinafter referred to as the "**Corporation**", which expression shall, unless it be repugnant to the subject or context thereof, include its, successors and assigns) having agreed to receive the Bid of _____, having their registered office at _____[(and acting on behalf of its Consortium)] (hereinafter referred to as the "**Bidder**" which expression shall unless it be repugnant to the subject or context thereof include their executors, administrators, successors and assigns), for operation, maintenance and management of certain assets forming part of the warehousing complex of the Cotton Corporation of India Limited(hereinafter referred to as the "**Scope of Work**") pursuant to the RfP Document dated _____ issued in respect of the Scope of Work, and other related documents including without limitation the draft agreement (hereinafter collectively referred to as "**Bidding Documents**"), we _____(Name of the Bank) having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the "**Bank**"), at the request of the Bidder, do hereby in terms of Clause 2.19 of the RfP Document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfillment and compliance of the terms and conditions of the Bidding Documents (including the RfP Document) by the said Bidder and unconditionally and irrevocably undertake to pay forthwith to the Corporation an amount of Rs. 2,00,000/- (Rupees Two Lakh only) (hereinafter referred to as the "**Guarantee**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Bidder if the Bidder shall fail to fulfill or comply with all or any of the terms and conditions contained in the said Bidding Documents.

2. Any such written demand made by the Corporation stating that the Bidder is in default of the due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank.

3. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without any reference to the Bidder or any other person and irrespective of whether the claim of the Corporation is disputed by the Bidder or not, merely on the first demand from the Corporation stating that the amount claimed is due to the Corporation by reason of failure of the Bidder to fulfill and comply with the terms and conditions contained in the Bidding Documents including failure of the said Bidder to keep its Bid open during the Bid validity period as set forth in the said Bidding Documents for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. 2,00,000/- (Rupees Two Lakh only).

4. This Guarantee shall be irrevocable and remain in full force for a period of 180 (one hundred and eighty) days from the Bid Due Date, inclusive of a claim period of 60 (sixty) days, or for such extended period as may be mutually agreed between the Corporation and the Bidder, and agreed to by the Bank, and shall continue to be enforceable till all amounts under this Guarantee have been paid.

5. We, the Bank, further agree that the Corporation shall be the sole judge to decide as to

[5]If executed in India, to be executed on stamp paper of a value of Rs. 200 (Rupees Two Hundred).

whether the Bidder is in default of due and faithful fulfillment and compliance with the terms and conditions contained in the Bidding Documents including, *inter alia*, the failure of the Bidder to keep its Bid open during the Bid validity period set forth in the said Bidding Documents, and the decision of the Corporation that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Corporation and the Bidder or any dispute pending before any court, tribunal, arbitrator or any other authority.

6. The Guarantee shall not be affected by any change in the constitution or winding up of the Bidder or the Bank or any absorption, merger or amalgamation of the Bidder or the Bank with any other person.

7. In order to give full effect to this Guarantee, the Corporation shall be entitled to treat the Bank as the principal debtor. The Corporation shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Bidding Documents or to extend time for submission of the Bids or the Bid validity period or the period for conveying acceptance of Letter of Award by the Bidder or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Bidding Documents by the said Bidder or to postpone for any time and from time to time any of the powers exercisable by it against the said Bidder and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Bidding Documents or the securities available to the Corporation, and the Bank shall not be released from its liability under these presents by any exercise by the Corporation of the liberty with reference to the matters aforesaid or by reason of time being given to the said Bidder or any other forbearance, act or omission on the part of the Corporation or any indulgence by the Corporation to the said Bidder or by any change in the constitution of the Corporation or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.

8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.

9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch which shall be deemed to have been duly authorised to receive the said notice of claim.

10. It shall not be necessary for the Corporation to proceed against the said Bidder before proceeding against the Bank and the guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which the Corporation may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.

11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Corporation in writing.

12. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

13. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. 2,00,000/- (Rupees Two Lakh only). The Bank shall be liable to pay the said amount or any part thereof only if the Corporation serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before _____ (indicate date falling 180 days after the Bid Due Date).

Signed and delivered by _____ Bank

By the hand of Mr./Ms._____, its _____ and authorised official.

(Signature of the Authorised Signatory)
(Designation & Code No.)
(Official Seal)

APPENDIX–III[6]:
Power of Attorney for signing of Bid

Know all men by these presents, I/ we, _____ having my/ our registered office at _____ do hereby irrevocably constitute, nominate, appoint and authorise Mr./ Ms._____, son/daughter/wife of _____ and presently residing at _____, who is presently employed with me/ us and holding the position of _____, as my/ our true and lawful attorney (hereinafter referred to as the "**Attorney**") to do in my/ our name and on my/ our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of my/ our bid for the'Operation, Maintenance and Management of Certain Assets forming part of the Warehousing Complex of the Cotton Corporation of India Limited' ("**Scope of Work**") in response to the Request for Proposals issued by the Cotton Corporation of India Limited (the "**Corporation**") including, but not limited to, signing and submission of all applications, bids and other documents and writings, participate in bidders' and other conferences and providing information/ responses to the Corporation, representing me/ us in all matters before the Corporation, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of my/ our bid, and generally dealing with the Corporation in all matters in connection with or relating to or arising out of my/ our bid for the said Scope of Work, and/or upon award thereof to me/ us and/or till the entering into of the Agreement with the Corporation.

AND I/ we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by my/ our said Attorney pursuant to and in exercise of the powers conferred by this power of attorney and that all acts, deeds and things done by my/ our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by me/ us.

IN WITNESS WHEREOF I/ WE, _____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 2018.

For _____
(Signature, name, designation and address)

Witnesses:

1.

2.

Accepted

Notarised

(Signature, name, designation and address of the Attorney)

Notes:

- The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

[6] To be submitted in original, and executed, if executed in India, on stamp paper of a value of Rs. 500 (Rupees Five Hundred).

- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this power of attorney for the delegation of power hereunder on behalf of the Bidder.

- For a power of attorney executed and issued overseas, the document shall also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX–IV[7]:
Power of Attorney for Lead Member of Consortium

Whereas the Cotton Corporation of India Limited (the "**Corporation**") has invited bids for Operation, Maintenance and Management of Certain Assets forming part of the Warehousing Complex of the Cotton Corporation of India Limited (the "**Scope of Work**");

Whereas, _____ and _____(collectively the "**Consortium**") being Members of the Consortium are interested in bidding for the Scope of Work in accordance with the terms and conditions of the Request for Proposals and other connected documents in respect of the Scope of Work; and

Whereas, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Scope of Work and its execution.

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS

I/ We, _____ having my/ our registered office at _____, (hereinafter referred to as the "**Principal**") do hereby irrevocably designate, nominate, constitute, appoint and authorise_____ having their registered office at _____, being one of the Members of the Consortium, as the Lead Member and true and lawful attorney of the Consortium (hereinafter referred to as the "**Attorney**") and hereby irrevocably authorise the Attorney (with power to sub-delegate) to conduct all business for and on behalf of the Consortium and any one of us during the bidding process and, in the event the Consortium is awarded the Scope of Work, during the execution of the Scope of Work, and in this regard, to do on our behalf and on behalf of the Consortium, all or any of such acts, deeds or things as are necessary or required or incidental to the submission of its bid for the Scope of Work, including but not limited to, signing and submission of all applications, bids and other documents and writings, accept the Letter of Award, participate in bidders' and other conferences, respond to queries, submit information/ documents, sign and execute contracts and undertakings consequent to acceptance of the bid of the Consortium and generally to represent the Consortium in all its dealings with the Corporation, and/ or any other government agency or any person, in all matters in connection with or relating to or arising out of the Consortium's bid for the Scope of Work and/ or upon award thereof.

AND hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by my/ our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things doneby my/ our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium.

IN WITNESS WHEREOF I/ WE THE PRINCIPAL ABOVE NAMED HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 2018.

For _____
(Signature, Name & Title)

(Executant)

[7] To be submitted in original, and, if executed in India, executed on stamp paper of a value of Rs. 500 (Rupees Five Hundred).

Witnesses:

1.

2.

Notes*:*

- The mode of execution of the power of attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.

- For a power of attorney executed and issued overseas, the document shall also have to be legalised by the Indian Embassy and notarised in the jurisdiction where the power of attorney is being issued. However, the power of attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalised by the Indian Embassy if it carries a conforming Appostille certificate.

APPENDIX–V[8]
Joint Bidding Agreement

THIS JOINT BIDDING AGREEMENT is entered into on this the _____ day of _____ 2018.

Amongst

1. _____, a [sole proprietorship/ company/ partnership firm/ limited liability partnership][incorporated/ registered] under the [insert relevant legislation] and having its registered office at _____ (hereinafter referred to as the "**First Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns); and

2. _____, a [sole proprietorship/ company/ partnership firm/ limited liability partnership][incorporated/ registered] under the [insert relevant legislation] and having its registered office at _____ (hereinafter referred to as the "**Second Part**" which expression shall, unless repugnant to the context include its successors and permitted assigns)

The above mentioned parties of the FIRST and SECOND PART are collectively referred to as the "**Parties**" and each is individually referred to as a "**Party**".

WHEREAS,

A. The Cotton Corporation of India Limited, having its principal offices at Kapas Bhavan, Plot No. 3A, Sector-10, CBD Belapur, Navi Mumbai, 400614,Maharashtra (hereinafter referred to as the "**Corporation**", which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) has invited bids (the **Bids**") by its Request for Proposals No. _____ dated _____ (the "**RfP**") for the operation, maintenance and management of certain assets forming part of the warehousing complex of the Cotton Corporation of India Limited (the "**Scope of Work**");

B. The Parties are interested in jointly bidding for the Scope of Work as members of a Consortium and in accordance with the terms and conditions of the RfP and other bidding documents in respect of the Scope of Work;

C. It is a necessary condition under the RfP that the members of the Consortium shall enter into a Joint Bidding Agreement and furnish a copy thereof with the Bid.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretations

In this Joint Bidding Agreement, the capitalised terms shall, unless the context otherwise requires, have the meaning ascribed thereto under the RfP.

2. Consortium

2.1 The Parties do hereby irrevocably constitute a consortium (the "**Consortium**") for the purposes of jointly participating in the Bidding Process.

2.2 The Parties hereby undertake to participate in the Bidding Process only through this

[8]If executed in India, to be executed on stamp paper of a value of Rs. 100 (Rupees One Hundred).

Consortium and not individually and/ or through any other consortium constituted for this Scope of Work, either directly or indirectly or through any of their Associates.

3. Covenants

The Parties hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Scope of Work, the Lead Member shall [enter into/ incorporate a special purpose company under the Companies Act, 2013 to enter into][9] an operation, maintenance and management agreement (the"**Agreement**") with the Corporation and [the Lead Member/ SPV][10]shall be responsible and liable for performing all obligations in respect of the Scope of Work.

4. Role of the Parties

The Parties hereby undertake to perform the roles and responsibilities as described below:

(a) Party of the First Part shall be the Lead Member of the Consortium and shall have the power of attorney from all other Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the expiry or earlier termination of the Agreement; and

(b) Party of the Second Part shall _____.

5. Joint and Several Liability

Notwithstanding the provisions of Clause 3 hereinabove, the Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Scope of Work and in accordance with the terms of the RfP and the Agreement, till the expiry or earlier termination of the Agreement.

6. Representation of the Parties

Each Party represents to the other Parties as of the date of this Joint Bidding Agreement that:

(a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Joint Bidding Agreement;

(b) The execution, delivery and performance by such Party of this Joint Bidding Agreement has been authorised by all necessary and appropriate corporate or governmental action, and will not, to the best of its knowledge:

(i) Require any consent or approval not already obtained;

(ii) Violate any applicable law presently in effect and having applicability to it;

(iii) Violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;

(iv) Violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is

[9]Delete whichever is not applicable.
[10]Delete whichever is not applicable.

a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or

(v) Create or impose any liens, mortgages, pledges, claims, security interests, charges or encumbrances or obligations to create a lien, charge, pledge, security interest, encumbrances or mortgage in or on the property of such Party, except for encumbrances that would not, individually or in the aggregate, have a material adverse effect on the financial condition or prospects or business of such Party so as to prevent such Party from fulfilling its obligations under this Joint Bidding Agreement;

(c) This Joint Bidding Agreement is the legal and binding obligation of such Party, enforceable in accordance with its terms against it; and

(d) There is no litigation pending or, to the best of such Party's knowledge, threatened to which it or any of its Associates is a party that presently affects or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Joint Bidding Agreement.

8. Termination

8.1 This Joint Bidding Agreement shall be effective from the date hereof and shall continue in full force and effect until the expiry or earlier termination of the Agreement, in case the Scope of Work is awarded to the Consortium.

8.2 However, in case the Consortium does not get selected for award of the Scope of Work, this Joint Bidding Agreement shall stand terminated upon return of the Bid Security by the Corporation to the Bidder, or appropriation thereof, as the case may be.

9. Miscellaneous

9.1 This Joint Bidding Agreement shall be governed by laws of [India].

9.2 The Parties acknowledge and accept that this Joint Bidding Agreement shall not be amended by the Parties without the prior written consent of the Corporation.

APPENDIX–VI[11]:
Financial Bid Submission Form

Dated:_____

To,
The General Manager (Purchase),
The Cotton Corporation of India Limited,
KapasBhavan, Plot No. 3A, Sector-10,
CBD Belapur, Navi Mumbai, 400614,
Maharashtra.

Sub: Financial Bid for the Operation, Maintenance and Management of Certain Assets forming part of the Warehousing Complex of the Cotton Corporation of India Limited ('Scope of Work')

Dear Sir,

1. With reference to your RfP document dated 17/08/2018, I/ we, having examined the Bidding Documents and understood their contents, hereby submit my/ our Financial Bid for the aforesaid Scope of Work. The Financial Bid is unconditional and unqualified.

2. I/ We hereby quote the Bid Parameter as follows[12]:

Category	**Bid Parameter(Please quote for any one of the following)**	**Amount Quoted (For the 11 month period excluding all Taxes)**	
	Asset (Description in short)	*In figures (In Rs.)*	*In words*
(a)	**Asset 1** (covered area of godowns and watch- and ward-rooms in administrative blocks(admeasuring an area of approximately 227208.87 sq. ft.))		
(b)	**Asset 2** (private railway siding alongwith loading and unloading platform on rear side of godown, covered area of godown (admeasuring an area of approximately 55497.67 sq. ft) and open plot)		

[11] To be printed on the letterhead of the Bidder.
[12]Indicate 'Not Applicable' against the assets which the Bidder is not bidding for.

(c)	**Combined Assets** (covered area of godowns and watch- and ward-rooms in administrative blocks, and private railway siding alongwith loading and unloading platform on rear side of go-down, and open plot)		

Note:

- In case any party quotes for more than one category the Bid will not be considered.
- A detailed description of Asset 1, Asset 2 and the Combined Assets is set out in *Schedule A* to the draft Agreement enclosed herewith.

3. In case of any discrepancy between the words and figures mentioned above, the amount in words shall be taken into consideration.

4. I/ We shall make available to the Corporation any additional information it may find necessary or require to supplement or authenticate the Financial Bid.

5. I/ We acknowledge the right of the Corporation to reject my/ our Financial Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, my/ our right to challenge the same on any account whatsoever.

6. I/ We agree and understand that the Financial Bid is subject to the provisions of the Bidding Documents. In no case, I/ we shall have any claim or right of whatsoever nature if the Scope of Work is not awarded to me/ us or my/ our Financial Bid is not opened or rejected.

7. The Bid Parameter has been quoted by us after taking into consideration all the terms and conditions stated in the RfP, draft Agreement, my/ our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the project cost and implementation of the Scope of Work.

8. I/ We shall keep this offer valid for 120 (one hundred and twenty) days from the Bid Due Date specified in the RfP.

9. In witness thereof, I/ we submit this Financial Bid under and in accordance with the terms of the RfP document.

Yours faithfully,

Date: (Signature, name and designation of the Authorised Signatory)

Place: Name and seal of Bidder/Lead Member

APPENDIX-VII:
Guidelines of the Department of Disinvestment

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment

Block 14, CGO Complex
New Delhi.
Dated 13th July 2001.

OFFICE MEMORANDUM

Sub: Guidelines[13] for qualification of Bidders seeking to acquire stakes in Public Sector Enterprises through the process of disinvestment

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for bidders interested in PSE-disinvestment so that the parties selected through competitive bidding could inspire public confidence. Earlier, criteria like net worth, experience etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification/ disqualification of the parties seeking to acquire stakes in public sector enterprises through disinvestment:

(a) In regard to matters other than the security and integrity of the country, any conviction by a Court of Law or indictment/ adverse order by a regulatory authority that casts a doubt on the ability of the bidder to manage the public sector unit when it is disinvested, or which relates to a grave offence would constitute disqualification. Grave offence is defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of the offence would be taken on case to case basis after considering the facts of the case and relevant legal principles, by the Government of India.

(b) In regard to matters relating to the security and integrity of the country, any charge-sheet by an agency of the Government/ conviction by a Court of Law for an offence committed by the bidding party or by any sister concern of the bidding party would result in disqualification. The decision in regard to the relationship between the sister concerns would be taken, based on the relevant facts and after examining whether the two concerns are substantially controlled by the same person/ persons.

(c) In both (a) and (b), disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all bidders for various disinvestment transactions, which have not been completed as yet.

(f) Before disqualifying a concern, a Show Cause Notice why it should not be disqualified would be issued to it and it would be given an opportunity to explain its position.

[13] These guidelines may be modified or substituted by the Government from time to time.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expression of Interest (EOI) from the interested parties. The interested parties would be required to provide the information on the above criteria, along with their Expressions of Interest (EOI).The bidders shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against its CEO or any of its Directors/ Managers/ employees, full details of such investigation including the name of the investigating agency, the charge/ offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, a similar undertaking shall be obtained along with EOI.

sd/-
(A.K. Tewari)
Under Secretary to the Government of India

DRAFT OPERATION, MAINTENANCE& MANAGEMENT AGREEMENT

BETWEEN

[THE COTTON CORPORATION OF INDIA LIMITED]

AND

[●]

OPERATION, MAINTENANCE & MANAGEMENT OF CERTAIN ASSETS FORMING PART OF THE WAREHOUSING COMPLEX OF COTTON CORPORATION OF INDIA

DATED [●]

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OPERATION, MAINTENANCE AND MANAGEMENT AGREEMENT

This operation, maintenance and management agreement is made at Navi Mumbai on this [●] day of [●], 2018 (the "**Agreement**") and is entered into:

BY AND BETWEEN

THE COTTON CORPORATION OF INDIA LIMITED through the Chairman-cum-Managing Director(hereinafter referred to as the "**Corporation**" (which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns) of the one part;

AND

[●], a [sole proprietorship/ company/ limited liability partnership][registered/ incorporated] under the[●], having its registered office at [●](hereinafter referred to as the "**Operator**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors-in-interest and permitted assigns), of the other part;

"**The Corporation**" & "**The Operator**" are hereinafter individually referred to as "**Party**" and collectively as "**Parties**".

WHEREAS:

A. The Corporation currently possesses a warehousing complex infrastructure facility, situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra (the "**Project Site**").

B. The Corporation had invited proposals by its Request-for-proposal No.1 dated ……. (the "**RfP**") for selecting a bidder to operate, maintain and manage the existing covered area of godowns along with watch-and-ward rooms in administrative blocks (admeasuring an area of approximately 2,27,208.87sq.ft.) situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra, specific details of which are provided in Schedule A] (Asset-1)

OR

[existing private railway siding (the "**Private Railway Siding**") along with loading and unloading platform on rear side of the godown, covered area of godown (admeasuring an area of approximately 55497.67 sq. ft) and an open plot (admeasuring an area of approximately 1,12,408.44 sq. ft.) situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra, specific details of which are provided in Schedule A] (Asset-2)

OR

[existing covered area of godowns along with watch-and-ward rooms in administrative blocks (admeasuring an area of approximately 282706.54sq. ft.), and the existing private railway siding (the "**Private Railway Siding**") along with loading and unloading platform on rear side of the godown and an open plot (admeasuring an area of approximately 112408.44 sq. ft.) situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra, specific details of which are provided in Schedule A]

(the "**Combined Assets**");

C. Pursuant to the said bidding process, [●] had been appointed as the selected bidder (the "**Selected Bidder**") and has accordingly been issued a letter of award dated [●] ("**LOA**") requiring, *inter alia*, the execution of this Agreement;

D. [By its letter dated [●], the Selected Bidder has conveyed that it shall undertake and perform the obligations and exercise the rights of the Operator including the obligation to enter into this Agreement pursuant to the LOA, and has requested the Corporation to accept it as the entity which shall undertake and perform the obligations of, *inter alia*, operating, maintaining and managing Asset 1, Asset 2 or the Combined Assets. The Corporation has agreed to the said request of the Selected Bidder;

OR

[The Selected Bidder has, in accordance with the RfP and LOA, promoted and incorporated a special purpose company under the provisions of the Companies Act, 2013,and has requested the Corporation to accept the Operator as the entity which shall undertake and perform the obligations and exercise the rights of the Operator, including the obligation to enter into this Agreement pursuant to the LOA, and has requested the Corporation to accept the special purpose company as the entity which shall undertake and perform the obligations of, *inter alia*, operating, maintaining and managing Asset 1, Asset 2 or the Combined Assets (as the case may be). The Corporation has agreed to the said request of the Selected Bidder;][14]

E. The Corporation has accordingly agreed to enter into this Agreement with the Operator for the operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets(as the case may be), subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

[14]**Note**: This clause may be amended depending on whether the Selected Bidder is a foreign entity or an Indian entity.

ARTICLE 1:DEFINITIONS AND INTERPRETATION

1.1 **Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

(a) **"Additional Facilities"** has the meaning set out in Clause 3.3.1;

(b) "**Affected Party**" has the meaning set out in Clause 9.1;

(c) "**Applicable Law**" mean all laws brought into force and effect by a Government Authority, including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

(d) "**Applicable Permits**" mean all clearances, licences, permits, authorizations, no-objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Law in connection with the construction, operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets (as the case may be) during the subsistence of this Agreement;

(e) "**Asset 1**" means the existing covered area of godowns along with watch-and-ward rooms in administrative blocks (admeasuring an area of approximately 2,27,208.87 sq.ft.)situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218, Maharashtra;

(f) "**Asset 2**" means existing private railway siding (the "**Private Railway Siding**") along with loading and unloading platform on rear side of the godown, covered area of godown (admeasuring an area of approximately 55497.67 sq. ft) and an open plot (admeasuring an area of approximately 1,12,408.44 sq. ft.)situated at the warehousing complex of the Corporation located at Plot No.S-5, Sector-KWC, Kalamboli, Navi Mumbai, 410 218;

(g) "**Change in Law**" means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Government Authority, quasi-judicial authority, court, tribunal or commission), or repeal after the date of signing of this Agreement of any Applicable Law, agreement, decree, permit, approval or order that materially adversely affects the Corporation or the Operator's ability for undertaking its obligations under this Agreement.

(h) "**Change in Ownership**" means (a) a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares which leads to the aggregate shareholding of (i) the lead member {in case the Selected Bidder is a consortium} of the Selected Bidder, or (ii) the Selected Bidder {in case the Selected Bidder is a sole bidder} to decline below 51% (fifty one per cent)in the shareholding of the Operator, or (b) acquisition of any control directly or indirectly of the Board of Directors of the Operator by any person either by himself or together with any person or persons acting in concert with him, or (c) in case the Operator is a partnership firm or a Limited Liability Partnership, any change or transfer in the constitution of such partnership such that the equity partnership of the original partners (comprising such partnership firm or LLP at the time of submission of the response to the RFP) declines

below 51% (fifty one per cent), after the date of signing of this Agreement. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the equity or voting rights of the shares of the Operator**;**

(i) "**Common Area Facilities**" means common area facilities described in Schedule C of this Agreement;

(j) "**Contract Year**" means:

(i) For the year in which the LOA is issued, the period commencing on the O&M Commencement Date and expiring on the immediately succeeding March 31;

(ii) Thereafter, the period commencing on April 1 and expiring on the immediately succeeding March 31; and

(iii) For the calendar year in which the Term, First Renewed Term ,Second Renewed Term, Third Renewed Term, or Fourth Renewed Term as the case may be, is set to expire, the period commencing on April 1 and expiring on the last day of the Term, First Renewed Term or Second Renewed Term, as the case may be.

(k) "**Change of Scope**" has the meaning set out in Clause 12.1;

(l) "**Change of Scope Notice**" has the meaning set out in Clause 12.2;

(m) "**Corporation**" has the meaning attributed thereto in the array of Parties hereinabove;

(n) "**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(i) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(ii) Not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;

(o) "**Dispute**" has the meaning set out in Clause 16.1;

(p) "**Delay Interest Payment**" has the meaning set out in Clause 11.2;

(q) "**Encumbrances**" mean any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations;

(r) "**First Renewed Term**" has the meaning set out in Clause 2.2;

(s) "**Fourth Renewed Term**" has the meaning set out in Clause 2.5;

(t) "**FSI**" means Floor Space Index;

(u) "**Force Majeure**" or "**Force Majeure Event**" has the meaning set out in Clause 9.1;

(v) "**Good Industry Practices**" mean the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced developer engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Law and Applicable Permits in reliable, safe, economical and efficient manner;

(w) "**Government Authority**" means any governmental or statutory authority, government department, agency, commission, board, tribunal or court or other entity authorized to make or interpret or adjudicate upon Applicable Law or pass directions, having or purporting to have jurisdiction over Asser 1, Asset 2 or the Combined Assets (as the case may be) or the Parties, or any state, municipality, district or other subdivision thereof (including, any stock exchange or any self-regulatory organization established under Applicable Law);

(x) "**Handback Requirements**" have the meaning set out in Clause 14.1;

(y) "**Indemnified Party**" has the meaning set out in Clause 10.2;

(z) "**Indemnifying Party**" has the meaning set out in Clause 10.2;

(aa) "**LOA**" has the meaning set out in Recital C;

(bb) "**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

(cc) "**Operator**" has the meaning attributed thereto in the array of Parties hereinabove;

(dd) "**Operator Default**" means the occurrence of any of the events set out in Clause 13.1;

(ee) "**O&M Commencement Date**" has the meaning set out in Clause 3.1.1;

(ff) "**O&M Plan**" means the detailed operation, maintenance and management plan conceptualized by the Operator, submitted to the Corporation prior to the signing of this Agreement;

(gg) "**Payment Default**" has the meaning set out in Clause 11.3;

(hh) "**Payment Default Termination**" has the meaning set out in Clause 11.3;

(ii) "**Payment Periods**" has the meaning set out in Clause 2.6;

(jj) **"Performance Security**" has the meaning set out in Clause 8.1;

(kk) "**Private Railway Siding**" has the meaning set out in Recital B;

(ll) "**Project Site**" has the meaning set out in Recital A;

(mm) "**Project**" means the entire activity of undertaking the operation, maintenance and management of Asset 1 or Asset 2 or the Combined Assets (as the case may be);

(nn) "**Railway Land Rent**" means such sum of money as may be fixed by the Railway Administration from time to time as yearly rent for the use and occupation of land belonging to the Railway Administration upon which the portion of the Private Railway Siding and related works are situated;

(oo) "**Railway Administration**" means any officer, department or instrumentality affiliated to or under the administrative control of the Ministry of Railways, Government of India or any Government Authority exercising jurisdiction over matters related to the Private Railway Siding;

(pp) "**Railway Operationalization Approval**" has the meaning ascribed to it in Clause 3.2.2;

(qq) "**Railway Siding Agreement**" railway private siding agreement dated August 13, 1997 entered into between the Central Railway Administration and the Corporation;

(rr) "**Second Renewed Term**" has the meaning set out in Clause 2.3;

(ss) "**Selected Bidder**" has the meaning set out in Recital C;

(tt) "**Sub-Contracts**"mean any agreements that may be entered into by the Operator with any person or persons in connection with matters relating to, arising out of, or incidental to Asset 1, Asset 2 or the Combined Assets(as the case may be), as described in Clause 5.4;

(uu) "**Taxes**" means any Indian taxes including goods and service tax, local taxes, cess and any impost or surcharge of a like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Authority, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.;

(vv) "**Term**" has the meaning set in Clause 2.1;

(ww) "**Termination Notice**" means a communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement; and

(xx) "**Termination**" means the expiry or termination of this Agreement.

(yy) "**Third Renewed Term**" has the meaning set out in Clause 2.4;
(zz)

1.2 **Interpretation**

In this Agreement, unless the context otherwise requires:

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a "**person**"and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of 2 (two) or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words **"include**"and "**including**"are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

(f) references to "**construction** "include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**"shall be construed accordingly;

(g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(h) any reference to day shall mean a reference to a calendar day;

(i) references to a "**business day**"shall be construed as a reference to a day (other than a Sunday) on which banks in Mumbai are generally open for business;

(j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

(k) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

(1) any reference to any period commencing "**from**"a specified day or date and "**till**"or "**until**"a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

(m) the words importing singular shall include plural and *vice versa*;

(n) references to any gender shall include the other and the neutral gender;

(o) "**lakh**" means 100,000 (one hundred thousand) and "**crore**"means 10,000,000 (ten million);

(p) "**indebtedness**"shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;

(q) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference:

Provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Corporation hereunder or pursuant hereto in any manner whatsoever;

(r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party in this behalf and not otherwise;

(s) the Schedules and Recitals to this Agreement form an integral part of this Agreement and shall be in full force and effect as though they were expressly set out in the body of this Agreement;

(t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement; and

(u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty.

1.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.4 Any capitalized word or expression used in this Agreement that is not defined herein but is defined in the Request for Proposals document issued by the Corporation on [●], shall, unless repugnant to the context in which such word or expression in used herein, have the means assigned to it in the said Request for Proposals document.

1.5 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act, 1897 shall not apply.

ARTICLE 2:TERM &APPOINTMENT OF THE OPERATOR

2.1 The Corporation hereby engages the Operator and the Operator hereby accepts its engagement as the operation, maintenance and management contractor for Asset 1, Asset 2 or the Combined Assets (as the case may be) for a period of 55(fifty five) months (the "**Term**") from the O&M Commencement Date in accordance with Clause 3.1, along with vacant, uninterrupted and unobstructed access to Asset 1, Asset 2 or the Combined Assets (as the case may be),and the right to operate, maintain and manage Asset 1, Asset 2 or the Combined Assets (as the case may be)on behalf of the Corporation, on the terms and conditions as set out in this Agreement.

2.2 No later than 3 (three) months prior to the expiry of the Term, the Corporation and the Operator, may mutually agree to renew the Term for an additional period of 55 (fifty five) months ("**First Renewed Term**").

2.3 No later than 3 (three) months prior to the expiry of the First Renewed Term, the Corporation and the Operator, may mutually agree to renew the First Renewed Term for an additional period of 55 (fifty five) months ("**Second Renewed Term**").

2.4 No later than 3 (three) months prior to the expiry of the Second Renewed Term, the Corporation and Selected Bidder, or the SPV, as the case may be, may mutually agree to renew the Second Renewed Term for an additional period of 55 (fifty five) months ("**Third Renewed Term**").

2.5 No later than 3 (three) months prior to the expiry of the Third Renewed Term, the Corporation and Operator may mutually agree to renew the Third Renewed Term for an additional period of 55 (fifty five) months ("**Fourth Renewed Term**").

2.6 The Term, First Renewed Term, Second Renewed Term, Third Renewed Term, or Fourth Renewed Term as the case may be, shall each be divided into 5 (five) periods of 11 (eleven) months each (the "**Payment Periods**").

2..7 It is agreed and understood by the Operator that:

(a) The Operator has been engaged exclusively for undertaking the operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets (as the case may be) in accordance with the terms of the Agreement;

(b) The Operator shall not in any way transfer, sell, alienate, or create any Encumbrance on Asset 1, Asset 2 or the Combined Assets (as the case may be);

(c) The ownership, title, rights and interest to Asset 1, Asset 2 or the Combined Assets (as the case may be) shall remain vested with the Corporation;

(d) Any minerals, treasure trove, fossils or other article of interest shall belong to and vest in the Corporation and the Operator shall promptly report the discovery thereof to the Corporation and follow its instructions for safe removal thereof;

(e) Any archaeological discoveries shall belong to and vest in the Government of India and the Corporation shall promptly report the discovery thereof to the Corporation and follow its instructions for safe removal thereof;

(f) Mining rights do not form part of the engagement of the Operator and the Operator hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Project Site:

For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein;

(g) The Operator shall not sublicense, sublet or sub-lease or create any Encumbrance on the whole or any part of Asset 1, Asset 2 or the Combined Assets (as the case may be);

(h) The Operator shall have the right to regulate the entry and use of Asset 1, Asset 2 or the Combined Assets (as the case may be)by third parties in accordance with and subject to the provisions of this Agreement; and

(i) The Operator shall allow free access to Asset 1, Asset 2 or the Combined Assets (as the case may be) at all times for the authorized representatives of the Corporation, and for the persons duly authorized by any Government Authority to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

ARTICLE 3:COMMENCEMENT OF OPERATION, MAINTENANCE& MANAGEMENT

3.1 O&M Commencement Date

3.1.1 The Corporation shall provide the Operator access to the assets (either Asset 1 or Asset 2 or the Combined Assets, as the case may be) within 30 (thirty) days of the date of signing of this Agreement. The date on which the Corporation provides access to Asset 1, Asset 2 or the Combined Assets (as the case may be), to the Operator will be referred to as "**O&M Commencement Date**" for the purposes of this Agreement.

3.1.2 The Operator shall commence undertaking the operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets (as the case may be) from the O&M Commencement Date. It is clarified that with respect Private Railway Siding (forming part of the Asset 2) the O&M Commencement Date will be date on which the Railway Operationalization Approval is issued.

3.1.3 The Operator acknowledges and agrees that Asset1, Asset 2 or the Combined Assets(as the case may be) will be handed over for the purposes of operation, maintenance and management on an "as is where is basis".

3.1.4 The Operator agrees, acknowledges and undertakes that it will operate, maintain and manage Asset 1, Asset 2 or the Combined Assets(as the case may be) in accordance with the provisions of Applicable Law, guidelines prescribed by any Government Authority and the standard operating procedures prescribed by the Railway Administration in respect of the operation of the Private Railway Siding or any other Government Authority. In the event any fines, penalty, damages are levied by any Government Authority in relation to any failure by the Operator to comply with the prescribed guidelines, standard operating procedures or any provisions under Applicable Law in relation to operation, maintenance and management of the Asset 1, Asset 2 or the Combined Assets(as the case may be), the Operator will be liable to pay such fines, penalties or damages.

3.2 Usage of Asset 2 or Combined Assets as the case may be

3.2.1 The Parties acknowledge and agree that the Corporation would obtain the Railway Operationalization Approval and the Corporation shall get the Railway Siding Operational within seven months of the date of issuance of Letter of Award (the "LoA") and till such time the Private Railway Siding becomes operational, the Corporation may consider providing the Operator a discount at the rate of Rs. 6,00,000 (Rupees Six lakhs) per month proportionately with respect to the O&M Charges payable in relation to the Combined Assets or Asset 2 only (as the case may be). However, if the Railway Siding does not become operational within seven months as above then from the 8th month the discount in the monthly O&M charges shall be increased from 6 lakh to 20 lakh per month proportionately with respect to the O&M Charges payable in relation to the Combined Asset or Asset 2 only (as the case may be) till the completion of twelfth month from the date of issuance of Letter of Award. No discount in O&M Charges shall be offered beyond twelve months of the date of issuance of Letter of Award (The "LoA") .Once the Railway Siding becomes Operational the Operator / Selected Bidder shall have to pay the O&M charges at full rates, from the date of Operationalisation of Railway Siding, as per the agreement and discount granted shall be withdrawn without any intimation in this regard.

In case the Corporation could not get the Railway siding operational within twelve months of the issuance of Letter of Award (the "LoA") the Contract may be terminated

on mutual consent and the Performance Security paid by the selected Bidder / Operator shall be returned to the Successful Bidder / Operator without interest.

3.2.2 The Parties agree that, the Corporation and the Operator will submit proposal to the Railway Administration to obtain their no-objection certificate/approval with respect to usage and operation, maintenance and management of the Private Railway Siding by the Operator (as a co-user)to facilitate the inward/outward traffic of goods being handled by the Operator at the Project Site ("**Railway Operationalization Approval**"). The operation, maintenance and management of the Private Railway Siding by the Operator will be subject to the preference to be provided to the Corporation's usage of the Private Railway Siding, as described under Clause 3.2.3.

3.2.3 Notwithstanding the provisions of Clause 3.2.2, the Parties acknowledge and agree that it shall be the obligation of the Operator to provide the Corporation preference in the event the Corporation intends to utilize the Private Railway Siding and platforms along with any allied infrastructure for its own use, during the term of this Agreement on mutually agreed terms and conditions.

3.2.4 The Operator agrees and acknowledges that in the event the Corporation expresses its intention to utilize Asset 1, Asset 2 or the Combined Assets (as the case may be) for its own use during the term of this Agreement, the Operator shall provide the same to the Corporation on a first preference basis on mutually agreed terms and conditions,

3.2.5 The Operator shall secure from the Railway Administration a 'no-dues certificate' as on March 31 in every Contract Year stating that there are no dues outstanding against the Operator with respect to payments to be made by the Operator in relation to the train operations conducted on the Private Railway Siding. It is clarified that any pending dues payable to the Railway Administration in relation to the train operations conducted on the Private Railway Siding till it becomes operational shall be paid by the Corporation.

3.2.6 The Operator will indemnify, defend, save and hold harmless the Corporation and its subsidiaries, affiliates, contractors, officers, servants, and/ or agents against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of anydamage caused to the Private Railway Siding during the Term/ the First Renewed Term/Second Renewed Term/ Third Renewed Term/ Fourth Renewed Term (as the case may be) or subsequent to a period of 1 (one) year after the expiry of the Term / the First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be), which has resulted due to the poor performance of the Private Railway Siding.

3.3 Use of additional permissible FSI in Asset 2 or Combined Assets

3.3.1 The Parties acknowledge that an additional FSI limit of 1667 sq. mts. is available in respect of Asset 2 or Combined Assets. If any additional buildings, structures or facilities or modification in the existing design of the warehousing complex ("Additional Facilities") are required, the same will be constructed within the permissible FSI subject to the prior written approval of the Corporation. However, if the Operator requires the demolition of any existing godown/ godowns then the Operator shall have to seek the prior written approval of the Corporation. The Corporation may grant the permission to demolish any existing godown /godowns only after carrying out the cost benefit analysis. If the permission to demolish any existing godown / godowns is granted by the Corporation then the Operator will have to pay the written down value of the Godowns/ godown to the Corporation on the date when permission to do so is granted by the Corporation. The Parties acknowledge and agree that all right, title and interest in any Additional Facilities will remain with the Corporation and the

Operator will not claim, demand or collect any consideration, revenue, reimbursement, premium in respect of such Additional Facilities.

3.3.2 Upon completion of the Term/the First Renewed Term/Second Renewed Term/ Third Renewed Term/ Fourth Renewed Term (as the case may be) of this Agreement, as directed by the Corporation, the Operator shall be allowed to take away the Additional facilities constructed /erected or any other modifications made by it in the Project Site at the Operator's own cost, to the satisfaction of the Corporation and the Corporation may not retain the Additional facilities constructed /erected or any other modifications made by Operator in the Project Site. But the Operator will have to clear the dues payable to the Corporation, under the agreement, if any, prior to removing / demolishing the Additional facilities constructed /erected by them. The Parties agree that no additional costs or compensation will be paid to the Operator by the Corporation in respect of the Additional Facilities upon the expiry of the term of this Agreement.

3.4 **Common Area Facilities**

3.4.1 The Operator will not make any changes, modification or alterations (including cutting any trees) at the Project Site and in respect of any Common Area Facilities, without the prior written permission of the Corporation. The Operator acknowledges and agrees that it will not obstruct the usage of the Common Area Facilities during the Term/the First Renewed Term/Second Renewed Term/ Third Renewed Term/ Fourth Renewed Term (as the case may be) of this Agreement and maintain the Common Area Facilities in accordance with the O&M Plan and the terms of this Agreement.

3.4.2 In the event the Operator is only entrusted with the operation, maintenance and management of Asset 1, it will use 'Gate Number 1' and 'Gate Number 2' located at the Project Site for entry and exit of any vehicles being used by it.

3.4.3 In the event the Operator is only entrusted with the operation, maintenance and management of Asset 2, it will use 'Gate Number 3' located at the Project Site for entry and exit of any vehicles being used by it.

3.4.4 Notwithstanding the provisions of Clause 3.4.2 and 3.4.3 above, it is clarified that the Operator shall not be restricted from using Gate Number 1 and Gate Number 2 (in the event the Operator is undertaking operation, maintenance and management of Asset 2 only) and Gate Number 3 (in the event the Operator is undertaking operation, maintenance and management of Asset 1 only) and will be allowed to use such entry gates, subject to the prior permission of the Corporation.

3.4.5 The expenses incurred in relation to maintaining the Common Area Facilities will be shared between the Selected Bidders(in case where two different Operators are engaged for Asset-1 and Asset-2) in the ratio of the Area Offered for Operation, Maintenance and Management i.e. 2.27:1.68 for Asset-1 and Asset-2 respectively. It is clarified that in the event a single Operator is selected for the operation, maintenance and management of the Combined Assets, the expenses incurred in relation to maintaining the Common Area Facilities will be borne solely by the Operator.

3.4.6 In the event two different Selected Bidders are engaged for the operation, maintenance and management of Asset-1 and Asset-2, each Selected Bidder (in its capacity as the Operator) shall have to bear any charges levied by CIDCO, Panvel Municipal Corporation, or the relevant Tehsildar exercising jurisdiction over the Project Site, in the ratio of the area offered for operation, maintenance and management to the Selected Bidders i.e. 2.27:1.68 for Asset-1 and Asset-2 respectively. It is clarified that in the event a single Operator is selected for the

operation, maintenance and management of the Combined Assets then the Selected Operator shall have to bear all charges levied by CIDCO, Panvel Municipal Corporation, or the relevant Tehsildar exercising jurisdiction over the Project Site.

ARTICLE 4:OPERATION, MAINTENANCE& MANAGEMENT OF THE PROJECT

4.1 The Operator shall be responsible for operating, maintaining and managing Asset 1, Asset 2 or the Combined Assets(as the case may be)during the Term/ First Renewed Term/ Second Renewed Term / Third Renewed Term/ Fourth Renewed Term.

4.2 Subject to and in accordance with Applicable Law, Good Industry Practices, and the provisions of this Agreement, the Operator shall be obliged or entitled (as the case may be) to:

(a) operate, maintain and manage Asset 1, Asset 2 or the Combined Assets(as the case may be) in accordance with Applicable Law, the terms of the Railway Siding Agreement and Good Industry Practices;

(b) obtain all permits, consents, approvals and permissions under Applicable Law to undertake the operation, maintenance and management of the Asset 1, Asset 2 or the Combined Assets(as the case may be);

(c) ensure that it will limit is area of operation, maintenance and management to the area identified for the same under this Agreement and not encroach, occupy, inhabit, obstruct any part of the Project Site;

(d) ensure that no political banners are displayed at the Project Site and that no political meetings, rallies or congregations are allowed at the Project Site;

(e) By the end of each quarter in a Contract Year, submit to the Corporation in the prescribed format, quarterly reports with respect to the operation, maintenance and management of the Project; and

(f) ensure that no unlawful activities such as gambling, betting or any activities of a like nature are carried out in the premises of Asset 1, Asset 2 or the Combined Assets(as the case may be);

(g) ensure that no unlawful activities in contravention of Applicable Laws are carried out at the Asset 1, Asset 2 or the Combined Assets(as the case may be);

(h) bear all expenses for operating, maintaining and managing the Asset 1, Asset 2 or the Combined Assets(as the case may be)including, private freight terminal, cargo lifts, electrical equipment, firefighting equipment, security personnel and all other costs and expenses that may be incurred for maintain the infrastructure facilities associated with Asset 1, Asset 2 or the Combined Assets(as the case may be);

(i) reimburse the Corporation for payment of all Taxes under Applicable Law pertaining to Asset 1, Asset 2 or the Combined Assets(as the case may be);

(j) reimburse the Corporation for payment of all statutory costs and necessary dues as may be payable under Applicable Law in respect of the execution of this Agreement including stamp duty costs, registration charges and any other charges of a like nature;

(k) reimburse the Corporation for payment of any fines, penalty, damages that are levied by any Government Authority in relation to any failure by the Operator to comply with the prescribed guidelines, standard operating procedures or any provisions under Applicable Law in relation to operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets(as the case may be); and

(l) Make reasonable efforts to coordinate its activities with, and not unreasonably interfere with the operations of, any other contractor(s) that the Corporation may have appointed in respect of the Project Site.

4.3 In the event the Operator commits any breach of the terms of this Agreement, the Corporation shall be entitled to provide a notice to the Operator in writing requiring the Operator to rectify such breach. If the Operator fails to rectify such breach within the time period stipulated by the Corporation, the Corporation will be entitled to terminate the Agreement in accordance with Article 13.

ARTICLE 5: OBLIGATIONS OF THE OPERATOR

5.1 The Operator shall comply with Applicable Law and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement, and, in particular, shall:

(a) Pay O&M Charges to the Corporation in the manner specified in Clause 11.1;

(b) In relation to the Private Railway Siding, pay fixed charges to the Corporation for payment as per actual for (i) Railway Land Rent, (ii) maintenance and inspection charges, (iii) establishment charges of Central Railway administration staff, (iv) charges levied by the Railway Administration under the Railway Siding Agreement, and (v) other ancillary expenses as may be levied by the Railway Administration as outlined under Clause 11.4;

(c) Pay demurrage, wharfage or any other charges of a like nature that may become payable to the Railway Administration. Such charges will be paid by the Operator to the Corporation, which in turn will make such payment to the Railway Administration on rake to rake basis;

(d) be liable to repair, rectify or cure any damage caused to the Asset 1, Asset 2 or the Combined Assets(as the case may be), in the event such any damage is caused due to any act or omission of the Operator or any of its personnel,

(e) have submitted to the Corporation the O&M Plan;

(f) Be and remain responsible to pay at its own cost and expense, electricity bills, water consumption charges, fuel (if any) and other utilities as may be required for the operation, maintenance and management of the Asset 1, Asset 2 or the Combined Assets(as the case may be)within the due date on which such charges become due and payable;

(g) Make its own necessary arrangements and engage labour and manpower for the operation, maintenance and management of the Asset 1, Asset 2 or the Combined Assets(as the case may be), including without limitation, the Private Railway Siding;

(h) Ensure compliance with all employment and labour laws including but not limited to Contract Labour (Regulation & Abolition) Act, 1970, Minimum Wages Act, 1948, Payment of Wages Act, 1936, Payment of Bonus Act, 1965, Employees Provident Funds and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948, Payment of Gratuity Act, 1972, The Workmen Compensation Act, 1923, Regulation of Employment and Conditions of Service) Act, 1979, Maternity Benefit Act, 1961 and Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 etc. (collectively the "**Employment Laws**");

(i) Make all necessary payments under Applicable Law and Employment Laws in relation to the employment of labour and manpower for the operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets(as the case may be). It is clarified that the Corporation will not be responsible for making any payments or compensation to labour workforce, personnel or other individuals employed, engaged or retained by the Operator;

(j) Ensure compliance with all labour, environment, and health and safety laws as applicable to Asset 1, Asset 2 or the Combined Assets(as the case may be) under Applicable Law;

(k) Operate, maintain and manage the Project in accordance within the terms of this Agreement;

(l) Not make any modifications, alterations or changes with respect to Asset 1, Asset 2 or the Combined Assets or the Common Area Facilities or the Project Site without the prior approval of the Corporation;

(m) Not cut any trees at the Project Site; and

(n) Not allow the parking of vehicles inside the premises of the Project Site which cause the obstruction of approach roads and pathways or any Common Area Facilities which results in the obstruction of movement of vehicles, material etc.;

(o) Not bring any hazardous materials, waste and other debris on the Project Site and ensure that the Project Site is maintained in a clean, tidy and orderly condition, and in conformity with Applicable Laws, and Good Industry Practice.

(p) allow the movement / manoeuvring of the vehicles, laborers, materials and machines etc. at the project site in connection with the operationalization of the Railway Siding.

(q) also allow the parking of vehicles, machines etc. and storing of the materials at project site in connection with the operationalization of the Railway Siding.

(r) bear the financial cost with regard to the conversion of Private Railway Siding into Private Freight Terminal i.e. PFT and also the cost with respect to the maintenance of Private Freight Terminal (in case where the Operator requests to the Corporation for conversion of Private Railway Siding into Private Freight Terminal i.e. PFT and the permission for same is granted by the Corporation).

(s) shall have to submit an undertaking to the Corporation stating that it will vacate the project site after completion remaining Terms as per the agreement, at the time of renewal of agreement,

5.2 **Obligations relating to Change in Ownership**

The Operator shall not undertake or permit any Change in Ownership, except with the prior approval of the Corporation save and except any changes in ownership as may be required pursuant to operation of Applicable Law.

5.3 The Operator shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) Perform and fulfill all its obligations under this Agreement, and incidental thereto, or necessary for performing the Operator's obligations under this Agreement, as a reasonable and prudent person, and in accordance with Applicable Law, the Applicable Permits, and Good Industry Practices;

(b) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of its obligations under this Agreement;

(c) Not assign, transfer or sublet or create any Encumbrance on this Agreement, , or on the whole or any part of the Project, nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement;

(d) Not assert any ownership rights over Asset 1, Asset 2 or the Combined Assets(as the case may be) and/ or the Project Site;

(e) Make, or cause to be made, necessary applications to the relevant Government Authorities, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Law;

(f) Procure or cause to be procured, as required, appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into Asset 1, Asset 2 or the Combined Assets(as the case may be);

(g) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its sub-contractors in connection with the performance of its obligations under this Agreement;

(h) Not do or omit to do any act, deed or thing which may in any manner be violative of any of Applicable Law or the provisions of this Agreement;

(i) Take reasonable measures to prevent the destruction, scarring and defacement of the natural surroundings and environment at the Project Site;

(j) Appoint its representative duly authorized to deal with the Corporation in respect of all matters under or arising out of or relating to this Agreement;

(k) Effect and maintain at its own cost such insurances for such maximum sums as may be required under Applicable Law and as may be necessary or prudent in accordance with Good Industry Practices, including but not limited to:

(i) contractor's all risk insurance covering all risks including any loss, damage or destruction or construction work in relation to the Project in relation to the construction activities in relation to the Project;

(ii) workmen's compensation insurance;

(iii) third party liability insurance; and

(iv) such other insurance policies as may be required.

It is clarified that the Operator shall novate such insurance policies in favour of the Corporation upon expiry of the Term/ the First Renewed Term/Second Renewed Term/ Third Renewed Term/ Fourth Renewed Term (as the case may be) of this Agreement, if the Corporation so requires in its sole discretion.

(l) From the O&M Commencement Date, reimburse the Corporation in relation to present and future outgoings, cesses, Taxes (including municipal taxes), rates and other charges whatsoever and all increases thereto, in respect of the portion of the Project Site on which Asset 1, Asset 2 or the Combined Assets(as the case may be) are situated, on the due dates thereof. It is hereby clarified that the Corporation shall not be liable to pay Taxes, cesses or charges of a like nature.

(m) Reimburse the Corporation in relation to payment of all Taxes made by the Corporation (including Goods & Services Tax), levies, import duties, fees and other charges, dues, assessments or outgoings payable in respect of the O&M Charges or in

respect of, the operation, maintenance and management of the Project or in respect of the materials stored therein which may be levied by any Government Authority. If the Operator fails to reimburse the Corporation for payment of any of the Taxes, cesses, outgoings or any charges of a like nature (as outlined in sub-clause 5.3 (l) and this sub-clause 5.3 (m)), the Corporation shall have the right, but not be obligated to pay such Taxes, cesses and charges to the relevant Government Authority and recover the amount as per the procedure set out in Clause 8.3;

(n) the Operator shall make Asset 1, Asset 2 or the Combined Assets(as the case may be)available to the Corporation at all times during the Term /the First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be) for regular inspections through the duly authorized Representatives:

Provided however that the duly authorized representatives of the Corporation shall not interfere with or prevent the Operator's officials and personnel from discharging their functions;

(o) Make or cause to be made available with respect to Asset 1, Asset 2 or the Combined Assets(as the case may be)all utilities and infrastructure required for the Project other than the utilities being provided by the Corporation; and

(p) Bear all stamp duty and registration charges under Applicable Law in relation to the execution of this Agreement.

5.4 **Sub-Contracts**

(a) The Operator may, subject to the prior approval of the Corporation, appoint sub-contractors to fulfill its obligations under this Agreement with respect to any activity relating to the Project, including but not limited to the operation, maintenance and management or any part thereof and enter into sub-contracts for this purpose ("**Sub-Contracts**") to the extent necessary for fulfilling its obligations under the approved O&M Plan. It is clarified that the Corporation shall not be liable with respect to any claim, damage, action, recourse or any matters related to or arising from the Sub-Contracts.

(i) The Operator shall organize the supervision, monitoring and control of the sub-contractors necessary to ensure the proper performance of their respective obligations under the Sub-Contracts and to ensure and procure that the sub-contractors comply with all Applicable Permits and Applicable Law in the performance by their obligations;

(ii) Notwithstanding anything contained in this Agreement or any other agreement, the Operator shall, at all times, be directly responsible and liable for the performance of all its obligations under this Agreement, and no default under any sub-contractor any other agreement shall excuse the Operator from its obligations or liability hereunder; and

(iii) The Operator shall procure that each of the Sub-Contracts contains provisions that entitle the Corporation to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination.

(b) The Operator shall not enter into any agreement which prejudices the right, title and interest of the Corporation under this Agreement in any manner whatsoever. The Operator will be solely responsible with respect to its obligations under any Sub-Contracts. The Operator shall indemnify the Corporation from any claims arising

under or in relation to any of the Sub-Contracts, in accordance with the terms of Article 10 of this Agreement.

5.5 **Personnel**

(a) The Operator shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

(b) The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or the sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator, and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of the sub-contractors shall not constitute a Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement.

ARTICLE 6:OBLIGATIONS OF THE CORPORATION

6.1 The Corporation shall, at the cost of the Operator as per the prevailing charges, make available to the Operator the utilities/facilities limited to electricity and water.

6.2 The Corporation shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder, and, in particular, shall:

(a) 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 Agreement;

(b) Support, cooperate with and facilitate the Operator in the operation, maintenance and management of the Project in accordance with the provisions of this Agreement; and

(c) Appoint its representative duly authorised to deal with the Operator in respect of all matters under or arising out of or relating to this Agreement.

ARTICLE 7:REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Operator

The Operator represents and warrants to the Corporation that:

(a) It is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) It has taken all necessary corporate and other actions under Applicable Law to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(d) This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) It is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) The information furnished in response to the RfP and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its constitution documents, or any Applicable Law 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;

(h) There are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it 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 Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) It has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) It has complied with Applicable Law 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 its ability to perform its obligations under this Agreement;

(k) No representation or warranty by it contained herein or in any other document furnished by it to the Corporation or to any Government Authority in relation to Applicable Permits 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; and

(l) No sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Project,, or entering into this Agreement, or for influencing or attempting to influence any officer or employee of the Corporation in connection therewith.

7.2 **Representations and Warranties of the Corporation**

The Corporation represents and warrants to the Operator that:

(a) This Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(b) It has the financial standing and capacity to perform its obligations under the Agreement;

(c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against it 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 default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;

(d) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Authority which may result in any material adverse effect on the Corporation's ability to perform its obligations under this Agreement; and

(e) It shall not, at any time during the Term /the First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be), interfere with peaceful exercise of the rights and discharge of the obligations by the Operator, in accordance with this Agreement.

7.3 **Disclosure**

(a) In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same.

(b) Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any obligation of either Party under this Agreement.

7.4 **Disclaimer**

(a) The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the Request for Proposals document issued by the Corporation on [●], the scope of the Project, the Project Site, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Corporation or obtained procured or gathered otherwise, and has determined to its satisfaction the

accuracy or otherwise 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.

(b) Save as provided in Clause 7.2, the Corporation makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against the Corporation in this regard.

(c) 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 7.4(a) above and hereby acknowledges and agrees that the Corporation shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under it:

ARTICLE 8:
PERFORMANCE SECURITY

8.1 **Performance Security**

The Operator has, for the performance of its obligations hereunder during the Term, provided to the Corporation within 30 (thirty) days of the issuance of the LOA, an irrevocable and unconditional guarantee issued by a scheduled commercial Bank (other than a co-operative bank) for a sum equivalent to the O&M Charges, (the "**Performance Security**"). The Performance Security shall be split in 2 (two) parts as follows:

(a) a demand draft issued in favour of Cotton Corporation of India or an RTGS payment for an amount equivalent to 30% (thirty percent) of the O&M Charges for the relevant Payment Period; and

(b) a revolving bank guarantee (in accordance with the format enclosed in Schedule B) for an amount equivalent to 70% (seventy percent) of the O&M Charges for the relevant Payment Period.

8.2 The amount of the Performance Security will be an amount equivalent to the O&M Charges payable during the relevant Payment Period.

For the purposes of this Clause, the Operator shall ensure that 30 (thirty) days prior to the expiry of any Payment Period, the Performance Security (a) shall be updated to an amount equivalent to the O&M Charges for the succeeding Payment Period and (b) shall be renewed and kept valid and effective for a period up to the expiry of the succeeding Payment Period. For the avoidance of doubt, the Operator shall keep renewing the Performance Security during the entire Term/First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be) in accordance with the provisions of this Clause 8.1.

8.3 **Appropriation of Performance Security**

8.3.1 Upon occurrence of an Operator Default, the Corporation shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as damages for such Operator Default. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, and the Operator shall, within the time so granted, replenish or furnish a fresh Performance Security as aforesaid failing which the Corporation shall be entitled to terminate this Agreement in accordance with the terms of this Agreement.

8.3.2 If the Operator fails to pay any of the Taxes, cesses, outgoings or any charges of a like nature (as outlined in Clause 5.3 (l) (m) and (p)), the Corporation shall have the right, but not be obligated to pay the same and recover the amount so incurred in relation to payment of such Taxes, cesses or charges from the Operator by appropriating an equivalent amount from the Performance Security, along with interest at a rate per annum of 24% (twenty four percent).

8.4 **Release of Performance Security**

The Performance Security shall remain in force and effect for the Term /the First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be), and shall cease to be in force and effect only when the Corporation shall have issued the Release Certificate to the Operator.

ARTICLE 9:FORCE MAJEURE

9.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**"or "**Force Majeure Event**" shall mean occurrence of any event of circumstance or combinations of events or circumstances which (a) affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**")of its obligations under this Agreement, and (b) is beyond the reasonable control of the Affected Party, and (c) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practices.

9.2 Duty to report Force Majeure Event

(a) Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith, giving full particulars of:

(i) The nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 9 with evidence in support thereof;

(ii) The estimated duration of such Force Majeure Event, and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(iii) The measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(iv) Any other information relevant to the Affected Party's claim.

(b) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence.

(c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 9.2(a), and such other information as the other Party may reasonably request the Affected Party to provide.

9.3 Effect of Force Majeure Event on the Project

(a) Upon the occurrence of any Force Majeure Event the Term /the First Renewed Term/Second Renewed Term / Third Renewed Term/ Fourth Renewed Term (as the case may be), shall be extended by a period equal in length to the duration of the Force Majeure Event.

(b) Upon occurrence of any Force Majeure Event, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

(c) If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused-from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(i) The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(ii) The Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(iii) The Affected Party shall promptly resume performance of its obligations hereunder when it is able to do so and shall give to the other Party notice to that effect.

9.4 **Termination Notice for Force Majeure Event**

(a) If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may terminate this Agreement by issuing a Termination Notice to the other Party, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.

(b) Before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) day period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

ARTICLE 10:INDEMNIFICATION

10.1 General indemnity

The Operator shall indemnify, defend, save and hold harmless the Corporation and its subsidiaries, affiliates, contractors, officers, servants, and/ or agents against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator's obligations under this Agreement, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Corporation and/or its subsidiaries, affiliates, contractors, officers, servants, or agents.

10.2 Notice and contest of claims

(a) If the Corporation receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article ("**Indemnified Party**"), the Indemnified Party shall notify the Operator (the "**Indemnifying Party**")within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed.

(b) If the Indemnifying Party wishes to contest or dispute the claim or demand, 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 reasonable satisfaction.

10.3 Defence of claims

(a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party.

(i) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence.

(ii) The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

(b) If the Indemnifying Party has exercised its rights under this Clause 10.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) If the Indemnifying Party exercises its rights under this Clause 10.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(i) the employment of counsel by such Party has been authorised in writing by the Indemnifying Party; or

(ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

(iii) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

a. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

b. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 10.3(c)are applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

10.4 **No consequential claims**

Notwithstanding anything to the contrary contained in this Article, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

10.5 **Survival on Termination**

The provisions of this Article shall survive termination of this Agreement.

ARTICLE 11: PAYMENTS

11.1 **O&M Charges**

Notwithstanding anything to the contrary contained in this Agreement and subject to the provisions of Article 3, the Operator shall commencing from the O&M Commencement Date be liable to pay to the Corporation the following amounts:

(a) The consolidated operation, maintenance and management charges (the "**O&M Charges**") as quoted by the Selected Bidder in response to the RfP, which will be revised from time to time in the manner set forth below:

(i) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period of the Term; and

(ii) Upon renewal of the Term for the First Renewed Term:

(I) The O&M Charges payable in the first Payment Period of the First Renewed Term shall be subject to an increase of 15% (fifteen percent), at the time of renewal, on the amount payable in the last Payment Period of the Term; and

(II) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the First Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period;

(iii) Upon renewal of the First Renewed Term for the Second Renewed Term:

(I) The O&M Charges payable in the first Payment Period of the Second Renewed Term shall be subject to an increase of 15% (fifteen percent), at the time of renewal on the amount payable in the last Payment Period for the First Renewed Term; and

(II) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Second Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

(iv) Upon renewal of the Second Renewed Term for the Third Renewed Term:

(I) The O&M Charges payable in the first Payment Period of the Third Renewed Term shall be subject to an increase of 15% (fifteen percent) at the time of renewal, on the amount payable in the last Payment Period of the Second Renewed Term; and

(II) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Third Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

(v) Upon renewal of the Third Renewed Term for the Fourth Renewed Term:

(I) The O&M Charges payable in the first Payment Period of the Fourth Renewed Term shall be subject to an increase of 15% (fifteen percent) at the time of renewal, on the amount payable in the last Payment Period of the Third Renewed Term; and

(II) The O&M Charges shall, in each of the second, third, fourth and fifth Payment Periods of the Second Renewed Term, be subject to a 5% (five percent) increase on the amount payable in the immediately preceding Payment Period.

11.2 The O&M Charges must be paid by the Operator in advance for every month, within the first week of such month, in the event the payment of the O&M Charges is not made by the 10th(tenth) day of each month, the Operator shall be liable to pay to the Corporation and interest on such unpaid O&M Charges at the rate of 24% (twenty four percent) per month ("**Delay Interest Payment**"). Such Delay Interest Payment Amount along with the unpaid O&M Charges will be payable in the month succeeding non-payment of O&M Charges. It is clarified that the acceptance of Delay Interest Payment will not prejudice any other rights of the Corporation under this Agreement and will not be construed as a waiver of any of the Corporation's rights under this Agreement.

11.3 In the event the Operator fails to make payment of O&M Charges for 2 (two) consecutive months ("**Payment Default**"), the Corporation will be entitled to terminate this Agreement by providing the Operator a written notice of 15 (fifteen) days ("**Payment Default Termination**"). Upon issuance of the Payment Default Termination, the Corporation shall forfeit the Performance Security and take over possession of the Asset 1, Asset 2 or the Combined Assets(as the case may be) forthwith and the Operator will be deemed to have forfeited all rights in respect of Asset 1, Asset 2 or the Combined Assets(as the case may be) and vacate the Project Site forthwith.

11.4 Charges relating to the Private Railway Siding

In addition to the O&M Charges outlined under Clause 11.1, the Operator shall pay the following fixed charges to the Corporation in the form of a demand draft for payment as per actual for In relation to the Private Railway Siding:

(i) Railway Land Rent;

(ii) maintenance and inspection charges; and

(iii) establishment charges of Railway Administration staff;

(iv) charges levied by the Railway Administration under the Railway Siding Agreement; and

(v) any other ancillary expenses payable to or as may be levied by the Railway Administration

11.5 The Operator shall be liable to pay any penalty, charges or other expenses demanded by the Railway Administration towards consequential damages arising out of or in relation to any accident, fire, mishap, or event of a like nature that occurs/takes place at the Private Railway Siding or any part of the Project Site.

ARTICLE 12:CHANGE OF SCOPE

12.1 **Change of Scope**

(a) The Corporation may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the O&M Plan ("**Change of Scope**").

(b) If the Corporation determines at any time that a Change of Scope is necessary, it shall by notice in writing require the Operator to consider such Change of Scope. The Operator shall, within 15 (fifteen) days of receipt of such Change of Scope notice (as defined below), accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 12.

12.2 **Procedure for Change of Scope**

(a) If the Corporation determines that a Change of Scope is necessary, it shall issue to the Operator a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

(b) Upon receipt of a Change of Scope Notice, the Operator shall, with due diligence, provide to the Corporation such information as necessary, together with preliminary documentation in support of:

(i) the impact, if any, which the Change of Scope is likely to have on the Asset 1, Asset 2 or the Combined Assets(as the case may be), and

(ii) the options for implementing the proposed Change of Scope and the effect, if any, each such option will have on the Project.

(c) Upon receipt of information set forth in Clause 12.2(b), if the Corporation decides to proceed with the Change of Scope, it shall convey its preferred option to the Operator, and the Operator shall thereupon make good faith efforts and implement the Change of Scope at its own cost. Upon intimation being provided to the Operator of the Change of Scope under the Change of Scope Notice, the Operator shall proceed with the performance and implementation of the Change of Scope forthwith.

12.3 In the event the Operator does not agree to any Change of Scope directed by the Corporation in accordance with Article 12, the Corporation will be entitled to terminate this Agreement by providing the Operator a notice of 30 (thirty) days.

ARTICLE 13:TERMINATION

13.1 **Termination for Operator's Default**

(a) Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Operator fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 30 (thirty) days, the Operator shall be deemed to be in default of this Agreement (an "**Operator Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Corporation or due to Force Majeure. The defaults referred to herein shall include:

(i) The Performance Security has been encashed and appropriated in accordance with Clause 8.3 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;

(ii) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Article 8, the Operator fails to cure, within a Cure Period of 90 (ninety) days, the Operator Default for which whole or part of the Performance Security was appropriated;

(iii) The Operator fails to operate, maintain and manage the Project in accordance with the terms of this Agreement;

(iv) The Operator executes the Project otherwise than in conformity with the O&M Plan and/or uses any part of the Project Site for development of any component or facility not part of the O&M Plan;

(v) The Operator fails to fulfill such of the obligations set out in this Agreement;

(vi) The Operator abandons or manifests intention to abandon the operation, maintenance and management of the Project without the prior written consent of the Corporation;

(vii) The Operator has failed to make any payment, including, but not limited to, the O&M Charges, Railway Land Rent or any other charges as specified in Article 11 to the Corporation within the period specified in this Agreement;

(viii) A Payment Default occurs in accordance with Clause 11.3 and the Corporation exercises its right of Payment Default Termination;

(ix) The Operator fails to comply with or acts in contravention of the Corporation's right to use the Private Railway Siding in accordance with Clause 3.2.3;

(x) The Operator creates any Encumbrance in breach of this Agreement;

(xi) The Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;

(xii) A Change in Ownership has occurred in breach of the provisions of Clause 5.2;

(xiii) There is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the Sub-Contracts, or of (ii) all or part of the

assets or undertaking of the Operator, which transfer has a Material Adverse Effect;

(xiv) An execution levied on any of the assets of the Operator has caused a Material Adverse Effect;

(xv) The Operator refuses to comply with the requirements of a Change of Scope Notice or undertake a Change of Scope in accordance with Article 12; and

(xvi) The Operator has been, or is in the process of being wound-up, dissolved or amalgamated in a manner that would cause, in the reasonable opinion of the Corporation, a Material Adverse Effect;

(b) Without prejudice to any other rights or remedies which the Corporation may have under this Agreement, upon occurrence of an Operator Default, the Corporation shall be entitled to terminate this Agreement by issuing a Termination Notice to the Operator.

(c) The Corporation shall by a notice inform the Operator of its intention to issue such Termination Notice and grant 30 (Thirty) days to the Operator to make a representation, and may after the expiry of such 30 (Thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

13.2 **Termination Payments**

(a) Upon Termination on account of a Operator Default:

(i) the Corporation will encash the Performance Security;
(ii) the Corporation will not be liable to make any payments whatsoever to the Operator; and

(iii) the Operator shall remove all buildings, structures, plant, machinery or any permanent constructions on the Project Site and handover vacant possession of the Project Site without any Encumbrances.

It is clarified that in the event the amount of the Performance Security, so encashed by the Corporation, is not sufficient to meet the total liability incurred on account of the termination of this Agreement due to an Operator Default, such additional liability will be reimbursed by the Operator to the Corporation.

13.3 **Consequences of Termination**

(a) Upon Termination for any reason whatsoever, the Corporation shall:

(i) Be deemed to have forthwith taken possession and control of the Asset 1, Asset 2 or the Combined Assets(as the case may be)and Project Site, including all moveable and immoveable properties thereon;

(ii) Be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Project Site or any part of the Project;

(iii) Require the Operator to comply with the Handback Requirements; and

(iv) Have the right to appoint an entity to undertake operation, maintenance and management of the Asset 1, Asset 2 or the Combined Assets(as the case may be);

(b) Upon Termination for any reason whatsoever, each Party shall pay to the other Party such uncontested amounts as may have become due and payable under this Agreement to the other Party prior to the date of Termination:

Provided that, in the event that the Agreement is terminated pursuant to the Operator opting against an extension of the Agreement for the First Renewed Term under Clause 2.2 or Second Renewed Term under Clause 2.3 or Third Renewed Term under Clause 2.4 or Fourth Renewed Term under Clause 2.5 of this Agreement, the Operator shall not be entitled to make any claims against the Corporation in respect of such uncontested amounts.

13.4 **Survival of rights**

(a) Any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract.

(b) All rights and obligations of either Party under this Agreement, including Termination Payments and Handback Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 14:HANDBACKOF RIGHTS AND INTEREST BY THE OPERATOR

14.1 **Handback Requirements**

Upon Termination, the Operator shall comply with and conform to the following requirements ("**Handback Requirements**"):

(a) Notify to the Corporation forthwith the location and particulars of Asset 1, Asset 2 or the Combined Assets(as the case may be), including any additions made to Asset 1, Asset 2 or the Combined Assets(as the case may be);

(b) Deliver forthwith the actual or constructive possession of the Asset 1, Asset 2 or the Combined Assets(as the case may be) in good, working and marketable condition and hand over possession of the Project Site free and clear of all Encumbrances;

(c) Cure the Project and Project Site, including the road, structures, warehouses, godowns and equipment, of all defects and deficiencies so that the Project is compliant with the O&M Plan:

(d) Deliver relevant records and reports pertaining to the Project and its operation, maintenance and management, including all programmes and manuals pertaining thereto, and complete 'as built' drawings as on the date of transfer;

(e) Transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Law;

(f) Execute such deeds of conveyance, documents and other writings as the Corporation may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project and Project Site, including the right to receive outstanding insurance claims to the extent due and payable to the Corporation, absolutely unto the Corporation or its nominee; and

(g) Comply with all other requirements prescribed or required under Applicable Law for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the Corporation or to its nominee.

14.2 **Release Certificate**

The divestment of all rights, title and interest in the Project shall be deemed complete on the date when all of the Handback Requirements have been fulfilled, and the Corporation shall, without unreasonable delay, thereupon issue a certificate as evidence of divestment by the Operator of all of its rights, title and interest in the Project, and their vesting in the Corporation pursuant hereto.

It is expressly agreed that any defect or deficiency in the Handback Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Corporation or its nominee on, or in respect of, the Project.

14.3 **Handback costs etc.**

The Operator shall bear and pay all costs incidental to handback of all of the rights, title and interest of the Operator in the Project in favour of the Corporation upon Termination.

ARTICLE 15: CHANGE IN LAW

15.1 If the occurrence of a Change in Law event results in a Material Adverse Effect, the Corporation or the Operator may by notice in writing to the other party request such modifications to the terms of this Agreement as the requesting party reasonably believes is necessary to place it in substantially the same legal, commercial and economic position as it was prior to such Change in Law. The Corporation and the Operator shall thereafter consult in good faith to agree to such modifications, and in the event the Parties do not reach an agreement with respect to such modifications, either of them may refer the matter for determination in accordance with the Dispute resolution procedure outlined in Article 16. It is hereby clarified that the Parties shall continue to fulfill their obligations under this Agreement during pending resolution of any Dispute under clause 16.1.

15.2 If a Change in Law event occurs which restricts the Operator from performing its obligations under this Agreement for a consecutive period of more than 1 (one) month, the Operator's engagement for the operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets (as the case may be) shall be deemed to be terminated and ceased with the concurrence of the Operator and this Agreement shall be deemed to be terminated by mutual agreement of the Parties. On the occurrence of a Change in Law event and subsequent termination in accordance with this Clause 15.1, the Corporation shall return the Performance Security submitted by the Operator, subject to any deductions or adjustments that may need to be made from the Performance Security amount for any amounts that are due from the Operator to the Corporation.

15.3 Notwithstanding anything to the contrary contained in this Agreement, the Corporation shall not in any manner be liable to provide any compensation to the Operator or reimburse to the Operator any sums on account of a Change in Law.

15.4 For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

ARTICLE 16:DISPUTE RESOLUTION

16.1 The Parties shall meet and endeavour to amicably resolve through discussions any dispute, difference, claim or controversy including the matter of damages if any (a "**Dispute**") that arises between the Parties about the validity, interpretation, implementation or alleged breach of any provision of this Agreement, or anything connected or related to or incidental to this Agreement.

16.2 If the Dispute is not amicably resolved by the Parties within 90 (ninety) days of the Parties meeting, either Party may submit the Dispute to arbitration to be conducted in accordance with the Arbitration and Conciliation (Amendment) Act, 2015 (as amended from time to time) in accordance with the following procedure:

(a) The arbitration proceedings shall be held at Mumbai.

(b) The arbitration proceedings shall be presided over by a sole arbitrator, appointed by the functional Director of the Corporation.

(c) The arbitration proceedings shall be conducted and the award shall be rendered in English.

(d) The arbitrator shall make the award within 3 (three) months of entering upon the reference unless the time is extended by consent of both Parties.

(e) The award rendered by the arbitrator shall be final, conclusive and binding on the Parties.

(f) The award shall be enforceable in any court having jurisdiction, subject to Applicable Law.

(g) Each Party shall bear the cost of preparing and presenting its case.

(h) The Parties shall equally share the cost of arbitration, including the arbitrator's fees and expenses.

ARTICLE 17:MISCELLANEOUS

17.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Mumbai shall have jurisdiction over matters arising out of or relating to this Agreement.

17.2 Waiver

(a) Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:

(i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(iii) shall not affect the validity or enforceability of this Agreement in any manner.

(b) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

17.3 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Corporation of any Project Agreement, document or drawing submitted by the Operator nor any observation or inspection of the operation, maintenance or management of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Operator from its obligations, duties and liabilities under this Agreement, Applicable Law and Applicable Permits; and

(b) the Corporation shall not be liable to the Operator by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

17.4 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other Agreement between the Parties or any representation by either Party not contained in a binding legal Agreement executed by both Parties.

17.5 Entire Agreement

This Agreement and the Schedules together with the Bidding Documents constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral

understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

17.6 **Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the dispute resolution procedure set forth under this Agreement or otherwise.

17.7 **No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.8 **Third Parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not party to this Agreement.

17.9 **Successors and Assigns**

(a) Neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party.

(b) This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

17.10 **Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

(a) Be given by facsimile or email and by letter delivered by hand to the address given below and marked for attention of the person set out below or to such other person as the Party may from time to time designate by notice to the other Party:

To the Operator
Attention : [●]
Address : [●]
Facsimile : [●]
Email : [●]

To the Corporation
Attention : [●]

Address : [●]
Facsimile : [●]
Email : [●]

Provided that notices or other communications to be given to an address outside Navi Mumbai may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Party may from time to time designate by notice to the Party;

(b) Any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

17.11 **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

17.12 **Amendments**

No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both Parties.

17.13 **Survival**

(a) All rights and obligations of either Party under this Agreement, including those set forth in Article 10 (Indemnification), Article 13 (Termination), Article 14 (Handback Requirements), and Article 15 (Dispute Resolution), shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

(b) The waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorised representatives, and affiliates of the Parties.

17.14 **Language**

All notices required to be given by one Party to the other Party and all other communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English.

For and on behalf of the [insert name of the Corporation]:

For and on behalf of [●]:

In the presence of:

1.

In the presence of:

1.

2.

2.

SCHEDULE A: PROJECT SITE

A. Location of property, area and its usage:

1. The corporation is having its warehousing complex premises of 61750 sq.m. Three separate entry Gate with CIDCO service Road and Internal Road facility. Administrative office and Watch & Ward Rooms.

2. It is located near to Kalamboli Circle of Mumbai Pune Express Highway & National Highway 4, Jawaharlal Nehru Port Trust is around 20km from the locations and connected with Big Road and suitable for containers traffics . It is also connected with Mumbai- Pune Road i.e old Pune Mumbai. Regular Bus services of NMMT, BEST and Kalamboli Railway station at 1.5 km , Khanda Rly station 1.5 km and Panvel station and Bus Depot around 2.5 Km .

3. The premises is having 2nos Godowns (5 Nos Compartments in Each Godown) of Al. Zinc coated Roof sheets with loading and unloading Platforms above Road Level around 1.5 meter facilitating for containers/trucks etc. The storage compartments are mainly 9 meters and Ridge level upto 16 meter. Also, 1 No Multistoried of RCC godowns of Ground plus First Floor with RCC partitions walls. Two Nos of Cargo Lifts in additions to 4 nos of staircases facility. 5 nos of compartments at first floor level and at ground floor 7 nos compartments. Loading and unloading Platforms above Road Level around 1.5 meter facilitating for containers/trucks etc. and ramps. Also, 1 No Multistoried of RCC godowns of 6 nos compartments at Ground Floor with RCC partitions walls, 4 nos of staircases facility for terrace. Loading and unloading Platforms above Road Level around 1.5 meter facilitating for containers/trucks etc. and ramps.

4. The open Plot area with rubble soling at almost all area , Street lighting poles around compound wall and One Nos High Mast for lighting, One Nos of Security Cabin , Rail Entry MS Gate and Two Nos Men entry gates , around 62 meter Pucca platform near Pump room no.2 ,

5. Track length of CCI Private railway siding connected with Panvel_ Diva Railway main line under agreement dated 7th August 1997 with Central Railway , pucca raised platform on one side and a boundary wall on the other side is situated inside the CCI Warehousing Complex at Plot No.S-5, Sector KWC, Kalamboli, Navi Mumbai-410218 (Maharashtra State).

For the purpose of Operation, Maintenance and Management the property has been bifurcated into Asset -1 and Asset -2 and Combined Assets details of which are provided on next page:

Asset-1

It consists of covered area of godowns (approx. 2.27 lakh sq. Ft.) along with the watch and ward facility in administrative block. The godown wise, compartment wise detail of same is provided on next page:

Sr. No.	**Particulars of Assets/property**	**Unit**	**Area In Sq.Ft**	**Sr. No.**	**Particulars of Assets/property**	**Unit**	**Area In Sq.Ft**
I	**II**	**III**	**IV**	**I**	**II**	**III**	**IV**
i)	**Aluminum Zinc coated Roof sheet** **Godown No. I**			**ii)**	**Aluminum Zinc coated Roof** **Sheet Godown No. II**		
***a**	Compartment No 1	Sq. ft	11365.39	**a**	Compartment No 1	Sq. ft	11365.39
b	Compartment No 2	Sq. ft	11825	**b**	Compartment No 2	Sq. ft	11301.33
c	Compartment No 3	Sq. ft	11663	**c**	Compartment No 3	Sq. ft	11301.33
d	Compartment No 4	Sq. ft	11663	**d**	Compartment No 4	Sq. ft	11301.33
e	Compartment No 5	Sq. ft	11825	**e**	Compartment No 5	Sq. ft	11301.33
A	**Total**		**58341.39**	***B***	**Total**		**56570.71**
iii)	**RCC Godown No III , Ground floor**			**iv)**	**RCC Godown No III , First Floor**		
a	Compartment No 1a	Sq. ft	5366.4	***a**	***Compartment No 1***	Sq. ft	11193.07
b	Compartment No 1b	Sq. ft	5336.4	***b**	***Compartment No 2***	Sq. ft	11193.07
c	Compartment No 2	Sq. ft	11694	**c**	Compartment No 3	Sq. ft	11193.07
d	Compartment No 3a	Sq. ft	5295	**d**	Compartment No 4	Sq. ft	11193.07
e	Compartment No 3b	Sq. ft	5295	**e**	Compartment No 5	Sq. ft	11193.07
***f**	***Compartment No 4***	Sq. ft	11694.59		``		
***g**	Compartment No 5	Sq. ft	10785.58				
C	**Total**		55466.97	***D***	**Total**		55965.35
				v)	Watch & Ward Room (in Administrative Block)		
				a	*Room No.2*	Sqft	288.15
				** b	*Room No.3*	Sqft	288.15
				c	Room No.4	Sqft	288.15
				E	**Total**		864.45
Total Area of Asset-1(Total of ***A+B+C+D+E)***						Sq. Ft	227208.87

Asset-2

The Asset -2 consist of Existing private railway siding along with loading and unloading platform on rear side of the godowns, covered area of godown (admeasuring an area of approximately 55497.67 sq. ft) and an open plot (admeasuring an area of approximately 1,12,408.44 sq. ft.). The detail of Godown attached with Asset-2 is as under:

(I)	**RCC Godown No IV**		
****a**	***Compartment No 1a***	Sqft	5366.4
b	Compartment No 1b	Sqft	5366.4
c	Compartment No 2	Sqft	11641.71
d	Compartment No 3	Sqft	10643
e	Compartment No 4	Sqft	11240.08
****f**	***Compartment No 5***	Sqft	11240.08
	Total Area of Godown No. IV		55497.67

Combined Assets

The Asset-1 and Asset -2 together have been referred as “Combined Assets”.

SCHEDULE B:

FORMAT OF PERFORMANCE SECURITY

To,
[*Designation*],
COTTON CORPORATION OF INDIA LIMITED
[*Insert address*]

WHEREAS:

(A) [●] (the "**Operator**") has been awarded a letter of award by **Cotton Corporation of India Limited** (the **"Corporation")** dated [●] ("**LOA**") which requires the Operator to enter into an Operation, Maintenance and Management Agreement (the "**Agreement**"), whereby the Corporation has agreed to appoint the Operator for operation, maintenance and management of Asset 1, Asset 2 or the Combined Assets(as the case may be) (as defined under the Agreement), subject to and in accordance with the provisions of the Agreement.

(B) The Operator is required to furnish a Performance Security to the Corporation in a sum of [Rs [●] (Rupees [●])][15] (the **"Guarantee Amount")** as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term (as defined in the Agreement).

(C) We, [*insert name of the Bank*] through our Branch at [*insert address*] (the **"Bank")** have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator 's obligations during the Term/ the First Renewed Term/Second Renewed Term/Third Renewed Term/ Fourth Renewed Term (as the case may be), under and in accordance with the Agreement, and agrees and undertakes to pay to the Corporation, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the Corporation shall claim, without the Corporation being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Corporation, under the hand of an officer not below the rank of a General Manager or a designation of an equivalent seniority in the Corporation, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Corporation shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Term/ the First Renewed Term/Second Renewed Term/Third Renewed Term/ Fourth Renewed Term (as the case may be) under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the Corporation and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the Corporation shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank,

[15]Note: The Guarantee Amount will be for an amount equivalent to O&M Charges for the relevant Payment Period.

whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Corporation to proceed against the Operator before presenting to the Bank its demand under this Guarantee.

5. The Corporation shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfillment and/or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Corporation against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Corporation, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Corporation of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the Corporation or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Corporation in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Corporation on the Bank under this Guarantee, not later than 12 (twelve) months from the date of expiry of this Guarantee, all rights of the Corporation under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security shall cease to be in force and effect upon expiry of the Term/ the First Renewed Term/Second Renewed Term/Third Renewed Term/ Fourth Renewed Term, (as the case may be) (as defined under the Agreement), and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the Corporation shall release the Performance Security forthwith, provided that the Corporation has issued the Release Certificate to the Operator.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Corporation in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Corporation that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and will be renewed on a yearly basis 30 (thirty) days prior to its expiry until the Term/ the First Renewed Term/Second Renewed Term/Third Renewed

Term/ Fourth Renewed Term (as the case may be) of the Agreement or until the Corporation has issued the Release Certificate to the Operator pursuant to the provisions of the Agreement, whichever is later.

Signed and sealed this ** day of ***, 2018 at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE C:

COMMON AREA FACILITIES

For the purposes of this Agreement, the Common Area Facilities mean and include:

(i) the approach roads, pathways, plot comprising trees block;
(ii) Gate Number 1, Gate Number 2 and Gate Number 3 situated at the Project Site;
(iii) street lighting poles around compound wall;
(iv) 1 (one) number High Mast for lighting;
(v) 1 (one) nos. of Security Cabin;
(vi) Rail Entry MS Gate;
(vii) 2 (two) nos. Men entry gates;
(viii) 1 (one) no. overhead tank;
(ix) 2 (two) nos. of underground water tanks including Firefighting storage tanks at Pump No. 1 and 2;
(x) Toilet and pantry;
(xi) Toilet Block for Godown number 1 and 2 each
(xii) Toilet Blocks between Godown number 3 and 4 as well at Godown No4;
(xiii) East side area HT Connection of MSED Co .Ltd;
(xiv) 315 KVA Transformer;
(xv) Flameproof wiring and sprinklers;
(xvi) street lighting along the compound wall and also having Bracket Lighting at wall of Godown compartments,
(xvii) fire retarding doors and electrical operated pumps and motors;
(xviii) Diesel Driven Pumps at pump room number 1 and 2; and
(xix) 40 (Forty) Nos. of coconut trees and 300 (three hundred)nos. of Asoka trees along the compound wall and other trees of bigger girth etc.

Note: The list illustrative and not exhaustive and the Corporation retains the right to make additions to the list of Common Area Facilities. All the facilities available in the above mentioned facilities will form part of the common area facilities for the purposes of Clause 3.4.