

**Request for Proposal (RFP) for Operation and
Maintenance of Lindsay Street Consumers' Store in
Kolkata through PPP mode on O&M Basis in the State
of West Bengal**


RFP No:- 001/CWS/2025-26 .

Dated:- 05.03.2026 .



&


CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD.
113/1/1A, Hazra Road, , Kolkata-700026; P.O.: Kalighat,


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

DISCLAIMER

1. The information contained in this Request for Proposal document (the "RFP") or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by **Calcutta Wholesale Consumers' Co-operative Society Ltd. (the "Authority")** or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP and such other terms and conditions subject to which such information is provided.
2. This RFP is not an agreement and is neither an offer nor invitation by the Authority 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 the formulation of their Bid for qualification pursuant to this RFP. This RFP includes statements, which reflect various assumptions and assessments arrived at by the Authority in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.
3. This RFP may not be appropriate for all persons, and it is not possible for the Authority, 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 this RFP 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.
4. Information provided in this RFP to the Bidder(s) 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 Authority accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.
5. The Authority, 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 the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way with qualification of Bidders for participation in the Bidding Process. The Authority 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.
6. The prospective Bidders are hereby informed that the Consumer Store is located at Shop No13, Nellie Sengupta Sarani, (Ground Floor) Kolkata – 700087 (Lindsay Street) (22.5623 ° North, 88.36304 ° East). The Project envisages Operation & Maintenance of the said unit, details of which have been mentioned in this RFP.
7. The Authority 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.
8. The issue of this RFP does not imply that the Authority is bound to select or to appoint the Selected Bidder or Selected Bidder, as the case may be, for the Project and the Authority reserves the right to reject all or any of the Bids or Bids without assigning any reasons whatsoever.

9. 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 Authority, or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and the Authority 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.

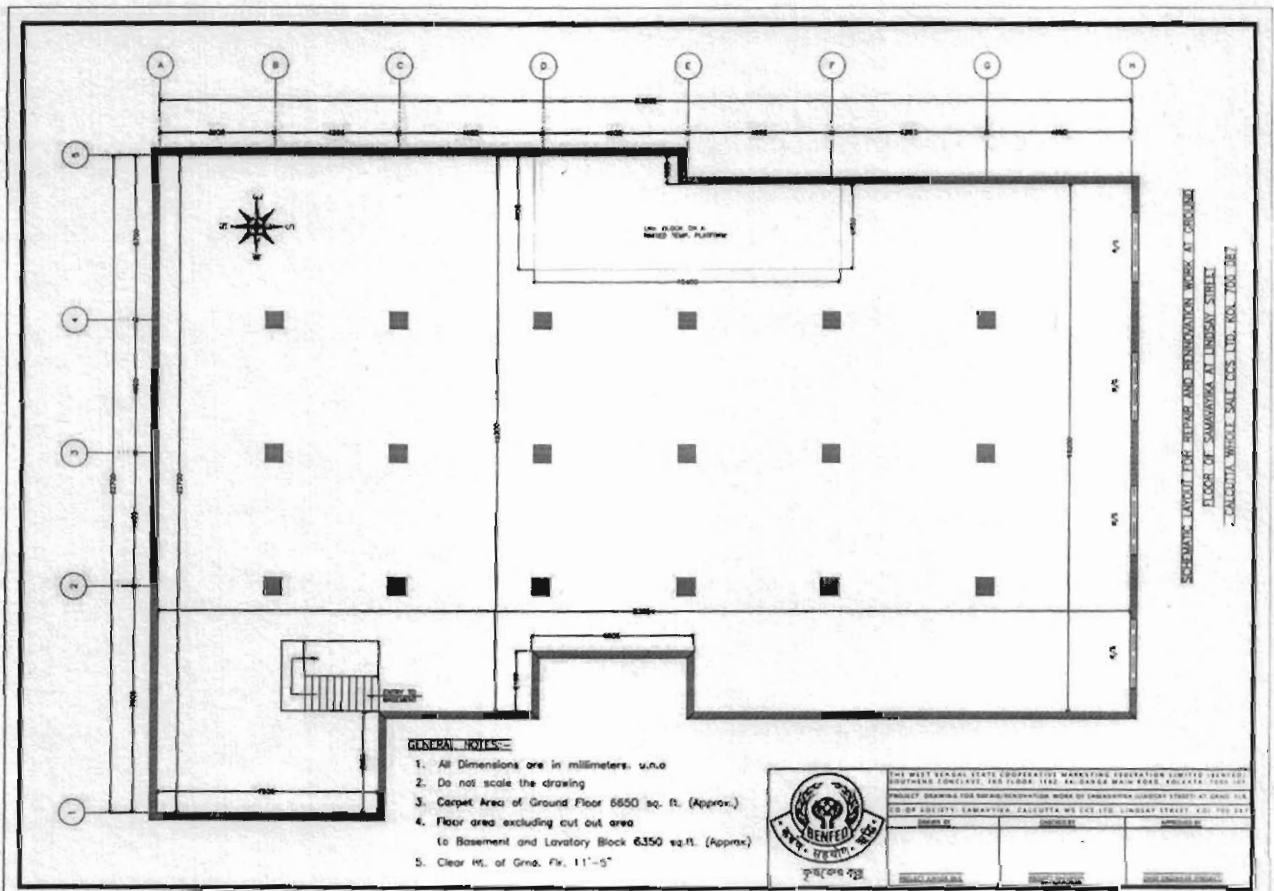

Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

NOTICE INVITING BIDS

- i. **Calcutta Wholesale Consumers' Cooperative Society Ltd.** (the "Authority") invite proposals "Bid(s)" from interested entities (the "Bidder" or "Bidders", as the context may require) to submit their Bids for Operation & Maintenance (O&M) of Lindsay Street Consumer Store (the "Project") located at 13, Nellie Sengupta Sarani (Lindsay Street), Ground Floor, P.S.: New Market, Kolkata-700087 through PPP mode on Operation & Maintenance (O&M) basis.

The proposed project site is located at 13, Nellie Sengupta Sarani, (Ground Floor) Kolkata – 700087 (Lindsay Street) (22.5623 ° North, 88.36304 ° East).

- ii. district Kolkata. Total carpet area is 9386 Sq. Ft. (7050 for Ground Floor & the rest in the Basement) The figure below shows the layout plan of the project site:



* Bidders are encouraged to submit their bids after visiting the Project site and ascertaining themselves with the project and its details.

- iii. The Authority is now desirous of selecting a Bidder (the "Selected Bidder") through competitive bidding process in accordance with the procedure set out herein under this RFP who shall develop, operate and maintain the project for a pre-determined user charges as per the terms & conditions mentioned in this RFP.
- iv. The Selected Bidder shall be responsible for Operate & Maintain the project in pursuance of the terms and conditions of the Agreement.
- v. The Bidder will be an individual entity and consortium of entities are not allowed.

- vi) Complete Bidding Document comprising of the Request for Proposal Document (including Invitation to Bid), can be downloaded from E tender portal, i.e. at <https://www.wbtenders.gov.in> under West Bengal Government.
- vi. The Bids must be submitted online at <https://www.wbtenders.gov.in> , in the manner as set out in the RFP.
- vii. In case Bidders require any further information about the Project or need access to any other documents related to the Project, as available with the Authority or wish to visit the Project Site, they are requested to contact the Authority at the addresses given below but the cost of the visit shall be borne by the Bidders:

Calcutta Wholesale Consumers' Cooperative Society Ltd.

113/1/1A, Hazra Road, Kolkata-700026, P.O.: Kalighat,

Name of the person to contact: Sri Achinta Dasgupta

Email Id: cws_hq@yahoo.com

Contact No: 9903332802

- The Bid shall be prepared in English language and all entries must be typed/written in blue/ black ink. Initials of the Authorized Representative of the Bidder must attest all deletions and alterations made while preparation of the Bid.
- viii. The Authority shall not be responsible for any costs or expenses or liabilities incurred by the Bidders in connection with the preparation and delivery of Bids, including costs and expenses related to the visits to the Project Site. The Authority reserves the rights to cancel, terminate, change or modify this procurement process and/or requirements of bidding stated in the RFP, at any time without assigning any reason or providing any notice and without accepting any liability for the same.
- ix. The Bids received in response to this invitation/ RFP shall be evaluated based on the Eligibility Criteria specified in this RFP document.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

1. Section 1: INTRODUCTION

1.1 Background

1.1.1 Calcutta Wholesale Consumers' Co-operative Society Ltd. was registered on 27.03.1963 vide Registration No. 54/CAL, under the West Bengal State Co-operative Act, 1961. It operates from the State capital Kolkata. It is a central society forming the second tier of the 3-tier co-operative structure. At the first tier is the West Bengal Consumer Co-operative Federation (CONFED) and the last tier is formed by the Primary Consumer Co-operative Societies. Calcutta Wholesale Consumer Society has 102 members which include Primary Consumers' Co-operative Societies and other Co-operative Societies. Calcutta Wholesale Consumer Society has 7(seven) stores in Kolkata.

1.1.1.1. The main objective of the society is to provide safe & good quality consumer products at competitive prices to the consumer.

- To arrange for purchase in bulk for sale to:
 - Primary Societies at wholesale rates
 - Individuals from main & branch units at retail price
 - Public bodies, institutions & other group of consumers
- To open branch unit for selling goods to individuals at retail price
- To raise fund for carrying on its business or the business of the member societies
- To arrange for production or processing & selling of finished goods through its units which include main/branch units, SHGs/Agents, outlets owned by private parties, government, semi-government, by organization direct control of local bodies; the above activities may include installation of machines of any type and printing & binding activities
- To rent, construct or own 'Go downs', shopping complexes, yards or buildings or malls or stores for storage, processing or production of goods or for retail or wholesale business or for any other commercial purpose or any other purpose incidental to the development of the society or for the advancement of the co-operative movement
- To train personnel in the consumer's co-operative sector and to open training institutes for them
- To conduct any type of service sector activities that is included in the tertiary sector of economy excluding activities exclusively in the domain of financial sector like banking, insurance, brokerage etc.
- To promote organization of primary co-operative stores, or branch units within its area of membership and to co-ordinate the work of its affiliate societies
- To cultivate thrift, self-help, mutual aid, and other humane qualities of the highest nature, amongst the members of the affiliated societies and amongst the public in general.
- To work in co-ordination with other public bodies and institutions for taking effective measures towards maintaining price level of consumer goods.
- To undertake import of consumer goods on its behalf or on behalf of affiliated societies and function as agent of government or distribution of short supply or controlled commodities through affiliated societies or otherwise
- To do such other work as will be conducive or incidental to the attainment of the above objects and for attainment of any other purpose as may be subsequently necessary in running the business of the society.

1.1.2. The objective of this RFP is to onboard a private entity to operate & maintain the existing store in lifestyle goods in consumer sector. The brief particulars of the Project are:

Name of the Project	Letter Association Period	of P-P-P Model

Operation and Maintenance of the Lindsay Street Consumer Store through P-P-P mode with floor space availability of 9386 sq. ft.	20 years	Operation & Maintenance
---	----------	-------------------------

The Authority intends to select an eligible Bidder, as the Selected Bidder for awarding the Project through an open competitive bidding process in accordance with the procedure set for therein.

1.1.3. The scope of work will broadly include the Operation and Maintenance of the project as per terms and conditions laid down in the Agreement.

- a. Taking over of the Project Site on "as is where is basis" and plan, operate & maintain, the store conforming to relevant regulations and as per terms of the Agreement and Schedules hereof.
- b. Operation & Maintenance of the store as per the TOR provided in the RFP document and in conformity with the standards set forth in this RFP and the Agreement.
- c. Operation and Maintenance of the project for 20 (Twenty) years as per the terms and conditions specified in this RFP and the Agreement.
- d. Meeting the requirements and norms laid down by the competent authorities.
- e. Provision of Manpower for the successful operations of the Lindsay Street Consumer Store for the Authority, as per the labor code or any other regulation, in place.
- f. The Selected Bidder shall be entitled to the relevant tax exemptions/deferments/incentives for the Project under the prevalent State Industrial Policy or any other policy of central or state government, if applicable.

1.1.4. The Selected Bidder [single entity] may be required to incorporate an SPV under the provisions of Companies Act, 2013 (the "Selected Bidder") based on the mutual consensus prior to execution of the Agreement. The Selected Bidder shall be jointly responsible for operation and maintenance of the Project under and in accordance with the provisions of the Agreement to be entered into between the Selected Bidder and the Authority [Selected Bidder shall execute the same as confirming party] in the form provided by the Authority as part of the Bidding Documents. ****(Decision of forming SPV would completely depend on the authority & selected bidder. This is not a binding clause under this RFP)

1.1.5. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth herein as modified, altered, amended and clarified from time to time by the Authority, and all Bids shall be prepared and submitted in accordance with such terms on or before the due date specified in Clause 1.3 for submission of Bids (the "Bid Due Date").

1.1.6. 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 anyway or manner the scope of work and obligations of the selected bidder to be set forth in the Agreement or the Authority rights to amend, alter, change, supplement or clarify the scope of work and the necessary statutory approval(s) to be awarded pursuant to this RFP 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 Authority.

1.1.7. The Authority shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP, to be set forth in the Agreement and other documents that are provided or may be provided by the Authority, as modified, altered, amended and clarified from time to time by the Authority (collectively the "Bidding Documents").

1.2 Brief description of Bidding Process

1.2.1. The Authority has adopted a single stage bidding process ("Bidding Process") for selection of the

Bidder for award of the Project. All Bidders for the Project shall simultaneously submit their relevant qualification details for the purpose of meeting Eligibility Criteria comprising of Technical Capacity and Financial Capacity conditions ("Technical Bid") and bid price quoting the User Fee (the "UF") plus applicable taxes at the prevailing rates payable to the Authority as mentioned in Section 3 ("Bid Price") to the Authority in accordance with the terms set forth in the RFP (the "Financial Bid"). The UF shall increase at the rate of 3% every year.

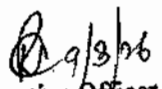
- 1.2.2. In the first step, Technical Bid of all Bidders shall be evaluated as to whether they are responsive in terms of Clause 2.19 and meet the Eligibility Criteria as set forth in Clause 2.2 of this RFP for undertaking the Project. The Financial Bids of only those Bidders who are considered responsive and meet the Eligibility Criteria (the "Qualified Bidder(s)") will be opened and evaluated for the purpose of identifying the Selected Bidder for the Project.
- 1.2.3. For participation in the e-tendering process, the Bidders need to register themselves on WB e-tender portal: <https://wbenders.gov.in>. On registration, Bidder shall be provided with a User ID and a system generated password enabling them to submit their Bid along with Digital System Certificate (DSC). Bids have to be submitted online latest by the dates as specified above. Bid submitted through any other mode shall not be entertained.
- 1.2.4. Proposal shall be submitted online, latest by the dates as specified above and as per procedure laid down in Section 1.2. In case of online submission, bids without digital signatures will not be accepted by the e-procurement system.
- 1.2.5. The schedule mentioned in Section 1.3 is tentative. The Authority reserves the right to modify the said schedule of Bidding Process at any time during the Bidding Process at its sole discretion without assigning any reason or being liable for the same in any manner whatsoever. Further, the Authority reserves the right to hold, in its sole and absolute discretion, more than one pre-bid meeting or hold one or more consultation meetings with the interested parties and in such event the above schedule shall stand modified and amended.
- 1.2.6. The Bidders would be required to furnish information specified in this RFP. The Bidders are requested to visit the Project Site to familiarize themselves with the Project at this stage itself. The Bidders interested in visiting the Project Site are requested to contact the Authority. The cost of Project Site visit shall be borne by the Bidders.
- 1.2.7. The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the date specified in the RFP for submission of Bids (the "Bid Validity Period").
- 1.2.8. The Bidders would be required to furnish all the information specified in this RFP. The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date.
- 1.2.9. The Government of India has issued guidelines 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 Authority shall be entitled to disqualify a Bidder in accordance with the aforesaid guidelines at any stage of the Bidding Process.
- 1.2.10. In terms of this RFP, a Bidder will be required to deposit, along with its Bid, an Earnest Money Deposit (EMD) for an amount of Rs. 4.58 Lakhs (Rupees Four Lakh Fifty-Eight Thousand Only) (the "EMD"), in the form of Bank Guarantee as per Annexure – V refundable no later than 60 (sixty) days from the Declaration of Result, except in the case of the Selected Bidder whose EMD shall be retained till it has provided a Performance Security pursuant to the provisions of the Agreement. The Bidders will have an option to provide EMD in the form of a demand draft or an unconditional and irrevocable bank guarantee acceptable to the Authority and in such an event, the validity period of the bank guarantee, as the case may be, 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 Authority and the Bidder from time to time. The Bid shall be summarily rejected if it is not accompanied by the EMD. The bank guarantee shall be uploaded online in the technical bid.

1.1.1. However, Technical Proposal shall be submitted, latest by the dates as specified above and as per procedure laid down in Section 1.2. Bids without digital signatures will not be accepted by the e procurement system. No Bid will be accepted in physical form and in case it has been submitted in the physical form it shall be rejected summarily.

Schedule of Request for Proposal (RFP) Process

1.2.1. The Authority shall endeavor to adhere to the following schedule:

S. No.	Event/ Activity Description	Target date/ Time Period
1	Issuance of Request for Proposal Document (RFP)	05.03.2026
2	Last date of receipt of Pre-Bid queries	12.03.2026 till 06:00 PM
3	Pre-Bid Meeting	13.03.2026 at 03:00 PM
4	Bid Submission last date	30.03.2026 till 05:00 PM
5	Opening of Technical Proposal	02.04.2026 at 03:30 PM
6	Opening of Financial Proposal	06.04.2026


Chief Executive Officer
Calcutta Wholesale Consumers
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

2. Section 2: INSTRUCTIONS TO BIDDERS

A. GENERAL

2.1 General Terms of Bidding

- 2.1.1 The Authority wishes to receive Bids for selection of an experienced and capable Bidder for the Project who meets the Eligibility Criteria as mentioned in Clause 2.2
- 2.1.2 Subsequently, the Financial Proposal of qualified Bidders shall be opened and evaluated.
- 2.1.3 The Bidders shall be responsible for all the costs associated with the preparation of their Bids and their participation in the Bidding Process. The Authority shall not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.
- 2.1.4 For participation in the e-tendering process, the Bidders need to register themselves on the e- procurement portal i.e. <https://www.wbtenders.gov.in> On registration they shall be provided with a User ID and a system generated password enabling them to submit their bid along with Digital System Certificate (DSC) or may submit physically as mentioned in Clause 1.2.3.
- 2.1.5 Bids without digital signatures will not be accepted online on the e-procurement portal i.e. <https://www.wbtenders.gov.in>

2.2 Eligibility of Bidder

- 2.2.1 The Bidder can be a single entity only and consortiums are not allowed.
- 2.2.2 A Bidder may be a Sole Proprietorship, Partnership firm or a Company (Public or Private Ltd.) incorporated under the Companies Act 1956/2013. The entity shall be required to submit proof of their statutory registration/ incorporation as per the respective governing statutes/ acts.
- 2.2.3 The Bidder shall not have a conflict of interest (the "Conflict of Interest") that affects the Bidding Process. Any Bidder found to have Conflict of Interest shall be disqualified. The Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
- 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 director in direct shareholding of the 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 Section 72 of the Companies Act, 2013. For the purposes of Clause 2.2, indirect shareholding held through one or more intermediate persons shall be computed as follows: (a) 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 (b) subject always to sub-clause(a) 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 (b) 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; a constituent of such Bidder is also a constituent of another Bidder or
- Such Bidder, or any Associate thereof, receives or has received any direct or indirect subsidy, grant, Letter of Associational loan or subordinated debt from any other Bidder, or any Associate thereof or has provided any such subsidy, grant, Letter of Associational loan or subordinated debt to any other Bidder, its member or any Associate thereof; or
 - Such Bidder has the same legal representative for purposes of this Bid as any other Bidder.
 - 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 in a position to have access to each other's information about, or to influence the Bid of either or each other; or
 - Such Bidder or any Associate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project.
 - Bidder shall be liable for disqualification if any legal, financial or technical adviser of the Authority in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. 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 6 (six) months prior to the date of issue of this RFP. Nor will this disqualification apply where such adviser is engaged after a period of twelve months from the date of completion of Bid submission.

2.2.4 To be eligible for opening of Financial Bid, a Bidder shall be required to fulfill the following conditions of eligibility as below:

Eligibility Criteria

S. No.	Criteria	Relevant Documentary Evidence to be attached with the bid
1	Bidder should be Sole Proprietorship, Partnership firm or a Company (Public or Private Ltd.) incorporated under the Companies Act 1956/2013 or any combination of them	<ul style="list-style-type: none"> Registration Certificate PAN Card Sole proprietorship/ Partnership Deed/ CoI with MoA & AoA
2	Bidder with turnover of above Rs 30 crore in the last three FY (2022-23, 2023-24, 2024-25)	<ul style="list-style-type: none"> Annual Balance Sheet for the last 3 years ITR Receipt Annexure - IV
3	Bidder with positive net worth as on March 2025	<ul style="list-style-type: none"> Auditor's Report Annexure - IV
4	Bidder should have experience in operation and management of at least 2 stores profitably (accumulated & running profit) in lifestyle or consumer segment with minimum area of 1500 sq ft each	<ul style="list-style-type: none"> Ownership Document Purchase Orders Or any other documentary proof which clearly proves the experience Annexure - III
5	The bidder should not have been blacklisted by any central/ state government as on closing date of RFP	<ul style="list-style-type: none"> Self-Declaration

- 2.2.5 The Bidders shall enclose with its Bid, to be submitted as per the format at Annexure - IV complete with its Annexes, the following:
- i. Certificate(s) from Statutory Auditors of the Bidder stating the payments investment made and the works commissioned, as the case may be, in respect of the projects specified in Clause 2.2.4 above; and
 - ii. Certificate from Statutory Auditors of the Bidder or its Associates specifying the Net Worth of the Bidder, as at the close of the Financial Year (March 2025), and also specifying that the methodology adopted for calculating such Net Worth confirms to the provisions of this Clause 2.2.4 of the RFP.
- 2.2.6 The Bidder should submit a Power of Attorney as per the format prescribed under Annexure-VI, authorizing the signatory of the Bid to commit the Bidder. The Power of Attorney should be supported by a Board Resolution confirming the Authorized Signatory.
- 2.2.7 Procurement through MSEs (Micro & Small Enterprises) will be done as per the Policy guidelines issued by the Ministry of Micro, Small & Medium Enterprises vide Gazette notification no. D.L.-33004/99 dated 23.03.2012 and as amended from time to time. MSEs are exempted from paying Application fee/cost & EMD, subject to furnishing of Valid certificate for claiming Exemption, if applicable (keeping required turnover in view).
- 2.2.8 As mentioned in Section-II of O.M. No.F.20/2014-PPD(Pt.) dated 20.09.2016 of Procurement Policy Division, Department of Expenditure, Ministry of Finance on Prior turnover and prior experience, relaxations may be applicable for all Startups [whether Micro & Small Enterprises (MSEs) or otherwise] subject to meeting of the quality and technical specifications specified in tender document, if applicable (keeping required turnover in view).
- 2.2.9 Any entity (the Bidder, its member, or Associate was, either by itself or as member of a consortium) which has been barred by the Central/ State Government, or any entity controlled by it, from participating in any project and the bar subsists as on the date of Bid, would not be eligible to submit a Bid.
- 2.2.10 A Bidder or Associate should 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, or Associate, as the case may be, nor has 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, or Associate. Provided, however, that where a Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.10 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to the Authority for seeking a waiver from the disqualification hereunder and the Authority 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 Project.
- 2.2.11 In computing the Eligibility Criteria of the Bidder Members under Clause 2.2.4, the eligibility criteria of their respective Associates would also be eligible hereunder. For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the "Associate"). 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 per cent) 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.

2.2.12 It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Applicant, shall be provided to demonstrate that a person is an Associate of the Bidder as the case may be.

2.2.13 The following conditions shall be adhered to while submitting a Bid:

- a. Bidders should attach clearly marked and referenced continuation sheets if the space provided in the prescribed forms in the Annexes is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b. Information supplied by a Bidder must apply to the Bidder, Member or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.
- c. in responding to the Bid, Bidders should demonstrate their capabilities in accordance with Section 3 below; and

2.2.14 While the process is open to any organization incorporated in India, the following provisions shall apply:

- a. Where, on the date of the Bid, 25% (twenty-five per cent) or more of the aggregate issued, subscribed and paid-up equity share capital in the Bidder or its Member is held by person resident outside India or where a Bidder or its Member is controlled by person resident outside India; or
- b. *if at any subsequent stage after the date of the Bid, there is an acquisition of 25% (twenty-five per cent) or more of the aggregate issued, subscribed and paid-up equity share capital or control, by person's resident outside India, in or of the Bidder or its Member;
**Note: Bidders shall be bound to follow the applicable RBI guidelines issued in respect of FDI from time to time. Any violation of such applicable RBI guidelines shall not in case render the Authority liable in any manner whatsoever.*
- c. Then the qualification of such Bidder or in the event described in sub clause (b) above, the continued qualification of the Bidder shall be subject to approval of the Authority from the perspective of national security and public interest perspective. The decision of the Authority in this behalf shall be final and conclusive and binding on the Bidder.
- d. The holding or acquisition of equity or control, as above, shall include direct or indirect holding/ acquisition, including by transfer, of the direct or indirect legal or beneficial ownership or control, by persons acting for themselves or in concert and in determining such holding or acquisition, the Authority shall be guided by the principles, precedents and definitions contained in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, or any substitute thereof, as in force on the date of such acquisition.
- e. The Bidder shall promptly inform the Authority of any change in the shareholding, as above, and failure to do so shall render the Bidder liable for disqualification from the Bidding Process.

2.3 Number of Bids and Costs thereof

- 2.3.1 No Bidder shall submit more than one Bid for the Project. A Bidder shall not be entitled to submit another Bid. In response to this Bid any Bidder who submits or participate in more than one Bid shall be disqualified.

2.4 Site Visit and Verification of Information

- 2.4.1 Bidders are encouraged to submit their respective Bids after visiting the Project Site at **13, Nellie Sengupta Sarani, (Ground Floor) Kolkata – 700087 (Lindsay Street) (22.5623 ° North ,88.36304 ° East)** and ascertaining for themselves the location, surroundings, climate, availability of power, water and other utilities for re- development, access to site, weather data, applicable laws and regulations or any other matter considered relevant by them.

2.5 Acknowledgement by Bidder

- 2.5.1 It shall be deemed that by submitting the Bid, the Bidder has:
- Made a complete and careful examination of the RFP;
 - Received all relevant information requested from the Authority;
 - Acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of the Authority or relating to any of the matters referred in Clauses above; and
 - Agreed to be bound by the undertakings provided by it under and in terms hereof.
 - Visited and duly inspected the project site.
- 2.5.2 The Authority 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 RFP or the Bidding Process, including any error or mistake therein or in any information or data given by the Authority.

2.6 Right to Accept or Reject any or all Bid/Bids

- 2.6.1 Notwithstanding anything contained in this RFP, the Authority reserves the right to accept or reject any Bid and to annul the bidding process and reject all Bids, at any time without any liability whatsoever or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.
- 2.6.2 The Authority reserves the right to reject any Bid and/or disqualify the Bidder 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 Authority, the supplemental information sought by Authority for evaluation of the Bid.
- 2.6.3 If such disqualification/rejection occurs after the Bids have been opened and the highest Bidder gets disqualified/ rejected, then the Authority reserves the right to:
- a. invite the remaining Bidders to match the Highest Bidder/ submit their Bids in accordance with the RFP; or
 - b. take any such measure as may be deemed fit in the sole discretion of the Authority, including annulment of the Bidding Process.
- 2.6.4 In case it is found during the evaluation or at any time before signing of the Agreement or after execution of the Agreement and during the period of subsistence thereof, including the Letter of Association thereby granted by the Authority, that one or more of the qualification conditions 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 party either by issue of the LoA or entering into of the Agreement, and if the Bidder 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 Authority to the Bidder, without the Authority being liable in any manner whatsoever to the Bidder and without prejudice to any other right or remedy which the Authority may have under this RFP the Bidding Documents, the Agreement or under applicable law.
- 2.6.5 The Authority reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by the Authority shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of the Authority thereunder.

2.7 Performance Security

- 2.7.1 For due and punctual performance of its obligations under the Agreement, relating to the Project, the selected bidder shall deliver to the Authority no later than 90 days from the date of this agreement an irrevocable and unconditional guarantee will be submitted. Until such time the Performance Security is provided by the Selected Bidder pursuant hereto and the same comes into effect, the Bid security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, shall release the Bid Security to the selected bidder.
- 2.7.2 Selected bidder has to provide a Performance Security of INR 10 Lakhs (Ten Lakhs only)
- 2.7.3 The Performance Security shall be from a Scheduled Commercial Bank in India and payable at Kolkata. The Performance Security shall be valid for a period of 12 (twelve) months and shall be renewed every year, at least 30 (thirty) days prior to the date of expiry of the Bank Guarantee. All charges, fees, costs and expenses related to the Bank Guarantee shall be borne and paid by the Selected Bidder. The Selected Bidder undertakes and warrants to the Authority that the bank guarantee furnished as above shall be unconditional and irrevocable and shall continue to be effective and enforceable for 6 (six) months after the expiry of the agreement Period.
- 2.7.4 The performance security in the form of bank guarantee shall be renewed every year till the end of the agreement Period and transfer of the Project along with the Project Site to the Authority. If the Agreement is terminated due to any event other than a selected bidder event of Default, the Performance Security shall, subject to the Authority's right to receive or recover amounts, if any, due from the selected bidder under the Agreement, be duly discharged and released to the selected bidder.

B. DOCUMENTS

2.8 Contents of the RFP

- 2.8.1 This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.10

2.8.2 Invitation for Bids

- | | |
|-----------|-----------------------------|
| Section 1 | Introduction |
| Section 2 | Instructions to Bidder |
| Section 3 | Criteria for evaluation |
| Section 4 | Fraud and corrupt practices |
| Section 5 | Pre-Bid Conference |
| Section 6 | Terms of Reference |
| Section 7 | Miscellaneous |
| Section 8 | Annexures |
- I. Cover Letter for the Bid
 - II. Details of Bidder
 - III. Technical Capacity Format
 - IV. Financial Capacity Format
 - V. Bank Guarantee for EMD
 - VI. Format for Power of Attorney
 - VII. Financial Proposal
 - (A) Financial Proposal- Cover Letter
 - (B) Financial Proposal
 - VIII. Agreement – Articles & Schedules

2.9 Clarifications

- 2.9.1 The Bidders may email their queries to Calcutta Wholesale Consumers' Cooperative


 Chief Executive Officer
 Calcutta Wholesale Consumers'
 Co-operative Society Ltd.
 113/1/1A, Hazra Road, Kolkata-700026

Society Ltd. at cws_hq@yahoo.com in the format specified below. The document containing the pre-proposal queries to be uploaded shall bear the following identification: "Queries concerning Request for Proposal (RFP) for Operation and Maintenance of Lindsay Street Consumer Store through PPP model"

S. No.	Clause/Page No.	Content of the RFP requiring clarifications	Change/ clarification requested
1.			
2.			
3.			

- 2.9.2 The Bidders should send in their queries at least 1 (one) day prior to the Pre-Bid Conference date specified in the Schedule 1.3 of the RFP. The Authority shall endeavor to respond to the queries within the period specified therein or will answer the queries in the pre-bid conference. Subsequently corrigendum shall be released.
- 2.9.3 The Authority shall endeavor to respond to the questions raised or clarifications sought by the Bidders. However, the Authority 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 Authority to respond to any question or to provide any clarification.
- 2.9.4 The Authority may, on its own, if deemed necessary, issue interpretations and clarifications to all Bidders. All clarifications and interpretations issued by the Authority shall be deemed to be part of the RFP. Verbal clarifications and information given by the Authority, or its employees or representatives shall not in any way or manner be binding on the Authority.

2.10 Amendment of RFP

- 2.10.1 At any time prior to the deadline for submission of Bid, the Authority may, for any reason, whether at its own initiative or in response to clarifications requested by Bidder, modify the RFP by the issuance of Addendum.
- 2.10.2 Any Addendum thus issued will only be uploaded on the website i.e., <https://www.wbtenders.gov.in>
- 2.10.3 In order to afford the Bidders a reasonable time in which to take an Addendum into account, or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date.

C. PREPARATION & SUBMISSION OF BID

2.11 Language

- 2.11.1 The Bid and all related correspondence and documents should be written in the English language. Supporting documents and printed literature uploaded on portal by the Bidder with the Bid may be in any other language provided that they are accompanied by appropriate translations of the pertinent passages in the English language, duly authenticated and certified by the Bidder. Supporting materials, which are not translated into English, shall not be considered.
- 2.11.2 For the purpose of interpretation and evaluation of the Bid, the English language translation shall prevail.
- 2.11.3 All communication provided should be legible, and wherever the information is given in figures, the same should also be mentioned in words. In case of different in amounts stated in figures and words, the amount stated in words only will be taken as correct and final.

2.12 Format & Signing of Bid

- 2.12.1 The Bidder shall provide all information sought under this RFP. The Authority would evaluate only those Bids that are received in the required format and complete in all respects. Incomplete and / or conditional Bids shall be liable for rejection.
- 2.12.2 The Bid shall be stamped and signed by the Authorized Signatory of the Bidder. In case of printed and published documents, only the cover 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. The Bid shall contain page numbers.

2.13 Bid Due Date

- 2.13.1 The Authority may, in its sole discretion, extend the Bid Due Date by issuing an Addendum for all Bidders as mentioned in above

2.14 Late Bids

- 2.14.1 Bids received by the Authority after the Bid Due Date shall not be eligible for consideration and shall be summarily rejected. The Authority shall not be responsible for any delay in submission of the same.

2.15 Modification/ Substitution/ Withdrawal of Bids

- 2.15.1 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 Authority within the Bid Due Date. No Bid shall be modified, substituted or withdrawn by the Bidder after the Bid Due Date.
- 2.15.2 Any alteration/ modification in the Bid or additional information/ material supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by the Authority, shall be disregarded.

2.16 Submission of Bid

- 2.16.1 Scanned copy of the Proposal shall be submitted online on the e-procurement portal i.e., <https://www.wbtenders.gov.in>. on or before the Bid Due Date and Proposal in physical form shall be submitted in the office of the Authority on the date as mentioned in Clause 1.3 of this RFP document. The Financial proposal shall be submitted online in the format available on the e- procurement portal.

D. EVALUATION PROCESS

2.17 Opening & Evaluation of Bids

- 2.17.1 The Authority would open the Bids as per the schedule specified in Clause 1.3 of this RFP in the presence of the Bidders who choose to attend.
- 2.17.2 Bids for which a notice of withdrawal has been submitted in accordance with Clause 2.15 shall not be opened.
- 2.17.3 The Authority would subsequently examine and evaluate Bids in accordance with the provisions set out in Section 3 on "Criteria for Evaluation of Bids".
- 2.17.4 Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.
- 2.17.5 Any information contained in the Bid shall not in any way be construed as binding on the Authority, its consultants, agents, successors or assigns, but shall be binding against the Bidder if any Project is subsequently awarded to it under the Bidding Process on the basis of such information.

- 2.17.6 The Authority 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.
- 2.17.7 If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, the Authority may, in its sole discretion, exclude the said information for computation of the technical capacity of the bidder.
- 2.17.8 In the event the Bidder claims credit for an Eligible Project, and such claim is determined by the Authority as incorrect or erroneous, the Authority shall reject such claim and exclude the same from computation of the Eligibility Criteria. Where any information is found to be patently false or amounting to a material misrepresentation, the Authority reserves the right to reject the Bid in accordance with the provisions of Clauses 2.6.

2.18 Confidentiality

- 2.18.1 Information relating to the examination, clarification, evaluation, and recommendation for the short-listed pre-qualified Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising the Authority in relation to or matters arising out of or concerning the Bidding Process. The Authority shall treat all information, submitted as part of Bid, in confidence and would require all those who have access to such material to treat the same in confidence. The Authority 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 Authority or as may be required by law or in connection with any legal process.

2.19 Tests of Responsiveness

- 2.19.1 Prior to evaluation of Bids, the Authority will determine whether each Bid is responsive to the requirements of the RFP. A Bid shall be considered responsive only if:
1. It is received as per formats given in this RFP;
 2. It is received within the Bid Due Date including any extension thereof pursuant to Clause 2.13;
 3. It is signed, stamped and marked as stipulated in Clauses 2.12;
 4. It contains the EMD of INR 10 Lakhs only (Rupees Ten Lakhs Only) as specified in clause 1.2.8.
 5. It is accompanied by the Power of Attorney as specified in Clause 2.2.6
 6. It contains all information (complete in all respects) as stipulated in the RFP;
 7. It contains information as per the formats specified in this RFP. Non-adherence to the formats may be a ground for declaring the Bid as non-responsive;
 8. It contains certificates from its Statutory Auditors/Chartered Accountant in the formats specified at Annexure III: Technical Capacity of Bidder of the RFP for each Eligible Project and at Annexure IV: Financial Capacity of Bidder;
 9. It does not contain any condition or qualification; and
 10. It is not non-responsive in terms hereof.
- 2.19.2 The Authority reserves the right to reject any Bid, which is non-responsive, and no request for alteration, modification, substitution or withdrawal shall be entertained by the Authority in respect of such Bid.

2.20 Clarifications from Bidders

- 2.20.1 To facilitate evaluation of Bids, the Authority may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarifications shall be provided within the time specified by the Authority for this purpose. Any request for clarifications and all clarifications shall be in writing.
- 2.20.2 If the Bidder does not provide clarifications sought under Clause 2.19.1 within the

prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, the Authority may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of the Authority.

2.21 Proprietary Data

- 2.21.1 All documents and other information supplied by the Authority or submitted by the Bidder to the Authority shall remain or become the property of the Authority. 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 Authority shall not return any Bid, or any information provided along therewith.

2.22 Correspondence with Bidder

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


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

3. Section 3: CRITERIA FOR EVALUATION OF BIDS

3.1 Evaluation parameters

- 3.1.1 Only those Bidders who meet the eligibility criteria specified in Clause 2.2 of this RFP above shall qualify for participation in the Bidding Process. Bids of firms who do not meet these criteria shall be rejected.

3.2 Details of Experience

- 3.2.1 The Bidders must provide the necessary information relating to Eligibility Criteria and other documents referred in this RFP as per the Annexures.

3.3 Financial Information for the Purpose of Evaluation

- 3.3.1 The Bid must be accompanied by Audited Annual Reports of the for the last 3 (three) financial years, preceding the Bid Due Date.
- 3.3.2 In case the annual accounts for the latest financial year are not audited and therefore the Bidder cannot make it available, the Bidder shall give an undertaking to this effect and the statutory auditor shall certify the same. In such a case, the Bidder shall provide the Audited Annual Reports for 3 (three) years preceding the year for which the Audited Annual Report is not being provided, as mentioned in clause 2.2.
- 3.3.3 The Bidder must establish annual Turnover and minimum Net Worth specified in Clause 2.2.4 and provide details as per format at Annexure IV: Financial Capacity of Bidder of.

3.4 Short listing of Bidders

- 3.4.1 The Authority shall qualify and shortlist the Bidders who fulfill the stipulated Eligibility criteria as set out in this RFP, along with the other conditions of the RFP.
- 3.4.2 The Authority will notify the other Bidders also who do not fulfill the criteria. The Authority will not entertain any query or clarification from Bidders who fail to qualify.
- 3.4.3 Financial Considerations: The Selected Bidder shall have to pay a User Charge to the Authority for the entire duration of Agreement Period.
- 3.4.4 Quoted User Charge shall be paid to Authority on an annual basis at an escalation rate of 10% in every 3 years till 20 years.
- 3.4.5 The bidder shall quote Annual User Charge over and above the Reserve price. The Reserve price for the purpose of this bid is INR 55 Lakhs.
- 3.4.6 The Reserve price shall mean the amount specified above which is the minimum bid price that a Bidder can quote for, as per the conditions laid out under this RFP.
- 3.4.7 The Authority would open the Bid as per the schedule specified in Clause 1.3. Bidder whose Bid is adjudged as responsive in terms of Clause 2.19 and who quotes the highest "Annual User Charge" payable to the Authority payable annually for the site granted shall be ranked as H1 Bidder and all other Bidders shall be placed below and ranked accordingly as H2 or H3 Bidder depending upon their quoted Annual User Charge. Subject to the provisions of this RFP the H1 Bidder shall be declared as the Selected Bidder.
- 3.4.8 In the event that two or more Bidders quote the same amount of Annual User Charge (the "Tie Bidders"), the Authority shall identify the Selected Bidder by draw of lots, which shall be conducted, with prior notice, in the presence of the Tie Bidders who choose to attend. Or by any method deemed suitable & fair by the Authority.
- 3.4.9 The negotiations, if any, will be held as per the latest instructions/ guidelines of the State Government.

Government.

3.5 Award of the Project

- 3.5.1 After selection, a Letter of Award (the "LoA") shall be issued by the Authority 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. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, authority may, unless it consents to extension of time for submission thereof, appropriate the EMD of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.
- 3.5.2 After acknowledgement of the LOA as aforesaid by the Selected Bidder, it shall cause the Selected Bidder to execute the Agreement within 30 days of issuance of LoA. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.
- 3.5.3 The selected bidder's rights in the Project Site are limited to a non-transferable, non-assignable and non-mortgageable right of use of the project site for the duration of the agreement. Such right shall not constitute any right, title or interest capable of being pledged, mortgaged or hypothecated in favour of any lender.

3.6 Contacts During Bid Evaluation

- 3.6.1 Bids shall be deemed to be under consideration immediately after they are opened and until such time the Authority 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 Authority and/or their employees/ representatives on matters related to the Bids under consideration.

3.7 Dispute Resolution

- 3.7.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.
- 3.7.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non- privileged records, information and data pertaining to any Dispute.

3.8 Arbitration

- 3.8.1 In case of failure of dispute resolution by way of amicable settlement, If any dispute or difference of any kind whosoever shall arise between the authority/his authorized agent and the bidder/Selected Bidder in connection with or arising out of the request for proposal/ Agreement, or the execution of the project that is (i) whether before its commencement or during the currency of project or after its completion, (ii) and whether before or after the termination, abandonment or breach of the Agreement, it shall be dealt as per the Arbitration mechanism embedded in Section 102 of the West Bengal Cooperative Societies Act, 2006.
- 3.8.2 The venue and seat of arbitration shall be in Kolkata (West Bengal, India). The work under the agreement shall continue during the arbitration proceedings.

4. Section 4: FRAUD & CORRUPT PRACTICES

4.1 Standard of Ethics

- 4.1.1 The Bidders and their respective officers, employees, agents and advisers shall observe

the highest standard of ethics during the Bidding Process. Notwithstanding anything to the contrary contained herein, the Authority shall reject a Bid without being liable in any manner whatsoever to the Bidder if it determines that the Bidder 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.

- 4.1.2 Without prejudice to the rights of the Authority under Clause 4.1.1 hereinabove, if a Bidder is found by the Authority 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, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such Bidder is found by the Authority 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, as the case maybe.

4.2 Definition for the purpose of Section 4

- 4.2.1 For the purposes of this Section 4 Fraud & Corrupt Practices, the following terms shall have the meaning hereinafter respectively assigned to them:

- I. **"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 Authority 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 there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.2, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LoA or after the execution of the Agreement, as the case maybe, any person in respect of any matter relating to the Project or the LoA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- II. **"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;
- III. **"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;
- IV. **"Undesirable practice"** means (i) establishing contact with any person connected with or employed or engaged by the Authority 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
- VI. **"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.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

5. Section 5: PRE-BID CONFERENCE

5.1 Date & Time

5.1.1 The Pre-Bid Conference shall be convened at the CONFED, HO located at Akbar Mansion 3rd Floor, P-1, Hide Lane, Kolkata- 700073, at **02.03.2026**, at **3 PM** .

5.2 Other Terms & Conditions for Pre-bid

5.2.1 A maximum of 3 (three) representatives from each Bidder shall be allowed to participate on production of authority letter from the Bidder.

5.2.2 During the course of Pre-Bid conference, the Bidders will be free to seek clarifications and make suggestions for consideration of the Authority in writing. The Authority shall endeavor 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.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

6. Section 6: Term of Reference

6.1 Background

- 6.1.1 Calcutta Wholesale Consumer Cooperative Ltd. is looking for eligible bidders who can renovate the existing consumer store and further operate & maintain the site.
- 6.1.2 The Lindsay Street Located in **13, Nellie Sengupta Sarani (Lindsay Street), Ground Floor, P.S.: New Market, Kolkata-700087** and its adjoining areas are major go-to shopping places in Kolkata. Throughout the year lakhs of people visit the area with sole purpose of shopping for various occasions like Durga Puja, Diwali, Christmas etc. Even during the non-festive season, the said place witnesses steady footfall. Wholesalers, retailers of both single brand and multi brand have their presence in the location.

6.2 Objectives of the Project

- 6.2.1 Project Objectives:
- i. To ensure proper utilization of the society's resources.
 - ii. To enhance source of revenue generation for Calcutta Wholesale Consumer Cooperatives Ltd.
 - iii. To ensure marketing space for products from co-operative sector i.e sarees from SHGs, weaver co-operatives, jewellery made by SHGs etc.

6.3 Location

- 6.3.1 Consumer Store is located at the prime location in Kolkata at New Market area Particularly **13, Nellie Sengupta Sarani (Lindsay Street), Ground Floor, P.S.: New Market, Kolkata-700087**. Google Co-ordinates of the site are as provided below: 22.5623 (Degree North), 88.36304 (Degree East)
- 6.3.2 Location Advantage: The location advantages of the cold storage are:
- Location is known as shopping destination
 - Humongous foot fall almost everyday
 - Availability of power, fuel, and water.
 - Availability of manpower/labour.
 - Public Transport facilities available at the site.

6.4 Consumer Store Specification

- 6.4.1 The store has 9386 sq. ft. Carpet area including the lavatories.

6.5 Approvals & Consent

- 6.5.1 Following clearances/approvals/consents before actual implementation of the Consumer Store projects may be required:
- Pollution control clearance from the competent authority.
 - Consent of the Electricity Department for the power.
 - Approval of the layout plan by the competent authority.
 - Approval from Fire Department.
 - Or any other compliance which is necessary as per the rule & policy of the State

6.6 Operating Model

- 6.6.1 Under the PPP model, the selected bidder will be responsible for primary renovation of the consumer store and operationalizing it as a go to shopping space in lifestyle goods consumer segment.
- 6.6.2 200 sq ft of floor area (of the total area mentioned in the document) will be reserved for Calcutta Wholesale Consumers' Co-operative Society for marketing products from SHGs & institutions under co-operative fold. Selected bidder is expected to support in training &

capacity building of staff running the segment under Calcutta Wholesale Consumers' Co-operative Society.

6.7 Scope of Work

- 6.7.1 The scope of work will broadly include the Operation and Maintenance of the project as per terms and conditions laid down below:
- a. Taking over of the Project Site on "as is where is basis" and plan, and renovate the store, conforming to Building Bye-Laws and Regulations
 - b. Operation and Maintenance of the project for 20 years as per the terms and conditions specified in this RFP and the Agreement meeting all the obligations under the act, rules and policies of the state.
 - c. Meeting the requirements and norms laid down by the competent authorities regarding development, completion, operation and maintenance of the Lindsay Street Consumer Store, if any.
 - d. Provision of Manpower for the successful operations of the Consumer store for the Authority.
 - e. Floor Place approximately 9386 Sq. Ft. will be earmarked for development of the facility. If in case, there will be vacant floor space (if any) after development and utilization of complete project then the said floor space will be considered under CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD.'s custody only.
 - f. The successful bidder shall get into operation and retailing of lifestyle goods & consumer segment
 - g. The Authority shall be entitled to utilize the Project on priority as and when required on mutual agreed terms & conditions.
 - h. The entire business model for operations including procurement and marketing shall be the responsibility of the Private Player. Any support required for the successful operation of the project can be mutually discussed during the operational phase between the Authority and the Private Player.

6.8 Role of Selected Bidder

- a. Selected Bidders shall complete the documentation related formalities after receipt of Work Order from CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD.
- b. The selected bidder is mandated to adhere the terms & conditions of Public Private Partnership (P-P-P) policy of West Bengal State.
- c. The selected bidder shall be responsible for all the Applicable Permits and the Statutory Clearances as may be required for the development and operations of the Project.
- d. The selected bidder shall execute the complete project as per the scope stipulated in the RFP document i.e., Operation and Maintenance of Lindsay Street Consumer store with floor space of 9386 sq. ft. (200 sq ft reserved for Calcutta Wholesale Consumers' Co-operative Society Ltd.
- e. In Kolkata through Public Private Partnership (P-P-P) mode on O & M Basis in the State of West Bengal.
- f. The following points to be taken into consideration:
 - The successful bidder shall have the liberty to make changes wherever required to increase efficiency and cost effectiveness. Though, such changes will be incorporated / implemented by the successful bidder with prior approval of the Competent Authority of CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD. at its own cost.
 - The selected bidder shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the

purposes of the Works, in the Project, for the Agreement Period.

- The Grant / Subsidy, if any, received by the selected bidder from Central / State Govt. for this Project, the same shall be invested by the selected bidder in this project only. As, after completion of the agreement period of the project, all facilities of the project including Lindsay Street Consumer Store and permanent changes made therein are proposed to be transferred back to CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD., therefore, the benefit of such Grant/ Subsidy shall remain with CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD. only.
- All the works pertaining to Civil, Utilities etc. must be undertaken by the selected bidder as per the market standards and law of the land.

6.9 Role of CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD

- 6.9.1 CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD. shall provide the Consumer store at Lindsay Street Kolkata with floor space of 9386 Sq. ft. to the selected agency for the establishment of the whole project as per the indicative specifications stipulated in this document.
- 6.9.2 CALCUTTA WHOLESALE CONSUMERS' CO-OPERATIVE SOCIETY LTD. shall support the selected bidder to get the benefit of applicable subsidy/indicative incentives by the Central/State Govt. such as exemption/ rebate in administrative/ operational costs which are being provided at the project location within the State, if any.
- 6.9.3 The successful bidder will have 1st right of refusal with regards to purchase of raw material / sale of finished goods.

6.10 Monitoring

- 6.10.1 Formation of Monitoring Committee: Authority shall form a Monitoring Committee with members from Co-operation Department not below the rank of Additional Registrar.
- 6.10.2 Roles and responsibilities
- Committee shall review and monitor the quarterly performance.
 - Committee shall be responsible for dispute resolution between the bidder and authority
 - A field officer as appointed by the Department shall visit the project site monthly (no later than 15th day of every month) and prepare quarterly progress reports for committee's review.
 - Committee shall review the records and performance of the project and indicate deficiencies in the Operation and Maintenance of the project facility if any and suggest remedial / corrective measures.
 - The Selected Bidder shall implement any remedial / corrective measures suggested by the committee within one month of the review.
 - In case of non-adherence / failure to rectify, the Authority shall levy penalty equivalent to 1% of performance security for each month's delay, beyond the stipulated rectification time.
 - Further, continued non-adherence may result in termination of contract.

7 Section 7: MISCELLANEOUS

7.1 Insurance

- 7.1.1 Insurance of Building/Project Site during the Operation/Usage Period: The selected bidder shall, pay the authority on actuals for the cost and expense incurred on the insurance of building to cover against: loss, damage or destruction of the Project Facility, at replacement value.
- 7.1.2 Insurance of movable assets within the facility during the Operation/Usage period: the selected party's general liability arising out of the agreement; liability to third parties; and any other insurance that may be necessary to protect the selected party and its employees, including all Force Majeure Events that are insurable, shall lie with the selected bidder for the entire agreement period.
- 7.1.3 Insurance Companies: The selected party shall insure all insurable assets comprised in the Project Assets and/ or the Project Facility through Indian insurance companies and if so permitted by the Authority, through foreign insurance companies, to the extent that insurances are necessary to be effected through them.
- 7.1.4 Evidence of Insurance Cover: The selected party shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the Selected Bidder in accordance with this Agreement.

7.2 Important Points

- 7.2.1 The Bidding Process shall be governed by, and construed in accordance with, the laws of India/ laws applicable to State of West Bengal/ Co-operative Act (whichever is applicable) and the Courts at Kolkata (West Bengal, India), shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in-connection with the bidding process.
- 7.2.2 The Authority, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- i. 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;
 - ii. Communicate with any Bidder in order to receive clarification or further information;
 - iii. Pre-qualify or not to pre-qualify any Bidder and/ or to consult with any Bidder in order to receive clarification or further information;
 - iv. Retain any information and/ or evidence submitted to the Authority by, on behalf of, and/ or in relation to any Bidder;
 - v. 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; and/or
 - vi. Supplement/Modify/Amend/Alter the terms of grant of Letter of Association pursuant to this RFP, or technical/financial or any other parameter for selection or evaluation of the Bidders or any terms and conditions of this RFP.
- 7.2.3 In order to afford the bidders a reasonable time for taking addendum/ supplement/modification etc. into account or for any other reason, the Authority may, at its own discretion, extend the Bid Due Date and time.
- 7.2.4 It shall be deemed that by submitting the Bid, the Bidder agrees and releases the Authority, 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 herewith and waives

any and all rights and/ or claims it may have in this respect, whether actual or contingent, whether present or future.


7.3

7.3.1 The successful Bidder shall ensure compliant with fire safety standards and protocols as determined by the Authority concerns from time to time.

7.3.2 The successful Bidder shall deal with only the articles permissible under the licenses issued by the competent Authority. Any violation of such condition will lead to punitive measures including termination of the contract alongwith forfeiture of the Performance Guarantee amount.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

Development, Maintenance and Operation of Lindsay street Consumer Store through PPP mode of Design-Build-Finance-Operation-Transfer(DBFOT) Mode in the state of West Bengal.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

Annexures

8.1 ANNEXURE I: Cover Letter for the Bid
(On the Letterhead of the Bidder)

Date:

Place:

To

The Chief Executive Officer

Calcutta Wholesale Consumers' Co-operative Society Ltd.

113/1/1A, Hazra Road, P.O. Kalighat,

Kolkata-700026

Sub: Request for Proposal (RFP) for Operation & Maintenance of Lindsay Street Consumer Stores in Kolkata through PPP mode in the State of West Bengal

Dear Sir,

With reference to your RFP document dated, I/We, having examined the RFP document and understood its contents, hereby submit my/our Bid under for the aforesaid Project. The Bid is unconditional in all respects.

I/ We acknowledge that the Authority will be relying on the information provided in the Bid and the documents accompanying such Bid for the aforesaid project, and we certify that all information provided in the Bid is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

This statement is made for the express purpose of qualifying as a Bidder for the Operation and Maintenance of the aforesaid Project.

I/ We shall make available to the Authority any additional information it may find necessary or require supplementing or authenticate the Bid.

I/ We acknowledge the right of the Authority to reject our Bid without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.

I/We certify that I/we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty or a judicial pronouncement or arbitration award, nor been expelled from any Project or contract nor have had any contract terminated for breach on our part.

I/ We declare that I/ We have examined and have no reservations to the RFP document, including any Addendum issued by the Authority.

I/ We do not have any conflict of interest in accordance with Clauses 2.2.3 of the RFP;

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 Section on Fraud & Corrupt Practices of the RFP document, in respect of any tender or request for proposal issued by or any agreement entered into with the Authority or any other public sector enterprise or any government, Central or State;

I/ We here by certify that I/we have taken steps to ensure that in conformity with the provisions of Section on Fraud & Corrupt Practices of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice;

I/ We hereby certify and confirm that in the preparation and submission of this Bid, I/we have not acted in concert or in collusion with any other Bidder or other person(s) and also not done any act, deed or thing which is or could be regarded as anti- competitive, restrictive or monopolistic trade practice;

I/ We further confirm that we have not offered nor will offer any illegal gratification in cash or kind to any person or agency in connection with the instant Bid; and

I/ We, am/are not barred by the Authority, or any State Government or any of their agencies from participating in similar projects.

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 Project, without incurring any liability to the Bidders.

I/ We believe that I/we satisfy the Financial Turnover and Net Worth criteria and meet(s) the requirements as specified in the RFP document.

I/ We certify that in regard to matter related to security and integrity of the country, I/we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.

I/ We further certify that in regard to matters relating to security and integrity of the country, we or any of 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 no investigation by a regulatory authority is pending either against us or against our Associates or against our CEO or any of our Directors/ Managers/ Employees.

I/ We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the guidelines referred to above, we shall intimate the Authority of the same immediately.

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

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

Signature,

Name and Designation of the Authorized
Signatory Name and Seal of the Bidder/ Lead
Member


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.2 ANNEXURE II: Details of Bidder

General Information

Name of the firm:

Country of incorporation/ registration:

Address of the Corporate Headquarters and its Branch Office(s), if any, in India:

Date of Incorporation and/ or Commencement of Business:

Brief description of the entity including details of its main lines of business and proposed role and responsibilities in this Project:

Details of Individual(s) who will serve as the Point of Contact/ Communication for THE AUTHORITY:

Name:

Designation:

Entity:

Address:

Telephone Number:

E-Mail Address:

Fax Number:

Particulars of the Authorized Signatory of the Bidder:

Name:

Designation:

Address:

Phone Number:

Fax Number:

Date:

Place:

Signature, Name and Designation of the Authorized Signatory Name and Seal of the Bidder/ Lead Member

(Attach the required documents)


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.3 ANNEXURE III: Technical Capacity of Bidder

Project Name	Project Location	Date of start of operation	Details of Experience	Proof of Project capacity Enclosed (Yes/No)

Note:

- Provide details of only those projects that have been undertaken by the Bidder under its own name and/ or by an Associate Company.

Signature of the Authorized Person

Name

Designation

Entity

Date


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.4 Annexure IV: Financial Capacity of Bidder

FORMAT FOR FINANCIAL DATA

Turnover related data
All figures in INR Cr.

Particulars	FY 2022-23	FY 2023-24	FY 2024-25
Turnover			

Net Worth related data for the preceding financial year
All figures in INR Cr.

Description	Amount (in INR Cr.)
Subscribed Share Capital	
(add) Paid up Share Capital	
(add) Free Reserves	
(Subtract) (Revaluation reserves + Miscellaneous Expenditure+ Expenditure not written off+ accrued liabilities)	
Net-worth	

Note:

- Audited Balance Sheets, Financial Statements and Annual Reports (where the Bidder is a Company) and Profit & Loss statements of the Bidder shall be enclosed.
- The Bidder shall provide an Auditor's certificate/Chartered Accountant certificate specifying the Net Worth of the Bidder and also specifying the methodology adopted for calculating such Net Worth;

Signature.....

Name:
Designation:
Name of Bidder:
Stamp/ seal:
Date:


Chief Executive Officer
 Calcutta Wholesale Consumers'
 Co-operative Society Ltd.
 113/1/1A, Hazra Road, Kolkata-700026

8.5 Annexure V: Bank Guarantee for EMD

Dated:

To
The Chief Executive Officer
Calcutta Wholesale Consumers' Co-operative Society Ltd.
113/1/1A, Hazra Road, P.O. Kalighat,
Kolkata-700026.

Unconditional and Irrevocable

B.G. No.

1. In consideration of you,, having its office at _____, (hereinafter referred to as "**Authority**"), 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 (name of the Bidder) and having its registered office at (_____) (hereinafter referred to as the "**Bidder**") which expression shall unless it be repugnant to the subject or context thereof include its/their executors, administrators, successors and assigns), for the..... Project on [O&M] basis (hereinafter referred to as "**the Project**") pursuant to the RFP Document dated issued in respect of the Project 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, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment 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 Authority an amount of **INR. 4.58 Lakhs (Rs. Four Lakh Fifty-Eight Thousand 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 fulfil 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 Authority stating that the Bidder is in default of the due and faithful fulfilment 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 Authority is disputed by the Bidder or not, merely on the first demand from the Authority stating that the amount claimed is due to the Authority by reason of failure of the Bidder to fulfil 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
INR.
..... (Rupee
s 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 Authority 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 Authority shall be the sole judge to decide as to 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 Authority that the Bidder is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority 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 Authority shall be entitled to treat the Bank as the principal debtor. THE AUTHORITY 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 Authority, and the Bank shall not be released from its liability under these presents by any exercise by the Authority 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 Authority or any indulgence by the Authority to the said Bidder or by any change in the constitution of the Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties but 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.
8. 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 authorized to receive the said notice of claim.
9. It shall not be necessary for the Authority 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 Authority 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 unrealized.
10. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Authority in writing.
11. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorized and has full power to execute this Guarantee for and on behalf of the Bank.
12. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to INR (Rupees only). The Bank shall be liable to pay the said amount or any part thereof

Operation and Maintenance of Lindsay street consumer store under Calcutta Wholesale Consumer Cooperative Society Ltd through PPP mode on Operation and Maintenance (O&M) Basis in the State of West Bengal

only if the Authority serves a written claim on the Bank in accordance with paragraph 9 hereof, on or before [.....(indicate date falling 180 (one hundred and eighty) 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) (Official Seal)


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.6 APPENDIX VI: Format for Power of Attorney for signing of bid

(On a Non-Judicial Stamp Paper of appropriate value)

POWER OF ATTORNEY

Know all men by these presents, We ____ (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./ Ms. (name), ____ son/daughter/wife _____ and presently residing at ____, who is holding the position of _____, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid to the Authority for the Operation and Maintenance of Lindsay Street Consumer Store at Kolkata, through PPP mode (O&M) basis in the State of West Bengal (the "Project") including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bids and other conferences and providing information/ responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/ or till the entering into of the Agreement with the Authority.

AND we hereby agree to ratify and confirm and do here by ratify and confirm all acts, deeds and things lawfully done or caused to be done by 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 our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ____, THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ____ DAY OF ____, 20**

(Signature, name, designation and address) Witnesses:

[Notarized]

Accepted

For (Signature)

(Signature)

(Name, Title and Address of the Attorney)


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.7 APPENDIX VII (A): FINANCIAL PROPOSAL

Covering Letter Date:

Place:

To

The Chief Executive Officer

Calcutta Wholesale Consumers' Cooperative Society Ltd.

113/1/1A, Hazra Road, Opposite Radha Krishna Temple, Hazra Road, Kalighat,
Kolkata-700026.

Sub: Request for Proposal (RFP) for O & M of Lindsay Street Consumer Stores in Kolkata through PPP mode in the State of West Bengal

Dear Sir/Madam,

I/We, (Applicant's name) herewith enclose the Financial Proposal for selection of our firm as an Agency for above.

I/We agree that this offer shall remain valid for a period of 180 (One Hundred and Eighty) days from the Proposal Due Date or such further period as may be mutually agreed upon.

Yours faithfully, (Signature, name and designation of the authorized signatory)


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.8 APPENDIX VIII (B): FINANCIAL PROPOSAL

S. No.	Project/Name	Total Annual User Charge (in INR)	Total Annual User Charge (in Words)
1.	Operation, Maintenance & Management of Lindsay Street Consumer Stores in Kolkata		

Authorized Signature:

Name:

Designation:

Name of firm:

Address:

Note:

1. GST shall be paid separately as per prevailing rate and the same is not required to indicated in Financial Proposal
2. All payment shall be made in Indian Rupees and shall be subject to applicable Indian laws withholding taxes if any.
3. The financial proposal shall not include any conditions attached to it and any such conditional financial proposal shall be rejected summarily


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8.9 ANNEXURE IX: DRAFT AGREEMENT

*This is a standard draft copy; the final agreement will be in line with the applicable rules and regulations of the State or as deemed fit by the Authority.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

Draft Agreement

THIS AGREEMENT (the "**Agreement**") is entered into on this the ___ day of __, 2026 at _____ BETWEEN, _____ represented by _____ Authorized Representative/Signatory/Officer/Personnel and having its principal office at _____ acting through its _____ (hereinafter referred to as the "**Authority**", which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **First Part**;

AND
M/s. _____ [insert the name of the selected party], a Company incorporated under the Companies Act, 2013, and having its registered office at _____ [insert address of the registered office], acting through _____ its _____ [designation], duly authorized in this behalf by way of Power of Attorney dated _____ (hereinafter referred to as the "**Selected Party**", which expression shall, unless the context otherwise requires, include its successors, permitted assigns and substitutes) of the **Second Part**, hereinafter individually referred to as "**Party**" and together referred to as "**Parties**".

RECITALS:

WHEREAS the Authority is the rightful owner of the store as marked in **Schedule I** (hereinafter referred to as "**Project Land**" or "**Project Site**" or "**Site**") and intends to lend it out for Operation and Maintenance of the aforesaid project in South 24 Parganas through PPP mode on Operate & Maintain ("**O&M**") basis (the "**Project**");

AND WHEREAS with an objective to seek private sector participation in the operation and maintenance of the aforesaid Project, the Authority undertook the process of selection of a suitable party through competitive bidding, after issuing a Request for Proposal document (the "**RFP**") dated _____ inviting Bids from prospective Bidders to implement the said Project, containing the technical and commercial parameters of the Project and the terms and conditions for the implementation of the Project. Upon detailed evaluation of the submitted Bids, the Authority had accepted the Financial Bid of the Selected Bidder and issued a Letter of Award ("**LoA**") dated _____ to the Selected Bidder requiring *inter alia* the execution of this Agreement within 60 (sixty) days of issuance thereof.

AND WHEREAS the Selected Bidder acknowledges and confirms that it has undertaken due diligence and audit of all aspects of the Project Site and the Project including technical and financial viability and on the basis of its independent satisfaction hereby accepts the LOA and agrees and undertakes to implement the Project at its own cost and expense in accordance with the terms and conditions of this Agreement.

AND WHEREAS the Selected Bidder hereby accepts the LOA granted and undertakes to implement the Project in accordance to the provisions of this Agreement.

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


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

1 ARTICLE 1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, unless repugnant to the context in which these words and expressions appear the words and expressions defined below shall have the meanings assigned to them:

1. **"Accounting Year"** means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year.
2. **"Act"** means Indian Companies Act, 1956/2013, read in context with the manner of its usage in this Agreement.
3. **"Adjusted Equity"** means the Equity funded in Indian Rupees and adjusted on the 1st (first) day of the current month (the **"Reference Date"**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI (the **"WPI"**), and for any Reference Date occurring:
 - a. on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
 - b. from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **"Base Adjusted Equity"**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
 - c. after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.3% (zero-point three percent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;
 - d. and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for capacity augmentation. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Termination Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Letter of Association Period is extended, but the revision on account of WPI shall continue to be made.
4. **"Affected Party"** shall have the meaning set forth in Article 26.1.
5. **"Annual User Charge"** means the fee as defined in Article 5.1 of the Agreement.
6. **"Applicable Laws"** means all laws which are applicable to the Project and/or the selected bidder extending to the State of West Bengal, having been enacted or brought into force by Government of India or Government of West Bengal including regulations and rules made there under, and judgments, decrees, injunctions, writs and orders of any Court of Record, as may be in force and effect during the subsistence of this Agreement.
7. **"Applicable Permits"** means all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained by the selected bidder under Applicable Laws during the subsistence of this Agreement.
8. **"Approvals"** means all approvals, permissions, authorizations, consents and notifications from any Governmental Authority, regulatory or departmental authority including, but not limited to the approvals of the Authority, Secretariat for Industrial Assistance, Reserve Bank of India and any other regulatory authority, as may be applicable.
9. **"Appointed Date"** means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be.

10. **"Arbitration Act"** means the Arbitration and Conciliation Act, 1996 as amended from time to time and the Rules there under as in force from time to time.
11. **"Associates"** means in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member. As used in this definition, the expression "control" means with respect to a person which is a 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 corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.
12. **"Authority"** means the Kolkata Wholesale Consumer Co-operative Society
13. **"Authority's Event of Default"** shall have the meaning ascribed to it in Article 22.2.
14. **"Bank"** means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crores (Rupees One Thousand Crore only) or any other bank acceptable to Senior Lenders but does not include a bank in which any Senior Lender has an interest.
15. **"Bank Guarantee"** means an irrevocable and unconditional bank guarantee payable on demand issued by a bank in favor of Authority and furnished by the Selected Bidder to Authority for guaranteeing the due performance of the obligations of the Selected Bidder under this Agreement.
16. **"Bank Rate"** means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.
17. **"Bid"** means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposals in accordance with the provisions thereof.
18. **"Business Day"** means a day on which banks are generally open for business in the city of Kolkata, West Bengal in India.
19. **"Change in Ownership"** means Transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {Selected Bidder/Consortium Members} together with {its/ their} Associates, in the total Equity to decline below (i) 100% (one hundred percent) for a period until the Effective Date (i.e. the date of execution of the Agreement); and (ii) 51% (fifty one per cent) thereof until the 5th (fifth) anniversary of the COD; provided that the Consortium Members whose technical capacity and financial capacity was used to satisfy the eligibility shall subscribe and maintain a minimum equity shareholding of 26% (twenty six percent) each in the stipulated subscribed and paid up equity share capital of the Selected Bidder at all time until the 5th (fifth) anniversary of the COD; provided further that any material variation (as compared to the representations made by the Selected Bidder during the Bidding Process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be) in the proportion of the equity holding of {the Selected Bidder/any Consortium Member} to the total Equity, if it occurs prior to Effective Date and/or 5th anniversary of the COD (as the case may be) of the Project, shall constitute Change in Ownership.
20. **"Clearance(s)"** means, as on the date of execution of this Agreement, any and all consents, no-objections, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective implementation of the Project.
21. **"Change in Laws"** means the occurrence of any of the following after the date of Bid:
 - a. the enactment of any new Indian law as applicable to the State;
 - b. the repeal, modification or re-enactment of any existing Indian law as applicable to the State;
 - c. the commencement of any Indian law, as applicable to the State, which has not entered into effect until the date of Bid; and
 - d. a change in the interpretation or application of any Indian law, as applicable to the State, by a judgment of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or any change in the rates of any of the Taxes that have a direct effect on the Project.
22. **"Competent Authority"** means any agency, authority, department, ministry, public or statutory

- Person of the Government of West Bengal or Government of India, or any local authority, or any other sub-division thereof with authority over aspects of implementation of the Project having jurisdiction over all or any part of the Project Site or the performance of all or any of the services or obligations of the Selected Bidder under or pursuant to this Agreement.
23. **"Compliance Date"** means the later of the date of issuance of the Certificate of Compliance to the Authority or Selected Bidder
 24. **"Agreement"** means and includes this signed Agreement (including the Schedules of the Agreement, the "Letter of Award" issued by the Authority, the written clarification(s), addenda, amendments, etc. to the RFP Document issued to the Bidders and all other documents/papers attached as annexure).
 25. **"Selected Bidder"** means a Company incorporated under the Companies Act, 2013 constituted by the Selected Bidder (consortium/sole applicant as the case may be) for the sole purpose of implementing this Project, having its registered office at ----- and includes successors and permitted assigns.
 26. **"Agreement Period"** is the period of 20 (Twenty) years, for which this project is granted, commencing from the Compliance Date.
 27. **"Consortium"** means the group of entities that have jointly submitting the Bid for the Project.
 28. **"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:
 - (a) 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;
 - (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
 - (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Selected Bidder requires any reasonable action by the Selected Bidder that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval.
 29. **"Damages"** shall have the meaning set forth in Sub-article (n) of Article 1.2.
 30. **"Day"** means calendar day, **"Month"** means 30 (thirty) days and **"Year"** means 365 (three hundred and sixty-five) days.
 31. **"Debt Due"** means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:
 - (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "**principal**") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;
 - (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority's Default; and
 - (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost; provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Selected Bidder, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.
 32. **"Monitoring Committee"** means the committee as constituted by Authority for approving the Monthly Progress Report as stipulated in **Schedule III** of the Agreement.
 33. **"Dispute"** shall have the meaning set forth in Article 22.
 34. **"Dispute Resolution Procedure"** means the procedure for resolution of Disputes set forth in Article 22.
 35. **"Effective Date"** means the date of the signing of this Agreement.

36. **"Encumbrances"** means 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 and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.
37. **"Event of Default"** means the Selected Bidder Event of Default and/or Authority Event of Default, as the case may be.
38. **"Equity"** means the sum expressed in Indian Rupees representing the paid up equity share capital of the Selected Bidder for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;
39. **"Escrow Account"** means an account which the Selected Bidder shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures, as the case may be shall be credited and debited, in accordance with the provisions of this Agreement, and includes the subaccounts of such Escrow Account;
40. **"Financing Agreements" or "Financing Documents"** means the documents/ agreements executed by the Selected Bidder in respect of Financial Assistance to be provided by the Senior Lenders to the Selected Bidder by way of loans, guarantees, subscription to non- convertible debentures and other debt instruments including loan agreements, guarantees, notes, debenture bonds and other debt instruments, security agreements and other documents relating to the financing (including refinancing) of the Total Project Cost and includes any amendments or modifications made to it;
41. **"Financial Close"** means the date on which the Financing Documents with respect to the Financing Package for the Project have been executed and become effective and the Selected Bidder has fulfilled all the conditions needed for draw down of Financing and the Selected Bidder has immediate access to such Financing and which shall in any case be not later than 90 (ninety) days from the Effective Date hereof, unless specifically extended.
42. **"Financial Model"** means the financial model adopted by Lenders setting forth the capital and operating costs of the Project and revenues there from on the basis of which the financial viability of the Project has been determined by the Lenders and includes a description of the assumptions and parameters used for making calculations and projections therein.
43. **"Financial Year"** means the year commencing from 1st April of any calendar year to the 31st March of the next calendar year except in the first and the last calendar year of the subsistence of this Agreement. In the first year of subsistence of this Agreement, it means the period from the Compliance Date to the 31st March of next calendar year. In the last year of subsistence of this agreement, it means the period from 1st April to the Transfer Date.
44. **"Financing Documents"** means the documents executed by the Selected Bidder in respect of financing of the Project to be provided by the Lenders by way of loans, guarantees, subscription to nonconvertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security arrangements, and other documents.
45. **"Financing Package" or "Financing"** means the financing package of the Project furnished by the Selected Bidder indicating the Total Project Cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Lenders and as approved by the Lenders for the purposes of funding the Project.
46. **"Force Majeure" or "Force Majeure Event"** shall mean an act, event, condition or occurrence specified in the Article 27.
47. **"Good Industry Practice"** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled,

prudent and experienced operator engaged in construction and operation of projects akin to the Project. It would include good engineering practices in the design, engineering, construction and project management which would be expected to result in the performance of its obligation by the Selected Bidder and in operation and maintenance of the Facilities in accordance with this Agreement, Applicable Laws, and Clearances, reliability, safety, environment protection, economy

and efficiency.

48. **"GoWB"** means the Government of West Bengal, its respective departments or any other authorities, agencies and instrumentalities functioning under the direction or control of the Government of West Bengal and its administrators, successors and assigns.
49. **"GoI"** means the Government of India.
50. **"Indemnified Party"** means the Party entitled to the benefit of an indemnity pursuant to Article 18.
51. **"Indemnifying Party"** means the Party obligated to indemnify the other Party pursuant to Article 18.
52. **"Lender(s)"** shall mean the banks, financial institutions, international credit agencies that extend or agree to extend a credit facility to the Selected Bidder in relation to the Project.
53. **"LoA"** means letter of award as per the applicable Clause of RFP.
54. **"Material Adverse Effect"** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Letter of Association ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Agreement, or (c) frustrates a material provision of this Agreement or any of the Project Agreements.
55. **"O&M Period"** is the period commencing from the Commercial Operations Date and ending at the Transfer Date.
56. **"Parties"** means the parties to this Agreement collectively and **"Party"** shall mean any of the parties to this Agreement individually;
57. **"Performance Standards"** means the standards for the operation and maintenance;
58. **"Performance Security"** means the Security as set out in Article 5.3 from a scheduled bank approved by the Authority.
59. **"Person"** means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
60. **"Project"** means, subject to the provisions of this Agreement, (i) the development, operation and maintenance of Lindsay Street Consumer Store at Kolkata, through PPP mode on Development-Build-Finance-Operation-Transfer (DBFOT) basis in state of West Bengal as per specifications and guidelines as mentioned in Annexure
61. **"Project Agreements"** means, collectively, this Agreement, the Financing Documents, hire purchase agreements, sub-license agreements/arrangements, construction agreements and operation & maintenance agreements, in each case as amended, supplemented or otherwise modified from time to time and does not include the Escrow Agreement and Substitution Agreement.
62. **"Project Facilities"** or **"Facilities"** means the Project including facilities and amenities to be provided in the Multipurpose Cold Storage as per specifications and guidelines
63. **"Project Insurance"** means the insurance taken out by or on behalf of the Selected Bidder pursuant to Article 2 of this Agreement.
64. **"Project Assets"** means all tangible and intangible assets relating to the Project including, but not limited to, (a) rights over the Project Site in the form of license, sub-license, right-of-way or otherwise; (b) tangible assets such as civil works and equipment including foundations, all buildings, pavements, substructures and superstructures, movement and parking areas, all internal and external services, drainage facilities, sign boards, air conditioning works, electrical works including sub-station, and telephone and communication equipment; (c) Project Facilities created on the Site; (d) all rights of the Selected Bidder under the Project Agreements/Documents; (e) financial assets, such as receivables, security deposits, cash and investments; (f) insurance proceeds; and (g) Applicable Permits and authorizations relating to or in respect of the Project.
65. **"RFP"** means Request for Proposal document issued by the Authority. The term RFP and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
66. **"Right of Way"** means the constructive possession of the Project Site on 'as is where is basis', together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the redevelopment, operation and maintenance of the Project Facilities in accordance with this Agreement;
67. **"Rs."** or **"Rupees"** refers to the lawful currency of the Republic of India.
68. **"Schedules"** mean the Schedules to this Agreement.
69. **"Security Interest"** means any existing or future mortgage, charge (whether fixed or floating),

pledge, lien, hypothecation, assignment, security interest or other encumbrances of any kind securing or conferring any priority of payment in respect of any obligation of any Person and includes without limitation any right granted by a transaction which, in legal terms, is not the granting of security but which has an economic or financial effect similar to the granting of security in each case under any Applicable Law.

70. "**Statutory Auditor**" means an independent, recognized and reputable firm of the chartered accountants duly licensed to practice in India acting as independent statutory auditor of the Selected Bidder under the provisions of Act including any statutory modification or re-enactment or replacement thereof, for the time being in force.
71. "**Subcontractor**" means the construction contractor(s) and/or operation and maintenance contractor(s) and/or any other contractors and sub-contractors, manufacturers or suppliers of Works and/or building/ services or part thereof, as the context may require, to whom the Selected Bidder contracts or subcontracts the Works in full or part.
72. "**Subordinated Debt**" means any borrowings by the Selected Bidder subordinated to the financial assistance provided by the Lenders for meeting the Total Project Cost but does not include any interest thereon.
73. "**Tax**" means all forms of taxation whether direct or indirect and whether levied in reference to income, profits, gains, net wealth, asset values, turnover, added value or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions, rates and levies (including without limitation social security contributions and any other payroll taxes), whenever and wherever imposed (whether imposed by way of withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating to it.
74. "**Technical Requirements**" means and includes the description of the scope, standards, design criteria and performance criteria, specifications, drawings and similar information related to the design, construction and implementation of the Project as set forth in the Schedules to this Agreement and any alterations and modifications thereto.
75. "**Temporary Works**" means all temporary works of every kind (other than Selected Bidder's Equipment) required for the construction, operation and maintenance of the Project, services, facilities and the remedying of any defects relating thereto.
76. "**Termination Date**" means the date on which this Agreement terminates by efflux of time or by issuance of a Termination Notice .
77. "**Termination Notice**" means the communication issued in accordance with this Agreement by a Party to the other Party for terminating this Agreement.
78. "**Termination Payment**" means the amount payable by the Authority to the Selected Bidder, upon Termination in pursuance of Article 22.3;
79. "**Third Party**" means any Person, real or judicial, or entity other than the Parties to this Agreement.
80. "**Total Project Cost**" means the either of the following:
 - a) The actual capital cost of the Project upon development and completion of the Project and mandatory Project Facilities.
 - b) Total Project Cost as set forth in the Financing Documents.

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

81. "**Transfer Date**" means the day immediately following the last day of Agreement Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Agreement.
82. "**Works**" means the construction, completion, testing and commissioning, operation and maintenance of facility as the context may require, and all the appurtenances thereof, any other permanent, temporary or urgent works required under this Agreement.
83. "**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GoI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2. Principles of Interpretation

In this Agreement, unless the context otherwise requires:

- a. Any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such for modification or reenactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. Reference to laws of Government of West Bengal (the "GoWB"), laws of India or Indian Laws or regulation having force of law shall include the laws, acts, ordinances, rules, regulations, guidelines or byelaws which have the force of law in State of West Bengal;
- c. The headings are for convenience and reference only and shall not be used in and shall not affect, the construction or interpretation of this Agreement;
- d. Terms and words beginning with capital letters shall have the meaning as defined in this Agreement including the Schedules;
- e. Words importing Person or Parties shall include firms and corporations and any organization having legal capacity to sue and be sued in its name.
- f. Words importing the singular shall include the plural and vice-versa
- g. Any reference to day shall mean a reference to a calendar day;
- h. Any reference to month shall mean a reference to a calendar month;
- i. The Schedules of this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- j. Any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- k. References to recitals, Articles, sub-articles or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles and Schedules of or to this Agreement;
- l. Any Agreement, consent, approval, authorization, 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 hands of duly authorized representative of such party, as the case may be, in this behalf and not otherwise;
- m. 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 (the "Business Day"), then the period shall run until the end of next business day; and
- n. 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. Measurements and Arithmetic Conventions

All measurements and calculations shall be in metric system and calculations done in 2 (two) decimals places, with the third digit of 5 (five) or above rounded up and below 5 (five) rounded down.

1.4. Ambiguities within Agreement

In case of ambiguities or discrepancies within this Agreement, the following shall apply:

- a. Between two Articles or more of this Agreement, the provisions of specific Article relevant to the issue under the consideration shall prevail over those in other Articles;
- b. Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;
- c. Between the written description on the drawings and the specifications and standards, the latter shall prevail;

- d. Between the written description on the drawing and the specific written dimension, the latter shall prevail; and
- e. Between any value written in numerals and that in words, the latter shall prevail.

1.5. Priority of Documents

The documents forming this Agreement are to be taken as mutually explanatory of one another. If there is an ambiguity or discrepancy in the documents, the Authority shall issue necessary clarification or instruction to the Selected Bidder, and the priority of the documents shall be as following:

- a. This signed Agreement (including its Schedules), along with any Addenda, if issued to RFP dated _____;
- b. Instructions to Bidders (ITB) {Section 2 of the RFP document dated ___}, enclosed/ attached with this signed Agreement; and
- c. All other documents enclosed/ attached with this signed Agreement.

1.6. General

Unless expressly provided otherwise in this Agreement, any documentation required to be provided or furnished by the Selected Bidder to the Authority and/or the agency or person appointed by the Authority shall be provided free of cost and in 2 (two) copies, and if the Authority and/or the person appointed by the Authority is required to return any such documentation with their comments and/or approval, they shall be entitled to retain one copy thereof.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

2 ARTICLE 2: LETTER OF ASSOCIATION

2.1. Grant of Letter of Association

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants to the Selected Bidder and the Selected Bidder hereby accepts the Letter of Association for a period of **20 (Twenty) years**, the "**Agreement Period**") commencing from the Compliance Date, subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Selected Bidder undertakes:

- a. to develop and implement the Project as per the Scope of Work.
- b. to enjoy complete and uninterrupted access and Right of Way and right to use the Project Site in pursuance of the declaration of license granted in favour of the Selected Bidder by the Authority.
- c. to have access and liberty to maintain and operate the Project Facilities during the Letter of Association Period in accordance with the provisions of this Agreement & Schedules hereof. Any construction or development done by the Selected Bidder in form of any structures or fixtures on the Project Site in respect of the Project shall be deemed to be the property of the Authority and the Selected Bidder relinquishes all its rights in such property in favour of the Authority;
- d. to fulfill its obligations under this Agreement, undertake activities either by itself or through subcontracting arrangements and to appoint contractors, subcontractors (the "**Subcontractor(s)**"), agents, advisors and consultants without in any way relieving the Selected Bidder of its obligations as set out in this Agreement;
- e. To arrange for all the Applicable Permits and Clearances from the Competent Authorities for the development of the Project and the Authority shall in no way be liable for the same. Nevertheless, the Authority, without any binding obligation may provide any assistance upon written request from the Selected Bidder on best effort basis;
- f. to arrange Clearances from the Competent Authorities for removal of existing trees, if any, from the Project Site to the extent necessary for the Project or any of its components;
- g. to exercise such other rights as the Authority may determine being necessary or desirable for the purposes incidental and necessary for operating, & maintaining the Project; and
- h. to bear and pay all expenses, costs and charges incurred for fulfillment of all the Selected Bidder's obligations as set out under this Agreement.

2.2. Agreement Period

- The Agreement Period for the Project shall commence from the Compliance Date and shall extend for a period of **20 (Twenty) years** from such date (the "**Agreement Period**") during which the Selected Bidder is authorized to implement the Project and operate and maintain the project accordance with the provisions hereof. For the avoidance of doubt, the Agreement Period shall include the Renovation Period.
- It is hereby made clear that:
 - In the event of the Agreement Period being extended by the Authority beyond the said period in accordance with the provisions of this Agreement, the Agreement Period shall include the period/ aggregate period by which the Association is so extended; and
 - In the event of Termination, the Agreement Period shall mean and be limited to the period commencing from the Compliance Date and ending with the Termination.
- At the end of the Agreement Period or early termination of this Agreement for any reason whatsoever, all rights given under this Agreement shall cease to have effect and the Project Site with all the fixtures and other assets as associated with the project on '**as is where is basis**' shall revert to the Authority without any obligation of the Authority to pay or adjust any consideration or other payment to the Selected Bidder.

3 ARTICLE 3: CONDITIONS PRECEDENT

The rights and obligations under this Agreement shall take effect only upon fulfillment of all the Conditions Precedent set out in Articles 3 on or before the expiry of a period of 90 (ninety) days from the Effective Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent (the "**Conditions Precedent**") of the Selected Bidder.

3.1. Conditions Precedent for the Authority

- a) The Authority shall execute the Declaration of License in favor of the Selected Bidder in terms of Clause 6.1 provided that the Selected Bidder shall have given a Bank Guarantee to the Authority as Performance Security in accordance with the terms hereof. It is however clarified that this Condition Precedent on the part of the Authority shall be fulfilled once all other Conditions Precedent of both the Parties have been met/fulfilled;
- b) constitute a Monitoring Committee, the constitution and function of which is specified in **Schedule IV**, for the approval of MPR, to be PROVIDED by the Selected Bidder.

3.2. Conditions Precedent for Selected Bidder

The Selected Bidder shall:

- a. provide to the Authority, no later than 30 (thirty) days from the date of this Agreement, an irrevocable and unconditional Bank Guarantee (the "**Performance Security**") for the performance of its obligations
- b. execute and procure execution of the Escrow Agreement, if deemed necessary by the Authority.
- c. provide copies (certified as true copies by an authorized officer of the Selected Bidder) of the constitutional documents of the Selected Bidder.
- d. Provide copies (certified as true by the Director of the Selected Bidder) of all resolutions adopted by the Board of Directors of the Selected Bidder authorizing the execution, delivery and performance of this Agreement by the Selected Bidder;
- e. receive from the Indian Legal Counsel of the Selected Bidder a legal opinion with respect to the authority of the Selected Bidder to enter into this Agreement and the Project Agreements and the Financing Documents and the enforceability of the provisions thereof;

Provided that upon request in writing by the Selected Bidder, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 3.1


3.3. Obligations to satisfy Condition Precedents

- a. Each Party hereto shall use all reasonable endeavors at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 90 (ninety) days of Effective Date which shall not extend beyond 180 (one hundred and eighty) days as mutually agreed between the Parties.
- b. Upon satisfaction in full of all Conditions Precedent for a Party, the other Party shall forthwith issue to such Party a certificate of compliance (the "**Certificate of Compliance**") with Conditions Precedent. The later of the date of issue of Certificate of Compliance to the Selected Bidder or the Authority shall be the Compliance Date, whereupon the obligations of the Parties under this Association shall commence and whereon the Authority shall issue the Certificate of Compliance to the Selected Bidder.
- c. Each Party shall bear its respective costs and expenses of satisfying such Conditions Precedents unless otherwise expressly provided.

3.4. Non-fulfillment of Conditions Precedent

- a. In the event that any of the Conditions Precedents relating to the Selected Bidder have not been fulfilled within 90 (ninety) days of the signing of this Agreement and also, the Authority has not extended or waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the Parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Selected Bidder or persons

- claiming through or under it.
- b. In the event that (i) the Authority does not procure/ fulfill any or all of the Conditions Precedent set forth in Article 3.2 within the period specified in respect thereof, and(ii) the delay has not occurred as a result of breach of this Agreement by the Selected Bidder or due to Force Majeure, the Authority shall pay to the Selected Bidder Damages of an amount equivalent to INR 5,000/- (Rupees Five Thousand Only) for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of INR 5,00,000/- (Rupees Five Lakhs Only).
 - c. In the event that (i) the Selected Bidder does not procure/ fulfill any or all of the Conditions Precedent set forth in Article 3.2 within a period of 90 (ninety) Days unless extended from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Article 3.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Selected Bidder shall pay to the Authority, Damages of an amount equivalent to **INR 10,000/-** (Rupees Ten Thousand Only) i.e. 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of an amount of **INR 10,00,000/-** (Rupees Ten Lakh only).
 - d. In the event the Authority has terminated this Agreement due to non-fulfillment of Conditions Precedent by the Selected Bidder, the Authority shall not be liable in any manner whatsoever to the Selected Bidder or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Selected Bidder.
 - e. In the event that the Project Site has been delivered to the Selected Bidder on the '**as is where is basis**' prior to the fulfillment in full of the Conditions Precedent on signing of Declaration of License, upon the termination of this Agreement the Project Site shall immediately revert to the Authority, free and clear from any Encumbrances on '**as is where is basis**', irrespective of any outstanding claims between the Parties or any other claims, disputes etc. whatsoever between the Parties.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

4 ARTICLE 4: CONSIDERATION TO THE AUTHORITY

4.1. Annual User Charges

- 4.1.1. In consideration of the rights, privileges and interests granted by the Authority to the Selected Bidder in terms of this Agreement, the Selected Bidder shall pay to the Authority a fixed amount of Annual User Charge (the "AUF") as quoted in its Financial Bid plus applicable taxes at the prevailing rates.
- 4.1.2. The Grant / Subsidy, if any, received by the Selected Bidder from Central / State Government for this Project, the same shall be invested by the Selected Bidder in this project only. As, after completion of the Agreement period of the project, all facilities of the project specifically the Lindsay Street Consumer store is proposed to be transferred back to Calcutta Wholesale Consumer Cooperative Society Ltd, therefore, the benefit of such Grant/ Subsidy shall remain with Calcutta Wholesale Consumer Cooperative Society Ltd only.
- 4.1.3. The Annual User Charge shall be payable by the Selected Bidder to the Authority on a half-yearly basis. This payment shall be made in advance every year through the escrow mechanism or in any manner set forth in the actual Agreement. The first Annual User Charge shall be due and payable on a date falling on Operation Date after signing of the agreement and accordingly, the Selected Bidder shall deposit the User Charge on or before the same date every year. *For Illustration, if the Compliance is 1st August 2026, the 1st (first) ACF i.e. half of the quoted amount shall be paid by the Selected Bidder on 1st August 2026 and the other half shall be provided by 1st February 2027. Accordingly, ACF shall be paid in subsequent years.*
- 4.1.4. In the event of delay up to 30 (thirty) days in payment by the Selected Bidder, the Selected Bidder shall be required to pay to the Authority an interest at the Benchmark Prime Lending Rate (BPLR) published by State Bank of India on the due and unpaid amount of ACF for the period of delay. In the case of delay beyond 30 (thirty) days, it shall be considered as Selected Bidder Event of Default.
- 4.1.5. The time prescribed for making payment shall be the essence of this Agreement. Non- Payment of the Annual User Charge shall be accounted as Selected Bidder Event of Default and subsequently form a ground for termination of this Agreement.

4.2. Performance Security

- 4.2.1. The Selected Bidder shall, for the performance of its obligations hereunder provide to the Authority, no later than 90 (ninety) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **INR10 Lakhs** (Rupees Ten Lakh only) in the form set forth in **Annexure - V** (the "**Performance Security**"). Until such time the Performance Security is provided by the Selected Bidder pursuant hereto and the same comes into effect, the EMD shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the EMD to the Selected Bidder.
- 4.2.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Selected Bidder within the stipulated time period, the Authority may encash the EMD and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Selected Bidder under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Selected Bidder, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

4.3. Appropriation of Performance Security

- 4.3.1. Upon occurrence of a Selected Bidder Event of Default or failure to meet any Condition Precedent, the Authority 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 Selected Bidder Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Selected Bidder shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of

the applicable Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Selected Bidder shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 17.

4.3.2. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Selected Bidder shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Selected Bidder Default or to meet any Condition Precedent, and in the event of the Selected Bidder not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement.

4.4. Release of Performance Security

4.4.1. The Performance Security shall remain in force and effect for the entire Agreement Period. Upon completion of 6 (six) months after end of the Agreement Period and thereby, request made by the Selected Bidder for release of the Performance Security along with the particulars which establish satisfaction of the requirements laid down in the Agreement, the Authority shall release the Performance Security forthwith.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

5 ARTICLE 5: USE OF THE PROJECT SITE

5.1. Use of the Project Site and Peaceful Possession

5.2.1. The Selected Bidder, subject to complying with the terms and conditions of this Agreement, shall have the right of use of the Project Site during the Agreement Period in accordance with the terms of this Agreement and such right shall be limited for the purposes mentioned in this Agreement. The Selected Bidder shall not use the Project Site for any other purpose not intended herein.

5.2.2. The Selected Bidder shall confine its operations to the Project Site. The Selected Bidder shall take all necessary precautions to keep labor, persons and equipment within such areas and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the neighboring areas or otherwise cause any interference to the employees, representatives and agents of the Authority. The Selected Bidder shall take utmost care in ensuring that nothing is done at any time or caused or permitted to be done, which creates annoyance or disturbance to occupiers of any building etc. (residential or otherwise) in the neighborhood or obstructs the passage in adjoining areas of the Project Site in any manner.

5.2.3. The Selected Bidder is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the Project Site premises granted to the Selected Bidder.

5.2. Access rights of the Authority and others

5.2.1. The Selected Bidder shall allow free access to the Project Site at all times for the authorized representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project and to investigate any matter within their authority, and upon reasonable notice, the Selected Bidder shall provide to such person's reasonable assistance necessary to carry out their respective duties and functions.

5.3. Property Tax

5.3.1. The Selected Bidder shall be liable to pay property taxes for the Project as required under the Applicable Laws.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

6 ARTICLE 6: OBLIGATIONS OF THE AUTHORITY

6.1. General Obligations


It shall be the Authority's obligation to ensure that the following are made available or executed by the Authority:

- a. Authority shall not interfere in or impede in any manner or otherwise limit, restrict or impose conditions in relation to the operation and maintenance of the project except as may be provided in this Agreement.
- b. All litigation involving the Project Site, prior to the date of issue of Certificate of Compliance and wherein the actions have been filed against the Authority, shall be contested solely by the Authority. The Selected Bidder shall in no way be held responsible or liable as a reason, therefore. The Authority shall indemnify the Selected Bidder and shall hold it free from any claim or consequent cost that may arise as a result of any such litigation obligations of Authority regarding Project Site.
- c. Any liability arising out of in providing the Project Site free of Encumbrances shall be borne solely by the Authority. The Authority shall indemnify the Selected Bidder and shall hold it harmless from any claim or consequential cost that may arise as a result of any such transfer of the Project Site.

6.2. Obligations of Authority regarding Project Site

The Authority agrees to provide support to the Selected Bidder and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- a. the Authority shall provide Project Site free from all Encumbrances on "as is where is basis" to the Selected Bidder.
- b. the Authority shall, upon written request of the Selected Bidder, assist the Selected Bidder in getting permissions and exemptions as may be required under Applicable Laws in State of West Bengal.
- c. the Authority shall ensure that from the date of the execution of Agreement and till the completion of the Letter of Association Period, the Selected Bidder has access to the Project Site for the purpose of carrying out the Selected Bidder's obligations under this Agreement.
- d. if the Selected Bidder suffers delay or incurs cost as a direct result of failure on the part of the Authority to perform its obligation under Article 7, the Selected Bidder shall give notice of the same to the Authority. Upon receipt of such notice Authority shall proceed to take remedial measures and make compensatory adjustments in the Agreement Period.
- e. the Authority may grant to the Selected Bidder right to advertise and set up and display hoardings, billboards and other information panels at the Project Site or to grant license to such rights against payments, provided that such rights shall be exercised in accordance with the Applicable Laws and orders, decrees.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

7 ARTICLE 7: OBLIGATIONS OF THE SELECTED BIDDER

7.1. General Obligations

The Selected Bidder shall observe, undertake, comply with and perform the following obligations, in addition to and not in derogation of its obligations elsewhere set out in this Letter of Association:

- Obtain any and all permits, necessary approvals, clearances and sanctions from the Competent Authority, as and when they may be required, for the Selected Bidder and its employees to perform their obligations under this Agreement;
- Pay charges as applicable under local Municipal Act or as levied by the concerned Municipal Corporation from time to time
- Comply and observe at all times with all Applicable Permits, approvals and applicable laws, norms/ standards in the performance of its obligations under this Agreement including those being performed by any of its Subcontractors;
- Make arrangements and procurement of firm commitment for financing the Project and achieve Financial Close and deliver complete evidence to the Authority that Financial Close has been accomplished, within a period of 90 (ninety) days from the Effective Date. As and when these documents are approved by the Lenders, with or without modifications, true notarized copies of the Financing Package, Financing Documents & the Financial Model shall be furnished by the Selected Bidder to the Authority forthwith. The soft copy of the Financing Package, Financing Documents and the Financial Model shall also be provided;
- carry out the Works strictly in accordance with the provisions of this Agreement, the Technical Requirements, Performance Standards, the Project Implementation and the Schedules of this Agreement, and all works not mentioned in this Agreement but which may be inferred to be necessary for safe, reliable and efficient;
- ensure that the project shall be used for the intended purpose only as agreed between the Parties;
- ensure that the use of the Project Site is restricted to the Article 2 of this Agreement.
- carry out its obligations/duties with regard to the O & M of the Project in accordance with the Schedules to this Agreement. The obligations shall include all work which is necessary to satisfy the Schedules, Technical Requirements and Performance Standards or is implied by this Agreement, or arises from any obligation of the Selected Bidder, and all duties not mentioned in this Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
- operate and maintain the Project and all its components, including maintaining necessary records, for the periods stipulated herein after, as per the Technical Requirements and Performance Standards set out, and shall remedy any defects within the Letter of Association Period. The Selected Bidder shall provide all superintendence, labour, materials, and all such other things for such operation and maintenance (including remedying of defects); be responsible from the date of execution of agreement for all liabilities arising out of operation and maintenance of the Project;
- take full responsibility for the adequacy, stability and safety of all Project Site operations, of all methods of, operation and maintenance of the Project, irrespective of any approval or consent by the Authority;
- submit to the Authority certified true copies of each of the Project Agreements and any further replacement, amendment or modifications within 7 (seven) days of their execution;
- be responsible for safety, soundness and durability of the Project, including other structures, services forming part thereof and their compliance with the local building byelaws;
- ensure that no structural damage is caused at the Project Site as a result of Selected Bidder's activities or any of its agents, contractors, tenants etc.;
- pay at its own cost all applicable existing and future taxes/ charges/ fees/ levies including the property tax, services tax, and any other legal documentation charges, if any, in respect of Project Site, as leviable;

- duly supervise, monitor and control the activities of Contractors, subcontractors, their employees and agents under their respective Project Agreements as may be necessary;
- ensure harmony and good industrial relations amongst the personnel employed in connection with the performance of the Selected Bidder's obligations under this Agreement;
- obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;
- not to permit any contractor, sub-contractors or other person, claiming through or under the Selected Bidder, to create or place any Encumbrances or security interest (the "**Security Interest**") over all or any part of Project Site or the Project Assets (the "**Project Assets**") or on any rights of the Selected Bidder therein or under this Agreement, save and except as expressly permitted in this Agreement;
- ensure that such Project Site remains free from all Encumbrances, encroachments and trespass during the entire Letter of Association Period;
- provide all assistance to the Engineer/ expert/ independent auditor/ arbitrator as it may require for the performance of their duties and services;
- at all times, to afford access to the Project Site to the authorized representatives of Authority, Lenders, other persons duly authorized by any governmental agency having jurisdiction over the Project, to inspect the project and to investigate any matter within their authority and upon reasonable notice;
- remain solely and primarily responsible to Authority for observance of all the provisions of this Agreement on behalf of the Selected Bidder, its employees and representatives and further on behalf of the sub- licensees, their employees and agents and any person acting under or for and on behalf of the Selected Bidder or the sub-licensees, the sub-contractor as fully as if they were the acts or defaults of the Selected Bidder, its agents or employees;
- remain liable for and to indemnify, protect, defend and hold harmless Authority, Authority's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Selected Bidder to discharge its obligations under this Article 7.1 and to comply with the provisions of Applicable Laws;
- acknowledge and recognize that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly;
- remain at all times, responsible and liable for all its obligations under this Agreement notwithstanding anything contained in any other agreement, and no default under any agreement shall excuse the Selected Bidder from its obligations or liability hereunder;
- the Selected Bidder may undertake development of Project by itself or through one or more contractors possessing requisite technical, financial and managerial expertise/capability; but in either case, the Selected Bidder shall remain solely responsible to meet the scope of work as mentioned in this Agreement;
- pay in a timely manner the Annual Letter of Association Fee at all time during the Letter of Association period;
- timely furnish the Performance Security as per the terms of the Agreement; and
- make good the shortfall in the Performance Security in a timely manner.

7.2. Information Regarding Project Site

The Selected Bidder shall, by submitting its Bid, be deemed to have carried out due diligence, inspection, etc.

7.3. Sufficiency of Letter of Association Period

The Selected Bidder shall be deemed to have satisfied itself as to the correctness and sufficiency of the Agreement Period. Unless otherwise stated in this Agreement, the Period shall cover all its

obligations under this Agreement and all things necessary for the execution and completion of the Works and the remedying of any defects during the construction and also the subsequent O & M Period of this Agreement.

7.4. Sub - contracting

The Selected Bidder may subcontract tasks relating to its obligations and responsibilities under this Agreement, including but not limited to tasks relating to O&M of the project. Provided however, for all intents and purposes, the Selected Bidder shall be sole and primary person responsible to the Authority for the observance of all the provisions of this Agreement. The Selected Bidder shall be responsible for the acts or defaults of any of its Subcontractors, its agents or employees, as if they were the acts or defaults of the Selected Bidder, its agents or employees. Any subcontracting shall not relieve the Selected Bidder of its obligations and liabilities under this Agreement.

7.5. Access for Supervision

- a. The Selected Bidder shall, at all reasonable times and on reasonable notice, afford access to the Project Site following grant of complete and uninterrupted Right of Way in respect of the Project Site thereof to the representatives of or Persons duly authorized by the Competent Authority concerned with safety, security or environmental protection to inspect the Project Site and the Facilities thereon and to investigate any other matter within its authority and the Selected Bidder shall further afford such Persons reasonable access to the Project Site necessary to carry out their respective duties and functions.
- b. The persons obtaining access to the Project Site shall conduct their operations at their own risk, cost and expenses and in such manner so as to cause minimum disruption to O&M of the Project consistent with the purpose of the Person gaining such access.

7.6. Supply of Power, Water and Other Consumables

- a. The Selected Bidder shall be solely responsible, at its own cost, for the total supply of electricity, water, fuel, consumables and any other services required for the purposes of the O&M, in the Project, for the Letter of Association Period.
- b. The Authority shall, if requested by the Selected Bidder, use all reasonable endeavors to assist the Selected Bidder in obtaining the supply of such services, provided that the Selected Bidder shall reimburse the Authority for the cost of providing the same and further provide that no such supply or assistance, or failure to do, by the Authority shall relieve the Selected Bidder of its obligations under paragraph(a). The Authority shall notify the cost to the Selected Bidder. The Selected Bidder shall, at its risk and cost, provide any apparatus necessary for such determination and for its use of these services.

7.7. Environmental Measures

- a. The Selected Bidder shall take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property in the vicinity resulting from operations.
- b. The Selected Bidder shall dispose off the waste/garbage as per the Applicable Laws and ensure that the users do not litter in an around the Project Site.
- c. The Selected Bidder shall be liable for and shall indemnify, protect, defend and hold harmless the Authority, it's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgments arising out of the failure of the Selected Bidder to discharge its obligations under this Article and to comply with the provisions of health, safety and environmental laws as applicable.

7.8. Hazardous Materials

The Selected Bidder shall be responsible for the removal of hazardous materials from the Project Site, and the works, in accordance with applicable Indian laws and directives and any other

materials generated or released by the Selected Bidder during its Operation and Maintenance activities, which are toxic or similarly hazardous to the health or safety of persons.

7.9. Project Site Security

- a. The Selected Bidder shall be responsible at its cost, for safe keeping of all plant and machinery, materials, Equipment and other things required for operation and maintenance of the project Unless otherwise stated in this Agreement:
- b. The Selected Bidder shall be responsible for keeping unauthorized persons off the Project Site and prevent encroachment on the Project Site


7.10. Limitations

- a. The Selected Bidder shall not be authorized to incur any expenditure on behalf of the Authority, or to enter into any commitment as agent of the Authority, unless specifically and explicitly authorized by the Authority under the terms of this Agreement.
- b. The Selected Bidder shall not amend, terminate, modify or supplement any agreement on behalf of or in the name of the Authority.

7.11. Mutual Obligations of Parties

Each Party shall:

- a. comply with and perform its respective obligations under this Letter of Association and shall work and cooperate in good faith with the other Party with respect to all the obligations and rights hereunder of the other Party.
- b. carry out their respective obligations during the O&M Period.
- c. understand that the title to and ownership of the Project Site shall at all times vest in the Authority and shall not under any circumstance whatsoever passover or be deemed to pass over to the Selected Bidder or Persons or any other Third Party claiming by, under or through the Selected Bidder.
- d. understand that the Letter of Association granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the Letter of Association, upon the termination of this Agreement for any reason whatsoever.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

8 ARTICLE 8: LABOUR

The Selected Bidder shall be solely responsible for the liability, cost and responsibility for all the laws relating to labour employed by the Selected Bidder and for their conditions under this Article.

8.1. Engagement

The Selected Bidder shall make its own arrangements for the engagement of all its staff and labour, local or otherwise and for their payment, housing, feeding and transport as mutually agreed upon.

8.2. Labour Laws

The Selected Bidder shall ensure that all labour laws, rules and regulations are followed, and the Selected Bidder shall be the primary employer of labour employed by it for the Project. The Authority or any of its officers, employees, and representative shall in no way be responsible for any of the obligations, whether statutory or otherwise, towards any of the labour or employees hired by the Selected Bidder in relation with the Project.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

9 ARTICLE 9: Execution & Commencement

9.1. Execution

All Works shall be executed in the manner set out in this Agreement. Where the manner of execution is not set out in this Agreement, the Works shall be executed under the instructions of Authority during the Operation and Maintenance Period, in a proper, workmanlike and careful manner and as per Good Industry Practice, with properly equipped facilities and non-hazardous materials.

9.2. Inspection

- 9.2.1. The Authority and Independent Engineer shall be entitled, during fabrication, construction or preparation at any places where Works are being carried out, to inspect, examine and test the materials and workmanship, and to check the progress thereof of all Works under this Agreement. The Selected Bidder shall give the Authority and Independent Engineer full opportunity to inspect, examine, measure and test any Works on Project Site or wherever being carried out.
- 9.2.2. The Selected Bidder shall give due notice to the Authority and Independent Engineer whenever such Work is ready. The Independent Engineer and the Authority shall then respond to the Selected Bidder with its intention to either carry out the inspection, examination, measurement or testing within 14 (fourteen) days, or notify that it is considered unnecessary. If the Selected Bidder fails to give such notice, it shall, when required by the Independent Engineer, uncover such work and thereafter reinstate and make good at Selected Bidder's own cost.
- 9.2.3. If the Independent Engineer or the Authority fails to respond to the Selected Bidder's notice within 14 (fourteen) days of receiving the notice, it shall be deemed to imply that they do not consider it necessary to inspect the Works mentioned in the notice.

9.3. Rejection

- 9.3.1. If, as a result of inspection, examination or testing, the Authority or Independent Engineer decides that any plant, materials, design or workmanship is defective or otherwise not in accordance with this Agreement, the Authority or Independent Engineer may reject such plant, materials, design or workmanship and shall notify the Selected Bidder within 7 (seven) days recording clearly his reasons thereof.
- 9.3.2. The Selected Bidder shall then, within the time permitted by the Independent Engineer, or the Authority make good the defect and ensure that the rejected item or work complies with this Agreement. If Independent Engineer requires such plant, materials, design or workmanship to be re-tested, all such Tests shall be repeated under Articles 9.3 at the cost of the Selected Bidder.

9.4. Commencement

- a. The rights and obligations of the Parties under this Agreement shall commence from the Effective Date. Any Works of whatever nature, which the Selected Bidder elects to carry out prior to the Effective Date including investigations, surveys, design, etc. shall be entirely at the risk and cost of the Selected Bidder.
- b. Any delay on the part of the Authority (unless such delay is contributed by the Selected Bidder) in the completion of the Conditions Precedent shall be deemed to be a delay in commencement of the Project.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

10 ARTICLE 10: OPERATIONS AND MAINTENANCE PERIOD

10.1. Commencement and Duration

The O&M Period of the Project shall commence from the date of execution as mentioned in the final Selected Bidder agreement.

10.2. Obligations of the Selected Bidder during O&M Period

- a. During the O&M Period the Selected Bidder shall be responsible for performing all the obligations and complying with the Performance Standards as set in the final agreement.
- b. In the event of failure to perform the obligations or comply with the Performance Standards and rectifying any defects within permissible time limits, the Selected Bidder shall be liable to a penalty which shall not exceed the 0.1% Performance Security for each day until rectification of such defect/damage subject to maximum of 10% of Performance Security for each lapse in compliance in the performance standards. It is clarified that the penalty amount should not exceed the amount of Performance Security which in turn shall lead to Selected Bidder Event of Default.
- c. Selected Bidder shall have right to prevent, impede or obstruct any bonafide visitor from using the Project Facility, save and except for regulating such usage under the terms of this Agreement. Under exceptional circumstances, if the Selected Bidder apprehends any detriment to the Project Facility it shall seek instructions from the Authority, whose decision in this regard shall be final.
- d. The Selected Bidder shall remove the defects or damage found by Inspecting Authority at his own cost. And ensure the performance standards are maintained throughout.
- e. The Selected Bidder is obliged to carry out adjustments, repairs, replacements or modifications during the O&M period to maintain the Works etc. the Authority shall permit the Selected Bidder to carry out all such adjustments, repairs, replacements or modifications as may be necessary. If the adjustment, repair, replacement or modification cannot be made without stopping the operations of the project, then such request shall only be granted if the Selected Bidder's request is reasonable under all the circumstances, having regard to the Selected Bidder's obligations to keep the project operation.

10.3. Scope of Work during O&M Period

In addition to what is provided elsewhere in this Agreement, the Selected Bidder shall have the following obligations and responsibilities during the O&M Period: -

- a. The Selected Bidder shall be responsible, at its own cost, for all the maintenance and repairs of the project and all its components, including buildings, structures, all services and allied works. The Selected Bidder shall also carry out rectification of any defects in the design or construction of any component of the Works as specified above.
- b. The Selected Bidder shall with due diligence carry out all necessary and periodical tests in accordance with the Applicable Laws. The Selected Bidder shall maintain proper record of such tests and the remedial measures taken to cure the defects or decencies, if any, indicative by the test results.
- c. The Selected Bidder shall be entitled at its own costs, expenses and consequences to perform the following:
 - Institution and supervision of operating policies, principles, systems and procedure for all departments including purchasing, accounting, credit management and maintenance, personnel, etc.
 - Instituting, conducting, defending, compromising, referring to arbitration and abandoning any legal or other proceedings, claims and disputes in which the said Project is concerned.
 - To issue its receipts and invoice in its own name.
- d. The Selected Bidder shall, put appropriate danger sign boards in English, Hindi and the local language, notices and barriers as necessary in order to avoid any accidents and/or emergencies on the Project Site.
- e. The Selected Bidder shall deploy adequately trained staff to manage complete operations of the project. The Selected Bidder shall bear the entire responsibility and liability for operation of the

Project.

- f. The Selected Bidder shall be entitled to levy, demand, collect, retain and appropriate the Project Revenues as per the terms of this Agreement.
- g. Notwithstanding anything contained herein, the Selected Bidder shall be solely responsible for all the claims or proceedings filed with respect to the management and operation of the project whether with regard to any negligence committed in the project otherwise for any reasons whatsoever whether intentionally or unintentionally and the Authority shall not be responsible or liable for the same whether vicariously or otherwise and the Selected Bidder shall always keep the Authority indemnified in this regard.
- h. The Selected Bidder shall at its cost, carry out such periodic inspections, as well as assist Authority or its nominee to carry out any (reasonable) random or periodic inspections or checks of any part or component of the Works, the cost of any Test shall be borne by the Selected Bidder.
- i. The Selected Bidder shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations
- j. The Selected Bidder shall ensure general upkeep of the Project Area in accordance with the development envisaged in terms of this Agreement.

10.4. Books and Records

The Selected Bidder shall, at its cost:

- a. Prepare and maintain, in a format approved by the Authority, and on generally accepted Indian accounting principles, proper, accurate and complete books, records and accounts of all transactions related to the Project.
- b. Provide to the Authority or persons notified by it, access to such records and accounts;
- c. Deliver to the Authority annual audited accounts of the Selected Bidder for the Project within 180 (one hundred and eighty) days of close of each Financial Year.
- d. Retain and store on the Project Site for a period of ten years all records relating to the Project, which shall be the property of the Authority.
- e. Provide support to the Authority to meet all the data requirements of all Competent Authorities.

10.5. Accidents

- a. In the event of an accident, the Selected Bidder shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Selected Bidder's responsibilities with regard to the operation of the Project shall in no way be diminished by informing the above officials, as it shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of these officials to give any instructions. The Selected Bidder shall preserve the Project Site of such accident intact, until completion of all legal formalities. If any portion of the project suffers any damage, the Selected Bidder shall, with the consent of Authority, arrange for the repair and rectification thereof.
- b. The Selected Bidder shall, in the event of any accident, incur any expenditure or take any other action as necessary (in accordance with Good Industry Practices). Except when the cause of the accident is attributed to any act or negligence of the Authority, any expenditure in connection with an accident shall be compensated to the Selected Bidder in accordance with Article 6.
- c. Any communication to the news media made by the Selected Bidder shall provide only enough information to satisfy public concern and the Selected Bidder shall neither make any admissions nor accept any liability in any such communications.

11 ARTICLE 11: REPRESENTATIONS AND WARRANTIES

11.1. Representations and Warranties of the Authority

The Authority represents and warrants to the Selected Bidder that:

- a. The Authority has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- b. The Authority has taken all necessary actions to authorize the execution, delivery and performance of this Agreement;
- c. This Agreement constitutes a legal, valid and binding obligation enforceable against the Authority in accordance with the terms hereof;
- d. The Authority is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement;
- e. The Authority has good and valid right to the Project Site, and has power and authority to grant a license in respect thereto to the Selected Bidder;
- f. The Selected Bidder shall have complete and uninterrupted Right of Way in respect of the Project Site in accordance with this Agreement;
- g. There is no litigation, claim, demand or any proceeding pending before any authority in respect of the Authority's title to or possession of the land constituting the Project Site;
- h. All information provided by the Authority in the Bid Documents in connection with the Project is to the best of its knowledge and true and accurate in all material respects; and
- i. The Authority has the financial standing and capacity to perform its obligations under the Agreement.

11.2. Representations and Warranties of the Selected Bidder

The Selected Bidder represents and warrants to the Authority that:

- a. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. It has the financial standing and capacity to undertake the Project;
- e. This agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. It is subject to civil and commercial laws of India with respect to this agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- g. All the information furnished in the Selected Bidder's Proposal is, and shall be, true and correct as on the Effective Date and the Balance Sheet and Profit and Loss Account of the Selected Bidder for each of the Financial Years after the Effective Date furnished to the Authority shall give true and fair view of the affairs of the Selected Bidder;
- h. It shall furnish a copy of the audited accounts of the Selected Bidder within 180 (one hundred and eighty) days of the close of each Financial Year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to the Authority by the Selected Bidder within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- i. 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 the Selected Bidder's Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, 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;
- j. As on the date of the Agreement, there are no actions, suits, proceedings, or investigations pending or, to the Selected Bidder's 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 or constitute a default of the Selected Bidder under this agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement;
- k. As on the date of the Agreement, the Selected Bidder 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 Competent Authority which may result in any Material Adverse Effect or impairment of the Selected Bidder's ability to perform its obligations and duties under this Agreement;
 - l. The Selected Bidder has complied with all Applicable Laws 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 Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
 - m. All rights and interests of the Selected Bidder in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims, and encumbrances without any further act or deed on the part of the Selected Bidder or the Authority and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Selected Bidder subject to any agreement under which a security interest or other lien or encumbrance is retained by any person save and except as expressly provided in this Agreement;
 - n. No representation or warranty by the Selected Bidder contained herein or in any other document furnished by it to the Authority, or to any Competent Authority in relation to clearances contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
 - o. The Selected Bidder warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Selected Bidder, to any person by way of commission or otherwise for securing the Letter of Association or entering into of this Agreement or for influencing or attempting to influence any officer or employee of the Authority

11.3. Disclosure

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. 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.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

12ARTICLE 12: VARIATIONS

12.1. Initiated by the Authority

- a. Variations may be initiated by the Authority at any time during the Letter of Association Period, either by instruction or by a request for the Selected Bidder to submit a proposal. The Selected Bidder shall not make any alteration or modification of the Works, unless and until Authority instructs or approves a Variation. If the Operation and Maintenance Procedures are not in accordance with this Agreement, the rectification, repair or remedy thereof shall not constitute a Variation.
- b. If Authority requests a proposal, prior to instructing a Variation, the Selected Bidder shall submit as soon as practicable:
 - i. A description of the proposed design or work to be performed and a programme for its execution.
 - ii. The Selected Bidder's proposal for any necessary modifications to the Project Implementation Schedule according to Article 8.6; and
 - iii. The Selected Bidder's proposal for adjustment to the Letter of Association Period, Time for Completion of Construction and/ or modifications to this Agreement.
- c. The Authority shall, as soon as practicable after receipt of such proposals, respond with approval, rejection or comments

12.2. Initiated by Selected Bidder

- a. The Selected Bidder may, at any time during the Agreement Period, initiate a Variation, by submitting to Authority a written proposal which in the Selected Bidder's opinion will reduce the cost of maintaining or operating the Works, or improve the efficiency or value to the Authority of the completed Works, or otherwise be of benefit to the Authority or to rectify a divergence between any law or directive and the Technical Requirements. Any such proposal shall be prepared at the cost of the Selected Bidder.
- b. Authority shall, as soon as practicable after receipts of such proposals respond with approval, rejection or comments.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

13 ARTICLE 13: FINANCIAL CLOSE

13.1. Financial Close

13.1.1. The Selected Bidder hereby agrees and undertakes that it shall achieve the Financial Close within 90 (ninety) days from the Effective Date and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of damages to the Authority of an amount of 0.1% of the amount of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Article 3 or due to Force Majeure.

13.1.2. The Selected Bidder shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package (the "**Financial Package**") and the Financial Model, duly attested by a Director or authorized representative of the Selected Bidder, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Lenders.

13.2. Termination due to failure to achieve Financial Close

13.2.1. Notwithstanding anything to the contrary contained in this Agreement, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth, all rights, privileges, claims and entitlements of the Selected Bidder under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with concurrence of the Selected Bidder, and the Agreement shall be deemed to have been terminated by mutual Agreement of the Parties. For the avoidance of doubt, it is agreed that in the event that the Parties hereto have, by mutual consent, determined the Financial Close, the provisions of mutual consent shall be applicable.

13.2.2. Upon termination under Article Clause 16.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

14ARTICLE 14: ACCOUNTS AND AUDIT

14.1. Appointment of Statutory Auditors

The Selected Bidder after due consultation with the Authority and Lenders shall appoint a firm of Chartered Accountants out of a mutually agreed list of 10 (ten) independent and reputable firms of Chartered Accountants in India/West Bengal as the Statutory Auditor to audit the accounts of the Selected Bidder for the Project on a yearly basis or in any other manner agreed by the Authority. All fees and expenses of the Statutory Auditors will be borne by Selected Bidder. The Parties agree that the Statutory Auditor so appointed shall have the status of an expert whose reports and decisions shall be final and binding on the Parties, save in the case of manifest error or fraud. The Selected Bidder shall extend full co-operation to the Statutory Auditor. All contracts, books, records, documents and vouchers relating to the construction, operation and maintenance of the project shall be open to inspection by such Statutory Auditor, who may make such copies thereof or extracts there from as it may deem appropriate. Any information secured as a consequence of such examination shall be kept confidential by all concerned. The Selected Bidder may terminate the appointment of its Statutory Auditor after a notice of 45 (forty-five) days to the Authority, subject to the replacement of Statutory Auditor being appointed from the panel of Chartered Accountants.

14.2. Audited Accounts

The Selected Bidder shall maintain books of accounts recording all its receipts (including all realizable revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including the payments from the Escrow Account), assets and liabilities in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Selected Bidder shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Statement along with report by its Statutory Auditor, within 90 (ninety) days of the close of Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Selected Bidder during the office hours and require copies of the relevant extracts of books of accounts duly certified by the Statutory Auditors to be provided to the Authority.

14.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Selected Bidder to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

14.4. Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Auditors, as the case may be, and the certification provided by the Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

14.5. Set-Off

In the event any amount is due and payable by the Authority to the Selected Bidder, it may set off any sums payable to it by the Selected Bidder and pay the balance remaining. Any exercise by the Authority of its rights under this Article shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

15 ARTICLE 15: SUSPENSION

15.1. Suspension upon Selected Bidder Default

Upon occurrence of a Selected Bidder Event of Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Selected Bidder under this Agreement including the Selected Bidder's right to collect revenues pursuant hereto; and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "Suspension"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Selected Bidder and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Selected Bidder and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

15.2. The Authority to act on behalf of Selected Bidder

15.2.1. During the period of Suspension, the Authority shall, on behalf of the Selected Bidder, collect all revenue from the Project in accordance with this Agreement and deposit the same in the Escrow Account if there is any. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension.

15.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Selected Bidder in accordance with the provisions of this Agreement shall continue to vest in the Selected Bidder therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Selected Bidder under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Selected Bidder and the Selected Bidder undertakes to indemnify the Authority for all costs incurred during such period.

15.3. Revocation of Suspension

15.3.1. In the event the cause of suspension has been rectified or removed within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the suspension forthwith and restore all rights of the Selected Bidder under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

15.3.2. Upon the Selected Bidder having cured the Selected Bidder Event of Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Selected Bidder under this Agreement.

15.4. Substitution of Selected Bidder

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Selected Bidder under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Article 21.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

15.5. Termination

15.5.1. At any time during the period of Suspension under this Article, the Selected Bidder may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this

Agreement and within the period, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement

- 15.5.2. Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Selected Bidder Event of Default.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

16 ARTICLE 16: TERMINATION FOR DEFAULT

16.1. Selected Bidder Event of Default

- 16.1.1. Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure and if not cured within the Cure Period which shall be 60 (sixty) days from the date of notice of default (the "**Default Notice**") from the Authority, shall be considered for the purpose of this Agreement as Event of Default of the Selected Bidder ("**Selected Bidder Event of Default**");
- a. The Selected Bidder is in breach of its obligations under this Agreement, which has a Material Adverse Effect upon the Authority or the Project;
 - b. The Selected Bidder fails to timely renew the license, the same is withdrawn at any time during the Letter of Association Period.
 - c. The time prescribed for making payment of the Annual Letter of Association Fee shall be the essence of this Agreement. Non-Payment of the Annual Letter of Association Fee shall be accounted as Selected Bidder Event of Default and subsequently form a ground for termination of this Agreement.
 - d. The Selected Bidder is in breach of any representation or warranty made under this Agreement or it repudiates this Agreement.
 - e. The Selected Bidder abandons the Project or any of its material obligations as provided under this Agreement.
 - f. The Selected Bidder has not furnished the Performance Security, and the Selected Bidder fails to replenish or provide fresh Performance Security within a cure period of 30 (thirty) days.
 - g. The Selected Bidder fails to undertake the O&M Obligations including compliance with the Maintenance Requirements as mentioned in this Agreement.
 - h. The Selected Bidder fails to achieve Financial Close within the stipulated time period of 90 (ninety) days from the Effective Date, unless expressly extended by the Authority.
 - i. A Lender recalls its loan under the Financing Documents on the ground that the Selected Bidder has defaulted on its obligations to the Lender under the Financing Documents.
 - j. The Selected Bidder creates any Encumbrances, charges or lien in respect of Project/Project Site or any part thereof in favor of any Person, save and except as otherwise expressly permitted in this Agreement.
 - k. Any transfer pursuant to law of either (a) the rights and/or obligations of the Selected Bidder under this Agreement and/ or (b) all or material part of the assets or undertaking of the Selected Bidder; except (i) to the extent permitted by this Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Selected Bidder to perform its obligations under this Agreement.
 - l. A resolution is passed by the shareholders of the Selected Bidder for the voluntary winding up of the Selected Bidder.
 - m. The Selected Bidder is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Selected Bidder or for any of its property that has a material bearing on the Project.
 - n. Any petition for winding up of the Selected Bidder is admitted by a court of competent jurisdiction or the Selected Bidder is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Selected Bidder are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the

Selected Bidder under this Agreement and Project Agreements, and provided that:

- The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement and Project Agreements;
 - The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and Project Agreements and has a credit worthiness at least as that good as that of the Selected Bidder as on the Compliance Date; and
 - All the Project Agreements remain in full force and effect.
- o. The Selected Bidder assigns this Agreement or any of its rights or obligations under the Agreement, where such assignment is not in accordance with the terms and conditions of the Agreement.
- p. The Selected Bidder submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars.
- q. An Escrow Default has occurred and the Selected Bidder fails to cure the default within a Cure Period of 60 (sixty) days, if applicable.

16.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Selected Bidder Event of Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Selected Bidder, provided that before issuing the Termination Notice, the Authority shall by a notice inform the Selected Bidder of its intention to issue such Termination.

16.1.3. The Authority shall issue notice and grant 15 (fifteen) days to the Selected Bidder to make a representation and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice

16.2. Termination for Authority Event of Default

16.2.1. In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Event of Default**") unless the default has occurred as a result of any breach of this Agreement by the Selected Bidder or due to Force Majeure. The defaults referred to herein shall include:

- a the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Selected Bidder;
- b the Authority has failed to make any payment to the Selected Bidder within the period specified in this Agreement; or
- c the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

16.2.2. Without prejudice to any other right or remedy which the Selected Bidder may have under this Agreement, upon occurrence of a Authority Event of Default, the Selected Bidder shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the

Selected Bidder shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

16.3. Termination Payment

- 16.3.1. Upon Termination on account of a Selected Bidder Event of Default during the Operation Period, the Authority shall pay to the Selected Bidder, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due (which shall in no case be more than 67% (sixty seven per cent) of the Total Project Cost) less Insurance Cover; Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due (which shall in no case be more than 67% of the Total Project Cost), **less any amount due to the Authority by the Selected Bidder under this Agreement.** For the avoidance of doubt, the Selected Bidder hereby acknowledges that no Termination Payment shall be due or payable on account of a Selected Bidder Event of Default occurring prior to COD.
- 16.3.2. Upon Termination on account of Authority Event of Default, the Authority shall pay to the Selected Bidder, by way of Termination Payment, an amount equal to:
- Debt Due [which shall in no case be more than 67% (Sixty Seven per cent) of the Total Project Cost];
 - Less: Insurance Cover, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of the Debt Due.
 - Less: any amount due to the Authority by the Selected Bidder under this Agreement.**
- 16.3.3. Termination Payment shall become due and payable to the Selected Bidder within 90 (ninety) days of a demand being made by the Selected Bidder to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 16.3.4. The Selected Bidder expressly agrees that Termination Payment under this Article shall constitute a full and final settlement of all claims of the Selected Bidder on account of Termination of this Agreement for any reason whatsoever and that the Selected Bidder or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.
- 16.3.5. As a consequence of Termination, irrespective of the reason for Termination, the Selected Bidder shall transfer all movable and immovable assets forming part of the Project Assets to the Authority upon the Transfer Date.

16.4. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- be deemed to have taken possession and control of the Project forthwith;
- take possession and control of all materials, stores, implements, and equipment, IT infrastructure including hardware and software on or about the Project Site;
- be entitled to restrain the Selected Bidder and any person claiming through or under the Selected Bidder from entering upon the Project Site or any part of the Project Site;
- succeed upon election by the Authority, without the necessity of any further action by the Selected Bidder, to the interests of the Selected Bidder under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such

election be liable to the Subcontractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Selected Bidder. For the avoidance of doubt, the Selected Bidder acknowledges and agrees that all sums claimed by such Subcontractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Selected Bidder and such Subcontractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

16.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 16.3.4, 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. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

16.6. Defect Liability

16.6.1. Liability for defects after Termination

The Selected Bidder shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer and Authority in the Project during the aforesaid period. In the event that the Selected Bidder fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Selected Bidder's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Selected Bidder to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account.

16.6.2. Retention in Escrow Account, as applicable

- a. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of this Clause 16.6.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 19.
- b. Without prejudice to the provisions of Clause 16.6.2.a, the Engineer shall carry out an inspection of the Project at any time between 120 (one hundred and twenty) days and 150 (one hundred and fifty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 16.6.2.a should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.

17 ARTICLE 17: LIABILITY AND INDEMNITY

17.1. General indemnity

The Selected Bidder will indemnify, defend, save and hold harmless the Authority and its officers, employees, agents and consultants 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 Selected Bidder of any of its obligations under this Agreement or any related 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 Authority indemnified persons.

17.2. Liability of the Authority

The Authority will indemnify, defend, save and hold harmless the Selected Bidder 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:

- (a) defect in title and/or the rights of the Authority in the Project Land given on Letter of Association to the Selected Bidder; or
- (b) breach by the Authority of any of its obligations under this Agreement or any related Agreement, which materially and adversely affect the performance by the Selected Bidder of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related Agreement and/or breach of its statutory duty on the part of the Selected Bidder, its subsidiaries, affiliates, contractors, employees or agents, the same shall be the liability of the Selected Bidder.

17.3. Indemnity by the Selected Bidder

Without limiting the generality of Article 24.1 and 24.2, the Selected Bidder shall fully indemnify, hold harmless and defend the Authority from and against any and all loss and/or Damages arising out of or with respect to:

- (a) failure of the Selected Bidder to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Selected Bidder in respect of the income or other taxes of the Selected Bidder's contractors, suppliers and Representatives;
- (c) Non-payment of amounts due as a result of materials or services furnished to the Selected Bidder or any of its contractors which are payable by the Selected Bidder or any of its Sub-contractors; or
- (d) Breach by the Selected Bidder of any of the obligations under this Agreement.

Without limiting the generality of the provisions of this Article, the Selected Bidder shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Selected Bidder or by the Selected Bidder's Contractors in performing the Selected Bidder's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Selected Bidder shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Selected Bidder shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Selected Bidder is unable to secure such license within a reasonable time, the Selected Bidder shall, at its own expense, and without impairing the specifications and standards,

either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

17.4. Notice and contest of claims

In the event that either Party 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 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not take any action without prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that 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.

17.5. Defense of claims

17.5.1. 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. 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 defense 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 defense. 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.

17.5.2. If the Indemnifying Party has exercised its rights, 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).

17.5.3. If the Indemnifying Party exercises its rights provided in the agreement, 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:

- a. the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- b. 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 defense of such action; or
- c. the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or
- d. the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defenses available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) 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 (b), (c) or (d) of this Clause 18.5.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense 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.

17.6. No consequential claims

Notwithstanding anything to the contrary contained in this Article 18, 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.

17.7. Survival on Termination

The provisions of this Article 18 shall survive Termination.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

18 ARTICLE 18 ESCROW ACCOUNT

18.1. Escrow Account

- 18.1.1. The Selected Bidder shall, prior to Compliance Date of the Project, open and establish an Escrow Account with a Bank (the "Escrow Bank") in accordance with this Agreement read with the Escrow Agreement.
- 18.1.2. The nature and scope of the Escrow Account are fully described in the Escrow Agreement to be entered into amongst the Selected Bidder, the Authority, and the Escrow Bank.

18.2. Deposits into Escrow Account

The Selected Bidder shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders or by way of any Subordinated Debt and the Authority (if any);
- (b) all funds received by the Selected Bidder from its shareholders, in any manner or form;
- (c) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits or capital receipts;
- (d) all payments to the Authority, after deduction of any outstanding Annual Letter of Association Fee;
- (e) all proceeds received pursuant to any insurance claims; and
- (f) Termination Payments.

18.3. Withdrawals during Agreement Period

- 18.3.1. The Selected Bidder shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month, then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
 - a. all taxes due and payable by the Selected Bidder for and in respect of the Project;
 - b. Annual Letter of Association Fee due and payable to the Authority;
 - c. O&M Expenses, subject to the ceiling, set forth by the Independent Engineer in accordance with Good Industry Practice;
 - d. O&M Expenses and other costs and expenses incurred by the Selected Bidder in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
 - e. monthly proportionate provision of debt service payment due in an Accounting Year;
 - f. all payments and Damages certified by the Authority as due and payable to it by the Selected Bidder; and
 - g. balance, if any, in accordance with the instructions of the Selected Bidder.

18.4. Withdrawals upon Termination

- 18.4.1. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
 - i. all taxes due and payable by the Selected Bidder for and in respect of the Project.

- ii. outstanding Annual Letter of Association Fee.
- iii. all payments and Damages certified by the Authority as due and payable to it by the Selected Bidder.
- iv. cost of repair and restoration of damages to the Project on account of a non-Political Event;
- v. all outstanding debt and interest thereon;
- vi. retention and payments relating to the liability for defects and deficiencies
- vii. incurred or accrued O&M Expenses.
- viii. any other payments required to be made under this Agreement; and

18.4.2. The provisions of this Article 19 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 19.4 have been discharged.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

19 ARTICLE 19 INSURANCE

19.1. Insurance during Letter of Association Period

- As per clause 7.1 of the RFP document.
- The Selected Bidder shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Selected Bidder during the Construction Period. The Selected Bidder shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance to the insurance company through Escrow Account and provide a photocopy of the receipt to the Authority. For the avoidance of doubt, the level of insurance to be maintained by the Selected Bidder after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

19.2. Notice to the Authority

Not later than 45 (forty-five) days prior to O&M Period, as the case may be, the Selected Bidder shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article. Within 30 (thirty) days of receipt of such notice, the Authority may require the Selected Bidder to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

19.3. Evidence of Insurance Cover

All insurances obtained by the Selected Bidder in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Selected Bidder shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or nonrenewal has been delivered by the Selected Bidder to the Authority.

19.4. Remedy for failure to insure

If the Selected Bidder shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Selected Bidder, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Selected Bidder.

19.5. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Selected Bidder pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

19.6. Selected Bidder's waiver

The Selected Bidder hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their

subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Selected Bidder may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Selected Bidder pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

19.7. **Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Selected Bidder and it shall, apply such proceeds for any necessary repair, re-construction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

20 ARTICLE 20: FORCE MAJEURE

20.1. Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Article 21.2, 21.3 and 21.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party; and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice; and (iii) has Material Adverse Effect on the Affected Party.

20.2. Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- a. act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b. strikes or boycotts (other than those involving the Selected Bidder, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty-four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year and not being an Indirect Political Event set forth in Article 21.3;
- c. any failure or delay of a Subcontractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Selected Bidder by or on behalf of such Subcontractor;
- d. any judgment or order of any court of competent jurisdiction or statutory authority made against the Selected Bidder in any proceedings for reasons other than (i) failure of the Selected Bidder to comply with any Applicable Law or Applicable Permit; or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract; or (iii) enforcement of this Agreement; or (iv) exercise of any of its rights under this Agreement by the Authority;
- e. the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f. any event or circumstances of a nature analogous to any of the foregoing.

20.3. Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

- a. an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- c. any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Selected Bidder for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- d. any failure or delay of a Subcontractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Selected Bidder by or on behalf of such Subcontractor;
- e. any Indirect Political Event that causes a Non-Political Event; or

- f. any event or circumstances of a nature analogous to any of the foregoing.

20.4. Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- a. Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 33 and its effect, in financial terms, exceeds the sum specified in Article 23.1;
- b. compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Selected Bidder or of the Subcontractors;
- c. unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Selected Bidder or any of the Subcontractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Selected Bidder's or any Subcontractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorisation, no objection certificate, exemption, consent, approval or permit;
- d. any failure or delay of a Subcontractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Selected Bidder by or on behalf of such Subcontractor; or
- e. any event or circumstance of a nature analogous to any of the foregoing.

20.5. Duty to report Force Majeure Event

20.5.1. Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- a. the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 21 with evidence in support thereof;
- b. the estimated duration 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;
- c. the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d. any other information relevant to the Affected Party's claim.

20.5.2. 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, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

20.5.3. For so long as the Affected Party continues to claim to be materially 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 21.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

20.6. Effect of Force Majeure Event on the Letter of Association

20.6.1. Upon the occurrence of any Force Majeure Event prior to the Compliance Date, the period forth in Article 19 for achieving Financial Close shall be extended by a period equal in length to the duration

of the Force Majeure Event.

- 20.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:
- a. before commencement of the Project, the Letter of Association Period and the dates shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - b. after commencement of the Project, whereupon the Selected Bidder is unable to collect project revenues despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Letter of Association Period shall be extended by a period, equal in length to the period during which the Selected Bidder was prevented from collection of project revenues on account thereof.

20.7. Allocation of costs arising out of Force Majeure

20.7.1. Upon occurrence of any Force Majeure Event prior to the Compliance Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

20.7.2. Upon occurrence of a Force Majeure Event after the Compliance Date, the costs incurred and attributable to such event and directly relating to the Project i.e., the Force Majeure Costs shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Selected Bidder, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Selected Bidder; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Selected Bidder.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, but shall not include loss of Selected Bidder's share of project revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

20.7.3. Save and except as expressly provided in this Article 21, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

20.8. Termination Notice for Force Majeure Event

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 in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 21, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that 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) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

20.9. Termination Payment for Force Majeure Event

- 20.9.1. If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Selected Bidder in an amount equal to 90% (ninety per cent) of the Debt Due (which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost) less Insurance Cover, less any amount due to the Authority by the Selected Bidder under this Agreement.
- 20.9.2. If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Selected Bidder in an amount equal to:
- (a) Debt Due [which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost] less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due [which shall in no case be more than 67% (sixty seven percent) of the Total Project Cost]; and
 - (b) Less any amount due to the Authority by the Selected Bidder under this Agreement
- 20.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Selected Bidder in an amount that would be payable under Article 27.9 i.e. Authority's Event of Default.

20.10. Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

20.11. Excuse from performance of obligations

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:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- (b) 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
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

21 ARTICLE 21: DISPUTE RESOLUTION

21.1. Dispute Resolution

- 21.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.
- 21.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

21.2. Arbitration

- 21.2.1 In case of failure of dispute resolution by way of amicable settlement, If any dispute or difference of any kind whatsoever shall arise between the authority/his authorized agent and the bidder/ Selected Bidder in connection with or arising out of the request for proposal/ Agreement, or the execution of the project that is (i) whether before its commencement or during the currency of project or after its completion, (ii) and whether before or after the termination, abandonment or breach of the Agreement, it shall in the first instance be referred to for being settled by the BOD, Calcutta Wholesale Consumers' Co-operative Ltd. at time and he/she shall within a period of sixty days after being requested in writing to do so, convey his/her decision to the parties, subject to arbitration as here-in-after provided, such decision in respect of every matter so referred, shall be final and binding upon the parties, In case the project is already in progress, the Selected Bidder will proceed with the execution of the project.
- 21.2.2 On receipt of the decision by the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. as aforesaid, the Selected Bidder will proceed with the execution of the project with all due diligence, whether he or authority/his authorized agent requires arbitration as hereinafter provided or not.
- 21.2.3 If the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. has conveyed its decision to the Selected Bidder and no claim to arbitration has been filed with him by the Contractor within a period of sixty days from the receipt of letter communicating the decision, the said decision shall be final and binding upon the Selected Bidder and will not be a subject matter of arbitration at all.
- 21.2.4 If the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. fails to convey his decisions within a period of sixty days of the expiry or first sixty days from the date on which request has been made to the CEO/BOD, Calcutta Wholesale Consumer Co-operative Ltd. the matter/s in disputes be referred to arbitration.
- 21.2.5 All disputes or differences in respect of which the decision of the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. is not accepted/conveyed, the party shall request in writing, made in a communication sent through Registered Post to the other party, to refer the dispute for settlement by the sole arbitrator. The parties shall endeavor to appoint a sole arbitrator mutually and in case of disagreement either party may take the recourse of Arbitration and Conciliation Act, 1996. The Arbitration proceedings shall be conducted as per Arbitration and Conciliation Act, 1996 as amended up to date.
- 21.2.6 The arbitrator shall deal all claims and dispute raised by either party including any counter claims individually and any lump-sum award shall not be legally enforceable. The award shall state the reasons upon which it is based.
- 21.2.7 The following matters shall not lie within the purview of arbitration: -
- a. Any dispute relating to the levy of compensation is liquidated damages which has already been referred to the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. and is being heard or/and has been decided by the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. Any dispute in respect of substituted, altered additional work/committed work/defective work referred by contractor for the decision of the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. if it is being heard or has already been decided by the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd.

- b. Any dispute regarding the scope of the work or its execution or suspension or abandonment that has been referred by the Selected Bidder for the decision of the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd. and has been so decided finally by the BOD, Calcutta Wholesale Consumers' Co-operative Society Ltd.

21.2.8 The independent claims of the party other than the one getting the arbitrator appointed, as also counter-claims of any party will be entertained by the arbitrator notwithstanding that the arbitrator had been appointed at the instance of the other party.

21.2.9 The venue and seat of arbitration shall be at Kolkata (West Bengal, India). The work under the agreement shall continue during the arbitration proceedings.

21.2.10 Neither Party shall be entitled to bring a claim for arbitration if the appointment of such arbitrator has not been applied within six months: -

- (a) of the date of completion of the work as certified by the competent authority, or
- (b) of the date of abandonment of the project, or
- (c) of its non- commencement within 6 months from the date of abandonment, or written order to commence the project as applicable, or
- (d) of the completion of the project through any alternative agency or means after withdrawal of the work from the Selected Bidder in whole or in part and/or its recession, or
- (e) of receiving an intimation from the competent authority that final payment due to or recovery from the Selected Bidder had been determined which he may acknowledge and/or receive.

Whichever of (a) to (e) above is the latest.

21.2.11 If the matter is not referred to arbitration within the period prescribed above all the rights and claim of any party under the contract shall be deemed to have been forfeited and are absolutely barred.


21.3 Costs associated with Dispute Resolution

21.3.1 The cost incurred on adjudication including inter alia the cost of Regulatory Authority proceedings shall be borne by the Parties in equal proportions.

21.3.2 Each Party shall bear its own legal fees incurred as a result of any Dispute under this Article 22.

21.4 Performance during Dispute

Performance of this Agreement shall continue during the settlement of any Dispute under this Article 21. The provision of this Dispute Resolution Procedure shall be binding upon the successors; assigns and any trustee or receivers of either the Authority or the Selected Bidder.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

22 ARTICLE 22: CHANGE IN LAWS

22.1 Increase in costs

If as a result of Change in Law, the Selected Bidder suffers an increase in costs or reduction in Net Return after Tax or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees ten Lakhs only) in any Accounting Year, the Selected Bidder may so notify the Authority and propose amendments to this Agreement so as to place the Selected Bidder in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Selected Bidder, the Parties shall meet, as soon as reasonably practicable but not later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Selected Bidder may by notice require the Authority to pay an amount that would place the Selected Bidder in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Selected Bidder, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 26.1 shall be restricted to changes in law directly affecting the Selected Bidder's costs of performing its obligations under this Agreement.

22.2 Reduction in costs

If as a result of Change in Law, the Selected Bidder benefits from a reduction in costs or increase in Net Return after Tax or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10,00,000/- (Rupees Ten Lakhs only) in any Accounting Year, the Authority may so notify the Selected Bidder and propose amendments to this Agreement so as to place the Selected Bidder in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement: Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Selected Bidder to pay an amount that would place the Selected Bidder in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Selected Bidder shall pay the amount specified therein to the Authority; provided that if the Selected Bidder shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 33 shall be restricted to changes in law directly affecting the Selected Bidder's costs of performing its obligations under this Agreement.

22.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 23 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1A, Hazra Road, Kolkata-700026

23 ARTICLE 23: DISCLAIMER

23.1 Disclaimer

- 23.1.1 The Selected Bidder acknowledges that prior to the execution of this Agreement, the Selected Bidder has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, specifications and standards, Project Site, local conditions, operational model, and all information provided by the Authority 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. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Selected Bidder confirms that it shall have no claim whatsoever against the Authority in this regard.
- 23.1.2 The Selected Bidder acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in the RFP above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Selected Bidder, or any person claiming through or under any of them. The Parties agree that any mistake or error in or relating to any of the matters set forth in RFP above shall not vitiate this Agreement or render it voidable.
- 23.1.3 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in RFP above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this RFP shall not prejudice the disclaimer of the Authority contained in RFP and shall not in any manner shift to the Authority any risks assumed by the Selected Bidder pursuant to this Agreement.
- 23.1.4 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Selected Bidder and the Authority shall not be liable in any manner for such risks or the consequences thereof.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

24 ARTICLE 24: MISCELLANEOUS PROVISIONS

24.1 Governing Law and Jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India as well as laws applicable to State of West Bengal and the Courts of Kolkata (West Bengal, India) shall have jurisdiction over all matters arising out of or relating to this Agreement.

24.2 Waiver

Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this Agreement:

- (a) 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;
- (b) Shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) Shall not affect the validity or enforceability of this Agreement in any manner. 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.

24.3 Exclusion of implied warranties

This Agreement expressly excludes any warranty, condition or any 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.

24.4 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Letter of Association or otherwise.

24.5 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms and conditions 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.

24.6 Custody of Documents

The Construction Documents shall be in the custody and care of the Selected Bidder. Unless stated otherwise in this Agreement, the Selected Bidder shall provide 2 (two) copies for the use of the Authority.

24.7 Copyright

The Selected Bidder, as beneficial owner, here by transfers to the Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Selected Bidder, in relation to the Construction Documents made or to be made by or on behalf of the Selected Bidder, during the Letter of Association Period for which such copyright subsists in such works. The Authority

hereby grants to the Selected Bidder non-exclusive royalty-free license to use such documents and drawings solely for the purpose of complying with its obligations under this Agreement.

24.8 Use of the Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Authority to the Selected Bidder shall (as between the Parties) remain the property of the Authority. The Selected Bidder may, at its cost, copy, use and communicate any such documents for the purposes of this Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Selected Bidder, except as necessary for the purposes of this Agreement.

24.9 Compliance with Applicable Laws

- a. The Selected Bidder shall, in all matters arising in the performance of this Agreement, comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Applicable Laws of any legally constituted public authority having jurisdiction over the Works. The Selected Bidder shall obtain all permits, licenses or approvals required for any part of the Works in reasonable time, taking into account the delivery time for the plant and machinery and materials and required for completion of the Works. The Authority and the Selected Bidder shall comply with all the laws as applicable.
- b. In the performance of this Agreement, the Selected Bidder shall ascertain and comply with all Applicable Laws. The Authority will provide such reasonable assistance as may be requested by the Selected Bidder in ascertaining the nature and extent of such relevant Applicable Laws.
- c. The Selected Bidder shall indemnify the Authority, the Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Selected Bidder, any Subcontractor or their respective agents or employees to comply with Applicable Laws in respect to the construction, start-up, operation and maintenance activities conducted at the Project Site, during the performance of the Works.
- d. If the Selected Bidder or the Authority finds any divergence between any Applicable Law and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed.

24.10 Notifications

- a. Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- b. All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- c. In the case of the Selected Bidder, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Authority by the Selected Bidder from time to time.
- d. Name of Selected Bidder's Representative:
Address for communication:
- e. In the case of the Authority, all communication shall be addressed to the:

24.11 Language

The language of this Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for construction, operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English and Hindi.

24.12 Counterparts

This Letter of Association may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS whereof the Parties have executed and delivered this Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of

The Authority by:

_____ (Signature)

_____ (Name)

_____ (Designation)

) SIGNED SEALED AND DELIVERED

For and on behalf of

The Selected Bidder by:

_____ (Signature)

_____ (Name)

_____ (Designation)

In the presence of

1.

_____ (Signature) _____ (Name)

_____ (Designation)

2.

_____ (Signature) _____ (Name)

_____ (Designation)


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

SCHEDULE II: FORMAT OF PERFORMANCE SECURITY

Bank Guarantee No.

Issuer of Bank Guarantee

(Name of Bank)

(Hereinafter referred to as the "Bank")

Beneficiary of Bank Guarantee

Details of the Bank of the Beneficiary

Bank: <>

Branch: <>

IFSC

Code: <>

Nature of the Bank Guarantee

Unconditional and irrevocable Bank Guarantee

Context of Bank Guarantee

Agreement to be executed between Kolkata Consumer Co-operative Society and (name of the Selected Bidder) [hereinafter referred to as the "Selected Bidder"] for the Operation and Maintenance of Co-operative Store at Lindsay road _____, through PPP mode on O & M Basis in the State of West Bengal [hereinafter referred to as the "Project"], provided, however, such context of the Bank Guarantee or reference to the Letter of Association in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The title of this Bank Guarantee i.e "Performance Security" shall in no manner and at no stage be relied upon at any stage to adversely affect or dilute the Unconditional and irrevocable nature of this Bank Guarantee. The Contract of the Bank Guarantee is an Independent Contract between the Bank and the Authority and is not dependent upon the execution or performance of any Contract/Agreement amongst the Authority and the Selected Bidder/Selected Bidder.

As per the terms of the Agreement, the Selected Bidder is required to furnish to The Authority, an unconditional and irrevocable bank guarantee for an amount of Rs _____ (Rupees _____ Lakhs only) as security for due and punctual performance/discharge of its obligations under the Agreement for the Letter of Association Period.

Operative part of the Bank Guarantee


1. At the request of the Selected Bidder, we, _____ (name and address of the bank), hereinafter referred to as the ("Bank"), do hereby unconditionally and irrevocably affirm and undertake that we are the guarantor and are responsible to the Authority i.e the beneficiary on behalf of the Bidder, upto a total sum of Rs _____ Crores (Rupees _____ Crores only), such sum

being payable by us to the Authority immediately upon receipt of the first written demand from the Authority.

2. We unconditionally and irrevocably undertake to pay to the Authority, on an immediate basis, upon receipt of first written demand from the Authority without any cavil or argument or delaying tactics or reference by us to the Selected Bidder and without any need for the Authority to convey us any reasons for invocation of the Guarantee or to prove on the failure on the part of the Selected Bidder or to show grounds or reasons for the demand or sum specified therein, the entire sum or sums within the limits of Rs ___lakhs (Rupees lakhs only).
3. We hereby waive the necessity of the Authority to demand the said amount from the Selected Bidder first prior to serving a demand notice upon us for the encashment of this Bank Guarantee Amount.
4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority will be the sole and exclusive judge to determine that whether or not any sum or sums are due and payable to it by the Selected Bidder, which are recoverable by the Authority by invocation of this Guarantee.
5. The Guarantee will not be discharged due to a change in the constitution of the Bank or the Selected Bidder. We undertake that to withdraw or revoke this Guarantee during its currency/validity period, except with the previous written consent of the Authority.
6. We unconditionally and irrevocably undertake to the Authority, any amount so demanded not exceeding Rs _____Lakhs (Rupees _____Lakhs only) notwithstanding any dispute or disputes raised by the Selected Bidder or anyone else in any suit or proceedings before any dispute review Independent Engineer, arbitrator, court, tribunal or other Authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be valid discharge of our liability for payment under the Guarantee and the Selected Bidder shall have no claim against us for making such payment.
7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid till _____
8. This Bank Guarantee is issued by the Bank having its office at _____ but as per the Authority's requirement, this Guarantee can be encashable/negotiable at the Bank's branch at Kolkata having address at _____.

Notwithstanding anytime contained herein:

1. Our liability under this Bank Guarantee shall not exceed Rs ___Lakhs (Rupees _____Lakhs only).
2. The unconditional and irrevocable Bank Guarantee shall be valid w.e.f _____ to _____
3. We are liable to pay the guaranteed amount or any part hereof under this unconditional and irrevocable Bank Guarantee only and if the Authority serves upon us as a written claim or demand on or before _____.


Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026

25 SCHEDULE III: Monitoring COMMITTEE

For the continuous monitoring of the "Project", the Authority shall constitute a Committee which shall be responsible for tracking the progress. The constitution of committee may change at the discretion of the "Authority



Chief Executive Officer
Calcutta Wholesale Consumers'
Co-operative Society Ltd.
113/1/1A, Hazra Road, Kolkata-700026