**WAREHOUSE AGREEMENT**

This Agreement is made and entered into on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_ (the “Execution Date”)

BY AND BETWEEN

Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­\_\_\_\_\_\_\_\_son of Mr \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an adult Indian Inhabitant M/s.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Partnership Firm through its partner Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, M/s.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Company formed and registered under the provisions of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having its address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Hereafter known as CLIENT

(which expression shall unless be repugnant to the context or meaning thereof mean and include his heirs, legal representatives/successors/executors or Administrator) (which expression shall unless it be repugnant to context or meaning thereof be deemed to mean and include the partners constituting the said firm, the survivors or survivors of them and executor, administrators or assign of the last surviving partner).

(which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the First Part.

 AND

Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­\_\_\_\_\_\_\_\_son of Mr \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an adult Indian Inhabitant M/s.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a Partnership Firm through its partner Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, M/s.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Company formed and registered under the provisions of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having its address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Hereafter known as Service Provider

(which expression shall unless be repugnant to the context or meaning thereof mean and include his heirs, legal representatives/successors/executors or Administrator) (which expression shall unless it be repugnant to context or meaning thereof be deemed to mean and include the partners constituting the said firm, the survivors or survivors of them and executor, administrators or assign of the last surviving partner).

(which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors and assigns) of the Second Part.

Client and SERVICE PROVIDER may hereinafter be collectively referred to as “Parties” and individually as a “Party”.

WHEREAS:

(1) Client is engaged in the business of, inter alia retailing of Products (defined hereinafter) and is desirous of appointing an entity for cold storage/dry storage its goods at such entity’s facility and for provision of related Services (hereinafter defined).

(2) SERVICE PROVIDER is engaged in the business of warehousing and storage activities of agricultural commodities and also undertakes Cold storage/dry storage activities for its clients.

(3) Client is desirous of appointing SERVICE PROVIDER for storing Client’s Products at its facility and to provide Services to Client on a non-exclusive basis, for storing its goods and for providing Services on the terms set forth herein.

NOW THEREFORE, THE PARTIES HERETO AGREES AS FOLLOWS:

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following expressions shall have following meaning:

* 1. “Agreement” shall mean this Agreement including all its Annexures, as the same may be supplemented, amended, restated or replaced from time to time in accordance with the provisions hereof.
	2. “Affiliate” shall mean with respect to any entity, any other entity that, directly or indirectly: (a) owns or controls the first entity; (b) is owned or controlled by the first entity; or (c) is under common ownership or control with the first entity, where “control” as applied to any entity means (i) direct or indirect ownership of more than fifty percent (50%) of the equity interests or rights to distributions on account of equity of the relevant entity; or (ii) direct or indirect power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise; or (iii) the power to appoint over half the members of the Board of Directors or similar governing body of such entity, through contractual arrangement or otherwise.
	3. “Applicable Laws” shall mean any and all national, central, state, municipal and / or local legislations, bye-laws, rules, regulations, orders and notifications having the force of law, of the central and/or state governments, municipal corporation, municipality, local body or public authority, order, writ, injunction or decree of any court or Governmental authority, and/or statutory authority having the force of law as may be issued and as may be in force from time to time.
	4. “Applicable Permits” shall have the same meaning as ascribed to it in clause 6.1(viii).
	5. “Chamber” shall mean an enclosed space within the Facility of specific area demarcated by walls.
	6. “Confidential Information” shall mean any and all information disclosed by Client to SERVICE PROVIDER during the term of this Agreement. Such information shall include, without limitation, all proprietary information, schematics, customer and product development plans, forecasts, strategies, patents, designs, trademarks, tradenames, copyrights, business plans and/or programmes, research material, marketing strategies, evaluation data, business contacts, list of suppliers, list of customers, business information, samples, drawings, engineering or operational information, financial information, costing and pricing information, policies and procedures. Such Confidential Information may be supplied as an actual sample, orally, in writing, through discussions, in the form of drawings.
	7. “Facility” shall mean the cold storage/dry storage facility described in Annexure I[[1]](#footnote-1).
	8. “Good Industry Practices” shall mean the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled experienced and recognised service provider engaged in the same type of undertaking as SERVICE PROVIDER under similar circumstances and acting generally in accordance with Applicable Laws and industry standards.
	9. “Goods” shall mean pulses and other agricultural products.
	10. “Intellectual Property” shall mean and include without limitation patents, copyrights including database, designs, labels, know-how, trade names, trademarks, service marks, logos and other distinctive brand features or business identifiers, technical information and equivalents of the foregoing and all other intellectual property rights whatsoever whether registered or unregistered, including rights in any applications or registrations in respect of any of the foregoing in any state, country or jurisdiction.
	11. “Services” shall mean the services more particularly set out in clause 5 below.

2. PRINCIPLES OF INTERPRETATION

Unless the context or meaning otherwise requires:

2.1 Words denoting singular number shall include plural number and vice-versa;

2.2 Words denoting one gender shall include the other gender;

2.3 The terms “hereof”, “herein”, “hereto”, “hereunder” or similar expressions used in this Agreement mean and refer to this Agreement and not to any particular Clause of this Agreement;

2.4 References herein to any provision of a statute shall be deemed to refer to the statute as it may, after the date hereof, be modified, supplemented or re-enacted and any reference to any statutory provision, shall include reference to any rule, order or regulation made thereunder or under such re-enactment;

2.5 The headings are inserted for convenience of reference only and shall not affect the construction of the provisions of this Agreement.

3. TERM AND APPOINTMENT

3.1 This Agreement shall be valid and binding on Parties for a period of one (1) years effective on and from \_\_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_ (“Effective Date”) (“Term”), unless terminated earlier in accordance with the terms hereof.

3.2 Client hereby appoints SERVICE PROVIDER to provide the Facility for cold storage/dry storage of Goods and to provide Services in relation thereto, as more particularly set out in clause 4 below and SERVICE PROVIDER hereby accepts such appointment on the terms and conditions set out herein.

3.3 The arrangement contemplated hereunder is non-exclusive and Client shall be entitled to enter into similar arrangements with any other entity including without limitation in the same area as the Facility and SERVICE PROVIDER shall not object to, dispute or challenge any such arrangement. SERVICE PROVIDER shall not make any monetary or other claim, save and except including for remuneration, compensation, commission or allowance in relation to any loss or damage of whatsoever nature that may be suffered or incurred by it due to Client exercising any of its rights under this clause 3.3.

4. SERVICES

4.1 SERVICE PROVIDER shall:

1. provide a separate Chamber at the Facility admeasuring square feet as described in Annexure II hereto exclusively for cold storage/dry storage of Client Goods. On request by Client, SERVICE PROVIDER shall provide additional space or reduce the space provided within the Chamber at the Facility.
2. Prior to accepting delivery of the Goods, SERVICE PROVIDER shall inspect and examine the Goods randomly to verify that the Goods are not damaged and are as per the specifications intimated by Client and set out in the delivery receipt.
3. accept delivery of only those Goods which have been approved by authorized representative of Client.
4. at the time of taking delivery certify the quantity, weight and quality of Goods delivered in general in accordance with the guidelines of Client.
5. store the Goods delivered at the Facility in accordance with the provisions of this Agreement.
6. In case of cold storage maintain a temperature 20C to 40C and relative humidity (RH) of 65% to 75% in the Chamber during the Term. SERVICE PROVIDER shall ensure that the variation in the temperature shall not exceed 20C to 40C and (RH) shall always be within the range of 65% to 75%.
7. maintain a two hourly record of temperature and RH maintained in the Chamber during the Term and shall also provide facility of monitoring data loggers over the inter-net.
8. intimate Client in writing any variation in the prescribed temperature level or RH level and forthwith take appropriate steps to correct the deviation in the temperature level or RH.
9. re-deliver the Goods from the Facility, in the quantities and in the manner directed by Client from time to time. Client may, at its sole discretion, engage any third party to take re-delivery of any or all of the Goods and on request by Client, SERVICE PROVIDER shall, within two (2) hours of such request, place the applicable Goods for dispatch at the dispatch bay at the Facility.
10. ensure that the Goods so redelivered are redelivered in the same condition and form as at the time of delivery to SERVICE PROVIDER at the Facility by or on behalf of Client subject to natural deterioration and such Goods are redelivered to the third party specified by Client.
11. be solely responsible for the Goods at all times when the Goods are in its possession or under its control and shall be solely liable for any loss of or damage to or shortage in the Goods when the Goods are in its possession or under its control. SERVICE PROVIDER shall not tamper with the Goods and shall at all times ensure that there is no deterioration in the quality of the Goods and the packaging is not tampered with when the Goods are in its possession or under its control.
12. at all times during the Term, store and handle the Goods with due care and prudence and shall ensure that the Goods are not exposed to any danger including of theft or pilferage. SERVICE PROVIDER shall take suitable safety precautions to prevent theft or pilferage at or from the Facility. SERVICE PROVIDER shall depute security guards at the Facility to ensure security thereof and shall arrange to have the Facility locked at all times. SERVICE PROVIDER shall indemnify and hold harmless Client, its officers, employees, agents and representatives from and against any loss or damage of any kind or nature to the Goods at any time when such Goods are in the possession or control of SERVICE PROVIDER including loss or damage arising due to negligence of SERVICE PROVIDER.
13. undertake all necessary documentation associated with receipt, storage, handling and redelivery of the Goods, including inventory and material balance documentation and maintain accurate and up-to date documentation in relation to the Goods in the format desired by Client from time to time.
14. perform all other acts, deeds and things as may be necessary for discharging its obligations under this Agreement or as may be specified by Client from time to time. SERVICE PROVIDER shall upon execution of this Agreement furnish a “No Objection Certificate” issued by the relevant financial institution, if any outstanding loan amount and or loan installments are pending.

5. TITLE

5.1 Client shall remain the owner of the Goods at all times and in no event shall any right, title or interest in the Goods pass to SERVICE PROVIDER.

5.2 SERVICE PROVIDER shall not sell, mortgage, hypothecate or otherwise deal in, create security interest over or use any of the Goods in any manner other than as per terms of this Agreement. SERVICE PROVIDER shall hold the Goods delivered to it by or on behalf of Client in trust as a bailee and shall not, directly or indirectly, create, incur, assume, or permit to be created, incurred or assumed, any claim, lien, charge or encumbrance of any nature whatsoever in favour of a third party over any Goods and shall procure that the Goods remain free from any liens, charges or other security interests and that no person other than Client shall have any claims to title thereon.

6. OBLIGATIONS OF SERVICE PROVIDER

6.1 SERVICE PROVIDER shall:

1. perform all Services in a professional manner and in accordance with the terms and conditions of this Agreement, Applicable Laws, Applicable Permits, Good Warehousing Practices, directions, guidelines and instructions issued by Client from time to time.
2. obtain, keep valid and subsisting, and comply with the conditions of, all permits, licenses, authorizations and consents as may be required from time to time in respect of Facility, Chamber and infrastructure herein and thereat, and in relation to performance of its obligations hereunder.
3. make efforts to prevent any delay in the performance of its obligations hereunder and shall work together with Client for the effective and timely provisions of Services.
4. perform all other activities and services as may be necessary for due and proper performance of its obligations hereunder in accordance with Applicable Laws, and Good Warehousing Practices and SERVICE PROVIDER shall perform all such activities services as if they were expressly described herein without any additional cost to Client and all such activities and services shall be deemed to be included in the Services to be performed hereunder.
5. permit Client and / or any person authorized by Client to inspect the Facility, the activities being carried out at the Facility, the Goods and any and all documents and / or books of accounts relating to this Agreement at any time during normal business hours.
6. maintain, preserve and keep in safe custody any and all records in relation to this Agreement for such periods as may be prescribed under Applicable Laws and as may be required by Client from time to time.
7. at all times during the Term of this Agreement ensure compliance with all Applicable Laws including without limitations any and all health and safety related laws and regulations applicable for maintaining cleanliness and sanitation of the Facility. SERVICE PROVIDER shall obtain, keep valid and subsisting at all times during the Term, and comply with the terms and conditions of, all permissions, consents, registrations and authorizations as may be required in respect of the Facility and the infrastructure therein and thereat and for performance of its obligations hereunder (“Applicable Permits”) and shall pay to the relevant Municipal Corporation and / or other authority any and all such taxes, duties, levies and charges as are liable to be paid to own and operate the Facility.
8. ensure that the Facility is maintained in safe and proper working order and condition at all times during the Term in accordance with guidelines issued by Client from time to time and in accordance with Applicable Laws and Permits. SERVICE PROVIDER shall ensure that storage and safety conditions at the Facility are in compliance with Good Industry Practices and the Facility is clean and hygienic.
9. ensure that the Facility is free from any and all encumbrances, liens and charges and that all amounts due, if any, in relation to the Facility are paid on or by their due date and certify in writing that there is no outstanding commitment with regard to the Facility. not store in the Facility, or permit to be stored in the Facility, any goods or products which may adversely affect the Goods including without limitation any goods or products that may emit foul or offensive odour or any inflammable goods.
10. not store the Goods at any location other than at the Facility without the prior written consent of Client save and except in case of urgency as a safety measures.
11. at its sole cost and expense, maintain the Facilities and necessary furniture, fixtures, facilities, equipment, resources and infrastructure therein and thereat in good and proper working condition and order and shall bear any and all costs and expenses in relation to maintenance and repair and insurance thereof including but not limited to rentals and all applicable municipal and other taxes, duties, levies, charges including water and electricity charges.
12. not use the name of Client in any manner whatsoever either for credit arrangement or otherwise and Client shall not be responsible in any manner whatsoever for any debt or obligation of SERVICE PROVIDER, its employees or workmen.
13. at all times during the Term ensure uninterrupted supply of electricity at the Facility at its own cost and expense. SERVICE PROVIDER shall at its own cost and expense ensure that the DG set and inverters are maintained in perfect working condition at all times to ensure uninterrupted power supply.
14. at its own cost and expense, display a board prominently at the Facility premises indicating that Client Goods are stored at the Facility and such Goods are the sole and exclusive property of Client.
15. shall not store goods of or provide services similar to the Services to any third party at the Facility on terms that are more advantageous than those offered to Client from time to time unless such terms are offered to Client. In the event SERVICE PROVIDER stores goods or provides services similar to the Services to any third party on more advantageous terms, then from the date of such storage and / or provision of services to the third party, SERVICE PROVIDER shall store Goods and provide Services to Client at the Facility on such more advantageous terms.

7. INSURANCE

* 1. SERVICE PROVIDER shall, in respect of Facility obtain, and keep valid and subsisting at all times during the Term, adequate insurance cover from a reputable insurance company, subject to such minimum sums insured and other provisions as may be prescribed by Applicable Laws, against all risks including without limitation third party risks to persons and properties, fire and explosion risk, comprehensive motor vehicle policy risk, workmen’s compensation or loss or injury to its personnel, loss or damage to the Facility.
	2. Immediately upon execution of this Agreement and in any event within three (3) days thereof, SERVICE PROVIDER shall provide to Client a copy of the insurance policies and evidence of the insurance coverage. SERVICE PROVIDER shall on request by Client furnish to Client copies of receipts issued by the insurance company in connection with payments of premiums under such insurance policies and copies the renewals, if any, of such insurance policies.
	3. SERVICE PROVIDER shall pay the requisite insurance premiums on or by their due date in accordance with the provisions of the insurance policies and shall deliver to Client evidence of such payments.
	4. Notwithstanding any claim Client may have under any insurance policy taken by it in relation to the Products, SERVICE PROVIDER shall not be relieved or discharged from any of its obligations hereunder.

8. REPRESENTATIONS AND WARRANTIES

8.1 Each Party represents and warrants that:

(a) it is a company duly and legally organized and validly existing under the laws of India;

(b) this Agreement constitutes its valid and legally binding obligations, enforceable in accordance with its terms;

(b) it has full corporate power and authority to execute and deliver this Agreement in accordance with its terms and to perform all its duties and obligations arising or created under or pursuant to this Agreement and all requisite corporate approvals, as applicable, have been obtained by it prior to the execution of this Agreement; and

(c) the execution of this Agreement and delivery and performance by it of its obligations hereunder do not and shall not violate or conflict in any manner with or result in a breach or default under Applicable Law or any of its duties or obligations under any agreement, understanding or arrangement, written or oral, to which it is a party.

8.2 SERVICE PROVIDER represents and warrants to Client that:

(a) it is the occupant and possessor of or otherwise well and sufficiently entitled to the Facility and that it has requisite experience, knowledge, expertise, ability, manpower and infrastructure (and the capability to supplement and augment the same) to perform its obligations under this Agreement;

(b) it has apprised itself of all Applicable Laws in so far as the same relates to performance of its obligations hereunder and shall at all times comply with all such Applicable Laws;

(c) it has obtained all necessary Permits required for performance of its obligations hereunder and shall comply with the conditions thereof and keep all such Permits valid and subsisting during the Term;

(d) the Facility is free from all encumbrances and all dues pertaining to the Facility, statutory or otherwise, have been paid on time. SERVICE PROVIDER is authorised to receive, store, handle Client Goods at the Facility and re-deliver them in accordance with Client instructions;

(e) it shall receive and hold the Goods as a bailee in trust for Client;

(f) it shall provide the Facility and provide Services to Client on a priority basis and on most favoured customer terms, including in respect of price and payment.

9. CONSIDERATION AND TAXES

9.1 As full consideration for provision of the Facility and Services, Client shall pay SERVICE PROVIDER at the rates and on the payment terms set out in Annexure III (Payment Terms and Mechanism).

* 1. The consideration payable by Client to SERVICE PROVIDER under this Agreement as determined in accordance with Annexure III shall be: (i) subject to deduction of tax at source in accordance with applicable tax laws of India and (ii) net of all other taxes and duties including without limitation central sales tax, local sales tax, VAT, levies and any other charges of similar nature except otherwise expressly agreed by Parties. SERVICE PROVIDER shall be solely liable and responsible for bearing and paying all such applicable taxes.

10. PAYMENT TERMS

10.1 SERVICE PROVIDER shall, in respect of the Facility and Services provided in any calendar month, submit an invoice to Client, together with such supporting documents as may be prescribed by Client from time to time, no later than on the seventh day of the immediately following month.

10.2 Client shall make payment of undisputed invoiced amounts within thirty (30) working days of receipt of correct invoice together with all supporting documents. Client shall advice SERVICE PROVIDER within [30] working days of the date of receipt of the invoice of any disputed amounts in such invoice. SERVICE PROVIDER shall promptly provide necessary clarifications and / or corrections to Client. Client shall pay the amount due, if any, after resolution or determination of the dispute, within [10] working days of resolution or determination of such dispute in accordance with clause 15.

11. TERMINATION

11.1 This Agreement may be terminated by Client without assigning any reason thereof at any time by giving 30 days prior written notice to SERVICE PROVIDER.

11.2 Without prejudice to any other rights or remedies available in law or under this Agreement, either Party may terminate this Agreement forthwith on or at any time after the occurrence of any of the events specified herein below:

(a) insolvency of the other Party;

(b) material breach of any of the terms or conditions of this Agreement by the other Party which breach is not remedied by such other Party to the satisfaction of the non-breaching Party within three (3) days of notice of the breach;

(c) if a petition for winding up of the other Party is decreed in any Court or a resolution is passed for winding-up the business of such other Party or if any receiver, manager, liquidator, administrator or other similar official is appointed to the other Party or a substantial part of the other Party’s property.

12. EFFECT OF TERMINATION

12.1 Upon termination of this Agreement:

1. unless otherwise directed by Client, forthwith deliver to Client all Products in SERVICE PROVIDER’s possession or control or in the Chamber or in any other part of the Facility in the same form and condition save and except natural detoriaton as when delivered to it without causing any damage or loss thereto.
2. both Parties shall be relieved of their respective rights and obligations under the Agreement save such rights, obligations and liabilities which (i) accrued prior to such termination; and (ii) survive termination of this Agreement;
3. Client shall not be liable to make any payment to SERVICE PROVIDER other than for Services provided by SERVICE PROVIDER till the date of termination hereof save and except any statutory liability arising in future and not part of the present agreement and SERVICE PROVIDER shall not be entitled to make any claim on Client for compensation or for loss or damages in respect of goodwill or otherwise save and except their legal claim;
4. each Party shall forthwith return to the other Party the property of such other Party including, but not limited to, all documentation and Confidential Information including details of future sales plans or models together with any copies thereof or any other documents entrusted to such other Party during the Term and hardware and software relating to this Agreement.

13. CONFIDENTIALITY

13.1 SERVICE PROVIDER shall maintain in confidence, in accordance with the standards of care and diligence that it utilises in maintaining its own Confidential Information, any and all confidential information received by it from Client in connection with or in the course of performance of this Agreement and shall not, and shall ensure that its officers, directors, employees and representatives do not, disclose to any person any Confidential Information of Client, without the prior written consent of Client.

13.2 This clause 13 shall survive expiry or termination of this Agreement.

14. INTELLECTUAL PROPERTY

14.1 Client does not grant to SERVICE PROVIDER any right, title or interest in any of its Intellectual Property except as expressly authorised in writing by Client and SERVICE PROVIDER shall not have any right, title or interest in the Client Intellectual Property other than the right to use it for purposes of this Agreement for the Term hereof. SERVICE PROVIDER shall comply with any and all instructions issued by Client in relation to the display of any logo, trademark, copyright or any other Intellectual Property of Client. Upon expiry or earlier termination of this Agreement, SERVICE PROVIDER shall immediately cease and desist for all times from any use of or reference to Client’s Intellectual Property and shall return to Client copies or materials containing such Intellectual Property.

14.2 Parties hereby acknowledge and confirm that:

(a) All Intellectual Property Rights in or relating to the Goods are and shall at all times remain the property of Client and / or its licensors;

(b) SERVICE PROVIDER shall notify Client immediately if SERVICE PROVIDER becomes aware of any illegal or unauthorized use of any of the Goods or any of the Intellectual Property therein or relating thereto and will assist Client in taking all steps necessary to protect and defend Client rights therein.

14.3 The provisions of this clause shall survive the termination of this Agreement.

15. ARBITRATION

15.1 Any claim, dispute or difference arising out of or in connection with this Agreement or its validity, interpretation, implementation or alleged breach of any of the provisions hereof or any contracts, dealings or transactions pursuant hereto or any rights, obligations, terms or conditions contained in this Agreement or the interpretation or construction of this Agreement or anything done or omitted to be done pursuant to this Agreement, shall as far as possible, be resolved by Parties by mutual consultation.

15.2 If Parties fail to reach agreement by mutual consultation within thirty (30) days after a Party has made a request for mutual consultation or such longer period as the Parties may agree in writing, then in that event the claim, dispute or difference may be referred to arbitration by either Party, to a sole arbitrator appointed by Parties by mutual consent and if Parties are unable to agree on such sole arbitrator within forty five (45) days of expiry of the aforesaid thirty (30) days period, then the dispute may be referred by either Party to arbitration by an arbitration tribunal comprising of three (3) arbitrators, one arbitrator to be nominated by each Party and the two arbitrators so appointed to jointly nominate and appoint the third arbitrator.

15.3 If the two (2) arbitrators appointed by the Parties are unable to agree on the third arbitrator within [ ] days of appointment of the second arbitrator, then either Party may apply to the competent courts of Mumbai, India for appointment of the third arbitrator.

15.4 The arbitration proceedings shall be conducted at \_\_\_\_\_\_\_\_\_\_\_\_.

15.5 The arbitration shall be governed by the provisions of the Arbitration and Conciliation Act. The arbitration proceedings shall be conducted in the English language and the arbitral award shall be in English and shall provide reasons thereof. The award passed by the arbitrator shall be final and binding on the Parties.

16. INDEMNITY AND LIMITATION OF LIABILITY

16.1 Each Party shall indemnify, defend and hold the other Party, and such other Party’s Affiliates and the directors, officers, agents, authorized representatives and employees of each of the foregoing (“Indemnified Parties”) harmless from and against any and all losses, liabilities, demands, actions, claims, suits, proceedings, damages, costs, expenses, including without limitation attorney's fees and costs relating to or arising from or in connection with

1. bodily injury or death of any person or damage to real and/or tangible personal property, personal injury, caused by the misconduct, breach of this Agreement or negligence of SERVICE PROVIDER or any other person acting for or on behalf of SERVICE PROVIDER.
2. resulting from a breach of any obligation, warranty, representation, covenant or any other provision of this Agreement by SERVICE PROVIDER.
3. any loss of or damage to Products.

16.2 In no event shall Client and its Affiliates aggregate liability to SERVICE PROVIDER and its Affiliates in connection with this Agreement, however caused, exceed in the undisputed amount payable by Client for Services provided by SERVICE PROVIDER under this Agreement.

16.3 In no event shall Client be liable to the SERVICE PROVIDER for any punitive, exemplary, special, indirect, incidental or consequential damages [including but not limited to, lost profits, lost business opportunities, loss of use or equipment down time) arising out ofor relating to this Agreement, regardless of the legal theory under which such damages are sought.

* 1. Any claim made by SERVICE PROVIDER hereunder must be made in writing and presented within one (1) year from the date on which the breach occurred, in respect of which the claim is made. Failure of the SERVICE PROVIDER to make such a claim shall be deemed to have waived such a claim.

17. LIQUIDATED DAMAGES

17.1 Without prejudice to any other rights or remedies available to Client under this Agreement or in law, if SERVICE PROVIDER fails to take delivery of or re-delivery of any Goods on the date and at the time specified by Client in accordance with this Agreement, SERVICE PROVIDER shall be liable to pay to Client, as ascertained and agreed, liquidated damages not amounting to penalty, of an amount equivalent to [ ] % of the agreed service charges of the Goods of which delivery was not taken or re-delivered by SERVICE PROVIDER on the date and the time so specified, for each day of delay or part thereof

17.2 Client may, at its sole discretion and without prejudice to its right to recover any or all of the liquidated damages by any other method of recovery, deduct the amount of such liquidated damages from any monies due or which may become due to SERVICE PROVIDER.

17.3 The payment or recovery of liquidated damages in accordance with this clause 17 shall not relieve SERVICE PROVIDER from any of its obligations or liabilities under this Agreement.

18. NOTICES

* 1. All notices, requests, consents, waivers or other communication required or permitted hereunder shall be in writing and shall be deemed properly served: (i) if delivered by hand and received by an authorized employee or officer of the Party, (ii) three (3) days after being given to an internationally reputed courier with a reliable system for tracking delivery, (iii) upon receipt of confirmation receipt when sent by facsimile; or (iv) fourteen (14) days after the date of dispatch by certified or registered mail, postage prepaid, return receipt requested; (v) when sent by electronic mail upon confirmation of delivery thereof. All notices and other communication shall be dispatched to the following addresses of the Parties:

|  |  |
| --- | --- |
| In case of Client  | In case of SERVICE PROVIDER  |
| Attn.:  | Attn.:  |
| Address:  | Address:  |
| Fax No.:  | Fax No.:  |
| E-mail:  | E-mail:  |

19. RELATIONSHIP

* 1. This Agreement is on a principal–to-principal basis and nothing in this Agreement shall create any association, partnership, joint venture or relationship of principal – agent or employer-employee relationship between the Parties hereto, it being understood that the parties hereto are with respect to each other independent contractors, and neither party shall have any authority to bind the other or the other’s representatives in any way and shall not represent to any third party that it has such authority nor will either party enter into any contract, make any representation, give any warranty or incur any liability on behalf of the other party. SERVICE PROVIDER shall be solely responsible for payment of all compensation owned to its employees, as well as employment related taxes. SERVICE PROVIDER shall maintain appropriate workers’ compensation for its employees as well as general liability insurance.
	2. SERVICE PROVIDER shall observe and be liable under the Applicable Laws including labour and industrial laws and any other similar enactment or amendment in respect of such persons employed/engaged by the SERVICE PROVIDER, including any accident, injury sustained by any persons and/or loss of life and limb of any person employed by the SERVICE PROVIDER for performance of its obligations hereunder.
	3. SERVICE PROVIDER shall indemnify the Client and hold it harmless against any claims or demands made by SERVICE PROVIDER’s employees or sub-contractors or their employees against Client or its employees, to the extent of the consideration value on any ground whatsoever.

20. FORCE MAJEURE

20.1 Neither Party shall be responsible or liable for any delay or failure in performance by it of its obligations hereunder, if such delay or failure is due to act of God namely declared war, hurricane, flood, cyclone, terrorism, or any order of any Governmental or statutory authority.

21. ASSIGNMENT

21.1 This Agreement shall not be assigned either fully or in part by any Party hereto to any third party without the prior consent, in writing, of the other Party, provided however that, Client shall be entitled to assign any or all of its rights or obligations hereunder to any of its Affiliates without any requirement of consent of SERVICE PROVIDER .

22. ENTIRE AGREEMENT AND AMENDMENTS

22.1 This Agreement shall be final and binding on the Parties and it constitutes the entire understanding between Parties in respect of the subject matter hereof and supersedes all prior negotiations, discussions and/or documents exchanged between Parties. This Agreement or any renewal thereof shall not be amended, altered or modified except by an instrument in writing expressly referring to this Agreement and signed by authorized representatives of both Parties.

23. GOVERNING LAW, JURISDICTION AND LANGUAGE

23.1 This Agreement shall be interpreted and construed exclusively in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and subject to clause 15, parties agree to submit to the exclusive jurisdiction of competent courts in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

23.2 The language to be used in connection with this Agreement shall in all cases be the English language.

24. WAIVER

24.1 No failure or delay on the part of either Party in the exercise of any right, power, privilege or remedy provided under this Agreement shall operate as a waiver of such right, power, privilege or remedy or as a waiver of any preceding or succeeding breach by the other Party to this Agreement nor shall any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of such or any other right, power, privilege or remedy provided in this Agreement (all of which are several and cumulative and are not exclusive of each other) or of any other rights or remedies otherwise available to a Party at law or in equity. Waiver, if any, has to be in writing by authorized personnel of the respective Party.

25. SEVERABILITY

25.1 If any provision of this Agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or un-enforceability of such provision shall not affect the validity or enforceability of any other provision of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. Parties hereby agree to attempt to substitute any invalid or unenforceable provision with a valid or enforceable provision, which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

26. SET OFF

26.1 Client shall be entitled to set off or retain out of any monies which may be or become due to SERVICE PROVIDER from Client under this Agreement, any amounts owed to Client by SERVICE PROVIDER.

27. CUMULATIVE REMEDY

27.1 No right or remedy made available to Client under or pursuant to this Agreement is intended to be exclusive of any other right or remedy provided to Client hereunder or available under Applicable Law, or in equity or under contract or otherwise.

28. COUNTERPARTS

* 1. This Agreement may be executed in any number of counterparts, and each of said counterparts shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, Parties hereto have caused this Agreement to be duly executed as of the Effective Date, such Parties acting by their officers, being thereunto duly authorized.

|  |  |
| --- | --- |
| Client  | SERVICE PROVIDER |
| Signature: | Signature: |
| Name:  | Name: |
| Title: | Title: |
| Date: | Date: |
| In the presence of:: | In the presence of: |

Annexure I

Description of Facility

Annexure II

Description of Chamber

Annexure III

Payment Terms and Mechanism

SERVICE PROVIDER shall raise its invoice on Client for Services provided under the following heads:

1. Storage fees
2. Reimbursement for unloading and loading charges
3. Other charges
1. [↑](#footnote-ref-1)