DRAFT CONCESSION AGREEMENT
## TABLE OF CONTENTS

1. DEFINITIONS AND INTERPRETATION .................................................................................................................. 4
   1.1. Definitions .................................................................................................................................................. 4
   1.2. Interpretation .............................................................................................................................................. 4
   1.3. Measurements and arithmetic conventions .............................................................................................. 7
   1.4. Priority of agreements, clauses and schedules .......................................................................................... 7
2. SCOPE OF THE PROJECT ................................................................................................................................. 9
   2.1. Scope of the Project ................................................................................................................................... 9
3. GRANT OF CONCESSION ................................................................................................................................. 10
   3.1. The Concession .......................................................................................................................................... 10
   3.2. Release of Capacity .................................................................................................................................... 10
   3.3. Substitution of the Authority .................................................................................................................... 11
4. CONDITIONS PRECEDENT ............................................................................................................................... 12
   4.1. Conditions Precedent ............................................................................................................................... 12
   4.2. Damages for delay by the Authority .......................................................................................................... 13
   4.3. Damages for delay by the Concessionaire ................................................................................................ 13
   4.4. Termination of this Agreement for non-fulfilment of Conditions Precedent by the Authority ................. 14
5. OBLIGATIONS OF THE CONCESSIONAIRE .................................................................................................... 15
   5.1. Obligations of the Concessionaire ............................................................................................................ 15
   5.2. Obligations relating to Project Agreements .............................................................................................. 16
   5.3. Obligations relating to Change in Ownership ........................................................................................... 18
   5.4. Employment of foreign nationals ............................................................................................................ 19
   5.5. Employment of trained personnel ........................................................................................................... 19

Version: 22/02/2016
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.6</td>
<td>Sole purpose of the Concessionaire</td>
<td>19</td>
</tr>
<tr>
<td>5.7</td>
<td>Branding of Storage Facility</td>
<td>19</td>
</tr>
<tr>
<td>5.8</td>
<td>Obligations regarding taxes</td>
<td>20</td>
</tr>
<tr>
<td>5.9</td>
<td>Obligations related to storage operations</td>
<td>20</td>
</tr>
<tr>
<td>5.10</td>
<td>Liability for Personnel</td>
<td>20</td>
</tr>
<tr>
<td>5.11</td>
<td>Furnishing of Information</td>
<td>21</td>
</tr>
<tr>
<td>6.</td>
<td>OBLIGATIONS OF THE AUTHORITY</td>
<td>22</td>
</tr>
<tr>
<td>6.1</td>
<td>Obligations of the Authority</td>
<td>22</td>
</tr>
<tr>
<td>6.2</td>
<td>Obligations related to consideration for transfer of land</td>
<td>22</td>
</tr>
<tr>
<td>6.3</td>
<td>Obligations of the Authority during the Operation Period</td>
<td>23</td>
</tr>
<tr>
<td>6.4</td>
<td>Obligations relating to refinancing</td>
<td>23</td>
</tr>
<tr>
<td>7.</td>
<td>REPRESENTATIONS AND WARRANTIES</td>
<td>24</td>
</tr>
<tr>
<td>7.1</td>
<td>Representations and warranties of the Concessionaire</td>
<td>24</td>
</tr>
<tr>
<td>7.2</td>
<td>Representations and warranties of the Authority</td>
<td>26</td>
</tr>
<tr>
<td>7.3</td>
<td>Disclosure</td>
<td>26</td>
</tr>
<tr>
<td>8.</td>
<td>DISCLAIMER</td>
<td>28</td>
</tr>
<tr>
<td>8.1</td>
<td>Disclaimer</td>
<td>28</td>
</tr>
<tr>
<td>9.</td>
<td>PERFORMANCE SECURITY</td>
<td>30</td>
</tr>
<tr>
<td>9.1</td>
<td>Performance Security</td>
<td>30</td>
</tr>
<tr>
<td>9.2</td>
<td>Appropriation of Performance Security</td>
<td>30</td>
</tr>
<tr>
<td>9.3</td>
<td>Release of Performance Security</td>
<td>31</td>
</tr>
<tr>
<td>10.</td>
<td>SITE AND RELATED ASPECTS</td>
<td>32</td>
</tr>
<tr>
<td>10.1</td>
<td>The Site</td>
<td>32</td>
</tr>
<tr>
<td>10.2</td>
<td>Procurement of the Site and transfer</td>
<td>32</td>
</tr>
<tr>
<td>10.3</td>
<td>Licence and Access</td>
<td>33</td>
</tr>
</tbody>
</table>

Version: 22/02/2016
10.4. Site to be free from Encumbrances ................................................................. 34
10.5. Protection of Site from encroachments ............................................................. 34
10.6. Special/temporary right of way ........................................................................... 35
10.7. Access to the Authority and Independent Expert .............................................. 35
10.8. Geological and archaeological finds ................................................................. 35
11. UTILITIES, ASSOCIATED ROADS AND TREES ................................................. 36
11.1. Existing utilities and associated roads ............................................................... 36
11.2. Shifting of obstructing utilities ......................................................................... 36
11.3. Felling of trees ................................................................................................... 36
12. CONSTRUCTION OF THE STORAGE FACILITY ................................................. 37
12.1. Obligations prior to commencement of construction ........................................... 37
12.2. Drawings ........................................................................................................... 37
12.3. Construction of the Storage Facility .................................................................... 38
13. MONITORING OF CONSTRUCTION .................................................................... 40
13.1. Monthly progress reports .................................................................................. 40
13.2. Inspection .......................................................................................................... 40
13.3. Tests .................................................................................................................. 40
13.4. Delays during construction ................................................................................ 41
13.5. Suspension of unsafe Construction Works ........................................................ 41
13.6. Video recording .................................................................................................. 42
14. COMPLETION CERTIFICATE .............................................................................. 43
14.1. Tests .................................................................................................................. 43
14.2. Completion Certificate ....................................................................................... 43
14.3. Provisional Certificate ....................................................................................... 43
14.4. Completion of Punch List items ........................................................................ 44
14.5. Withholding of Provisional Certificate ................................................................. 45
14.6. Rescheduling of Tests .......................................................................................... 45
14.7. Safety certification prior to COD ......................................................................... 45
15. ENTRY INTO COMMERCIAL SERVICE .................................................................. 46
15.1. Commercial Operation Date (COD) .................................................................... 46
15.2. Damages for delay ............................................................................................... 46
16. CHANGE OF SCOPE ............................................................................................... 47
16.1. Change of Scope ................................................................................................. 47
16.2. Procedure for Change of Scope .......................................................................... 47
16.3. Payment for Change of Scope ............................................................................ 48
16.4. Restrictions on certain works ............................................................................. 48
16.5. Power of the Authority to undertake works ....................................................... 49
16.6. Reduction in Scope of the Project ...................................................................... 49
16.7. Change in Scope during the Operational Period ................................................ 50
17. OPERATION AND MAINTENANCE ........................................................................ 51
17.1. O&M obligations of the Concessionaire ............................................................ 51
17.2. Maintenance Requirements .............................................................................. 52
17.3. Maintenance Manual ......................................................................................... 52
17.4. Maintenance Programme .................................................................................. 53
17.5. Major Overhaul .................................................................................................. 54
17.6. Safety, breakdowns and accidents ..................................................................... 54
17.7. De-commissioning due to Emergency .................................................................. 54
17.8. Section closure .................................................................................................... 55
17.9. Unscheduled Maintenance .................................................................................. 55
17.10. Damages for breach of maintenance obligations ............................................... 56
17.11. Authority’s right to take remedial measures ................................................................. 56
17.12. Overriding powers of the Authority ............................................................................. 57
17.13. Restoration of loss or damage to Storage Facility ......................................................... 57
17.14. Modifications to the Storage Facility ........................................................................... 58
17.15. Excuse from performance of obligations ...................................................................... 58
17.16. Advertising on the Site .................................................................................................. 58
17.17. Determination of available storage capacity ............................................................... 58
17.18. Receipt of Food Grain in Storage Facility ................................................................. 59
17.19. Pre-storage treatment of Food Grain ............................................................................. 61
17.20. Storage of Food Grain .................................................................................................. 61
17.21. Dispatch of Food Grains .............................................................................................. 62
17.22. Weighment of Food Grain ............................................................................................ 64
17.23. Damages payable in shortfall in compliance during Operation Period ....................... 64
17.24. Damages payable in the event of lower reliability ....................................................... 65
17.25. Appointment of Contractors ....................................................................................... 65
17.26. Handling Losses .......................................................................................................... 66
17.27. ISO Certification .......................................................................................................... 66
18. SAFETY REQUIREMENTS ................................................................................................. 67
18.1. Safety Requirements ....................................................................................................... 67
18.2. Expenditure on Safety Requirements ............................................................................ 67
19. MONITORING OF OPERATION AND MAINTENANCE .................................................. 68
19.1. Monthly status reports .................................................................................................. 68
19.2. Inspection ..................................................................................................................... 68
19.3. Tests ............................................................................................................................. 68
19.4. Remedial measures ...................................................................................................... 68

Version: 22/02/2016
25.4. Mode of Payment ................................................................. 85
25.5. Disputed Amounts ............................................................. 85
25.6. Delay in Payment ............................................................... 86
25.7. Right to set-off ................................................................. 86
25.8. Payment Security Mechanism ............................................ 86
25.9. Security Creation by Concessionaire ................................... 87
26. ESCROW ACCOUNT .............................................................. 88
26.1. Escrow Account ............................................................... 88
26.2. Deposits into Escrow Account ........................................... 88
26.3. Withdrawals during Concession Period ............................... 88
26.4. Withdrawals upon Termination .......................................... 89
27. INSURANCE ........................................................................ 91
27.1. Insurance during Concession Period ................................... 91
27.2. Notice to the Authority ....................................................... 91
27.3. Evidence of Insurance Cover ............................................. 91
27.4. Remedy for failure to insure .............................................. 91
27.5. Waiver of subrogation ...................................................... 92
27.6. Concessionaire’s waiver .................................................... 92
27.7. Application of insurance proceeds ..................................... 92
27.8. Insurance Cover .............................................................. 93
27.9. Insurance of food grains .................................................. 93
28. ACCOUNTS AND AUDIT .......................................................... 94
28.1. Audited accounts ............................................................ 94
28.2. Appointment of auditors .................................................. 94
28.3. Certification of claims by Statutory Auditors ....................... 95

Version: 22/02/2016
28.4. Set-off .................................................................................................................. 95
28.5. Dispute resolution ............................................................................................... 95
29. FORCE MAJEURE ................................................................................................. 97
29.1. Force Majeure ..................................................................................................... 97
29.2. Non-Political Event ............................................................................................ 97
29.3. Indirect Political Event ....................................................................................... 98
29.4. Political Event ..................................................................................................... 98
29.5. Duty to report Force Majeure Event .................................................................... 99
29.6. Effect of Force Majeure Event on the Concession ............................................... 100
29.7. Allocation of costs arising out of Force Majeure ................................................ 100
29.8. Termination Notice for Force Majeure Event ....................................................... 101
29.9. Termination Payment for Force Majeure Event .................................................... 101
29.10. Dispute resolution ............................................................................................. 102
29.11. Excuse from performance of obligations ........................................................ 102
29.12. Compensation for Loss of Food Grain ............................................................. 102
29.13. Relief for Unforeseen Events .......................................................................... 103
30. COMPENSATION FOR BREACH OF AGREEMENT .............................................. 105
30.1. Compensation for default by the Concessionaire ............................................... 105
30.2. Compensation for default by the Authority ......................................................... 105
30.3. Extension of Concession Period ....................................................................... 105
30.4. Compensation to be in addition ........................................................................ 106
30.5. Mitigation of costs and damage ........................................................................ 106
31. SUSPENSION OF CONCESSIONAIRE’S RIGHTS ............................................... 107
31.1. Suspension upon Concessionaire Default ......................................................... 107
31.2. Authority to act on behalf of Concessionaire ..................................................... 107

Version: 22/02/2016
36.2. Reduction in costs .......................................................... 123
36.3. Protection of NPV ......................................................... 123
36.4. Restriction on cash compensation ..................................... 123
36.5. No claim in the event of recovery from Users ..................... 124
37. LIABILITY AND INDEMNITY .............................................. 125
37.1. General indemnity ......................................................... 125
37.2. Indemnity by the Concessionaire ...................................... 125
37.3. Notice and contest of claims ........................................... 126
37.4. Defence of claims ........................................................ 126
37.5. No consequential claims ................................................. 128
37.6. Survival on Termination ................................................ 128
38. RIGHTS AND TITLE OVER THE SITE ............................... 129
38.1. Licensee rights ........................................................... 129
38.2. Access rights of the Authority and others ......................... 129
38.3. Property taxes ............................................................. 129
38.4. Restriction on sub-letting .............................................. 129
39. DISPUTE RESOLUTION ................................................... 130
39.1. Dispute resolution ......................................................... 130
39.2. Conciliation ............................................................... 130
39.3. Arbitration ................................................................. 130
39.4. Adjudication by Regulatory Authority or Commission ........ 131
40. DISCLOSURE ................................................................. 132
40.1. Disclosure of Specified Documents ................................. 132
40.2. Disclosure of Documents relating to safety ....................... 132
41. MISCELLANEOUS .......................................................... 133

Version: 22/02/2016
S. Schedule S - Criteria for Chartered Accountants .......................................................... 210

T. SCHEDULE T - VESTING CERTIFICATE ....................................................................... 212

U. SCHEDULE U - SUBSTITUTION AGREEMENT ............................................................ 213

1 DEFINITIONS AND INTERPRETATION ......................................................................... 214

V. Schedule V - Procedural Guidelines on movement of Food Grains .............................. 225

W. Schedule W - Statutory Permits and Compliances ...................................................... 226
Part I

Preliminary
CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the .......... day of ........, 20.....

BETWEEN

1 THE FOOD CORPORATION OF INDIA, established under the Food Corporation Act 1964, represented by its Chairman and having its principal offices at 16-20, Barakhamba Lane, New Delhi - 110001 (hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 ............ LIMITED, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at ............... (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Authority had resolved to procure an integrated Storage Facility for storage of Food Grains at two locations, each with a design storage capacity of 50,000 (fifty thousand) metric tonnes, at ‘Kaimur’ and ‘Buxar’ in the state of Bihar in India on design, build, finance, operate and transfer (“DBFOT”) basis in accordance with the terms and conditions set forth in this Agreement.

(B) The Authority had accordingly invited proposals by its Request for Qualification No. *** dated *** (the “Request for Qualification” or “RFQ”) for short listing of bidders for construction, operation and maintenance of the above referred Storage Facility on DBFOT basis and had shortlisted certain bidders including, inter alia, the {the selected bidder/ Consortium comprising ................, ................ and ...................... (collectively the “Consortium”) with ...................... as its lead member (the “Lead Member”)}).

(C) The Authority had prescribed the technical and commercial terms and conditions, and invited Bids (the “Request for Proposals” or “RFP”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.

(D) After evaluation of the Bids received, the Authority had accepted the Bid of the {selected bidder/ Consortium} and issued its Letter of Award No. ........ dated ............. (hereinafter called the "LOA") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.

(E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations

Version: 22/02/2016
and exercise the rights of the selected bidder/ Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

(F) {By its letter dated ............, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

(G) The Authority has agreed to the said request of the {selected bidder/Consortium and the} Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

**NOW, THEREFORE,** in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:
ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 42) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2. Interpretation

1.2.1. In this Agreement, unless the context otherwise requires,

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

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

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

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

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

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

(g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-
gradation and other activities incidental thereto, and “develop” shall be construed accordingly;

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

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

(j) references to a “business day” shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;

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

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

(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, then the period shall run until the end of the next business day;

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

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

(p) “lakh” means a hundred thousand (100,000) and “crore” means ten million (10,000,000);

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

(r) references to the “winding-up”, “dissolution”, “insolvency”, or “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this
Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

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

(u) the Schedules and Recitals to 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;

(v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a paragraph of this Agreement or of the Schedule in which such reference appears;

(w) 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 (the “Damages”); and

(x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

(y) capitalised terms used in the Agreement, but not defined herein, shall be construed in accordance with Good Industry Practice

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Expert shall be provided free of cost and in three copies, and if the Authority and/or the Independent Expert is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

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

1.4. **Priority of agreements, clauses and schedules**

1.4.1. This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2. Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.
Part II

The Concession
ARTICLE 2

2. SCOPE OF THE PROJECT

2.1. Scope of the Project

The scope of the Project (the “Scope of the Project”) shall mean and include, during the Concession Period:

(a) Identification and procurement of land parcel for the Project and transfer of the same to the Authority, in accordance with the provisions of this Agreement;

(b) design, finance, and construction of the Storage Facility on the Site set forth in Schedule A and as specified in Schedule B together with provision of Project Facilities as specified in Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D;

(c) operation and maintenance of the Storage Facility in accordance with the provisions of this Agreement; and

(d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement;

(e) storage and preservation of Food Grains, including provision of Storage Services, in accordance with the provisions of this Agreement.
ARTICLE 3

3. GRANT OF CONCESSION

3.1. The Concession

3.1.1. Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the Concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “Concession”) for a period of 31.5 years (Thirty One years and six months) commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

3.1.2. Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

i. access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;

ii. design, finance and construct the Storage Facility

iii. manage, operate and maintain the Storage Facility in accordance with the terms of this Agreement;

iv. receive payments from the Authority in respect of the Storage Services;

v. perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;

vi. bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

vii. neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Storage Facility nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2. Release of Capacity

3.2.1. Storage Capacity shall be deemed to be earmarked and reserved for exclusive utilization by the Authority, and the Concessionaire shall be entitled to receive payment of Fixed Storage Charges for Availability thereof in accordance with the provision of this Agreement
3.2.2. In the event that any part of the Storage Capacity is released or de-reserved with mutual consent, the same shall be deemed to be unutilized capacity (“the Unutilized Capacity”); The Concessionaire may, subject to the provisions of this Agreement, let out the Unutilized Capacity for storage of Food Grains belonging to third parties; provided that the revenues from use of Unutilized Capacity hereunder shall be subject to payment of Revenue Share under and in accordance with the provisions of Clause 3.2.4 and 3.2.5

3.2.3. Subject to the provisions of Clause 3.2.1 the Parties expressly acknowledge and agree that the Authority may utilize, or cause to be utilized, the Storage Capacity for storage of Food Grains owned by any other public or private entity; provided, however, that the Authority shall at all times be responsible and liable for discharging all its obligations under this Agreement, including the payment of Storage and Handling Charges.

3.2.4. The Concessionaire shall pay to the Authority, 40% (forty per cent) of the revenues accruing from all charges including proceeds of any rentals, deposits, capital receipts or insurance claims, received in each month for and in respect of the Unutilized Capacity (the “Revenue Share from Unutilized Capacity”). The Parties agree that Revenue Share from Unutilised Capacity payable for any month shall be set off against the Storage and Handling Charges payable by the Authority for that month.

3.2.5. In the event of any dispute relating to Revenue Share from Unutilised Capacity, the Dispute Resolution Procedure shall apply.

3.3. Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any reorganization or restructuring undertaken in pursuance of the Applicable Laws, substitute itself by any other public entity having the capacity to undertake and discharge the duties and obligations of the Authority and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to the Applicable Laws; provided, however, that, prior to any substitution hereunder, the Parties shall, on a best endeavor basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Clause 25.8.
4. CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1. Save and except as expressly provided in Articles 4, 9, 10, 22, 29, 39 and 41 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "Conditions Precedent").

4.1.2. The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 120 (one hundred and twenty) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

a) provided consideration in one instalment to the Concessionaire against provision of land parcel for the Site in accordance with provisions of Clause 10.2.4;

b) granted the Concessionaire the licence to the Project Site in accordance with Clause 10.3.2

c) executed and procured execution of the Escrow Agreement in accordance with the provisions of Clause 26.1

4.1.3. The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) provided Performance Security to the Authority;

(b) executed and procured execution of the Escrow Agreement;

(c) executed and procured execution of the Substitution Agreement;

(d) procured all the Applicable Permits specified in Schedule W unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
(f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;

(g) delivered to the Authority from {the existing promoter/selected bidders/Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set-forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement;

(h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof; and

(i) transferred the ownership title of the Site in accordance with provisions of Clause 10.2;

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

4.1.4. Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

4.1.5. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2. Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3. Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this
Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2 % (zero point two per cent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.4. **Termination of this Agreement for non-fulfilment of Conditions Precedent by the Authority**

4.4.1. If the Conditions Precedent set forth above in Clause 4.1.2 have not been satisfied by the Authority on or before the expiry of 60 (Sixty) days from the date of receipt of notice from the concessionaire as per Clause 4.1.2 and the Concessionaire has not extended the said period or waived, fully or partially, such conditions, then the Concessionaire may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement.

4.4.2. In case of Termination on account of non-fulfilment of Conditions Precedent by the Authority, if the land title for the identified project site had been transferred by the Concessionaire to the Authority in accordance with clause 10.2.3, then the land transfer shall be reversed by the Authority in favour of the Concessionaire along with return of any consideration paid by the Authority to the Concessionaire for such transfer of land. Any expenses / taxes / fees for such transfer of land shall be borne by the Authority.
ARTICLE 5

5. OBLIGATIONS OF THE CONCESSIONAIRE

5.1. Obligations of the Concessionaire

5.1.1. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Storage Facility and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3. Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4. Subject to the provisions of Clause 3.2.1, the Concessionaire shall provide the Storage Facility for the exclusive use of the Authority or its assignees for storage of Food Grain and provide handling and related services to the Authority or its assignees, as per the terms laid down herein against payment of Storage and Handling Charges, as the only charges payable as per terms of this Agreement for the Storage Services.

5.1.5. The Concessionaire shall design, construct, operate and maintain the Storage Facility in accordance with the Specifications and Standards and the Maintenance Requirements, such that its Availability is not less than 98% (ninety eight per cent) of the Storage Capacity during any Accounting Year of the Concession Period (the “Normative Availability”). For the avoidance of doubt and by way of illustration, the Normative Availability for a designed Storage Capacity of 10,000 (ten thousand) MT shall be 9,800 (nine thousand and eight hundred) MT for an Accounting Year and where the context so requires, the Normative Availability for any month shall also be an average Availability of 9,800 (nine thousand and eight hundred) MT for that month.

Explanation:

Availability of the Storage Capacity shall mean, the capacity available for storage of Food Grains in Silos, expressed as a percentage of the aggregate designed Storage Capacity (the “Availability”) and shall include any deemed Availability in accordance with the provisions of this Agreement. For the avoidance of doubt, any Storage Capacity which is being utilised for storage of Food Grains shall be included in the computation of Availability.

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

Version: 22/02/2016
a. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

b. procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Storage Facility;

c. perform and fulfil its obligations under the Financing Agreements;

d. make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

e. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire’s obligations under this Agreement;

f. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

g. support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

h. transfer the Project Assets to the Authority upon Termination of this Agreement

5.2. Obligations relating to Project Agreements

5.2.1. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2. The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the
terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3. The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority. If such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

5.2.4. The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, where under such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.
5.3. Obligations relating to Change in Ownership

5.3.1. The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

5.3.2. Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

(i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or

(ii) acquisition of any control directly or indirectly of the board of directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the board of directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

(a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the board of directors, as the case may be, of the Concessionaire;

(b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the
Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4. Employment of foreign nationals

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

5.5. Employment of trained personnel

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

5.6. Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7. Branding of Storage Facility

The Storage Facility or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Storage Facility to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed. It is further agreed that the Storage Facility shall be known, promoted, displayed and advertised by the name of*******. 
5.8. Obligations regarding taxes

The Concessionaire shall pay, at all times during the subsistence of this agreement, all Taxes, levies, duties, cesses and all other statutory charges payable in respect of the Storage Facility, provided, however, that all payments made with respect to service tax, value added tax or general sales tax, if any, levied on or in respect of the Storage Services shall be reimbursed by the Authority upon receipt of particulars thereof.

5.9. Obligations related to storage operations

The concessionaire shall at all times operate the Storage Facility in accordance with Applicable Laws, Good Industry Practice and the provisions of this Agreement.

5.10. Liability for Personnel

5.10.1. The Concessionaire shall be solely responsible for complying with all statutory responsibilities and liabilities in respect of the personnel engaged by him and liable for obtaining all mandatory registrations and deposit of contributions under various enactments. If, on account of default of the Concessionaire, the Authority is compelled to make any payments/contributions or discharge any responsibility/liability of the Concessionaire, the Authority shall be entitled to recover and/or set off such amounts/expenses incurred from the amounts due to the Concessionaire without prejudice to the right of the Authority to initiate appropriate legal proceedings for recovery of such amounts. The Concessionaire shall indemnify the Authority against all claims whatsoever arising out of his default in respect of the personnel engaged by him under any Statute/Law in force.

5.10.2. The Concessionaire shall maintain and submit all records & returns prescribed under all the Applicable Law to the designated Authorities within the prescribed time limit and also to the Authority’s Representative or any officer acting on its behalf whenever demanded.

5.10.3. The Agreement as entered into between the Authority and the Concessionaire shall in no way nullify, reduce, mitigate or absolve the parties of any responsibility, obligation or liability that may devolve upon them under any statutory/mandatory provisions prevailing in India. Liabilities of the Concessionaire in respect of obligatory laws remain unaffected and Concessionaire shall remain responsible for settlement of claims, if any, of third parties who may suffer damages either due to the fault of the Concessionaire or its employees and Associates.

5.10.4. All persons employed by the Concessionaire shall be engaged by him as his own employees/workers in all respects and all rights and liabilities under the Indian Factories Act, the Employees Compensation Act, Employees Provident Fund & Miscellaneous Provisions Act (EPF & MP Act), Industrial Disputes Act, Employees State Insurance Act, Contract Labour (R&A) Act and under all other applicable enactments in India in respect of all such personnel shall exclusively be that of the Concessionaire. The Concessionaire shall be bound to indemnify Authority against
all the claims whatsoever in respect of his personnel under the Employees Compensation Act, 1923 or any statutory modification thereof or otherwise for or in respect of any damage or compensation payable in consequence of any accident or injury sustained by any workmen or other person whether in employment of the Concessionaire or not.

5.10.5. The provisions indicated above are not comprehensive; the Concessionaire shall ensure compliance of all statutory/mandatory provisions under all the Applicable Laws, rules & regulations made by the State Government/Central Government from time to time pertaining to the contract, including all labour laws and all the laws as applicable.

5.11. Furnishing of Information

Unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Expert shall be provided free of cost and in three copies and in the event the Authority and/or the Independent Expert are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
ARTICLE 6

6. OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

6.1.1. The Authority shall, at its own cost and expense undertaken, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2. The Authority agrees to provide support to the Concessionaire 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. upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;

b. procure that no barriers are erected or placed on or about the Storage Facility by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;

c. assist the Concessionaire in procuring police assistance for removal of trespassers and security on or at the Storage Facility;

d. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

e. support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

f. upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

g. ensure timely release of Storage and Handling Charges to the Concessionaire on performance of the obligation as provided herein;

6.2. Obligations related to consideration for transfer of land

The Authority shall, upon transfer of land by the Concessionaire under Clause 10.2.3, pay consideration in one instalment as per the provision of Clause 10.2.4.
6.3. **Obligations of the Authority during the Operation Period**

Authority shall arrange at its own cost/expense for transport/movement of Food Grains to and from Storage Facility and the Authority shall allow reasonable time notices to the Concessionaire in order to facilitate such movements. Operational guidelines to be followed by the Authority in respect of movement of Food Grains are provided in Schedule V.

6.4. **Obligations relating to refinancing**

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.
ARTICLE 7

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

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

b. it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

c. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

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

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

f. the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

h. there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
i. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

j. it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

k. it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/Lead Member/Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold at least 26% (twenty six per cent) of such Equity during the Construction Period and two years thereafter along with its Associates

Provided further that any such request made under Clause 7.1(k) and / or Article 42, at the option of the authority, may be required to be accompanied by a suitable no objection letter from lenders,

l. {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

m. {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

n. all its rights and interests in the Storage Facility 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 its part or that of the Authority, and that none of the Project Assets shall be acquired by it, 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;

o. no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading
statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

p. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and

q. all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

a. it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

b. it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

c. it has the financial standing and capacity to perform its obligations under this Agreement;

d. this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

e. it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority’s ability to perform its obligations under this Agreement;

f. it has complied with Applicable Laws in all material respects;

g. It has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire

7.3. 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 right, remedy or obligation of either Party under this Agreement.
8. DISCLAIMER

8.1. Disclaimer

8.1.1. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, 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 Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, (the Consortium Members and their) Associates or any person claiming through or under any of them.

8.1.3. The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.

8.1.4. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 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 Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.
Part III
Development and Operations
9. PERFORMANCE SECURITY

9.1. Performance Security

9.1.1. The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs 3.26 crore (Rupees Three crore Twenty Six Lakhs only) in the form set forth in Schedule M (the “Performance Security”). Until such time the Performance Security is provided by the Concessionaire 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, the Authority shall release the Bid Security to the Concessionaire.

9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2. Appropriation of Performance Security

Upon occurrence of a Concessionaire 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 Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire 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 32. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or failure to meet any Condition Precedent, and in the event of the Concessionaire 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 in accordance with Article 32.

9.3. **Release of Performance Security**

The Performance Security submitted by the Concessionaire in accordance with this Agreement shall be released by the Authority 180 (one hundred and eighty) days after the expiry of the Concession Period or Termination of this Agreement. Provided, such release shall be effective only after: (i) issue of a certificate from the Independent Expert mentioning that the Concessionaire is not in default of its obligations under the Agreement; and (ii) concurrence of the Authority to such certificate with respect to performance of such obligations as per the Agreement.
ARTICLE 10

10. SITE AND RELATED ASPECTS

10.1. The Site

The site of the Storage Facility shall comprise the land described in Schedule A for which the Right of Way shall be provided and granted by the Authority to the Concessionaire under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for development of Storage Facility as set forth in Schedule A.

10.2. Procurement of the Site and transfer

10.2.1. The Site provided by the Selected Bidder/Concessionaire shall meet the following requirements as mentioned in Clause 1.2.14 of the RFP document:

a) Location: The land parcels should be located within the boundaries of the respective [revenue districts] as specified in Clause 1.1.1 of the RFP document
b) Minimum size of land parcel: The land parcel, at each location, should measure a minimum of 7 acres and maximum of 7.5 acres. The land parcel should be a contiguous piece of land. The dimensions of the land parcel should be adequate to meet the requirements of the silo facility as per the Standards and Specifications prescribed in the Draft Concession Agreement for pilot projects.
c) Accessibility: The land parcels should be connected to major highway (national highway / state highway / major district road) by a two-lane paved road. The land parcels should also be within 8 KMs of road distance from a railway goods shed.
d) The land parcels should be free from any encumbrances or encroachments.
e) The land parcels should be suitable and available for construction and operation of the silo facility.
f) Concessionaire should have identified and procured the land parcels for transferring the sites to the Authority before signing of the concession agreement.

10.2.2. The Concessionaire shall undergo proper due-diligence of the Site before transferring the Site to the Authority and shall indemnify the Authority from any kind of disputes arising due to this transfer

10.2.3. The ownership of the Site shall be transferred by the Concessionaire to the Authority as per the prescribed legal process during the Condition Precedent to this Agreement;

10.2.4. The consideration for the land payable by the Authority to the Concessionaire upon transfer shall be calculated in accordance with the prevailing circle rates. The consideration shall be a one-time payment at the time of transfer of land. Payment
of all necessary charges and duties applicable to the transfer of land shall be done in accordance with LARR

10.2.5. The consideration shall be paid for minimum of 7 acres and maximum of 7.5 acres of land

10.2.6. The Concessionaire shall provide all necessary support to transfer the ownership title to the Authority and ensure that the ownership is duly transferred to the Authority. The Concessionaire also hereby warrants that after the transfer of land, the Authority shall be the sole owner of the land

10.2.7. Pursuant to transfer of the Site to the Authority, the ownership title of the Site shall rest with the Authority during and after the Concession Period;

10.2.8. For the avoidance of doubt, it is hereby acknowledged and agreed that, once the Site is transferred to the Authority, the Site shall continue to rest with the Authority in perpetuity. Termination of this Agreement for any purpose and under any clause of this Agreement, shall not affect the status and ownership of the Site, except in accordance with Clause 4.4.2.

10.2.9. The Additional Bank Guarantee of Rs. 35 lakhs per location, if applicable as per Clause 1.2.13 of the RFP document shall be released after the land gets transferred to the Authority. If the Concessionaire fails to transfer the land as per the provisions of Clause 10.2.3, the Additional Bank Guarantee shall be enchased and the project will be terminated

10.2.10. Without reference to any other clause in this Agreement, it is hereby acknowledged and agreed that non-compliance by the Concessionaire with Clause 10.2.1 and / or Clause 10.2.3 shall be treated as an event of Concessionaire’s Default and shall form a basis for the Termination of the Agreement;

10.2.11. On and after grant of leave and license rights by the Authority as per provisions of Clause 10.3.2, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3. Licence and Access

10.3.1. The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
10.3.2. In consideration of the License Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule A hereto (the “Licensed Premises”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.3.3. It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.3.4. The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.3.5. It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.4. Site to be free from Encumbrances

Subject to the provisions of Clause 10.2, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority, except insofar as otherwise expressly provided in this Agreement. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5. Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create
nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

10.6. Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site. The Concessionaire shall obtain at its cost such facilities on or outside the Site as may be required by it for the purposes of the Storage Facility and the performance of its obligations under this Agreement.

10.7. Access to the Authority and Independent Expert

The licence and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Expert and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8. Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.
ARTICLE 11

11. UTILITIES, ASSOCIATED ROADS AND TREES

11.1. Existing utilities and associated roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing associated roads or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that associated road, or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at the Concessionaire’s cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2. Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Storage Facility. The cost of such shifting shall be borne by the Concessionaire or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall not be excused for failure to perform any of its obligations hereunder; unless such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3. Felling of trees

The Concessionaire shall obtain Applicable Permits for felling of trees for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Storage Facility. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.
ARTICLE 12

12. CONSTRUCTION OF THE STORAGE FACILITY

12.1. Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

a. submit to the Authority and the Independent Expert its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule N;

b. appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and

c. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits

12.2. Drawings

In respect of the Concessionaire’s obligations relating to the Drawings of the Storage Facility, the following shall apply:

a. the Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Expert for review;

b. by submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified the compliance of such Designs and Drawings with the requirements of Clause 12.3.1;

c. within 15 (fifteen) days of the receipt of the Drawings the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;

d. if the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the
Concessionaire and resubmitted to the Independent Expert for review. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

e. no review and/or observation of the Independent Expert and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner;

f. without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to planning of the Storage Facility and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply mutatis mutandis to the review and comments hereunder

g. within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Storage Facility as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Storage Facility and setback lines, if any, of the buildings and structures forming part of Storage Facility.

12.3. Construction of the Storage Facility

12.3.1. On or after the Appointed Date, the Concessionaire shall undertake construction of Storage Facility as specified in Schedule B and Schedule C, and in conformity with the Specifications and Standards set forth in Schedule D. The 540th (five hundred and fortieth) day from the Appointed Date shall be the scheduled date for completion of Storage Facility (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that the construction of the Storage Facility shall be completed on or before the Scheduled Completion Date.

12.3.2. The Concessionaire shall construct the Storage Facility in accordance with the Project Completion Schedule set forth in Schedule N. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule N, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule N shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule N has been amended as above; provided further that in the event Project
Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.3.3. In the event that Storage Facility is not completed within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.3.4. During the Construction Period, the Concessionaire shall:

i. ensure that professionally competent persons are appointed to manage the Construction Works;

ii. provide adequate safety at the Site;

iii. undertake that all the Construction Works, materials, equipment, systems and procedures are new, in good condition and in conformity with the Standards and Specifications (ref: Schedule D), Good Industry Practice, the Applicable Laws and the Applicable Permits;

iv. the Storage Facility is fabricated, erected, installed and completed in accordance with the final designs and Drawings approved by the Independent Expert under Clause 12.2; and

v. reasonably consider the comments/suggestions made by the Independent Expert during any meetings of the Concessionaire with its Contractors.
ARTICLE 13

13. MONITORING OF CONSTRUCTION

13.1. Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Expert.

13.2. Inspection

During the Construction Period, the Independent Expert shall inspect the Storage Facility at least once a month and make a report of such inspection (the “Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3. Tests

13.3.1. For determining that the Construction Works conform to the Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2. In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this behalf. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it
is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4. Delays during construction

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Expert shall have reasonably determined that the rate of progress of Construction Works is such that completion of the Storage Facility is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Expert in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5. Suspension of unsafe Construction Works

13.5.1. Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any person or property.

13.5.2. The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, the affected persons or properties and the Users. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3. Subject to the provisions of Clause 29.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “Preservation Costs”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is
reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Expert. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6. Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.
14.1. Tests

14.1.1. At least 30 (thirty) days prior to the likely completion of the Storage Facility, the Concessionaire shall notify the Independent Expert of its intent to subject the Storage Facility to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days’ notice to the Independent Expert.

14.1.2. All Tests shall be conducted in accordance with Schedule K. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Storage Facility with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Storage Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Storage Facility with Specifications and Standards.

14.2. Completion Certificate

Upon completion of Construction Works and the Independent Expert determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule O (the “Completion Certificate”).

14.3. Provisional Certificate

14.3.1. The Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Annex – I of Schedule O (the “Provisional Certificate”) if the Tests are successful and the Storage Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Concessionaire (the “Punch List”); provided that the Independent Expert shall not withhold the
Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2. The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3.2 may, upon request of the Concessionaire to this effect, be issued if the Tests undertaken in terms hereof establish that the Storage Facility can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4. Completion of Punch List items

14.4.1. All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Expert. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Expert in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2. Upon completion of all Punch List items, the Independent Expert shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the extended time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority and failure of the Concessionaire to pay the damages as set forth in Clause 14.4.1, shall entitle the Authority to terminate this Agreement.

14.4.3. Notwithstanding anything to the contrary contained in Clause 14.4.2, the Parties hereto expressly agree that the Completion Certificate shall, subject to the provisions of this Agreement, be issued if the tested storage capacity is capable of providing at least 90% (ninety per cent) of the Storage Capacity; provided, however, that for every shortfall of 1% (one per cent) or part thereof in the Availability, the Fixed Storage Charge set forth in Clause 25.1 shall be deemed to be reduced by 1.5% (one point five per cent) thereof; provided further that upon reduction of the Fixed Charge hereunder, the Storage Capacity shall be deemed to be reduced in accordance with the capacity specified in the Completion Certificate and the provisions of this Agreement shall apply as if the Storage Capacity is the capacity determined hereunder. For the avoidance of doubt, the Concessionaire may at any time rectify the shortfall hereunder and require the Independent Expert to issue a
revised Completion Certificate under and in accordance with this Article 14 and the revised Completion Certificate, if any, shall be deemed to be the Completion Certificate, from the date thereof, for the purposes of this Agreement, including the determination of Fixed Storage Charges.

14.5. Withholding of Provisional Certificate

14.5.1. If the Independent Expert determines that the Storage Facility or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Expert and after conducting its own inspection, if the Authority is of the opinion that the Storage Facility is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Storage Facility and direct the Independent Expert to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2. Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6. Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

14.7. Safety certification prior to COD

The Concessionaire shall, not later than 1 (one) month prior to the likely COD, notify the Authority and the Independent Expert of the compliance of Safety Requirements and invite them to observe any or all the tests that may be specified by the Independent Expert in accordance with Applicable Laws and Good Industry Practice to determine and certify that the Storage Facility is safe for entering into commercial service, and the costs of such tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire.
ARTICLE 15

15. ENTRY INTO COMMERCIAL SERVICE

15.1. Commercial Operation Date (COD)

15.1.1. Storage Facility shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”).

15.1.2. The Storage Facility shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to receive Storage and Handling Charges from the Authority in accordance with the provisions of Article 25.

15.1.3. For avoidance of all doubt it is, hereby, agreed and accepted by the Parties that the declaration of COD, in case of earlier completion of the Storage Facility and issue of Completion Certificate as detailed in Clause 14.2, will be at the sole and exclusive discretion of the Authority.

15.2. Damages for delay

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.
ARTICLE 16

16. CHANGE OF SCOPE

16.1. Change of Scope

16.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2. If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Storage Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.3. Any works or services which are provided under and in accordance with this Article 16 shall form part of the Storage Facility and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.1.4. Notwithstanding anything to the contrary contained in Clause 16.1.3 or this Agreement, the Change in Scope shall not require the acquisition of additional land, and in the event such additional land is required for the Change of Scope, the responsibility for determining need for additional land for executing the Change of Scope activity shall be with the Independent Expert and the responsibility for the acquisition and provision of this additional land to execute the Change in Scope, shall be with the Authority.

16.2. Procedure for Change of Scope

16.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “Change of Scope Notice”).

16.2.2. Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:

   a. the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
b. the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable.

16.2.3. Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Expert, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “Change of Scope Order”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Article 16.

16.3. Payment for Change of Scope

Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Expert. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Expert as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.4. Restrictions on certain works

16.4.1. Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of Storage Facility; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope
16.4.2. Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5. Power of the Authority to undertake works

16.5.1. Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority\(^\S\), and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2. The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Storage Facility. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply \textit{mutatis mutandis} to the works carried out under this Clause 16.5.

16.6. Reduction in Scope of the Project

16.6.1. If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as

\(^\S\) The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.
it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

16.6.2. For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

16.7. Change in Scope during the Operational Period

If Change in Scope is required during the Operational Period, the provisions of this Article 16 shall apply *mutatis mutandis* to such Change in Scope.
ARTICLE 17

17. OPERATION AND MAINTENANCE

17.1. O&M obligations of the Concessionaire

17.1.1. During the Operation Period, the Concessionaire shall operate and maintain the Storage Facility in accordance with this Agreement and in compliance with the performance standards given in Schedule G either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Storage Facility to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

a. ensuring safe, hygienic and efficient storage of Food grains in the Storage Facility, including prevention of loss or damage thereto, during normal operating conditions;

b. minimising disruption to storage of Food Grains in the event of accidents or other incidents affecting the safety and use of the Storage Facility by providing a rapid and effective response and maintaining liaison with emergency services of the State;

c. carrying out periodic preventive maintenance of the Storage Facility;

d. procuring that the Availability of the Storage Capacity is not less than the Normative Availability;

e. undertaking operation and maintenance of the Storage Facility in an efficient, coordinated and economical manner, in compliance with the Standards and Specifications, and procure Availability of the Storage Capacity to the Authority in accordance with the provisions of this Agreement and Applicable Laws;

f. undertaking major maintenance including Major Overhaul, replacement of components and parts, repairs to structures, and repairs and refurbishments of associated facilities and equipment;

g. preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Storage Facility;

h. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Storage Facility;

i. protection of the environment and provision of equipment and materials therefore;
j. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Storage Facility;

k. maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

l. complying with Safety Requirements in accordance with Article 18;

17.1.2. The Concessionaire shall remove promptly from the Storage Facility all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Storage Facility in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.1.3. The Concessionaire shall maintain, in conformity with Good Industry Practice, storage Silos, handling facilities, all stretches of approach roads or other structures situated on the Site.

17.1.4. If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

17.2. Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period; the Storage Facility conforms to the maintenance requirements set forth in Schedule H (the “Maintenance Requirements”).

17.3. Maintenance Manual

17.3.1. No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Engineer Expert, evolve a repair and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Storage Facility in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.3.2. Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide
for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4. Maintenance Programme

17.4.1. On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Expert, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

a. preventive maintenance schedule;

b. arrangements and procedures for carrying out urgent repairs;

c. criteria to be adopted for deciding maintenance needs;

d. intervals and procedures for carrying out inspection of all elements of the Storage Facility

e. intervals at which the Concessionaire shall carry out periodic maintenance;

f. arrangements and procedures for carrying out safety related measures; and

g. intervals for major maintenance works and the scope thereof

h. frequency of carrying out intermediate and periodic overhaul of the equipment

Provided that the Maintenance Programme shall not schedule any closure or Major Overhaul at any time during the Harvest Season

17.4.2. Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Expert shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.4.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply mutatis mutandis to such modifications.

17.4.4. Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4.4 and as notified to the Authority under the provisions of Article 31 (suspension of services) shall be deemed to be Scheduled Maintenance (the “Scheduled Maintenance”). For the avoidance of doubt, any
closure, Suspension or reduction of Storage Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of Storage Capacity.

17.5. Major Overhaul

17.5.1. The Concessionaire may, as and when necessary, undertake Major Overhaul of a Silo, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Authority, at least 1 (one) year in advance, and requiring the Authority to evacuate Food Grains from such Silo prior to the scheduled date of commencement of Major Overhaul. Provided that a Major Overhaul shall not be scheduled during the Harvest Season or during a period of 6 (six) months following the Harvest Season. For the avoidance of doubt, unless the Parties mutually agree, not more than 1 (one) Silo shall be subjected to a Major Overhaul during the course of an Accounting Year.

17.5.2. The Normative Availability of the Storage Facility shall be deemed to be reduced during the period of Major Overhaul and such reduction shall bear the same proportion as the capacity of the Silo being subjected to Major Overhaul does to the Storage Capacity.

17.5.3. The Fixed Storage Charge due and payable to the Concessionaire shall be reduced proportionately to the extent of reduction in Availability of the Storage Facility during the period of Major Overhaul. For the avoidance of doubt, the Parties agree that the evacuation of a Silo shall cause disruption in the operations of the Authority and consequently, the Concessionaire shall be liable to pay Damages equal to 25% (twenty five per cent) of the Fixed Storage Charge payable for a period of 1 (one) month following the re-commissioning of such Silo.

17.6. Safety, breakdowns and accidents

17.6.1. The Concessionaire shall ensure safe conditions for the Authority and Users, and in the event of unsafe conditions, damages, breakdowns and accidents, it shall follow the relevant operating procedures and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.6.2. The Concessionaire’s responsibility for rescue operations on the Storage Facility shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the safe operations of the Storage Facility.

17.7. De-commissioning due to Emergency

17.7.1. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Storage Facility, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Storage Facility for so long as such Emergency and the
consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

17.7.2. The Concessionaire shall re-commission the Storage Facility or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Storage Facility and shall notify the Authority of the same without any delay.

17.7.3. Any decommissioning or closure of any part of the Storage Facility and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.8. Section closure

17.8.1. Upon notice given by the Authority to this effect prior to commencement of an Accounting Year, the Concessionaire shall, save and except as provided in Clause 17.7, not schedule a closure of any part of the Storage Facility at any time during a continuous period of 180 (one hundred and eighty) days as may be specified by the Authority for and in respect of such Accounting Year.

17.8.2. Save and except as provided in Clause 17.7, the Concessionaire shall not shut down or close any part of the Storage Facility for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Authority at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Authority shall grant permission with such modifications as it may deem necessary.

17.8.3. Upon receiving the permission pursuant to Clause 17.8.2, the Concessionaire shall be entitled to shut down the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 1% (one per cent) of the Fixed Storage Charge for each day of delay until the section has been re-opened for operations.

17.9. Unscheduled Maintenance

Any maintenance, repair or rectification of the Storage Facility not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “Unscheduled Maintenance”). For the avoidance of doubt, it is agreed that any maintenance arising out of de-commissioning and Forced Closure of the whole or any part of the Storage Facility under the provisions of Clause 17.7 shall be deemed to be Unscheduled Maintenance. It is further agreed that any closure, suspension or reduction of Storage Capacity arising out of Unscheduled Maintenance shall be
deemed as Non- Availability of Storage Capacity and excluded from the computation of Availability

17.10. **Damages for breach of maintenance obligations**

17.10.1. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Fixed Storage Charge, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Expert. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.10.2. The Damages set forth in Clause 17.10.1 may be assessed and specified forthwith by the Independent Expert; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.11. **Authority’s right to take remedial measures**

17.11.1. In the event the Concessionaire does not maintain and/or repair the Storage Facility or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Expert, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.11.1 shall be without prejudice to its rights and remedies provided under Clause 17.10.

17.11.2. The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.11.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.11.2 and debit the same to O&M Expenses.
17.12. **Overriding powers of the Authority**

17.12.1. If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to any person or property or the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.12.2. In the event that the Concessionaire, upon notice under Clause 17.12.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.12.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.11 along with the Damages specified therein.

17.12.3. In the event of a national emergency, civil commotion or any other act specified in Clause 29.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Storage Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 29. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.12.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.13. **Restoration of loss or damage to Storage Facility**

Save and except as otherwise expressly provided in this Agreement, in the event that the Storage Facility or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Storage Facility conforms to the provisions of this Agreement.
17.14. **Modifications to the Storage Facility**

The Concessionaire shall not carry out any material modifications to the Storage Facility save and except where such modifications are necessary for the Storage Facility to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Expert may make within 15 (fifteen) days of receiving the Concessionaire’s proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.15. **Excuse from performance of obligations**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Storage Facility is not available for storage of Food Grains on account of any of the following for the duration thereof:

a. an event of Force Majeure;

b. measures taken to ensure the safe use of the Storage Facility except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

c. compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Storage Facility.

Provided, that any such Non-Availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Expert without any delay:

Provided further that the Concessionaire shall ensure and procure Availability of all unaffected parts of the Storage Facility, provided they can be operated safely.

17.16. **Advertising on the Site**

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site which violates Applicable Laws. All advertising on the Storage Facility shall also conform to Good Industry Practice.

17.17. **Determination of available storage capacity**

17.17.1. The Concessionaire shall from time to time, but not less than once a quarter, inform the Authority and the Independent Expert in writing of the unused Food Grain storage capacity available in each of the Silo in the Storage Facility. The Concessionaire shall especially inform the Authority when the unused Food Grain
storage capacity reaches the level of 15% (fifteen) of total Storage Capacity. The Authority and Independent Expert may carry out inspection of the Storage Facility to verify such submissions made by the Concessionaire. Based on the submissions made by the Concessionaire, as verified by the Independent Expert and/or the Authority, the Authority shall determine the Acceptance Quantity for the Storage Facility and shall, sufficiently in advance and not less than 72 (seventy two) hours in advance, instruct the Concessionaire to receive Food Grain from the Authority or its nominees or from the farmers directly.

17.17.2. The Concessionaire shall be obligated to receive and store the Acceptance Quantity in the Storage Facility as instructed by the Authority subject to provisions of this Agreement.

17.18. Receipt of Food Grain in Storage Facility

17.18.1. The Authority shall be responsible for, directly or indirectly, procuring and transporting of Food Grain, subject to the Acceptance Quantity, to the Acceptance Point within the Storage Facility. In this case, the direct procurement and transportation shall be undertaken by the Authority on its own or its contractors while the indirect procurement and transportation may be undertaken by the Authority’s nominee or by farmers.

17.18.2. Subject to the Acceptance Quantity determined at Clause 17.17, the Concessionaire shall receive and accept all consignments of Food Grain received at the gates of Storage Facility subject to the consignment of Food Grain meeting the Grain Acceptance Specification, as per Schedule F, as determined by the Pre-Acceptance Test. For avoidance of doubt, a consignment shall mean the total quantity of Food Grain, whether in bulk or bagged form, contained in a single Vehicle, a Vehicle being a truck, tractor-trailer or animal-pulled cart, where one Vehicle is distinguishable from another Vehicle.

17.18.3. Each consignment of the Food Grain received at the Storage Facility shall be subjected to Pre-Acceptance Test to be carried out by the Concessionaire at its costs. The Pre-Acceptance Test shall determine the quantity and the quality of Food Grain in the consignment. The Concessionaire shall prepare a report of Pre-Acceptance Test (“Pre-Acceptance Test Report”) for each consignment of Food Grain received at the Storage Facility and provide a duly signed and stamped copy of the Pre-Acceptance Test Report to each of the Authority’s nominee / farmer (in case consignment is received from the Authority’s nominee / farmer), the Authority’s Representative and Independent Expert.

17.18.4. The quality test for the Pre-Acceptance Test shall be carried out on a sample basis to determine if the quality is within the norms of Grain Acceptance Specifications as specified under Schedule F. In the event, a consignment of Food Grain does not meet the Grain Acceptance Specifications; the Concessionaire has the right to reject the concerned consignment, duly stating the reason for the same in the Pre-Acceptance Test Report. In the event the Concessionaire is of the opinion that the concerned consignment can be brought within the Grain Acceptance
Specifications by carrying out Pre-Storage Treatment, the Concessionaire may do so with prior intimation and approval of the Authority’s Representative and specifying the loss in quantity estimated for the consignment as a result of Pre-Storage Treatment and the loss in quantity shall be borne by the Authority.

17.18.5. The sampling for the quality test as part of the Pre-Acceptance Test shall be required to meet the following requirements:

i. In case of Food Grain received in bulk form in a Vehicle by road (open truck, lorry, tractor-trailer, animal-pulled cart), a minimum of 5 (five) samples per Vehicle taken from 5(five) different points;

ii. In case of Food Grain received in bagged form in a Vehicle by road (open truck, lorry, tractor-trailer, animal-pulled cart), a minimum of 10% of the Bags from across the consignment to be probed for samples;

17.18.6. The quantity test for the Pre-Acceptance Test shall be carried out as per the weighment test specified in Clause 17.22. The same shall be duly recorded in the Pre-Acceptance Test Report.

17.18.7. The Authority may nominate a representative to witness the Pre-Acceptance Tests during the receipt process and counter-sign the Pre-Acceptance Test Report.

17.18.8. After the Pre-Acceptance Test, the consignment of Food Grain, as acceptable to the Concessionaire, will be unloaded into the dump pit at the Acceptance Point. All the activities related to unloading of Food Grain, including but not limited to emptying of Food Grain load, unloading of Bags, debagging and emptying of Bags, stacking of empty Bags, conveying of emptied load onto Pre-Storage Silos / Receiving Silos and further for Pre-Storage Treatment and storage in Long Term Storage Silos shall be the sole responsibility of the Concessionaire and shall be carried by the Concessionaire at its own cost.

17.18.9. The possession of the Food Grain shall be deemed to have been transferred to the Concessionaire once the Food Grain is received at the Acceptance Point. The Concessionaire shall be responsible for the quantity and quality, as determined through the Pre-Acceptance Test, of the Food Grain from Acceptance Point to the Dispatch Point.

17.18.10. The Concessionaire shall maintain real-time information of the number of consignments of Food Grain entering the gates of Storage Facility, number of consignments which have been subjected to Pre-Acceptance Test, number of consignments accepted, number of consignments rejected, quantity of Food Grain accepted across all parameters of Grain Storage Specifications, average quality of Food Grain accepted and other relevant details. The Concessionaire shall provide consolidated information to the Authority at least once every month. The Concessionaire shall maintain proper consignment-wise record and consolidated reports for inspection on future dates.

Version: 22/02/2016
17.18.11. The Concessionaire shall be overall responsible for managing all the activities within the Storage Facility related to receipt and acceptance of Food Grain. The Authority may appoint its representative to witness the Pre-Acceptance Test and counter-sign each Pre-Acceptance Test Report or the consolidated Pre-Acceptance Test Report.

17.19. **Pre-storage treatment of Food Grain**

17.19.1. The Concessionaire shall carry out Pre-Storage Treatment of Food Grain received and accepted by the Concessionaire at the Acceptance Point. Such Pre-Storage Treatment shall be limited to Cleaning and weighing and is to be carried out at process tower (as specified in Schedule C) (the “Pre-Storage Treatment”). The costs and expenses associated with the Pre-Storage Treatment shall be borne solely by the Concessionaire.

17.19.2. The purpose of Pre-Storage Treatment of Food Grain shall be to clean the Food Grain to bring it in conformance within the acceptable limit of Grain Acceptance Specifications. Such Cleaning operation shall be required only if weighted average quality of the Acceptance Quantity is below the Grain Acceptance Specifications. In such cases where the Cleaning activities leads to release of dust and residue, the same shall be collected, weighed and examined by the Authority’ Representative prior to its disposal.

17.20. **Storage of Food Grain**

17.20.1. After the Pre-Storage Treatment, the Concessionaire shall move the Food Grain to one of the Long Term Storage Silos (as specified in Schedule C), for long term storage. The Concessionaire shall inform the loading plan for each of the Long Term Storage Silo to the Authority and obtain concurrence of the Authority to avoid unwarranted mixing of Food Grain consignments and shall load the Silos accordingly. The Authority shall provide its concurrence or suggest modification within reasonable time of receipt of request from the Concessionaire. The Authority may also inform the same while informing the Concessionaire of the Acceptance Quantity.

17.20.2. The Concessionaire shall carry out preservation activities, including aeration, fumigation, sanitation activities as required and in accordance with the Specifications and Standards.

17.20.3. The Concessionaire shall carry out regular physical inspections of the Food Grain stored in the Storage Facility, at intervals of not more than 15 (fifteen) days, to ascertain the quality of Food Grain stored in the Storage Facility. Such physical inspections shall include drawing samples of Food Grain from the Long Term Storage Silos and carrying out quality checks on the same. The Concessionaire shall also carry out inspection of the Storage Facility to check for any signs of damage, leakage, infestation, contamination of any kind, breakage, malfunctioning and such other aspects which may affect the quality and quantity of the Food Grain stored in the Storage Facility.
17.20.4. The Concessionaire shall ensure that the quality of the Food Grain is maintained at the same level as it was at the time of acceptance at the Acceptance Point. The required quality of the Food Grain stock stored at any point in time shall be the weighted average quality measure of all the consignments which constitutes the stock as at the time of review. For the purpose of evaluation, the principle of First in First Out (FIFO) shall be applied. The Food Grain should at all times be within the limits prescribed under Grain Acceptance Specifications in Schedule F.

17.20.5. The Concessionaire shall ensure that the quantity of the Food Grain is maintained at the same level as it was at the time of receipt. For the purpose of determining the required quantity of Food Grain stored in the Storage Facility at point in time, shall be estimated as the closing as of the latest stock audit, duly accepted by the Authority, increased by the total quantity of Food Grain received and accepted by the Concessionaire, based on Pre-Acceptance Test Report, since the latest stock audit and reduced by the quantity of Food Grain dispatched by the Concessionaire, based on the Dispatch Reports, since the latest stock audit.

17.20.6. The Concessionaire shall be responsible for storing the Food Grain in compliance with FAQ norms for a maximum period of 3 (three) years from the date of receipt. Beyond this period, the Concessionaire shall take all reasonable effort to maintain the quality of the Food Grain without attracting any liability for loss in quality.

17.21. Dispatch of Food Grains

17.21.1. In the event the Authority wishes to move Food Grain out of the Storage Facility, the Authority shall issue a written notice (“Dispatch Notice”) for the same to the Concessionaire at least 72 (seventy two) hours in advance. The Dispatch Notice shall specify the total quantity to be moved, whether the movement is to be in bulk or bagged form and the associated timelines. The Authority shall take into consideration the Storage Facility and the related capacities and the Maintenance Program prior to issuing any Dispatch Notice.

17.21.2. Based on the Dispatch Notice from the Authority, the Concessionaire shall make the requisite arrangements such that the Food Grain can be dispatched within the timelines stipulated by the Authority. The Concessionaire shall not move out any quantity of Food Grain without the Dispatch Notice from the Authority.

17.21.3. Upon issuance of the Dispatch Notice, the Authority shall ensure that sufficient transportation arrangement, by way of sufficient number of trucks or other mode of transportation, is made available at the Storage Facility as per timelines mentioned in the Dispatch Notice. The cost of such transportation, including demurrage charges within period stipulated under Performance Standards, shall be borne solely by the Authority.

17.21.4. In the event the Food Grain is to be dispatched in bagged form, the Authority shall make available Bags, in proper condition, to the Concessionaire at the Bag Storage Warehouse (as specified in Schedule C), within the Storage Facility at no
cost to the Concessionaire. The Concessionaire shall be responsible for unloading of Bags brought in Vehicles arranged by the Authority.

17.21.5. In the event the Food Grain is to be dispatched in bagged form, the Concessionaire shall carry out bagging using the Bagging System, as specified in Schedule C, and prepare stack of filled Bags. Prior to filling in a Bag, the Concessionaire shall ensure that the Bag is not damaged in which case the damage should be brought to the notice of the Authority. The Concessionaire shall ensure that the stipulated quantity of Food Grain is filled in each Bag.

17.21.6. In the event the Food Grain is to be dispatched in bulk form by road, the Concessionaire shall move the required quantity, in batches, as per Dispatch Notice to the Bulk Truck Loading System, as specified in Schedule C, for bulk loading of trucks.

17.21.7. Prior to dispatch of Food Grain from the Storage Facility, the Concessionaire shall carry out quality inspection on the Food Grain being dispatched as part of Pre-Dispatch Test. The quality inspection shall be done on random samples drawn during the process of reclaiming Food Grain from the Long Term Storage Silos. The sample shall be drawn at random basis from the conveying system, Pre-Shipping Silos, Bagging System, and filled Bags. A minimum number of 3 (three) samples should be drawn per 10 MT of grain reclaimed from the Long Term Storage Silo. The required quality of the Food Grain stock shall be the weighted average quality measure of all the consignments which constitutes the stock being reclaimed from the Long Term Storage Silo as per Dispatch Notice. For the purpose of evaluation, the principle of First in First Out (FIFO) shall be applied. The Food Grain should at all times be within the limits prescribed under Grain Acceptance Specifications in Schedule F.

17.21.8. In the event the weighted average quality of the consignment at the time of dispatch is less than the required levels as stipulated in Clause 17.21.7, the Concessionaire, with the permission of the Authority, may, at its costs, carry out cleaning activity on the consignment of Food Grain proposed to be dispatch to bring it at par with required levels. Any loss in quantity as a result of this process shall be borne by the Concessionaire.

17.21.9. Prior to dispatch of Food Grain from the Storage Facility, the Concessionaire shall carry out quantity inspection on the Food Grain being dispatched as part of Pre-Dispatch Test. The quantity measurement shall be done as per method specified under clause 17.22.

17.21.10. The Authority shall nominate its representative at the Storage Facility during the time of dispatch to witness the quality and quantity test under the Pre-Dispatch Test.

17.21.11. The Concessionaire shall prepare a consignment-wise report on the Food Grain dispatched (“Dispatch Report”). The Dispatch Report shall specify the consignment wise report on quantity, quality, form of release (bulk or bagged)
which shall be time stamped at the exit gate of the Storage Facility. The Concessionaire shall send a consolidated Dispatch Report, covering multiple consignments dispatched in a period, such period being not more than 7 days, to the Authority with a copy to the Independent Expert.

17.21.12. The possession of the Food Grain shall be deemed to be transferred to the Authority at the point where the Food Grain is loaded onto the transportation Vehicle, whether in bagged or bulk form; provide the Concessionaire shall be liable to provide security to the transportation Vehicle and the Food Grain loaded thereto till the point the Vehicle leaves the premises of the Storage Facility. The loading point of transportation Vehicle shall be considered as the Dispatch Point (the “Dispatch Point”) for the purpose of this Agreement.

17.22. **Weighment of Food Grain**

17.22.1. In case of consignment received by road, the determination of the quantity for the Pre-Acceptance Test shall be done in two steps, first being measurement of the gross weight of the Vehicle with the consignment fully loaded, and then as second step, measuring the gross weight of the Vehicle after the consignment has been emptied, such that the weight of the Food Grain consignment shall be the difference between the two measurements further reduced for the weight of the Bags based on standard weight in case Food Grain consignment is received in Bags. The Concessionaire shall keep records of the weighments carried at the weighing machines.

17.22.2. In case of reclaiming of Food Grain from the Long Term Storage Silos for dispatch, the weight of the consignment shall be determined using the online weigher as part of the process tower specified in Schedule C or such similar provision. The Concessionaire shall keep records of the weighments carried at the online weighers.

17.23. **Damages payable in shortfall in compliance during Operation Period**

17.23.1. In the event in providing the Services, the Concessionaire fails to comply with the performance parameters set out in Schedule G, as certified by the Independent Expert, the Concessionaire shall be liable to pay Damages to the Authority at the rates/on the basis of calculations set forth in Schedule L.

17.23.2. In the event the Availability is below the levels of Normative Availability, the same shall be considered as shortfall and the Concessionaire shall be liable to pay Damages to the Authority as stipulated in Schedule L, provided that such shortfall is not due to Force Majeure Event. The shortfall shall be measured as Normative Availability less Availability where the Availability shall be calculated as per methodology prescribed below.

The Availability shall mean the availability as derived in the following manner and expressed in percentage terms:
Availability in a period = \(1 - \left(\frac{\text{period of Non-Availability}}{\text{Total period}}\right)\) X 100

Where period of Non-Availability is the total number of hours in a time period during which any of the Services is disrupted. It is agreed that such time period here that the disruption is cumulatively for more than an hour in a calendar day shall be considered for the purpose of this calculation.

Total period shall mean the total number of hours in a period when the Storage Services is required to be available and shall be calculated as number of calendar days in a time period multiplied with 20 (twenty) hours per day.

17.23.3. Upon withdrawal of stock for dispatch, if it is found that variation in moisture, when compared to the weighted average level of the stock in the relevant Long Term Storage Silo, has led to shortfall in quantity of Food Grain for the Authority, the Concessionaire shall make good the loss on account of such shortfall to the Authority. The shortfall in quantity shall be measured as per the norm prescribed in the Standards and Specifications and shall be recorded for every consignment dispatched. The Damages on such shortfall, based on the records for every consignment, shall be assessed by the Independent Expert through physical audit of the stock and the Damages so calculated, at rates prescribed in Schedule L, shall be payable by the Concessionaire to the Authority.

17.24. Damages payable in the event of lower reliability

The reliability of the Storage Facility in any quarter shall be measured in terms of the number of Forced Closures occurring in the Storage Facility (“the Reliability”) but only if it is caused by an event other than Force Majeure, and the Concessionaire shall procure Reliability such that there are no more than 1 (One) Forced Closure in the Storage Facility in each quarter. In the event of a lower Reliability during any quarter the Concessionaire shall pay damages in accordance with the provisions of Schedule L.

17.25. Appointment of Contractors

17.25.1. In order to carry out the operational and/or maintenance requirements of the Storage Facility, the Concessionaire may appoint any person(s) as Contractor(s), at its own cost and risk, for any works related to the operations and/or maintenance of the Storage Facility; provided that such person(s) are capable for carrying out the required work for and on behalf of the Concessionaire.

17.25.2. The Concessionaire shall ensure that its obligations, which are relevant to the scope of work of a Contractor, pursuant to this Agreement are incorporated in the terms and conditions under which any Contractor is retained.

17.25.3. Prior to the appointment of a Contractor for any substantial work, the Concessionaire shall inform the Independent Expert of the appointment and the qualification of such Contractors. The Independent Expert shall have the right, but not the obligation, to review the submissions related to the qualification of the
Contractors. The Concessionaire shall undertake required steps to address the concerns raised by Independent Expert, if any.

17.25.4. The appointment of Contractors shall not in any way relieve the Concessionaire of its obligations as set out in this Agreement and the Independent Expert’s consent to the appointment of such Contractors shall not impose any obligation or liability whatsoever on the Authority in this respect.

17.26. **Handling Losses**

The Authority acknowledges that after receipt of Food Grains pursuant to the provisions of Clause 17.18, the Concessionaire shall undertake Cleaning and processing thereof in accordance with the provision of this Agreement. The Parties expressly agree that a reduction of [0.1% (zero point one per cent)] in the weight of Food Grains delivered to the Concessionaire shall be deemed to be a consequence of such Cleaning and processing (“the Handling Losses”) and the same shall be deducted from the quantity of Food Grains accepted by the Concessionaire for storage at the Storage Facility and reckoned as such for the purposes of Storage Charges and dispatch of Food Grains. [Provided however that the Parties have expressly agreed not to give effect to the aforesaid reduction of Handling Losses for and in respect of Food Grains received at the Storage Facility prior to the 3rd (third) anniversary of COD, and all Food Grains received at the Storage Facility during such period shall be deemed to have been accepted and stored as if there were no Handling Losses.]

17.27. **ISO Certification**

17.27.1. The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, the applicable ISO certifications, including ISO /TS 22003:2007, or a substitute thereof for all the facilities at the Storage Facility, and shall provide a certified copy thereof to the Authority forthwith.

17.27.2. In the event of default in obtaining the certifications specified in Clause 17.27.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certifications for all facilities of the Storage Facility.

17.27.3. If the period of default in obtaining the ISO certifications under this Clause 17.26 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to 0.5% (zero point five per cent) of the Fixed Storage Charge for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.
ARTICLE 18

18. SAFETY REQUIREMENTS

18.1. Safety Requirements

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Storage Facility, other persons present in the premises and Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Storage Facility, and shall comply with the safety requirements set forth in Schedule I (the “Safety Requirements”).

18.2. Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.
ARTICLE 19

19. MONITORING OF OPERATION AND MAINTENANCE

19.1. Monthly status reports

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert a monthly report stating in reasonable detail the condition of the Storage Facility including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Expert. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.’

19.2. Inspection

The Independent Expert shall inspect the Storage Facility at least once a quarter. It shall make a report of such inspection (the “O&M Inspection Report”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3. Tests

For determining that the Storage Facility conforms to the Maintenance Requirements, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Expert and furnish the results of such tests forthwith to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4. Remedial measures

19.4.1. The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Expert and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remediing of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
19.4.2. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Storage Facility into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4.2 shall be repeated until the Storage Facility conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.10.

19.5. Reports of unusual occurrence

19.5.1. The Concessionaire shall, prior to the close on each day on which any unusual occurrence as defined in this Clause 19.5 materialises, send to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Storage Facility relating to the safety and security of Food Grains, the Users or the persons affected by it and the Storage Facility. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month. For the purposes of this Clause 19.5, accidents and unusual occurrences on the Storage Facility shall include:

(a) death or injury to any person;
(b) damaged or dislodged fixed equipment;
(c) any obstruction on the Storage Facility, which results in slow down of the services being provided by the Concessionaire;
(d) disablement of any equipment during operation;
(e) communication failure affecting the operation of Storage Facility;
(f) smoke or fire;
(g) flooding of Storage Facility; and
(h) such other relevant information as may be required by the Authority or the Independent Expert.
ARTICLE 20

20. SECURITY OF THE STORAGE FACILITY

20.1. Security

20.1.1. Without prejudice to the obligations of the Concessionaire to obtain insurance for the Storage Facility in accordance with the provisions of this Agreement, the Authority acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the Storage Facility for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Storage Facility and such agreement may inter alia provide for sharing of costs as may be agreed upon.

20.1.2. The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Storage Facility and shall be responsible for the security arrangements for the Storage Facility in order to maintain orderly conduct of its business and the security thereof.

20.1.3. The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Storage Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government’s actions or the actions of any organization authorized by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Storage Facility, without unduly or unreasonably disrupting the operations of the Storage Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations for and in respect of the security of the Storage Facility.

20.1.4. The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.

20.1.5. The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Storage Facility without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.
20.2. Insurance Premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Storage Facility is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising primarily out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 50% (fifty per cent) of such increase to the Authority as and when required subject to submission of necessary proof of payment in this regard.
ARTICLE 21

21. INDEPENDENT EXPERT

21.1. Appointment of Independent Expert

21.1.1. The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule P, to be the Independent Expert under this Agreement (the “Independent Expert”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule P to be the Independent Expert for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

21.2. Duties and functions

21.2.1. The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule P.

21.2.2. The Independent Expert shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule P.

21.2.3. A true copy of all communications sent by the Authority to the Independent Expert and by the Independent Expert to the Authority shall be sent forthwith by the Independent Expert to the Concessionaire.

21.2.4. A true copy of all communications sent by the Independent Expert to the Concessionaire and by the Concessionaire to the Independent Expert shall be sent forthwith by the Independent Expert to the Authority.

21.3. Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority and subject to the limits set forth in Schedule P, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

21.4. Termination of appointment

21.4.1. The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 21.1.
21.4.2. If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1.

21.5. Authorised signatories

The Authority shall require the Independent Expert to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Independent Expert, and any communication or document required to be signed by the Independent Expert shall be valid and effective only if signed by any of the designated persons; provided that the Independent Expert may, by notice in writing, substitute any of the designated persons by any of its employees.

21.6. Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

21.7. Interim arrangement

In the event that the Authority does not appoint an Independent Expert, or the Independent Expert so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Expert in accordance with the provisions of this Agreement, save an except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Expert, and such functions shall be discharged as and when an Independent Expert is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 21.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.
22.1. Financial Close

22.1.1. Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (Ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 180 (one hundred and eighty) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) 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 Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

22.1.2. The Concessionaire 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 and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

22.2. Termination due to failure to achieve Financial Close

22.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 29.6, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession 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 the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.

22.2.2. Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon
Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to en-cash therefrom an amount equal to Bid Security.
23. Grant

23.1. The Authority agrees to provide to the Concessionaire cash support by way of an outright Grant equal to the sum set forth in the Bid, namely, Rs. ............. (Rupees in words ..................), in accordance with the provisions of this Article 23 (the “Grant”).

23.1.1. The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 23.2,

23.2. Equity Support

23.2.1. Subject to the conditions specified in this Clause 23.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “Equity Support”).

23.2.2. The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than the Equity of the Concessionaire, and shall be further restricted to a sum not exceeding 20% (Twenty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 23.2.2 shall include Equity Support.

23.2.3. Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

23.2.4. In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

23.2.5. Subject to the provisions of the scheme of financial support to Public Private Partnership in Infrastructure as notified by the Central Government (the “Scheme for Financial Assistance”) the Authority shall for funding the Grant specified in Clause 23.1.1 provides best effort assistance to the Concessionaire for obtaining viability gap funding under the Scheme for Financial Assistance. For the avoidance of doubt, it is expressly agreed that in the event of the concessionaire being able to receive such viability gap funding for the project the same shall, for the purposes of this Agreement be deemed to be Grant by the Authority hereunder, to be disbursed in accordance with the provisions of the Scheme for Financial Assistance. It is further agreed that the Authority shall at all times discharge its
obligation to disburse Grant under and in accordance with this Article 23 whether or not funds are disbursed to the Concessionaire under the Scheme of Financial Assistance

23.3. {PREMIUM}$

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority for each year of the Concession Period, a premium (the “Premium”)

a) a sum of Rs. ... (Rupees .............) as Premium for the 1st (first) year of the Concession Period; and

b) for each subsequent year of the Concession Period, the Premium shall be determined by increasing the amount for the respective year by 10% (ten per cent) as compared to the immediately preceding year. For the avoidance of doubt, and by way of illustration, if the Premium for the first year is Rs. 1 (one) crore, the Premium for the 2nd (second) and 3rd (third) years shall be equal to Rs. 1.10 cr. (Rupees one crore and ten lakh) and Rs. 1.21 cr. (Rupees one crore and twenty one lakh) respectively.

c) The premium for the 1st (first) year shall be payable within 30 (thirty) days from the appointed date and for the subsequent years of the Concession period within one year of the date on which preceding year payment was due

$ In the event that the Concessionaire does not seek any Grant from the Government and offers to pay a Premium instead, the provisions of Clauses 23.1 and 23.2 relating to Grant shall be substituted by the provisions of Clause 23.3 relating to Premium, which Clause shall be renumbered.

Version: 22/02/2016
24.1. License Fee

24.1.1. In consideration of the Grant of Concession under this Agreement, the License Fee payable by the Concessionaire to the Authority for use of land shall be Re.1.00 (Rupee One) per year during the term of this Agreement.

24.1.2. The License Fee, for each year, shall be paid in advance within 90 (ninety) days of the commencement of the Accounting Year, for which it is due and payable.
25. Storage and Handling Charges

25.1. Storage and Handling Charges

25.1.1. Subject to the provisions of this Agreement, the Concessionaire upon achieving COD for the Project and Completion Certificate having been issued, and in consideration of the Concessionaire performing and discharging its obligations in accordance with the terms, conditions and covenants set forth in this Agreement, the Authority shall pay to the Concessionaire the Storage and Handling Charges as per provisions of this Agreement from the COD to the Terminal Date or till Termination Date, whichever is earlier.

25.1.2. In the event, COD is achieved earlier than the Scheduled Completion Date, the Authority may, at its sole discretion, start utilizing the Storage Facility against payment of the Storage and Handling Charges.

25.1.3. The Storage and Handling Charge payable by the Authority to the Concessionaire shall have the following components:

a) Fixed Storage Charge;

b) Variable Charge;

c) Bag Handling Charges; and

d) Service Tax, as applicable under service tax rules and provided the Concessionaire is having a valid service tax registration.

25.1.4. The monthly Fixed Storage Charge for the Accounting Year in which COD occurs shall be the product of Rs. 66.04 (Rupees Sixty Six and Four paise) and the Normative Availability for and in respect of the Normative Availability of Storage Capacity for the relevant month. It is clarified that the Fixed Storage Charge of Rs. 66.04 per MT per month will not be changed/indexed till COD. By way of illustration, it is clarified that if COD occurs in Accounting Year 2018-19, the Fixed Storage Charge of Rs. 66.04 would be payable for Accounting Year 2018-19. However, for second Accounting year from COD (FY 2019-20), the total variation in the price index shall be taken into account from the base index year (2012-13) for which the base Fixed Storage Charge are Rs. 57.50 per MT per month duly factoring the annual escalation over the years as per the Price Index. For the subsequent years, the Fixed Storage Charge shall be revised annually in accordance with the provision of this Article 25. The above benefit or indexation during the period of construction will be available for only a maximum of One and Half years (540 days) from the Appointed date and rates arrived at for the scheduled COD will be frozen till the actual COD and for subsequent years only annual revision will be admissible from the rate which was frozen on the scheduled COD. For the avoidance of doubt, the Parties agree that the Fixed Storage Charge for a part of any month shall be determined on a proportionate basis. By way of illustration, the Parties agree that if the Normative Availability is...
9,800 MT, the Fixed Storage Charge shall be the product of Rs. 66.04 and 9,800 i.e. (Rs. 6,47,145 (Rupees Six lakh Forty Seven thousand and One hundred Forty Five only).

25.1.5. The Variable Charge for storage of Food Grains shall be Rs. 0.57 (Fifty seven paise) per quintal per month [i.e. Rs 5.7 per MT per month] for Food Grains actually stored in the Storage Facility for any month or part thereof in the Accounting Year in which COD occurs. In case of rice storage, following additional charges shall be payable by the Authority to the Concessionaire

a) An initial chilling charge of Rs. 43 (Rupees Forty three) per ton, for each rice Silo bin, whether fully or partly occupied, when rice is received at the Project Facility

b) Maintenance chilling charge of Rs. 38 (Rupees Thirty eight) per ton per year, for each rice Silo bin whether fully or partly occupied, for any month or part thereof in the Accounting Year

25.1.6. The payment towards the Bag Handling Charge to be made to the Concessionaire by the Authority is as follows:

a) Rs. 1.20 (one point two zero) per Bag for number of Bags de-bagged

b) Rs. 1.75 (one point seven five) per Bag for number of Bags bagged

c) Rs. 1.83 (one point eight three) per Bag for number of Bags stacked and loaded

The payment towards Bag Handling Charges shall be made on a monthly basis.

25.1.7. At any time if the storage is above the Storage Capacity, as defined in Schedule B, additional storage charge at the rate of 25% of the Fixed Storage Charge for the actual period of storage shall be payable by the Authority to the Concessionaire. The total payment under this clause a) shall be calculated by multiplying (a) the total grain stored over the Storage Capacity, as defined in Schedule B, with (b) 25% of the Fixed Storage Charge further multiplied with (c) the actual days of storage divided by 365. For clarity, the Variable Charge and Bag Handling Charges shall be payable on the actual quantity of Food Grain handled/stored in terms of provisions of the clauses 25.1.5 and 25.1.6

25.1.8. The Fixed Storage Charge, Variable Charge and Bag Handling Charges payable under this Article 25 shall be the only payment made by the Authority to the Concessionaire towards provision of Storage Services as per the terms of the Agreement.

It is clarified that the Fixed Storage Charges, Variable Charges and Bag Handling Charges shall not be charged/index until the COD has been achieved. In the every subsequent year after the COD the charges shall be revised annually.
25.2. Escalation of Storage and Handling Charge

25.2.1. The Fixed Storage Charge for an Accounting year shall be calculated by reducing the Fixed Storage Charge for the previous Accounting year by 2% and then shall be revised annually to reflect the variation in Price Index occurring between the Reference Index Date for January of the year specified in this Clause 25.2.1 and the Reference Index Date for the month of January preceding the Financial Year for which such revision is undertaken. For the avoidance of doubt, the Parties agree that the base Fixed Storage Charge mentioned in Clause 25.1.4 has been fixed with reference to Accounting Year in which COD occurs. The illustration for calculation of Fixed storage charge is provided in Schedule E.

For the avoidance of doubt and by way of illustration, the Fixed Storage Charge for the Accounting Year commencing from April 1, 2019 shall be calculated by taking into account the total variation in the price index from the based index year duly factoring the annual escalation over the years as per price Index and the same shall be as per following table for that Accounting Year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Fixed Storage Charge in Rs per MT per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>57.50</td>
</tr>
<tr>
<td>2013-14</td>
<td>62.45</td>
</tr>
<tr>
<td><strong>2014-15</strong></td>
<td><strong>66.04</strong></td>
</tr>
<tr>
<td>2015-16</td>
<td>67.02</td>
</tr>
<tr>
<td>2016-17</td>
<td>67.70</td>
</tr>
<tr>
<td>2017-18</td>
<td>71.09</td>
</tr>
<tr>
<td>2018-19</td>
<td>74.64</td>
</tr>
<tr>
<td>2019-20</td>
<td>78.37</td>
</tr>
</tbody>
</table>

Note: Fixed Storage Charge till Financial Year 2016-17 has been calculated based on the actual variation in Price Index, however from Financial Year 2017-18 onwards, the Fixed Storage Charge has been estimated based on Average Price Index of @5% annually.

25.2.2. The Fixed Charge for the Accounting Year in which COD occurs shall be the sum specified in Clause 25.1.4, and for each subsequent Accounting Year, the applicable Fixed Charge shall be determined by decreasing the Fixed Charge for the immediately preceding Accounting Year by 2% (two per cent) thereof. For the avoidance of doubt and by way of illustration, the Fixed Charge for the Accounting Year in which COD occurs shall be the amount specified in Clause 25.1.4, and for the second and third Accounting Years it shall be a sum equal to 98% (ninety eight per cent) and 96.04% (ninety six point zero four per cent) respectively of the amount specified in Clause 25.1.4.

For the avoidance of doubt and by way of illustration, Fixed Charges computed for First year of COD, second year of COD and subsequent years are as tabulated below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Final storage charge after factoring price index and</th>
</tr>
</thead>
</table>

Version: 22/02/2016
Note: Average Price index is assumed @5% annually. The aforementioned Fixed Charges are indicative for illustration purpose only. For Fixed Charges payable by FCI to the Concessionaire from second year of COD onwards, actual Price index to be derived by FCI as per clause 25.1.4 shall be applicable. The monthly base fixed charge of Rs 66.04 per MT per month has been arrived at for the Accounting Year 2014-15 taking into account annual escalation as per actual variation in the price index from the base index Year 2012-13. For avoidance of doubt, it is hereby clarified that total escalation in base price index shall be applicable as per the aforementioned table for 2nd year of COD subject to maximum permissible construction period of 1.50 years (540 days) as per the terms of DCA. It is further clarified that in case of any delay beyond 540 days, escalation in base price index for corresponding delay shall not be applicable with cumulative effect.

25.2.3. It is clarified that the Variable Charge of Rs. 0.57 per quintal per month (Rs 5.7 per MT per month) will not be changed/indexed till COD (FY 2018-19). By way of illustration, it is clarified that if COD occurs in Accounting Year 2018-19, the Variable Charge of Rs. 0.57 would be payable for Accounting Year 2018-19. However, for second Accounting year from COD (FY 2019-20), the total variation in the price index shall be taken into account from the base index year (2012-13) for which the Variable Charge are Rs. 5.00 per MT per month duly factoring the annual escalation over the years as per the Price Index. For the subsequent years, the Variable Charge shall be revised annually to reflect the variation in Price Index occurring between the Reference Index Date for January of the year specified in this Clause 25.2.3 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken. The above benefit or indexation during the period of construction will be available for only a maximum of 1.50 years (540 days) from the Appointed date and rates arrived at for the scheduled COD will be frozen till the actual COD and for subsequent years only annual revision will be admissible from the rate which was frozen on the scheduled COD. For the avoidance of doubt and by way of illustration, the Variable Charge for the Accounting Year commencing from April 1, 2019 shall be calculated by taking into account the total variation in the price index from the based index year duly factoring the annual escalation over the years as per price Index and the same shall be as per following table for that Accounting Year.

<table>
<thead>
<tr>
<th>Year</th>
<th>Base Variable Charge in Rs per MT per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>2012-13</td>
<td>5.00</td>
</tr>
<tr>
<td>2013-14</td>
<td>5.43</td>
</tr>
<tr>
<td>2014-15</td>
<td>5.74</td>
</tr>
<tr>
<td>Year</td>
<td>Charge</td>
</tr>
<tr>
<td>--------</td>
<td>--------</td>
</tr>
<tr>
<td>2015-16</td>
<td>5.83</td>
</tr>
<tr>
<td>2016-17</td>
<td>5.89</td>
</tr>
<tr>
<td>2017-18</td>
<td>6.18</td>
</tr>
<tr>
<td>2018-19</td>
<td>6.49</td>
</tr>
<tr>
<td>2019-20</td>
<td>6.82</td>
</tr>
</tbody>
</table>

Note: Variable Charge till Financial Year 2016-17 has been calculated based on the actual variation in Price Index, however from Financial Year 2017-18 onwards, the Variable Charge has been estimated based on Average Price index of @5% annually.

For avoidance of doubt, the Parties agree that the base Variable Charge of Rs 0.50 (Rupees Zero point five zero) per quintal per month here above has been fixed with reference to the Accounting Year [2012-13].

Note: Average Price index is assumed @5% annually. The aforementioned Variable Charge are indicative for illustration purpose only. For Variable Charge payable by FCI to the Concessionaire from second year of COD onwards, actual Price index to be derived by FCI as per clause 25.2.3 shall be applicable. The Variable charge of Rs 5.70 per MT per month has been arrived at for the Accounting Year 2014-15 taking into account annual escalation as per actual variation in the price index from the base index Year 2012-13. For avoidance of doubt, it is hereby clarified that total escalation in base price index shall be applicable as per the aforementioned table for 2nd year of COD subject to maximum permissible construction period of 1.50 years (540 days) as per the terms of DCA. It is further clarified that in case of any delay beyond 540 days, escalation in base price index for corresponding delay shall not be applicable with cumulative effect.

25.2.4. The Bag Handling Charges shall be revised annually to reflect the variation in CPI (IW) to the extent of 80% (eighty per cent) thereof, occurring between the Reference Index Date for January preceding the Accounting Year specified in the Clause 25.2.4 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt, the Parties agree that the Bag Handling Charges mentioned in Clause 25.1.6 has been fixed with reference to Accounting Year in which COD occurs. The illustration for calculation of Bag Handling Charges is provided in Schedule E.

25.2.5. For detailed computation methodology of the Storage and Handling Charges under Clause 25.1.4, 25.1.5, 25.1.6 and 25.2.4, refer to Schedule E.

25.3. Invoices

25.3.1. With effect from the COD, at the end of each calendar month, the Concessionaire shall prepare and submit to the designated Bank account with copy to the Authority, an invoice ("Invoice") for Storage and Handling Charges for the Storage
Facility with supporting calculations in relation to the service with following details:

a) The opening stock of Food Grain, quantity of the Food Grains received and/or dispatched during that month in accordance with weighment readings for that month and the closing stock of Food Grain;
b) The Fixed Storage Charges for the month calculated as per Schedule E;
c) The Variable Charges for the month calculated as per Schedule E;
d) The Bag Handling Charges for the month calculated as per Schedule E;
e) adjustment, including adjustments for past period, if any;
f) arrears, if any; and
g) Taxes, if any.

25.3.2. The Concessionaire shall maintain, retain and store all relevant information along with the relevant records, bills, invoices and receipts with respect to Storage Services performed under this Agreement. Upon request, the Concessionaire shall provide all such information forthwith to the Authority.

25.4. Mode of Payment

25.4.1. The Concessionaire hereby expressly authorises Authority to pay the Storage and Handling charges, including any reduction or adjustments, Termination Payment and any other payment which becomes payable by the Authority to the Concessionaire under this Agreement directly by credit to the designated Bank account as per mechanism stipulated in Clause 26.1. The Authority shall to the extent of the payment so made be relieved and discharged of all its obligations in respect of such payments under this Agreement.

25.4.2. Unless otherwise provided in this Agreement, the Invoices shall be payable within 30 (thirty) days from the date of submission of the Invoice to the Authority under an acknowledgement ("Payment Due Date”).

25.5. Disputed Amounts

25.5.1. If, within 21 (twenty one) days of the submission of an Invoice, the Authority does not raise any dispute, in writing, on the submitted Invoice, the Invoice shall be considered as being accurate, final and binding. In the event, the Authority raises any Dispute on an Invoice, it shall specify the specific parts where it has objections (“Disputed Amounts”). The portion payable as per the Invoice other than the Disputed Amount shall be the undisputed amounts (“Undisputed Amounts”). The Authority shall advise the designated Bank Account of the Disputed Amounts.
25.5.2. The Authority through the Account Bank shall pay the Undisputed Amounts of Invoice on or before the Payment Due Date.

25.5.3. If the parties do not, within 30 (thirty) days, of the communication of dispute in writing, resolve any dispute arising under this Clause 25.5 either Party may refer the matter for dispute resolution as set out in Article 39.

25.5.4. In the event the Disputed Amounts are settled in favour of the Concessionaire, the Authority shall additionally pay interest to the Concessionaire at the rate of interest equal to rate of interest applicable on fixed deposit of 90 (ninety) days offered by the State Bank of India (“Reference Rate”). The interest payable under this clause shall be calculated from the Payment Due Date to actual payment date.

25.6. Delay in Payment

25.6.1. If payment of Undisputed Amounts of an Invoice is not made by the Authority and/or Account Bank into the designated Bank account of the Concessionaire on or before the close of business on the Payment Due Date, a delayed payment charge on the unpaid payable amount due, for each day from the Payment Due Date of the Invoice till date of actual payment thereof, shall be payable at the rate of interest equal to rate of interest applicable on fixed deposit of 90 (ninety) days offered by the State Bank of India (“Reference Rate”). Subject to Clause 25.5, Authority’s failure to pay full payable amount (other than Disputed Amounts) of an Invoice within 30 (thirty) days of the Payment Due Date, shall constitute, a material breach of this Agreement by the Authority.

25.6.2. The non-payment of the Disputed Amount, as per Clause 25.5, shall not amount to a breach by the Authority under this Agreement.

25.7. Right to set-off

The Authority retains the right to set-off any amount owed to it by the Concessionaire under this Agreement which has fallen due and payable against any amount due to the Concessionaire under this Agreement.

25.8. Payment Security Mechanism

25.8.1. The Authority shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Concessionaire, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to 120% (one hundred twenty per cent) of the Storage and Handling Charge payable for the Storage Facility for a period of 1 (one) month (the “Letter of Credit”), which may be drawn upon by the Concessionaire for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule R and shall come into effect on COD.
25.8.2. The Letter of Credit shall be procured by the Authority from a Bank where at least 40% (forty per cent) of the Authority’s total monthly revenues are normally deposited. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Authority.

25.8.3. In the event of Authority’s failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Concessionaire may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank that has issued the Letter of Credit shall, without any reference to the Authority, transfer the amount due to the Escrow Account, upon the Concessionaire presenting the following documents, namely:

a. a copy of the Monthly Invoice which has remained unpaid; and
b. a certificate from the Concessionaire to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due has remained unpaid.

25.8.4. In the event that the amount covered by the Letter of Credit is at any time less than the amount specified in Clause 25.8.1 or is insufficient for recovery of payment due against the Monthly Invoice, the Authority shall, within a period of 7 (seven) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 25.8.1.

25.8.5. The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

25.9. Security Creation by Concessionaire

The Authority hereby acknowledges that the Concessionaire shall, without increasing the financial liabilities as contemplated by the Authority under this Agreement, have the right to undertake and implement such financial engineering, structuring and creation of security in relation to the flow of receivables due from the Authority under this Agreement, as it may consider necessary in order to effectively finance the Project and the provision of Storage Services. The Authority hereby undertake to take, on a best efforts basis, such actions as may be necessary in order for the Concessionaire to create a valid and enforceable obligations, arrangements and security and not to impose or create any restrictions in relation thereto.
ARTICLE 26

26. ESCROW ACCOUNT

26.1. Escrow Account

26.1.1. The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the “Escrow Bank”) in accordance with this Agreement.

26.1.2. The nature and scope of the Escrow Account are fully described in the agreement (the “Escrow Agreement”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule Q.

26.2. Deposits into Escrow Account

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

a) all funds constituting the Financial Package;

b) all revenues from the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and

c) all payments by the Authority, including the Storage and Handling charges.

Provided that the Senior Lenders may make direct disbursements to the Contractor in accordance with the express provisions contained in this behalf in the Financing Agreements.

26.3. Withdrawals during Concession Period

26.3.1. The Concessionaire 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 Concessionaire for and in respect of the Storage Facility;

b) all payments relating to construction of the Storage Facility, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

e) any other amounts due and payable to the Authority, including revenue share from release of Storage Capacity to the extent not set off in accordance with the provisions of this Agreement

f) monthly proportionate provision of Debt Service due in an Accounting Year;

g) {Premium due and payable to the Authority}

h) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire, pursuant to the Storage Agreement;

i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt; any reserve requirements set forth in the Financing Agreements; and

j) balance, if any, in accordance with the instructions of the Concessionaire.

26.3.2. The Concessionaire shall not in any manner modify the order of payment specified in Clause 26.3.1, except with the prior written approval of the Authority.

26.4. Withdrawals upon Termination

26.4.1. 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:

a) all taxes due and payable by the Concessionaire for and in respect of the Project;

b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

c) outstanding revenue share and any other amounts due and payable to the Authority

d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to this Agreement, including {Premium} and any claims in connection with or arising out of Termination;

e) retention and payments relating to the liability for defects and deficiencies set forth in Article 34;

f) outstanding Debt Service Payments including the balance of Debt Due;
g) outstanding Subordinated Debt;

h) incurred or accrued O&M Expenses;

i) any other payments required to be made under this Agreement; and

j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 26.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 33

26.4.2. The provisions of this Article 0 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 26.4.1 have been discharged.
27.1. Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire 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 Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire 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.

27.2. Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire 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 27. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire 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.

27.3. Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 27 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised 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 non-renewal has been delivered by the Concessionaire to the Authority.

27.4. Remedy for failure to insure

If the Concessionaire 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 Concessionaire, 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 Concessionaire.

27.5. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 27 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.

27.6. Concessionaire’s waiver

The Concessionaire 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, insurers and underwriters, which the Concessionaire 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 Concessionaire 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.

27.7. Application of insurance proceeds

27.7.1. The proceeds from all insurance claims, except life and injury and other than stated in Clause 27.9, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 26.1, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Storage Facility, followed by payment of Damages and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

27.7.2. The proceeds from the Insurance of Food Grains as specified in Clause 27.9 shall be paid directly to the Authority and no other claims on this sum shall be entertained
27.8. Insurance Cover

Without prejudice to the provisions contained in Clause 27.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Storage Facility;

c) the Concessionaire’s general liability arising out of the Concession;

d) liability to third parties for goods or property damage;

e) workmen’s compensation insurance; and

f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure events that are insurable at commercially reasonable permits and not otherwise in items (a) to (e) above

27.9. Insurance of food grains

Subject to the provisions of Clause 27.2, the Concessionaire shall effect and maintain, during the Operation Period, such insurances for such maximum sums as may be specified by the Authority to cover any shortfall in or loss of Food Grains and such other insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire 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 Concessionaire during the Operation Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For the avoidance of doubt, the aforesaid insurances shall include the value of Food Grains stored, calculated with reference to the average procurement cost of such Food Grains.
ARTICLE 28

28. ACCOUNTS AND AUDIT

28.1. Audited accounts

28.1.1. The Concessionaire shall maintain books of accounts recording all its receipts (including the revenues from Storage and Handling Charges and all revenues derived/colllected by it from or on account of the Storage Facility and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the 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 Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

28.1.2. The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

28.1.3. On or before the thirty-first day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipt on account of Storage and Handling Charges and (c) such other information as the Authority may reasonably require.

28.2. Appointment of auditors

28.2.1. The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “Panel of Chartered Accountants”), such list to be prepared substantially in accordance with the criteria set forth in Schedule S. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

28.2.2. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
28.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

28.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire 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. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

28.4. Set-off

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

28.5. Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors and the certification provided by the Statutory 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.
Part V

Force Majeure and Termination
ARTICLE 29

29. FORCE MAJEURE

29.1. 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 Clauses 29.2, 29.3 and 29.4 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.

29.2. 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 Storage Facility);

b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Storage Facility 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 Clause 29.3;

c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

d) any delay or failure of an overseas contractor to deliver any critical equipment required for the Storage Facility and not available in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;

e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire 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;
f) 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
g) any event or circumstances of a nature analogous to any of the foregoing.

29.3. 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) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
c) 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;
d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
e) failure of the Authority to permit the Concessionaire to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
g) any Indirect Political Event that causes a Non-Political Event; or
h) any event or circumstances of a nature analogous to any of the foregoing.

29.4. 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 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors 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 Concessionaire’s or any Contractor’s inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
e) any event or circumstance of a nature analogous to any of the foregoing.

29.5. Duty to report Force Majeure Event

29.5.1. 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 29 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.

29.5.2. 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 no 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.

29.5.3. 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
29.6. Effect of Force Majeure Event on the Concession

29.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

29.6.2. At any time after the Appointed Date, if any Force Majeure Event occurs:

a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

b) after COD, whereupon the Concessionaire is unable to provide the Storage Services 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 Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from providing the aforesaid service on account thereof; provided that in the event of reduction in Storage Capacity where the Availability on any day is less than 90% (ninety per cent) of the Average Daily Availability, the Authority shall extend the Concession Period in proportion to the loss of such Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty-five per cent) in Availability for four days as compared to the Average Daily Availability shall entitle the Concessionaire to extension of one day in the Concession Period.

29.7. Allocation of costs arising out of Force Majeure

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

29.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (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 Concessionaire,
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 Concessionaire; 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 Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Storage and Handling charges 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.

29.7.3. Notwithstanding anything contained in this Clause 29.7, if during the occurrence of a Force Majeure Event, the Storage Capacity or part thereof is deemed available for any reason whatsoever, the Authority shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Clause 29.7.

29.7.4. Save and except as expressly provided in this Article 29, 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.

29.8. 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 29, 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.

29.9. Termination Payment for Force Majeure Event

29.9.1. If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
29.9.2. If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

a) Debt Due 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; and

b) 110% (one hundred and ten per cent) of the Adjusted Equity.

29.9.3. If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 32.3.2 as if it were an Authority Default.

29.10. 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.

29.11. 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.

29.12. Compensation for Loss of Food Grain

Where any loss or shortfall of Food Grains occurs due to occurrence of a Force Majeure Event, such loss or shortfall of Food Grains shall be borne and paid as follows:

a) upon occurrence of a Non-Political Event, any loss or shortfall in Food Grains
arising therefrom, but not exceeding the Insurance Cover, shall be borne by the Concessionaire and paid to the Authority;
b) upon occurrence of an Indirect Political Event, any loss or shortfall in Food Grains arising therefrom, but not exceeding the Insurance Cover, shall be borne by the Concessionaire and paid to the Authority;
c) upon occurrence of a Political Event, the Concessionaire shall not be required to bear any loss or shortfall arising therefrom and such loss or shortfall shall be borne by the Authority

29.13. Relief for Unforeseen Events

29.13.1. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “Unforeseen Event”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Events with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 29.13

29.13.2. Upon determination of the occurrence of the Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judges of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court

29.13.3. The conciliation tribunal referred to in Clause 29.13.2 shall conduct its proceedings in accordance with the provisions of Article 39 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 29.13

29.13.4. The conciliation tribunal referred to in this Clause 29.13 shall conduct preliminary proceedings to satisfy itself that -

a) An Unforeseen Event has occurred;
b) The effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
c) The Unforeseen Event or its effects have not been caused by any Party by any act or omission of its part;

and if the conciliation tribunal is satisfied that each of the conciliations specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 29.13
29.13.5. Upon completion of the conciliation proceedings referred to in this Clause 29.13, the conciliation tribunal may by a reasoned order make recommendations which shall be:

a) based on a fair and transparent justification;

b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;

c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Events; and

d) quantified and restricted in terms of relief or remedy.

29.13.6. Within 15 (fifteen) days of receiving the order referred to in Clause 29.13.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provision of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding ("MoU") setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.
ARTICLE 30

30. COMPENSATION FOR BREACH OF AGREEMENT

30.1. Compensation for default by the Concessionaire

Subject to the provisions of Clause 30.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 30.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

30.2. Compensation for default by the Authority

Subject to the provisions of Clause 30.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Storage and Handling Charges, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

30.3. Extension of Concession Period

Subject to the provisions of Clause 30.5, in the event that a material default or breach of this Agreement as set forth in Clause 30.2 causes delay in achieving COD, the Authority shall, in addition to payment of compensation under Clause 30.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.
30.4. Compensation to be in addition

30.5. Compensation payable under this Article 30 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof. Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.
ARTICLE 31

31. SUSPENSION OF CONCESSIONAIRE’S RIGHTS

31.1. Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire 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 Concessionaire under this Agreement including the Concessionaire’s right to Storage and Handling Charges, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise 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 Concessionaire 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 Concessionaire 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.

31.2. Authority to act on behalf of Concessionaire

31.2.1. During the period of Suspension, the Authority shall, on behalf of the Concessionaire, operate and maintain the Storage Facility under and in accordance with this Agreement and appropriate the same for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension. Any balance remaining after meeting the aforesaid expenditure shall be deposited in a bank account to be designated by the Concessionaire. For the avoidance of doubt, the Authority shall continue to pay the Fixed Storage Charge, Variable Charges and Bag Handling Charges under and in accordance with this Agreement and deposit the same in the aforesaid designated bank account after appropriating the expenses and costs specified hereinabove.

31.2.2. During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire 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 Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licenses respectively, the Authority or any other person authorised by it under Clause 31.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Storage Facility and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.
31.3. Revocation of Suspension

31.3.1. In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire 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.

31.3.2. Upon the Concessionaire having cured the Concessionaire 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 Concessionaire under this Agreement.

31.4. Substitution of Concessionaire

At any time during the period of Suspension, the Lenders’ Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire 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 Clause 31.1, for enabling the Lenders’ Representative to exercise its rights of substitution on behalf of Senior Lenders.

31.5. Termination

31.5.1. At any time during the period of Suspension under this Article 31, the Concessionaire 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 specified in Clause 31.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 32.

31.5.2. 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, set forth in Clause 31.1, the Concession 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 Concessionaire Default.
ARTICLE 32

32. TERMINATION

32.1. Termination for Concessionaire Default

32.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “Concessionaire Default”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

a) the Performance Security has been en-cashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule N and continues to be in default for 120 (one hundred and twenty) days;
d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Storage Facility without the prior written consent of the Authority;
e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
k) a breach of any of the Project Agreements by the Concessionaire has caused
a Material Adverse Effect;
l) the Concessionaire creates any Encumbrance in breach of this Agreement;
m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3
o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect
q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
   i. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
   ii. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
t) each of the Project Agreements remains in full force and effect;
u) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading the Concessionaire is at any time hereafter found to be in breach thereof;
v) the Concessionaire 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;
w) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
x) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.
y) the Concessionaire fails to achieve a monthly Availability of 96% (ninety six cent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, or (ii) an act or omission of the Authority, not occurring due to any default of the Concessionaire;
z) the entire quantity dispatched pursuant to a Dispatch Notice is found to be Rejected Food Grains on 3 (three) consecutive occasions;

32.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire 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, subject to the provisions of clause 32.1.3.

32.1.3. The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 32.1.2 to inform the Lenders’ Representative and grant 15 (fifteen) days to the Lenders’ Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders’ Representative to exercise the Senior Lenders’ right of substitution in accordance with the Substitution Agreement:

32.1.4. Provided that the Lenders’ Representative may, instead of exercising the Senior Lenders’ right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:
32.1.5. Provided further that upon written request from the Lenders’ Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

32.2. Termination for Authority Default

32.2.1. 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 Default”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire 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 Concessionaire;

b) the Authority has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement;

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; or

32.2.2. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire 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 Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the 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.

32.3. Termination Payment

32.3.1. Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due 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. For the avoidance of doubt, the Concessionaire hereby acknowledges that no
Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD.

32.3.2. Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

a. Debt Due; and
b. 150% (one hundred and fifty per cent) of the Adjusted Equity.

32.3.3. Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire 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.

32.3.4. The Concessionaire expressly agrees that Termination Payment under this Article 32 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

32.4. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

a) be deemed to have taken possession and control of the Storage Facility forthwith;
b) take possession and control of all Food Grains, materials, stores, implements, construction plants and equipment on or about the Site;
c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 33.1; and
e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors 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 Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors 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 Concessionaire and such Contractors, 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.

32.5. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 32.3.4, 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 and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.
ARTICLE 33

33. DIVESTMENT OF RIGHTS AND INTEREST

33.1. Divestment Requirements

33.1.1. Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

a) notify to the Authority forthwith the location and particulars of all Project Assets;

b) deliver forthwith the actual or constructive possession of the Storage Facility, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

c) cure all Project Assets of all defects and deficiencies so that the Storage Facility is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;

d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Storage Facility and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Storage Facility, and shall be assigned to the Authority free of any encumbrance;

e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Storage Facility including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Storage Facility, free from all Encumbrances, absolutely unto the Authority or to its nominee.

33.1.2. Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.
33.2. Inspection and cure

33.2.1. Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire’s cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 34 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 33.

33.2.2. Immediately before the Transfer Date, the Independent Expert shall conduct an audit, in the presence of the Authority’s Representative and the representative of the Concessionaire, and shall prepare an inventory of the Food Grains stored at the Storage Facility and such inventory shall be signed by the Authority’s Representative and the representative of the Concessionaire in verification thereof. Upon completion of the audit, the Authority shall be deemed to have taken possession and control of the Food Grains stored at the Storage Facility.

33.3. Cooperation and assistance on transfer of Project

33.3.1. The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.

33.3.2. The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

33.3.3. The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 33.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.
33.4. Vesting Certificate

The divestment of all rights, title and interest in the Storage Facility shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule T (the “Vesting Certificate”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Storage Facility, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Storage Facility on the footing that all Divestment Requirements have been complied with by the Concessionaire.

33.5. Divestment costs etc.

33.5.1. The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Storage Facility in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

33.5.2. In the event of any dispute relating to matters covered by and under this Article 33, the Dispute Resolution Procedure shall apply.
ARTICLE 34

34. DEFECTS LIABILITY AFTER TERMINATION

34.1. Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Storage Facility 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 Expert in the Storage Facility during the aforesaid period. In the event that the Concessionaire 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 Concessionaire’s risk and cost so as to make the Storage Facility conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire 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.

34.2. Retention of Fixed Storage Charges

34.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.2.3, a sum equal to 5 (five) times the monthly Fixed Storage Charges payable immediately preceding the Transfer Date 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 Clause 34.1.

34.2.2. Without prejudice to the provisions of Clause 34.2.1, the Independent Expert shall carry out an inspection of the Storage Facility at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Storage Facility is such that a sum larger than the amount stipulated in Clause 34.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.

34.2.3. The Concessionaire may, for the performance of its obligations under this Article 34, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 34.2.1 or 34.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule M (the “Performance Guarantee”), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 34. Upon furnishing of a Performance Guarantee under this Clause 34.2.3, the
retention of funds in the Escrow Account in terms of Clause 34.2.1 or 34.2.2, as the case may be, shall be dispensed with.
Part VI

Other Provisions
ARTICLE 35

35. ASSIGNMENT AND CHARGES

35.1. Restrictions on assignment and charges

35.1.1. Subject to Clauses 35.2 and 35.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.1.2. Subject to the provisions of Clause 35.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

35.2. Permitted assignment and charges

The restraints set forth in Clause 35.1 shall not apply to:

a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Storage Facility;

b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Storage Facility, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Storage Facility;

c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders’ Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

d) liens or encumbrances required by any Applicable Law.

35.3. Substitution Agreement

35.3.1. The Lenders’ Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the “Substitution Agreement”) to be entered into amongst the Concessionaire, the Authority and the Lenders’ Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule U.

35.3.2. Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the
Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

35.4. Assignment by the Authority

35.4.1. Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days’ notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority’s then outstanding obligations under this Agreement.

35.4.2. Any assignment under this Article 35 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 36

36. CHANGE IN LAW

36.1. Increase in costs

36.1.1. If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10 Lakh (Rupees ten Lakh) and 0.5% (zero point five percent) of the Fixed Storage Charges in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire 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 Concessionaire, 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 amendments to this Agreement or on any other mutually agreed arrangement:

36.1.2. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire 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 Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this
Clause 36.1 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

36.2. Reduction in costs

36.2.1. If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10 Lakh (Rupees ten Lakh) and 0.5% (zero point five percent) of of the Storage and Handling Charges in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire 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:

36.2.2. Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire 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 Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire 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 Clause 36.2 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

36.3. Protection of NPV

Pursuant to the provisions of Clauses 36.1 and 36.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

36.4. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 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.

36.5. No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.
ARTICLE 37

37. LIABILITY AND INDEMNITY

37.1. General indemnity

37.1.1. The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “Authority Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

37.1.2. The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) 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 Concessionaire 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 Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

37.2. Indemnity by the Concessionaire

37.2.1. Without limiting the generality of Clause 37.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

a. failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
b. payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s contractors, suppliers and representatives; or
c. non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the
Concessionaire or any of its contractors

d. any dispute arising due to transfer of the ownership title of the land

37.2.2. Without limiting the generality of the provisions of this Article 37, the Concessionaire 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 Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’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 Concessionaire 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 Storage Facility, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire 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.

37.3. 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 37 (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 settle or pay the claim without the 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.

37.4. Defence of claims

37.4.1. 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 37, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. 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 Indemnifying 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.

37.4.2. If the Indemnifying Party has exercised its rights under Clause 37.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

37.4.3. If the Indemnifying Party exercises its rights under Clause 37.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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 defence 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 defence 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 defences 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 37.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements
of such counsel shall constitute legal or other expenses hereunder.

37.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 37, 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.

37.6. Survival on Termination

The provisions of this Article 37 shall survive Termination.
ARTICLE 38

38. RIGHTS AND TITLE OVER THE SITE

38.1. Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Storage Facility by third parties in accordance with and subject to the provisions of this Agreement.

38.2. Access rights of the Authority and others

The Concessionaire shall allow free access to the Site at all times for the authorised representatives and Vehicles of the Authority, Senior Lenders, and the Independent Expert, and for the persons and Vehicles duly authorised by any Government Instrumentality to inspect the Storage Facility or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

38.3. Property taxes

All property Taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such Taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

38.4. Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Storage Facility, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Storage Facility.
ARTICLE 39

39. DISPUTE RESOLUTION

39.1. Dispute resolution

39.1.1. 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 in accordance with the conciliation procedure set forth in Clause 39.2.

39.1.2. 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.

39.2. Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 39.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 39.3.

39.3. Arbitration

39.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 39.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 39.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

39.3.2. There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and
in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

39.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 39 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

39.3.4. The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.

39.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

39.4. Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 39.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.
ARTICLE 40

40.DISCLOSURE

40.1. Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Storage Facility and Concessionaire’s registered office. The Concessionaire shall prominently display at the Storage Facility, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

40.2. Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Storage Facility, free of charge, during normal business hours on all working days, at the Concessionaire’s registered office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

Notwithstanding the provisions of Clauses 40.1 and 40.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:
The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 40.1 and 40.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.
ARTICLE 41

41. MISCELLANEOUS

41.1. Governing law and jurisdiction

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

41.2. Waiver of immunity

Each Party unconditionally and irrevocably:

a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

41.3. Depreciation and Interest

41.3.1. For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

41.3.2. Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.
41.4. Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

41.5. Waiver

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

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 authorised respective representative of the Parties; and

c. shall not affect the validity or enforceability of this Agreement in any manner.

41.5.2. 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.

41.6. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

a. no review, comment or approval by the Authority or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Storage Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

b. the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.
41.7. Exclusion of implied warranties etc.

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

41.8. Survival

41.8.1. Termination shall:

a. not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

41.8.2. All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination.

41.9. Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Qualification or Request for Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

41.10. Severability

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

41.11. **No partnership**

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

41.12. **Third parties**

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

41.13. **Successors and assigns**

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

41.14. **Notices**

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

a. in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

b. in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Delhi it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
c. any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

41.15. **Language**

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

41.16. **Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.
ARTICLE 42

42. DEFINITIONS

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

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. “Acceptance Quantity” means the total quantity of Food Grain nominated by the Authority, taking into consideration the unused Storage Capacity at the Storage Facility, as the quantity to be received by the Concessionaire for storage at the Storage Facility as per Clause 17.17.1

3. “Acceptance Point” means the point at or next to the grain intake system or rake unloading system at Storage Facility where the Food Grain will be handed over by the Authority or its nominee or farmers to the Concessionaire for storage in the Storage Facility as per provisions of this Agreement

4. “Additional Auditors” shall have meaning as set forth in 28.2.3

5. “Adjusted Equity” means the Equity funded in Indian Rupees and adjusted on the 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, 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 per cent) 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;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal
to the duration, if any, for which the Concession Period is extended, but the 
revision on account of WPI shall continue to be made;

6. “Affected Party” shall have the meaning set forth in Clause 29.1;

7. “Agreement or Concession Agreement” means this Agreement, its Recitals, the 
Schedules hereto and any amendments thereto made in accordance with the 
provisions contained in this Agreement;

8. “Applicable Laws” means all laws, brought into force and effect by GOI or the State 
Government including rules, regulations and notifications made thereunder, and 
judgments, decrees, injunctions, writs and orders of any court of record, applicable to 
this Agreement and the exercise, performance and discharge of the respective rights 
and obligations of the Parties hereunder, as may be in force and effect during the 
subsistence of this Agreement;

9. “Applicable Permits” means all clearances, licenses, permits, authorisations, no 
objection certificates, consents, approvals and exemptions required to be obtained or 
maintained under Applicable Laws in connection with the construction, operation and 
maintenance of the Storage Facility during the subsistence of this Agreement;

10. “Appointed Date” means the date on which the Financial Close is achieved or an 
earlier/ later 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. In the event all Conditions Precedent are not satisfied or 
waived, as the case may be and Financial Close has been achieved, 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;

11. “Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include 
modifications to or any re-enactment thereof, as in force from time to time;

12. “Associate” means, in relation to either Party (and/or Consortium Members), 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 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, whether by operation of law or by 
contract or otherwise);

13. “Authority” shall mean the government body granting the Concession to the 
Concessionaire under this Agreement;

14. “Authority Default” shall have the meaning set forth in Clause 32.2.1;

15. “Authority Indemnified Persons” shall have the meaning set forth in 37.1.1

16. “Authority’s Representative” means such person or persons as may be authorised in 
writing by the Authority to act on its behalf under this Agreement and shall include 
any person or persons having authority to exercise any rights or perform and fulfill any 
obligations of the Authority under this Agreement;
17. “Availability” means the availability of the facilities for the acceptance, storage and dispatch of Food Grain at the Storage Facility as specified in terms of Clause 5.1.5;
18. “Average Daily Availability” means the average daily Availability, in terms of percentage, determined for the month preceding the relevant Force Majeure Event;
19. “Average Daily Fixed Storage Charge” means the amount arrived at by dividing the total Fixed Storage Charge of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily Fixed Storage Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fixed Storage Charge collected with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fixed Storage Charge payable for any segment of the Storage Facility has not been realised for any reason, an assessment thereof shall be made by the Independent Expert to form part of the Average Daily Fixed Storage Charge for such period;
20. “Award” shall have meaning set forth in Clause 39.3.3
21. “Bag” means a bag that can carry 50 (fifty) kilogram of Food Grains or such other weight as the Parties may mutually determine. For the avoidance of doubt, Bag Handling Charges under this Agreement shall always be determined as if the Bags have a carrying capacity of 50 (fifty) kilogram of Food Grains;
22. “Bag Handling Charge” shall have the meaning set forth in Clause 25.1.6 and more specifically in Schedule E;
23. “Bag Storage Warehouse” shall have meaning as set forth in Schedule C
24. “Bagging System” shall have the meaning set forth in Schedule C;
25. “Bank” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;
26. “Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;
27. “Bid” means the documents entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;
28. “Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. ------- (Rupees ------- lakh), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;
29. “Bulk Truck Loading System” shall have meaning as specified in Schedule D
30. “COD” or “Commercial Operation Date” shall have the meaning set forth in Clause 15.1.1;
31. “Change in Law” 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;
c. the commencement of any Indian law which has not entered into effect until the date of Bid;
d. a change in the interpretation or application of any Indian law by a judgement 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
e. any change in the rates of any of the Taxes that have a direct effect on the Project;

32. “Change in Ownership” means a 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 (existing promoters/selected bidder/Consortium Members), together with (its/their) Associates in the total Equity declines below (i) 51% (fifty one per cent) thereof during Construction Period and two years thereafter, provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or 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 Completion of a period two years after COD, shall constitute Change in Ownership;

33. “Change of Scope” shall have the meaning set forth in Article 16 and more specifically Clause 16.1.1;

34. “Change of Scope Notice” shall have meaning set forth in Clause 16.2.1
35. “Change of Scope Order” shall have meaning set forth in Clause 16.2.3
36. “Cleaning” means the process of reduction of foreign material (such as dust, fibre, stones or other foreign particles) from the Food Grains, to be carried out at the Storage Facility, in accordance with the provisions of this Agreement and “Clean” shall be construed accordingly;

37. “Completion Certificate” shall have meaning set forth in Clause 14.2
38. “Concession” shall have meaning set forth in Clause 3.1.1
39. “Concessionaire” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;
40. “Concession Period” means the period starting on and from the Appointed Date and ending on the Transfer Date;
41. “Concessionaire Default” shall have the meaning set forth in Clause 32.1.1;
42. “Conditions Precedent” shall have the meaning set forth in Clause 4.1;
43. “Consortium” shall have the meaning set forth in Recital (B)
44. “Consortium Member” means a company specified in Recital (B) as a member of the Consortium;
45. “Construction Period” means the period beginning from the Appointed Date and
ending on COD;

46. “Construction Works” means all works and things necessary to construct and complete the Storage Facility in accordance with this Agreement;

47. “Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Storage Facility or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

48. “Covenant” shall have meaning as set forth in Clause 5.2.4

49. “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;
   d. provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Expert hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert to accord their approval;

50. “DBFOT” or “Design, Build, Finance, Operate and Transfer” shall have the meaning set forth in Recital (A);

51. “Damages” shall have the meaning set forth in Sub-clause w of Clause 1.2;

52. “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 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 here such charges have arisen due to Authority Default; and
disbursed by lenders for financing the Total Project Cost;
c. provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, 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;

53. “Debt Service Payments” means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

54. “Development Period” means the period from the date of this Agreement until the Appointed Date;

55. “Dispatch Point” shall have meaning set forth in Clause 17.21.12

56. “Dispatch Notice” shall have meaning set forth in Clause 17.21.1

57. “Dispatch Report” shall have meaning set forth in Clause 17.21.11

58. “Dispute” shall have meaning set forth in Clause 39.1.1

59. “Disputed Amounts” shall have meaning set forth in Clause 25.5.1

60. “Dispute Resolution Procedure” means the procedure for resolution of Disputes set forth in Article 33;

61. “Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 33 and more specifically in Clause 33.1;

62. “Document” or “Documentation” means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

63. “Drawings” means all of the drawings, calculations and documents pertaining to the Storage Facility as set forth in Schedule J, and shall include ‘as built’ drawings of the storage Facility;

64. “Drying” means the process of reduction of moisture content in Food Grains, to be carried out at the Storage Facility in accordance with the provisions of this Agreement, and “Dry” or “Dried” shall be construed accordingly;

65. “EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Storage Facility in accordance with the provisions of this Agreement;

66. “Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Storage Facility, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets or Food Grains;

67. “Encumbrances” means, in relation to the Storage Facility, 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 any designation of loss payees or beneficiaries or any similar
arrangement under any insurance policy pertaining to the Storage Facility, where applicable herein;

68. “Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire 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, but does not include Equity Support;

69. “Equity Support” shall have the meaning set forth in Clause 23.2.1;

70. “Escrow Account” shall mean an account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement.

71. “Escrow Agreement” shall have the meaning ascribed thereto in Clause 26.1.2.

72. “Escrow Bank” shall have meaning set forth in Clause 26.1.1.

73. “FAQ” means the ‘Fair Average Quality’ norms stipulated by Government of India, including modifications thereof, for wheat grain;

74. “Financial Close” means the fulfilment of all Conditions Precedent to the initial availability of funds under the Financing Agreements;

75. “Financial Default” shall have the meaning set forth under the Substitution Agreement set forth in Schedule U;

76. “Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

77. “Financial Package” means the financing package indicating the Total Project cost of the Storage Facility and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any;

78. “Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

79. “First In First Out (FIFO)” means an accounting technique used in managing inventory, wherein the oldest inventory item are recorded first and the oldest inventory item are
also sold first

80. “Fixed Storage Charge” shall have the meaning set forth in Clause 25.1.4 and more specifically in Schedule E

81. “Food Grains” means wheat and rice or such other food grains as the Parties may mutually agree upon;

82. “Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 29.1;

83. “Force Majeure Cost” shall have meaning set forth in Clause 29.7.2;

84. “Forced Closure” means a complete or partial shutdown of any Silo of the Storage Facility due to a fault or any other reason, if it reduces Availability by more than 1% (on per cent) of the total Storage Capacity during a continuous period of 24 (twenty four) hours;

85. “GOI” means the Government of India;

86. “Good Industry Practice” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner, and includes prudent utility practices generally accepted by Food Grain storage and warehousing utilities for ensuring safe, economic and efficient construction, operation and maintenance of the Storage Facility;

87. “Government” means the Government of the State;

88. “Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Storage Facility or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement

89. “Grant” shall have the meaning set forth in Clause 23.1;

90. “Grain Acceptance Specifications” shall have meaning as specified in Schedule F

91. “Grain Storage Specifications” shall have meaning as specified in Schedule F

92. “Handling Losses” shall have the meaning as set forth in Clause 17.26

93. “Harvest Season” means a continuous period of 45 (forty five) days in a year, to be notified by the Authority to the Concessionaire at least 7 (seven) days before the commencement thereof, and in the absence of such communication, it shall be deemed to commence on the 15th (fifteenth) day of April;

94. “Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 37;

95. “Indemnifying Party” means the Party obligated to indemnify the other Party
pursuant to Article 37;
96. “Independent Expert” shall have the meaning set forth in Article 21;
97. “Indirect Political Event” shall have the meaning set forth in Clause 29.3
98. “Inspection Report” shall have meaning as per Clause 13.2
99. “Insurance Cover” means the aggregate of the maximum sums insured under the
insurances taken out by the Concessionaire pursuant to Article 27, and includes all
insurances required to be taken out by the Concessionaire under Clauses 27.1 and
27.2 but not actually taken, and when used in the context of any act or event, it shall
mean the aggregate of the maximum sums insured and payable or deemed to be
insured and payable in relation to such act or event;
100. “Intellectual Property” means all patents, trademarks, service marks, logos, get-up,
trade names, internet domain names, rights in designs, blue prints, programmes and
manuals, drawings, copyright (including rights in computer software), database rights,
semi-conductor, topography rights, utility models, rights in know-how and other
intellectual property rights, in each case whether registered or unregistered and
including applications for registration, and all rights or forms of protection having
equivalent or similar effect anywhere in the world;
101. “LOA” or “Letter of Award” means the letter of award referred to in Recital (D);
102. “Lead Member” shall have the meaning set forth in Recital (B);
103. “Lenders’ Representative” means the person duly authorised by the Senior Lenders to
act for and on behalf of the Senior Lenders with regard to matters arising out of or in
relation to this Agreement, and includes his successors, assigns and substitutes;
104. “Letter of Credit” shall have the meaning set forth in Clause 25.8.1;
105. “License Fee” shall have the meaning set forth in Article 24 “Licensed Premises” shall
have the meaning set forth in Clause 10.3.2;
106. “Long Term Storage Silo” shall have meaning as specified in Schedule C
107. “Major Overhaul” means the complete repair, restoration and renovation of any one
or more of the Silo after removal of Food Grains therefrom;
108. “Maintenance Manual” shall have the meaning ascribed to it in Clause 17.3.1;
109. “Maintenance Plan” shall have meaning as specified in Schedule H
110. “Maintenance Programme” shall have the meaning ascribed to it in Clause 17.4.1;
111. “Maintenance Requirements” shall have the meaning set forth in Clause 17.2;
112. “Material Adverse Effect” means a material adverse effect of any act or event on the
ability of either Party to perform any of its obligations under and in accordance with
the provisions of this Agreement and which act or event causes a material financial
burden or loss to either Party;
113. “Monthly Invoice” shall mean the Invoice raised by the Concessionaire for the
payment of the Storage and Handling Charges by the Authority;
114. “NPV” shall have meaning as specified in Clause 36.3
115. “Nominated Company” means a company selected by the Lenders’ Representative
and proposed to the Authority for substituting the Concessionaire in accordance with
the provisions of the Substitution Agreement;
116. “Non-Availability” means any partial or total lack of Availability;
117. “Non-Political Event” shall have the meaning set forth in Clause 29.2;
118. “Normative Availability” shall have the meaning set forth in Clause 5.1.5;
119. “Operating Hours” mean the period between 8:00 a.m. and 6:00 p.m. on all days other than Sundays and bank holidays;
120. “O&M” means the operation and maintenance of the Storage Facility and includes all matters connected with or incidental to such operation and maintenance, and provision of Storage Services and facilities in accordance with the provisions of this Agreement;
121. “O&M Contract” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;
122. “O&M Contractor” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;
123. “O&M Expenses” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;
124. “O&M Inspection Report” shall have the meaning set forth in Clause 19.2;
125. “Operation Period” means the period commencing from COD and ending on the Transfer Date;
126. “Panel of Chartered Accountants” shall have meaning as specified in Clause 28.2.1
127. “Parties” means the parties to this Agreement collectively and “Party” shall mean any of the parties to this Agreement individually;
128. “Payment Due Date” shall have the meaning set forth in Clause 25.4.2;
129. “Performance Guarantee” shall have the meaning set forth in Clause 34.2.3
130. “Performance Security” shall have the meaning set forth in Clause 9.1.1;
131. “Performance Standards” shall have meaning as specified in Schedule G
132. “Political Event” shall have the meaning set forth in Clause 29.4;
133. “Pre-Acceptance Test” means the test of quality and quantity of Food Grain to be carried out by the Concessionaire prior to accepting the Food Grain for storage at the Storage Facility as per procedure described in Clause 17.18.3
134. “Pre-Acceptance Test report” shall have the meaning as prescribed in 17.18.3
135. “Pre-Storage Silos” / “Receiving Silos” shall have meaning as set forth in Schedule C
136. “Pre-Storage treatment” shall have meaning as specified in Clause 17.19.1

Version: 22/02/2016
137. {“Premium”} shall have meaning as set forth in 23.3
138. “Price Index” shall comprise:
   (a) 70% (seventy per cent) of WPI; and
   (b) 30% (thirty per cent) of CPI (IW),
139. Which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;
140. “Project” means the construction, operation and maintenance of the Storage Facility in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;
141. “Project Agreements” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement or any agreement for procurement of goods and services involving a consideration of upto Rs.5 (five) crore;
142. “Project Assets” means all physical and other assets relating to and forming part of the Project including:
   a. rights over the Site in the form of licence, Right of Way or otherwise;
   b. tangible assets such as civil works and equipment including foundations, embankments,
   c. pavements, electrical systems, communication systems, relief centres, administrative offices and loading/ unloading facilities;
   d. Project Facility situated on the Site;
   e. all rights of the Concessionaire under the Project Agreements;
   f. financial assets, such as receivables, security deposits etc;
   g. insurance proceeds; and
   h. Applicable Permits and authorisations relating to or in respect of the Storage Facility;
143. “Project Completion Date” means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 12;
144. “Project Completion Schedule” means the progressive Project Milestones set forth in Schedule N for completion of the Project on or before the Scheduled Completion Date;
145. “Project Facilities” means all the amenities and facilities situated on the Site, as described in Schedule C;
146. “Project Milestones” means the project milestones set forth in Schedule N;
   “Protected Documents” mean such of the Specified Documents or documents, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.
147. ‘Provisional Certificate’ shall have the meaning set forth in Clause 14.3.1;
148. “Punch List” shall have the meaning ascribed to it in Clause 14.3.1;
149. “Re.”, “Rs.” or “Rupees” or “Indian Rupees” means the lawful currency of the Republic of India;

150. “Reference Rate” shall have meaning as specified in Clause 25.5.4

151. “Reference Exchange Rate” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

152. “Reliability” shall have the meaning set forth in Clause 17.24

153. “Request for Proposals” or “RFP” shall have the meaning set forth in Recital (C);

154. “Request for Qualification” or “RFQ” shall have the meaning set forth in Recital (B);

155. “Revenue share from Unutilized capacity” shall have the meaning set forth in Clause 3.2.4

156. “Right of Way” means the constructive possession of the Licensed Premises, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Storage Facility in accordance with this Agreement;

157. “Rules” shall have meaning set forth in Clause 39.3.1

158. “Safety Requirements” shall have the meaning set forth in Clause 18.1;

159. “Scheduled Completion Date” shall have the meaning set forth in Clause 12.3.1;

160. “Scheduled Maintenance” shall have the meaning set forth in Clause 17.4.4;

161. “Scheme for Financial Assistance” shall have meaning as set forth in Clause 23.2.5

162. “Scope of the Project” shall have the meaning set forth in Clause 2.1;

163. “Senior Lenders” means the financial institutions, Banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

164. “Silo” means a structure, comprising a storage bin, constructed in accordance with the Standards and Specifications for bulk storage of Food Grains at the Storage Facility;

165. “Site” shall have the meaning set forth in Clause 10.1;

166. “Specifications and Standards” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Storage Facility, as set forth in Schedule D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Storage Facility submitted by the Concessionaire to, and expressly approved by, the Authority;

167. “Specified Documents” shall have the meaning prescribed in 40.1

168. “State” means the State of -------and “State Government” means the government of that State;

169. “Statutory Auditors” means a reputable firm of chartered accountants acting as the
statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956/Companies Act 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 28.1;

170. “Storage and Handling Charges” shall have the meaning set forth in Article 25 and in Schedule E

171. “Storage Capacity” shall mean the designed storage capacity 50,000 (fifty thousand) metric tonnes of Food Grains at the Storage Facility for each location;

172. “Storage Facility” shall mean the facility created at the Site for the storage of food grains and discharge of services as defined under this agreement;

173. “Storage Services” means the provision of all the storage services by the Concessionaire in accordance with the provisions of this Agreement;

174. “Subordinated Debt” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:
   a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
   b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six month LIBOR (London Inter-Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;
   c) provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

175. “Substitution Agreement” shall have the meaning set forth in Clause 35.3.1;

176. “Suspension” shall have the meaning set forth in Clause 31.1;

177. “Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project/Storage Facility charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

178. “Termination” means the expiry or termination of this Agreement and the Concession hereunder;

179. “Termination Notice” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;
180. “Termination Payment” means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 32.3;

181. “Tests” means the tests set forth in Schedule K to determine the completion of Storage Facility in accordance with the provisions of this Agreement;

182. “Total Project Cost” means the capital cost incurred on construction and financing of the Storage Facility and shall be limited to the lowest of:
   a) the capital cost of the Storage Facility, less Equity Support as set forth in the Financial Package;
   b) the actual capital cost of the Storage Facility upon completion less Equity Support;
   or
c) a sum of Rs. 65,28,00,000 (Rupees Sixty Five crore Twenty eight lakhs), less Equity Support;
   d) provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost.

183. “Transfer Date” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

184. “Undisputed Amounts” shall have meaning set forth in Clause 25.5.1

185. “Unforeseen Events” shall have the meaning as set forth in Clause 29.13.1

186. “Unutilised Capacity” shall have the meaning as set forth in Clause 3.2.1

187. “Users” shall mean the third parties using the Storage Facility or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

188. “Unscheduled Maintenance” shall have the meaning as set forth in Clause 17.9

189. “Variable Charge” shall have the meaning set forth in Clause 25.1.5 and more specifically in Schedule E

190. “Vehicle” means a 2-axle or 3-axle truck being a goods carrier with a gross vehicle weight of 7,500 (seven thousand five hundred) kilograms or more, but less than 25,000 (twenty five thousand) kilograms;

191. “Vesting Certificate” shall have the meaning set forth in Clause 33.4;

192. “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, save and except that for the purposes of annual revision of the Storage and Handling Charges in accordance with the provisions of this Agreement, the revision due on April 1 of any year shall be computed with reference to WPI as on March 31 of that year.
Part VII

Schedule
A. SCHEDULE A - Description of the Site

- The Site of the Project shall include the Land, building, structures and related Project Facilities.
- An inventory of the Licensed Premises including the Land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority’s Representative and the Concessionaire.
- Additional land required for ancillary buildings, extension/ addition of Storage Capacity or for construction of works specified in Change of Scope Order issued under Article 16 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.
**Annex-I of Schedule A**

The details of the land for the Kaimur Site\(^1\) are as follows:

<table>
<thead>
<tr>
<th>Field</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Location (^2)</td>
<td></td>
</tr>
<tr>
<td>Name of the village/town / city where the land (site) is located</td>
<td></td>
</tr>
<tr>
<td>Survey numbers of the land parcel (site)</td>
<td></td>
</tr>
<tr>
<td>Area of land</td>
<td></td>
</tr>
<tr>
<td>Description of topography of the land, boundaries and facilities surrounding the land</td>
<td></td>
</tr>
<tr>
<td>Nearest National / State Highway and distance of the site from the same</td>
<td></td>
</tr>
<tr>
<td>Distance (by road) of the land parcel from the rail head</td>
<td></td>
</tr>
<tr>
<td>Nature of possession of land</td>
<td>Already owned/procured by the bidder (Yes/No):(..................); OR Identified by the bidder and not yet procured (Yes/No):</td>
</tr>
</tbody>
</table>

---

\(^1\) As per details specified by the (Bidder/Consortium) during the RFP stage

\(^2\) As per LOA

Version: 22/02/2016
The details of the land for the Buxar Site³ are as follows:

<table>
<thead>
<tr>
<th>Project Location ⁴</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of the village/town / city where the land (site) is located</td>
<td></td>
</tr>
<tr>
<td>Survey numbers of the land parcel (site)</td>
<td></td>
</tr>
<tr>
<td>Area of land</td>
<td></td>
</tr>
<tr>
<td>Description of topography of the land, boundaries and facilities surrounding the land</td>
<td></td>
</tr>
<tr>
<td>Nearest National / State Highway and distance of the site from the same</td>
<td></td>
</tr>
<tr>
<td>Distance (by road) of the land parcel from the rail head</td>
<td></td>
</tr>
<tr>
<td>Nature of possession of land</td>
<td>Already owned/procured by the bidder (Yes/No):………………; OR Identified by the bidder and not yet procured (Yes/No):</td>
</tr>
</tbody>
</table>

---

³ As per details specified by the (Bidder/Consortium) during the RFP stage
⁴ As per LOA
Version: 22/02/2016
Annex-II of Schedule A

Layout of the proposed Site
B. SCHEDULE B – Storage Facility

The Storage Facility shall use a combination of three types of Silos - Long Term Storage Silos for wheat, Long Term Storage Silos for milled rice, and Pre-Storage Silo.

All Long Term Storage Silos for wheat will have capacity of 12,500 MT each and for milled rice storage will have capacity of 3,125 MT each. For the proposed Storage Facility, two Pre-Storage Silos of 250 MT each are also recommended. The following table summarises the overall storage capacity requirements for the Storage Facility at one location:

<table>
<thead>
<tr>
<th>Silo types &amp; capacities</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Term Storage Silos</td>
<td>3 silos of 12,500 MT each and 4 silos of 3125 MT each</td>
</tr>
<tr>
<td>Pre-storage silos</td>
<td>2 silos of 250 MT each</td>
</tr>
</tbody>
</table>

As noted above, the long term storage capacity at the proposed facility shall aggregate to 50,000 MT. The Storage Facility shall be developed in conformity with the Specifications and Standards as per Schedule D.
C. Schedule C - Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

Project Facilities shall form a part of the Storage Facility and the Concessionaire shall make available the following facilities from the COD:

<table>
<thead>
<tr>
<th>Facility Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Truck parking area</td>
<td>Of area sufficient to allow for parking of 50 Vehicles</td>
</tr>
<tr>
<td>Lorry Weighbridge</td>
<td>2 numbers electronic weighbridge of weighing capacity 60 MT</td>
</tr>
<tr>
<td>Laboratory for quality testing</td>
<td>Laboratory equipped to test at least 40 samples per hour as per the FAQs (Fair Average Quality) parameters. Testing facilities including, but not limited to, moisture meter, Dockage testing, Sample divider, sensitive lab scale, sieve sets, a foot long sample probes, four feet long sample probes and oven for moisture calibration.</td>
</tr>
<tr>
<td>Grain intake system *</td>
<td>Grain intake system comprising of unloading station with dump pits arrangement comprising of four hopper bins covered with MS grating suitably connected through a conveyor to Pre-Storage Silos. The unloading station should be at ground level and have minimum dimension of 16 meters by 3 meters. The Food Grains in Bags are to be opened at the unloading station and unloaded into the dump pit while the Food Grain in bulk at to directly unloaded into the dump pit. The unloading area should have at least one hydraulic tippler of dimension 3 meters by 9 meters. The conveying system should comprise of two chain or belt conveyors &amp; should have combined capacity of at least 125 Tons per hour (TPH). The hopper discharge should have regulator valve gate to regulate the discharge of Food Grain. A suitable shed to protect the unloading station from rain to be provided. Dust suppression system to prevent dust from dumping operations to get air borne.</td>
</tr>
<tr>
<td>Pre-Storage Silos *</td>
<td>2 hopper bottom silos of 250 Metric Tons (MTs) each equipped with stationary vents, aeration fans along with a provision of fumigation. The intake capacity of silos should be minimum 125 Tons Per Hour (TPH) and discharge should be at minimum at 125 Tons Per Hour (TPH).</td>
</tr>
<tr>
<td>Process Tower</td>
<td>Comprising of Cleaner and online weigher of minimum 125 Tons Per Hour (TPH) capacity to be sequenced vertically in a tower along with the provision of bag filter in one of the floor and separate dust collection bins on the ground floor.</td>
</tr>
<tr>
<td>Bulk Truck Loading System</td>
<td>One Silo of minimum 100 MTs to be provided beside the Process Tower having the flow from the online weigher with discharge for loading trucks in bulk.</td>
</tr>
<tr>
<td>Bagging system @</td>
<td>Semiautomatic weigher and bagger mechanism is required which can be two stations of 30 Tons Per Hour (TPH), with individual surge bins of 50 MTs</td>
</tr>
</tbody>
</table>

Version: 22/02/2016
<table>
<thead>
<tr>
<th>Bag Storage Warehouse</th>
<th>Warehouse should be of minimum 1500 square meter. The Warehouses should comply with warehouse related norms of Food Corporation of India / Central Warehousing Corporation. The Warehouse should be have good cross ventilation and have the requisite plinth level and should be rodent and fire proof.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fumigation system</td>
<td>A closed loop fumigation system, either from the Silos' aeration fans or separate centrifugal fan or a separate phosphine generator</td>
</tr>
</tbody>
</table>

# - In Silos in procuring regions  
@ - In Silos in consuming regions  
The above specifications of Project Facilities should be read along with the Standards and Specification as per Schedule-D.
D. Schedule D - Standards and Specifications

1. Conceptual Plan and Silo Layout

Introduction
This section lays down the development standards and specifications, conceptual plan, components and layout for the Storage Facility for bulk storage. The Storage Facility, including silo storage, handling facility, should be designed and built with the following objectives:

- Ensure safe long term storage of Food Grains with minimum loss in quality of Food Grain
- Efficient handling of Food Grain with minimum losses
- Integration with present collection and distribution systems of FCI
- Optimize capital investment
- Enable efficient operation and maintenance
- Ensure safety and security

Configuration of Silo Storage Complex

- While the Storage Facility will provide facility for safe long term storage for Food Grain in the facilities, the handling requirement will vary depending upon the location of the Silo. The Silo will be located in a) wheat producing cum consuming and b) rice producing cum consuming areas. The Storage Facility is proposed in two locations of Buxar & Kaimur for long term storage of wheat & rice in bulk. Keeping these factors in consideration, the following Silo configuration is recommended.
- The option for Silo facility, to be located in wheat producing cum consuming areas and rice producing cum consuming areas, will have facility for receiving Food Grain in bulk and bagged form by road and off take / issue in bulk or bagged form by road.
- The Silo facility will have long term silo capacity of 37,500 for wheat (12,500 x 3) and 12,500 MT for rice (3125 x 4) in which even wheat can also be stored.
- The salient features of the abovementioned option for Silo configuration are presented in the table below. The conceptual layout plans with major components of each option are discussed in detail in the following sections.

Storage Facility Layout:
The Storage Facility will have the following components:
1. Entry and exit gates
2. Electronic Weigh bridges for weighing gross and tare weight
3. Inbound Vehicles parking for about 50 Vehicles like tractor trolleys of about 3 MT or equivalent lesser number for larger Vehicles
4. Administration office within the premise of Silo facility
5. Laboratory for quality testing of Food Grains
6. Unloading station for receiving the bags for bulking or bulk trolleys
7. Pre-Storage silos and its material handling equipment
8. Process tower
9. Long Term Storage Silos
10. Fumigation system
11. Bulk Truck loading system
12. Chilling of rice by grain chillers
13. Electrical sub station
14. Pump house and work shop
15. Firefighting system
16. Rain water harvesting
17. Provision of power backup to run the plant and equipment
18. Bagging facility and Bag Storage Warehouse.

Figure 1: Plan & Elevation (Indicative)
2. Silo specifications

All the silos are required to be galvanized corrugated sheet metal structures. The long term Silos should be flat bottom with a sweep auger, while 250 MT Pre-Storage Silos with hopper bottom loading in Pre-Storage Silos will be from the top and discharge or reclaim from the bottom by gravity.

The Silo facility discussed herein is to be used for storage of wheat & milled rice. These Food Grains are granular, free-flowing; free from larger impurities are supposed to be stored in the Silos. The bulk density for Indian wheat & rice is about 750 Kg per cubic meter having compaction factor of about 5%. The volume of the 12500 MTs Silo will be about 16666 meter cube and the volume of 3125 MTs Silos for storing rice will be around 4200 meter cube. The diameter, eave height and overall height of silos could be decided by the operator around these parameters keeping the hydrostatic pressure on the Food Grains at optimum levels.

3. Components of Silo

<table>
<thead>
<tr>
<th>Essential Components of Silos Storage</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Silos</td>
<td>Galvanized, corrugated, bolted sheet metal Silos having hot dip galvanizing of not less than 350 gms./mtr. Sq.</td>
</tr>
</tbody>
</table>
capable of lasting for 30 years. Civil & mechanical design to suit wind pressure and seismic zone as per prevailing site zone notification. Also the Silos should be water-tight and relatively air tight.

<table>
<thead>
<tr>
<th>Component</th>
<th>Requirement Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aeration fans and aeration floor</td>
<td>Double F or Double H or 100% aeration floor, aeration fans having capacity between 4.5 to 6 meter cube per hour per ton</td>
</tr>
<tr>
<td>Chiller for milled rice storage</td>
<td>100% aeration floor and chiller capacity to cool 3125 MT silos in 7 days from ambient temperature to 15 degrees C</td>
</tr>
<tr>
<td>Temperature monitoring system</td>
<td>12500 MTs silos should have 13 to 15 temperature cables, having 9 to 11 temperature sensors and 3125 MTs silos should have 9 to 11 temperature cables having 6 to 8 temperature sensors</td>
</tr>
<tr>
<td>Stationary vents and mechanical ventilators</td>
<td>Sufficient stationary vents for perpetual ventilation and mechanical ventilators to safeguard the condensation at the head space of the silos</td>
</tr>
<tr>
<td>Provision for Fumigation</td>
<td>A close loop fumigation system either from the aeration fans or a separate phosphine generator</td>
</tr>
<tr>
<td>Food grain shifting system</td>
<td>Material handling system enabling shifting of Food Grain from one Silo to another in-case it is required to cool the Food Grain to atmospheric temperature</td>
</tr>
<tr>
<td>Internal Process Quality Control (IPQC)</td>
<td>Material Handling system should have provision to recirculate the Food Grain for drawing the samples for lab analysis required for IPQC</td>
</tr>
</tbody>
</table>

### 4. Design basis & Specifications for all disciplines

<table>
<thead>
<tr>
<th>Sr no</th>
<th>Component</th>
<th>Requirement &amp; Specifications</th>
<th>BIS/International Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Land Requirement</td>
<td>For Storage Facility minimum 7 acres of land is required. Other specifications as documented in the Request for Proposal Document for the project.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Boundary wall with separate entry and exit gates</td>
<td>1.8 meter high boundary wall made of bricks/stone and mortar having 0.75 meter concertina wire coils to protect from outside intrusion.</td>
<td>The guideline for construction should be taken from BIS Hand Book on Masonry Design and Construction section 5.5.2.1 or other relevant section</td>
</tr>
<tr>
<td>3</td>
<td>Electronic Weigh Bridges for gross &amp; tare weight</td>
<td>2 nos pit less or pit type having steel platform or concrete platform having steel base with minimum 6 load cells. It should be at least 16 meter long and capable of weighing 60 MT load.</td>
<td>Indian standard IS-1436(1991): weigh bridges specifications and IS - 9281 Part 1 of 4 (1979) for electronic weighing system including load cells. Weighbridges shall conform to Standard of Weight and Measures Act, 1976 and the Standards of Weights and Measures (Packaged Commodities) Rules,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td><strong>Truck Parking</strong></td>
<td>For parking 50 trucks with minimum 1600 square meter parking area The construction should be based on standards like IS:15658:2006 on &quot;Precast Concrete Blocks for Paving – Specification,&quot; Bureau of Indian Standards.IRC SP: 63-2004 &quot;Guidelines for Use of Interlocking Concrete Block Pavement&quot; Indian Roads Congress</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td><strong>Administration Office</strong></td>
<td>Suitably designed office block to accommodate the requisite staff for ease of working</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td><strong>Laboratory for Lab testing</strong></td>
<td>A suitably designed lab to test 40 samples per hour should have a requisite working space For civil construction “BIS hand book on Masonry Design and Construction” and for wielding IS:1024 -1979 (1st Rev) should be referred to</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td><strong>Unloading station for receiving the bags for bulking or bulk trolleys</strong></td>
<td>A dumping station which should have minimum 16X3 meter area with a capability of unloading 8 Vehicles of all type back to back. It should have four dumpits of the size of 2.7X2.7 meter and 5 meter deep covered by MS grating. The unloading capability should be minimum 125 TPH. Provision of one hydraulic tippling of 9X3 meter should be there within the same area of dumping.</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td><strong>Pre storage silos &amp; its Material Handling</strong></td>
<td>For the option two hopper bottom pre storage silos of 250 MTs required having intake and out take at minimum 125 TPH with a provision of aeration and fumigation capability. A suitably designed catwalk and supporting structuring. All pre storage silos, catwalk and supporting structure to be hot galvanized. Civil &amp; mechanical design to suit wind pressure and seismic zone as per prevailing site zone notification The design of the silo should be based on Singapore Standard SS EN 1993-4-1:2011 which is an adaption of the European Standard code EN 1993-4-1: 2007, IDT. This standard has all the references of the individual components of silo. The concrete foundations should be as per EN 1992 and EN 1997. All the steel structure and civil foundations with retaining walls should be based on prevailing seismic zone and wind velocity of the particular site.IS: 5503 (Part – I &amp; Part – II) -1969 and IS: 9178 (Part – II) -1979 could also be referred.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td><strong>Process tower</strong></td>
<td>A suitably designed structure is required to accommodate cleaner and online weigher in a gravity flow at minimum 125 TPH flow. The structure should adhere to the site notification on wind pressure and seismic zone. The reference codes for the structure designs are IS: 800-1984 Code for practice for general construction in steel, SP6 (1) Handbook for structural steel sections, IS: 875-1987 (2nd rev) part 1 to 5 Code of practice for design loads for buildings and structures.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td><strong>Long Term</strong></td>
<td>The flat bottom silos should have The design of the silo should be</td>
<td></td>
</tr>
<tr>
<td>Storage Silos</td>
<td>components as explained in the above section “Silo specifications”. The silos sheets should be hot dip galvanized having galvanization thickness of minimum 350 gm per square meter. The intake material handling capacity should be minimum 125 TPH and the reclaim capacity minimum 100 TPH. Its conveyors, elevators, catwalk, internal &amp; external ladder should be hot dip galvanized. The tunnel should have appropriate ventilation. The volume of 12500 MT silo should be minimum 16666 meter cube and for 3125 MT silo should be minimum 4200 meter cube. The silo floor should be minimum 1.5 meter above ground level. It should have components like sweep augur, temperature monitoring system, stationary vents and mechanical ventilators, aeration floor four aeration fans, inspection windows and level sensors. based on Singapore Standard SS EN 1993-4-1:2011 which is an adaption of the European Standard code EN 1993-4-1: 2007, IDT. This standard has all the references of the individual components of silo. The concrete foundations are as per EN 1992 and EN 1997. As the steel structure and civil foundations with retaining walls are based on prevailing seismic zone and wind velocity as per norms of the particular site. Seismic design RC columns and wall section IS: 5503 (Part – I &amp; Part – II) -1969 and IS: 9178 (Part – II) -1979 could also be referred.</td>
<td>11 Chiller for milled rice chilling</td>
<td>With a provision of 100% aeration floor in 3125 MT silos, one chiller should have a capacity to chill the rice grain to 15 degrees with ambient atmospheric conditions within seven days on continued operations. The construction should be as per code DIN EN 12900.</td>
</tr>
<tr>
<td>Sr no</td>
<td>Requirements</td>
<td>Compliances</td>
<td></td>
</tr>
<tr>
<td>-------</td>
<td>---------------------------------------------------</td>
<td>-------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Bulk truck Loading system</td>
<td>A 100 MTs hopper bottom silos having discharge height of 4.5 meter above ground level. It should be installed adjacent to the process tower to pre weigh food grains from the online weigher.</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Electrical sub station</td>
<td>A substation having a transformer of 750 KVA is required which would have free access to the entry of the State Electricity Board officials. As per the State Electrical Inspectorate specifications</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Fire Fighting System</td>
<td>A suitably designed firefighting system is required as per the norms of the local Fire Fighting department which has hydrants, portable fire extinguishers like CO2, dry powder type etc. As per State Fire department specifications</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Rain Water Harvesting</td>
<td>A suitably designed rain water harvesting system as per State Government specification is required which works as a storm water drainage as well. As per local authority norms.</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Power Back up</td>
<td>250 KVA power back up is required which can be either two 125 KVA gen set or one 125 KVA with two 62.5 KVA combination As per State Electrical Inspectorate norms</td>
<td></td>
</tr>
</tbody>
</table>

5. Identifying Performance Standards
Refer Schedule G

6. Gain acceptance specifications:
Refer Schedule F

7. Other requirements:
<table>
<thead>
<tr>
<th>Sr no</th>
<th>Requirements</th>
<th>Compliances</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sampling, testing and weighment facility requirement</td>
<td>Sampling for quality testing to be done at the time of intake by bulk trucks, farmer’s trolleys, bagged trucks, during long term storage, prior to bagging etc. Proper system for sampling and testing as per prevailing Indian and International norms for accurate results. Weighment should be as per weights and measures act of India</td>
</tr>
<tr>
<td>2</td>
<td>Storage Specifications</td>
<td>The acceptance of quality of Food Grains is as per FAQ standards. The storage parameters are required to be same as been received.</td>
</tr>
<tr>
<td>3</td>
<td>Fumigation Requirement</td>
<td>The storage needs to be insect free but still two fumigation cycles are expected once as a preventive</td>
</tr>
</tbody>
</table>

Version: 22/02/2016
<table>
<thead>
<tr>
<th></th>
<th></th>
<th>fumigation and other as a curative fumigation. Beyond two fumigation a care needs to be taken for phosphine residue as per PFA.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Delivery Requirement</td>
<td>For bulk trucks a day notice, for bagged trucks delivery 1000 MTs per day working of 10 hours.</td>
</tr>
<tr>
<td>5</td>
<td>Maintenance requirement</td>
<td>The Storage Facility should be available at least 96% of the time per year and any stoppages or maintenance should be informed to FCI well in advance.</td>
</tr>
<tr>
<td>6</td>
<td>Operational and Management plan &amp; system which is compatible for ISO certification</td>
<td>A well thought system for operational management conforming all the requirements needs to be written and shared. A PLC/SCADA system is a good enabler for the purpose which serves well for safe operations as well.</td>
</tr>
<tr>
<td>7</td>
<td>Testing and commissioning procedures and acceptance certification</td>
<td>FCI’s representative will inspect by appointing a third party company to verify the dry run testing of the Silo equipments and thereafter for on load testing for the final acceptance certification. The equipments would be tested for the capacities and dimensions as per the Standards and Specifications.</td>
</tr>
<tr>
<td>8</td>
<td>Environment Management plan</td>
<td>Pre post commissioning stages the facility management should conform to the State Environment &amp; Pollution norms. Any deviation would lead to strict action by the Implementing Agency</td>
</tr>
<tr>
<td>9</td>
<td>Safety Management plan</td>
<td>A well laid out safety plan as specified by the bidder in the Maintenance Manual should be adhered to avoid any kind of minor or major accidents. High structures like Process tower, the catwalks of the Silos etc. should be provided with the lightening arrester system</td>
</tr>
</tbody>
</table>

8. **Moisture –mass equivalence**

Gain/loss norm in respect of Food Grain shall be as follows:
- No loss in weight due to drying shall be allowable
- In case of gain the following adjustment in weight shall be done :
  - a 0.7% gain in weight of food grain shall be reduced for every 1% increase in moisture content.
E. SCHEDULE E - Storage and Handling Charges

The illustration for calculation of Fixed Storage Charge, Variable Charge and Bag Handling Charge, payable by the Authority to the Concessionaire for an Accounting Year is shown below:

1.) Fixed Storage Charges
   i. The base unit rates for Fixed Storage Charge payable by the Authority to the Concessionaire is Rs. 66.04 (Rupees Sixty Six and four paise) per MT per month. This base rate is applicable for the Accounting Year in which the COD is achieved.
   ii. Fixed Storage Charge payable for a month in nth Accounting Year in Rupees =
       (Unit rate of Fixed Storage Charges for a year payable in the nth Accounting year) X
       (Capacity in Tons X 1/12 X Availability)

   Where
   Unit rate of Fixed Storage Charges payable for a year payable in nth Accounting Year in Rupees = (Unit rate of Fixed Storage Charges in Rs per ton per year for (n-1)th Accounting year) X (1-2%) X (1 + variation in Price Index between January of base year and January of nth year)

2.) Variable Charges:
   i. The base unit rate for the Variable Charge payable by the Authority to the Concessionaire is [Rs. 0.57 (fifty seven paise)] per quintal per month. This base rate is applicable for the Accounting Year in which COD occurs this is the same year when the COD is achieved.
   ii. In case of rice storage, initial chilling charge and maintenance chilling charge will be payable by the Authority to the Concessionaire. The base rates for these charges is as follows:
       a. Initial chilling charges of Rs. 43 (forty three) per ton, payable as per capacity of each rice silo occupied – whether partially or fully; and applicable on the basis of the rice received for storage
       b. Maintenance chilling charges of Rs. 38 (thirty eight) per ton per year, payable on pro-rata basis for capacity of rice silos occupied – whether partially or fully
   i. Total Variable Charges payable for a month in the nth Accounting Year in Rupees =
       (Unit rate of Variable Charge for the nth Accounting Year) X (quantity of Food Grain stored in the Storage Facility) + (Unit rate of initial chilling charges for the nth Accounting Year) x (No of rice Silos occupied (when rice is received at the Project Facility)) + (Unit rate of maintenance chilling charges for the nth Accounting Year) x (No of rice Silos occupied) x (duration for which the rice is stored in the Silo)

Where
Unit Rate of Variable charge for the nth Accounting Year in Rs per Ton =
(Unit Rate of Variable charge in Rs per Ton for (n-1)th Accounting year) X (1+ variation in
3.) **Calculation of Bag Handling Charges**

The base unit rates for Bag Handling Charges payable by the Authority to the Concessionaire is as follows:

i. De-bagging charges of Rs. 1.20 (one point two zero) per Bag, payable on the number of Bags de-bagged

ii. Bagging charges of Rs. 1.75 (one point seven five) per Bag, payable on the number of Bags bagged

iii. Stacking and Loading charges of Rs. 1.83 (one point eight three) per Bag, payable on the number of Bags stacked and loaded

These base rates for the Bag Handling Charges is applicable for the Accounting Year in which COD occurs.

Bag Handling Charges payable in the nth Accounting Year in Rupees = (Unit Rate for Bag Handling Charges for nth Accounting Year in Rs per Bag) X (No of Bags de-bagged/bagged/stacked and loaded, as applicable)

Where
- Unit Rate of Bag Handling Charges for nth Accounting Year in Rs per Bag = (unit rate of Bag Handling Charges in Rs. per Bag for (n-1)th Accounting Year) X (1 + (80% X variation in CPIn and CPIb))
- CPIn is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for the month of January immediately preceding the date of revision;
- CPIb is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for month January immediately preceding the start of the base Year mentioned in Clause 25.2.4
- Quantity of Food Grain received in the Storage Facility is to be determined as per Pre-Acceptance Test Reports
- Quantity of Food Grain dispatch in the Storage Facility is to be determined as per Dispatch Reports
F. Schedule F - Grain Acceptance Specifications

The Schedule shows the maximum permissible limits of different Refractions in Fair Average Quality (FAQ) of Wheat and Rice has been notified in FY2013. The FAQ norms are notified every year. The FAQ for the applicable year needs to be complied with. Current FAQ norms are provided below:

**For Wheat:**
The acceptable limits are
- Foreign matter: 0.75% maximum
- Other food grains: 2% maximum
- Damaged grains: 2% maximum
- Slightly damaged grains: 6% maximum
- Shriveled and broken grains: 7% maximum

**Other conditions:**

1) Moisture in excess of 12% to be rejected.
2) Within the overall limit specified for foreign matter, the poisonous weed seeds shall not exceed 0.4% of which Dhatura and Akra (Vicia species) shall not be more than 0.025% and 0.2% by weight respectively.
3) Kernels with glumes will not be treated as unsound grains. During physical analysis the glumes will be removed and treated as organic foreign matter.
4) Within the overall limit specified for damaged grains, ergot affected grains shall not exceed 0.05%.
5) In case of stocks having living infestation, a cut at the rate of Rupee one per quintal may be charged as fumigation charges.

For weeviled grains determined by count, following price cuts will be imposed,

i. from the beginning of the season till end of August the rate of cut will be Rupee one per quintal, for every 1% or part thereof.

ii. from 1st September till end of October ,no cut will be imposed up to 1% while for any excess, the cut will be @Rs.1/- per quintal., for every 1% or part thereof.

iii. from 1st November till end of season no cut will be imposed upto 2% while for any excess the cut will be @ Rs.1/- per quintal, for every 1% or part thereof.

iv. stocks containing weeviled grains in excess of 3% will be rejected.

**FAQ For Rice:**

<table>
<thead>
<tr>
<th>Sr.</th>
<th>Refractions</th>
<th>Maximum Limit %age</th>
</tr>
</thead>
</table>

Version: 22/02/2016
<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>Grade A</th>
<th>Common</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Broken*</td>
<td>25</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td>Raw</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Parboiled/single parboiled Rice</td>
<td>16</td>
<td>16</td>
</tr>
<tr>
<td>2</td>
<td>Foreign Matter**</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td></td>
<td>Raw/Parboiled/single Parboiled rice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Damaged#/Slightly Damaged Grains</td>
<td>3.0</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>Raw</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Parboiled/Single parboiled rice</td>
<td>4.0</td>
<td>4.0</td>
</tr>
<tr>
<td>4</td>
<td>Discoloured Grains</td>
<td>3.0</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>Raw</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Parboiled/single Parboiled rice</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td>5</td>
<td>Chalky Grains</td>
<td>5.0</td>
<td>5.0</td>
</tr>
<tr>
<td></td>
<td>Raw</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Red grains</td>
<td>3.0</td>
<td>3.0</td>
</tr>
<tr>
<td></td>
<td>Raw/Parboiled/Single Parboiled rice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Admixture of lower class</td>
<td>6.0</td>
<td>--</td>
</tr>
<tr>
<td></td>
<td>Raw/Parboiled/Single Parboiled rice</td>
<td></td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Dehusked Grains</td>
<td>12.0</td>
<td>12.0</td>
</tr>
<tr>
<td></td>
<td>Raw/Parboiled/Single Parboiled rice</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Not more than 1% by weight shall be small broken

**Not more than 0.25% by weight shall be mineral matter and not more than 0.10% by weight shall be impurities of animal origin

#Including pin point damaged grains

Rice lot having moisture above 12% to be rejected
G. Schedule G - Performance Standards

- The Storage Facility and its Operation and Maintenance are required to meet the following specifications:
- The performance standards are for wheat & rice, both of which have same bulk density, are described below. However in case of paddy, which has low bulk density, the performance standards will be 16% lower as compared to wheat & rice.

<table>
<thead>
<tr>
<th>Sr no</th>
<th>Requirements</th>
<th>Performance Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Truck Parking</td>
<td>For minimum 50 trucks</td>
</tr>
<tr>
<td>2</td>
<td>Service time for Food Grains delivery for unloading</td>
<td>3 MT tractor trolly or equivalent</td>
</tr>
<tr>
<td>3</td>
<td>Delivery of bagged wheat and rice</td>
<td>Minimum 1000 MTs per 10 hours during a day’s working</td>
</tr>
<tr>
<td>4</td>
<td>Quality testing parameter for intake or off take of Food Grains</td>
<td>Intake as per prevailing FAQ of Government of India. The moisture content will not be more than 12%. During offtake if weeviled grain % increases more than 3% from the receiving weighted average then full value cut equivalent to the economic cost will be levied. More than 10 % weeviling the entire lot will be rejected at the economic cost of the year of delivery.</td>
</tr>
<tr>
<td>5</td>
<td>Food Grains intake capacity</td>
<td>Minimum 125 TPH and 2500 MTs per day</td>
</tr>
<tr>
<td>6</td>
<td>Intake &amp; discharge capacity of Pre-Storage silos</td>
<td>Minimum 125 TPH</td>
</tr>
<tr>
<td>7</td>
<td>Cleaner &amp; Online weigher capacity of the process tower</td>
<td>Minimum 125 TPH</td>
</tr>
<tr>
<td>8</td>
<td>Intake capacity of Long Term Storage Silos</td>
<td>Minimum 125 TPH</td>
</tr>
<tr>
<td>9</td>
<td>Discharge capacity of Long Term Storage Silos</td>
<td>Minimum 100 TPH</td>
</tr>
<tr>
<td>10</td>
<td>Bagging capacity</td>
<td>Minimum 60 TPH</td>
</tr>
<tr>
<td>11</td>
<td>Truck loading capacity of bagged Food Grain</td>
<td>Minimum 100 TPH</td>
</tr>
<tr>
<td>12</td>
<td>Paperless stock auditing and quality audit</td>
<td>Once in a month</td>
</tr>
<tr>
<td>13</td>
<td>Physical audit of stocks</td>
<td>Once in a year or once in two year</td>
</tr>
<tr>
<td>14</td>
<td>Dust loss In Food Grains</td>
<td>Maximum 0.05% of the intake quantity if the storage is beyond one year</td>
</tr>
<tr>
<td>15</td>
<td>Stock and asset insurance</td>
<td>By the concessionaire</td>
</tr>
<tr>
<td>16</td>
<td>Intake weight</td>
<td>Weigh bridge receipts</td>
</tr>
<tr>
<td>17</td>
<td>Facility/Silos availability per year</td>
<td>96% availability per year. 100% availability during the Harvest Seasons of Food Grains.</td>
</tr>
<tr>
<td>18</td>
<td>Interlocking system</td>
<td>A food proof system to avoid mixing of wheat into rice silos and vice versa</td>
</tr>
</tbody>
</table>

- The above specifications of Storage Facility should be read along with the Standards and Specification.
H. Schedule H - Maintenance Requirement

1. MAINTENANCE REQUIREMENTS
   a. The Concessionaire shall, at all times, operate and maintain the Storage Facility in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule H (the “Maintenance Requirements”).
   b. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule H within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. REPAIR/RECTIFICATION OF DEFECTS AND DEFICIENCIES
   a. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule H within the time limit set forth therein.
   b. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. OTHER DEFECTS AND DEFICIENCIES
   a. In respect of any defect or deficiency not specified in Annex - I of this Schedule H, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
   b. In respect of any defect or deficiency not specified in Annex - I of this Schedule H, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Standards and Specifications, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Expert.

4. EXTENSION OF TIME LIMIT
   a. Notwithstanding anything to the contrary specified in this Schedule H, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in conformity with Good Industry Practice. Such additional time shall be determined by the Independent Expert and conveyed to the Concessionaire and the Authority with reasons thereof.
5. EMERGENCY REPAIRS/RESTORATION
   a. Notwithstanding anything to the contrary contained in this Schedule H, if any defect, deficiency or deterioration in the Storage Facility poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

6. INSPECTION BY THE CONCESSIONAIRE
   a. The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Storage Facility in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Independent Expert may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the Independent Expert at any time during office hours.

7. DISPLAY OF SCHEDULE H
   The Concessionaire shall display a copy of this Schedule H at the Storage Facility.
Annex – I of Schedule H

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex- I of Schedule H to conform to Standards and Specifications and Performance Standards within the time limit set forth herein.

<table>
<thead>
<tr>
<th>Nature of defect or deficiency</th>
<th>Time limit for repair/ rectification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Breakdown of conveyor</td>
<td>24 hours</td>
</tr>
<tr>
<td>Breakdown of elevator</td>
<td>24 hours</td>
</tr>
<tr>
<td>Breakdown of DG set</td>
<td>24 hours</td>
</tr>
<tr>
<td>Breakdown of, or defect in, silo temperature monitoring system</td>
<td>7 days</td>
</tr>
<tr>
<td>Breakdown of, or defect in, weighbridge / online weigher</td>
<td>48 hours</td>
</tr>
<tr>
<td>Breakdown of, or defect in, fumigation system</td>
<td>48 days</td>
</tr>
<tr>
<td>Breakdown of, or defect in, bagging machines</td>
<td>48 hours</td>
</tr>
<tr>
<td>Breakdown of, or defect in, laboratory equipment</td>
<td>48 hours</td>
</tr>
<tr>
<td>Breakdown of, or defect in, fire hydrant system</td>
<td>24 hours</td>
</tr>
<tr>
<td>Truck parking</td>
<td>48 hours</td>
</tr>
</tbody>
</table>
I. Schedule I - Safety Requirements

1. GUIDING PRINCIPLES
   a. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents at the Project, irrespective of the person(s) at fault.
   b. Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
   c. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule I.

2. OBLIGATIONS OF THE CONCESSIONAIRE
   a. The Concessionaire shall abide by the following: (a) Applicable Laws and Applicable Permits; (b) provisions of this Agreement; (c) relevant Standards/Guidelines contained in internationally accepted codes; and (d) Good Industry Practice.

3. SAFETY MEASURES DURING OPERATION PERIOD
   a. The Concessionaire shall develop, implement and administer a safety programme for the Storage Facility and any persons who may be affected by it, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
   b. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Storage Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
   c. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Financial Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.a of this Schedule I for averting or minimising such accidents in future.
   d. Once in every Financial Year, the Concessionaire shall, at its costs, cause a safety audit to be carried out for review and analysis of the annual report and accident data of the preceding year. The recommendations of such safety audit shall be communicated to the Authority and the Independent Expert. Within 15 (fifteen) days of receipt of such communication from the Concessionaire,
the Authority and the Independent Expert shall send their respective comments thereon to the Concessionaire, and no later than 15 (fifteen) days of receiving such comments, the Concessionaire shall review the same and carry out any or all of the recommendations with such modifications as the Authority and Independent Expert may specify.
J. SCHEDULE J - Drawings

Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

- A Functional Block Diagram;
- Process Flow Diagram(s);
- Process and Instrumentation Diagrams (P & ID);

General Arrangement Drawings (layouts, sections and elevations) for:
- i. Unloading and sampling station;
- ii. dispatch and sampling station;
- iii. weighing system for intake and dispatch of Food Grains;
- iv. Bag unloading and receiving systems;
- v. storage systems including capacity of Silos and their conveying systems; and
- vi. process tower including reject bins, cleaners, dust filters, bucket elevators, chain conveyors, belt conveyors, screw conveyors, spouting and ducting, and gates and diverters;
- vii. Silo bottom discharge arrangement;
- viii. Aeration system and fumigation system;
- ix. Silo temperature monitoring system;
- x. Layout of ancillary buildings including security offices, weighing offices, electrical room and stand-by generator room, administrative office, control room, quality control laboratory, cafeteria and restrooms;
- xi. Fire hydrant system;
- xii. Fumigation system; and
- xiii. Electric system.
K. SCHEDULE K - Tests

1. Schedule for Tests
   a. The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Storage Facility, notify the Independent Expert and the Authority of its intent to subject the Storage Facility to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Storage Facility.
   b. The Concessionaire shall notify the Independent Expert of its readiness to subject the Storage Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Clause 13.3 and this Schedule K.

2. Tests
   a. Without prejudice to the provisions of this Schedule K, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with Good Industry Practice, for determining the compliance of the Storage Facility with Specifications and Standards.
   b. Visual and Physical Test
      i. The Independent Expert shall conduct a visual and physical check of the Storage Facility, in accordance with this paragraph 2.b, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
   c. Trial run
      i. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run to determine that the Storage Facility is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment.
   d. Tests for equipment
      i. The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Storage Facility. Such systems and equipment shall include:
         1. Feeding and extraction systems;
         2. Ventilation systems;
         3. Systems for measurement and control of humidity, heat and light...
exposure;
4. Systems for handling of Food Grains;
5. Systems for fumigation;
6. Aeration systems for cooling and equalising of moisture and temperature; and
7. Systems for preventing moisture migration.
e. Tests for weighment and testing facilities:
   i. The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of weighment and testing facilities with the Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice and the calibration certificate issued by the manufacturers.
f. Environmental audit:
   i. The Independent Expert shall carry out a check to determine conformity of the Storage Facility with the environmental requirements set forth in Applicable Laws and Applicable Permits.
g. Safety review:
   i. The Independent Expert shall carry out a safety audit of the Storage Facility to determine its compliance with the provisions of Schedule K and this Agreement.
h. Air compression and diesel generator sets:
   i. The Independent Expert shall conduct or cause to be conducted Tests to determine that the air compression units of all utilities conform to their rated capacities; and the diesel generator sets are capable of being operated for 48 hours in full load and no load conditions.

3. Agency for conducting Tests
   a. All Tests set forth in this Schedule K shall be conducted by the Independent Expert or such other agency or person as it may specify in consultation with the Authority.

4. Tests for Safety Certification
   a. Tests for determining the conformity of the Storage Facility with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

5. Completion/Provisional Certificate
   a. Upon successful completion of Tests, the Independent Expert shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14
## L. Schedule L

### Damages for shortfall in Storage Services and Non-Conformance on quality and quantity

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Damages payable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quantity loss at the time of stock taking</td>
<td>Damages payable at Economic Cost. The Economic Cost in the year the loss is reported to be considered</td>
</tr>
<tr>
<td>Quality loss at the time of dispatch</td>
<td>Value cut as applicable under FAQ norms</td>
</tr>
<tr>
<td></td>
<td>If the stock is not in compliance with FAQ norms, Damages payable at Economic Cost</td>
</tr>
<tr>
<td>Delay in handling trucks</td>
<td>Damages at the rate of Rs 20 per ton for every hour of delay beyond the stipulated time for handling trucks. The deviation is to be calculated on average quarterly basis. The rate of penalty shall be revised annually with effect from April 1 every year to reflect 100% of increase in aggregate whole sale price index, as published by Reserve Bank of India.</td>
</tr>
<tr>
<td>Shortfall in Availability below Normative Availability level</td>
<td>At the rate of Rs 40,000 (Rs Forty Thousand) per day for each day of shortfall in Availability during period other than Harvest Season and Rs 80,000 (Rs Eighty Thousand) per day during Harvest Season. In case of shortfall of less than a day, penalty shall be on pro-rata basis. It is agreed that if such disruption is cumulatively for more than an hour in a calendar day, than such Non-Availability shall be considered for the purpose of this calculation. The rate of penalty shall be revised annually with effect from April 1 every year to reflect 100% of increase in aggregate whole sale price index (WPI), as published by Reserve Bank of India.</td>
</tr>
<tr>
<td>Lower Reliability</td>
<td>In the event that the Reliability in a quarter exceeds 1 (One) Forced Closure in the Storage Facility, the Concessionaire shall pay to the Authority Damages equal to 2.5% (two point five per cent ) of the Fixed Storage Charges payable for the Storage Facility in accordance with the provisions of Clause 25.1.4 for each such Forced Closure in excess of 1 (One)</td>
</tr>
</tbody>
</table>
M. SCHEDULE M - PERFORMANCE SECURITY

The Chairman,
Food Corporation of India
New Delhi
WHEREAS:

(A) .................. (the “Concessionaire”) and the Chairman, Food Corporation of India (the “Authority”) have entered into a Concession Agreement dated ................. (the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking of CONSTRUCTION, OPERATION & MAINTENANCE OF STORAGE FACILITY UNDER DESIGN, BUILD, FINANCE, OPERATE& TRANSFER (DBFOT) MODEL basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs.*****************(in words) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Concession Period (as defined in the Agreement).

(C) We, .................. through our Branch at ................... (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an officer not below the rank of General Manager in the Food Corporation of India that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or

Version: 22/02/2016
obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.

5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation 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 Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.

7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.

8. The Performance Security submitted by the Concessionaire in accordance with this Agreement shall be released by the Authority 180 (one hundred and eighty) days after the expiry of the Concession Period or Termination of this Agreement. Provided, such release shall be effective only after: (i) issue of a certificate from the Independent Expert mentioning that the Concessionaire is not in default of its obligations under the Agreement; and (ii) concurrence of the Authority to such certificate with respect to performance of such obligations as per the Agreement.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.

10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by
post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this .......... day of ..........., 20........ at ..........

SIGNED, SEALED AND DELIVERED
For and on behalf of the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.
N. Schedule N - PROJECT COMPLETION SCHEDULE

1. PROJECT COMPLETION SCHEDULE
   a. During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule N for each of the Project Milestones and the Scheduled Completion Date (the “Project Completion Schedule”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. PROJECT MILESTONE-I
   a. Project Milestone-I shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the “Project Milestone-I”).
   b. Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Project and expended not less than 30% (thirty per cent) of the total capital cost set forth in the Financial Package.

3. PROJECT MILESTONE-II
   a. Project Milestone-II shall occur on the date falling on the 270th (Two Hundred Seventieth) day from the Appointed Date (the “Project Milestone-II”).
   b. Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of not less than 50% (Fifty per cent) of the total capital cost set forth in the Financial Package.

4. PROJECT MILESTONE-III
   a. Project Milestone-III shall occur on the date falling on the 400th (Four Hundred) day from the Appointed Date (the “Project Milestone-III”).
   b. Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of not less than 75% (Seventy Five per cent) of the total capital cost set forth in the Financial Package.

5. SCHEDULED COMPLETION DATE for the STORAGE FACILITY
   a. The Scheduled Completion Date for the Storage Facility shall occur on the 540th (five hundred fortieth) day from the Appointed Date.
   b. On or before the Scheduled Completion Date, the Concessionaire shall have completed the Storage Facility in accordance with this Agreement.

6. EXTENSION OF PERIOD
   a. Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Schedule Completion Date shall be deemed to have been amended accordingly.
O. SCHEDULE O - COMPLETION CERTIFICATE

I, .................. (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Concession Agreement dated ............ (the “Agreement”), for.......................(the “Project”) on design, build, finance, operate and transfer (DBFOT) basis, through .................. (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule K of the Agreement have been successfully undertaken to determine compliance of the Storage Facility with the provisions of the Agreement, and I am satisfied that the Storage Facility can be safely and reliably placed in commercial service thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of Storage Facility have been completed, and the Storage Facility is hereby declared fit for entry into commercial operation on this the .......... day of ........... 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of the INDEPENDENT EXPERT by:

(Signature)
(Name)
(Designation)
(Address)
ANNEX – I OF SCHEDULE O

PROVISIONAL CERTIFICATE

(I, ……………………… (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Concession Agreement dated ……………… (the “Agreement”), for ……………………… (the “Project”) on design, build, finance, operate and transfer (DBFOT) basis through …………………… (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule K of the Agreement have been undertaken to determine compliance of the Storage Facility with the provisions of the Agreement.

Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)@ I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Storage Facility pending completion thereof.

In view of the foregoing, I am satisfied that the Storage Facility can be safely and reliably placed in commercial service, and in terms of the Agreement, the Storage Facility is hereby provisionally declared fit for entry into commercial operation on this the …………. day of ………….…… 20…….

ACCEPTED, SIGNED, SEALED AND DELIVERED
For and on behalf of
CONCESSIONAIRE by:

(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name and Designation)
(Address)

@ Strike out if not applicable.
P. Schedule P

Selection and Terms of Reference for Independent Expert

Selection of Independent Expert (IE)

1. The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Base (Volume V) issued by Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, mutatis mutandis, for invitation of bids and evaluation thereof save as otherwise provided herein.

2. The Authority shall invite technical and financial offers from consulting firms or bodies corporate, as single entities or consortia, with expertise in engineering and post-harvest agriculture science to undertake and perform the duties and functions set forth in Part III of this Schedule. All technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall open the financial bids of the qualified firms. The Independent Expert shall be selected on the basis of the lowest price bid from among the qualified bidders.
   a. Fees and expenses of Independent Expert
      i. The Authority shall ensure that that the payments to the IE on account of fees and expenses does not exceed 0.5% per annum of the Total Project Cost during the Construction Period and 0.25% per annum, adjusted for All India Consumer Price Index (CPI), of the Total Project Cost during Operation Period. The payments made to the IE shall be borne equally by the Authority and the Concessionaire in accordance with this Agreement.
   b. Appointment of government entity as Independent Expert
      i. Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert and Auditor; provided that such entity shall be involved in consulting, advisory and supervisory work for work similar to the Project envisaged in this Agreement; provided further that a government-owned entity which is owned or controlled by the Authority and/or the direct administrative ministry of the Authority shall not be eligible for appointment as Independent Expert.

Terms of Reference for Independent Expert

(A) Duties & Responsibilities

1. The Independent Expert shall perform its duties under the Agreement during the Concession Period starting from the Commencement Date as follows:
   a. To review and comment all activities associated with Construction Works of the Project to ensure compliance with the terms of the Concession Agreement
b. Report to the Authority on technical, operational and financial aspects including progress on at least quarterly basis during the Construction Period

c. Carry out duties set out in the Concession Agreement

2. The Independent Expert shall have no powers or authority to relieve the Concessionaire of any of its duties or to impose additional obligations other than those expressly provide for in the Concession Agreement.

(B) Scope of Services

1) During the Construction Period
   i. Review and comment the Construction Plan prepared by the Concessionaire with respect to the requirements for Construction Works as specified in the Concession Agreement;
   ii. Review and comment on the adequacy of engineering investigations including but not limited to geo-technical and topographical aspects;
   iii. Review the proposed quality assurance and quality control procedures for the construction stage of the Projects
   iv. Review the safety measures proposed for the construction of the Project;
   v. Supervise works on sample basis and to oversee the materials and workmanship of the Construction Works
   vi. Review the quality assurance and quality control during the Construction Works
   vii. Review the material testing results, mix designs and order special tests of materials and/or completed works and/or suggest removal and substitution of substandard materials and/or works as required;
   viii. Ensure that the construction, procurement and installation and commissioning work is carried out in accordance with the Standards and Specifications and Good Industry Practice;
   ix. Identify delays in completion and recommend to the Concessionaire the remedial measures to expedite the progress;
   x. Review “as-built” drawings for design parameters and performance of the works prepared by the Concessionaire;
   xi. Supervise and monitor various tests as required for the works
   xii. Issue the Completion Certificate in accordance with the provisions of the Concession Agreement;
   xiii. Review and suggest improvements on the O&M Plan
   xiv. Design a Management Information System (MIS) for monitoring of the Project by the Authority
   xv. If required mediate and assist in resolving disputes between both the Parties to the Concession Agreement

2) During the Operation Period
   i. Carry out audits at the Storage Facility to establish quantity and quality parameters
in accordance with the Standards and Specifications and if required, assess the magnitude of damages to be paid by the Concessionaire to the Authority;

ii. Ensure calibration of weighment equipments at periodic intervals as per requirements;

iii. Carry out quarterly and annual audits at the Storage Facility in respect of operational performance parameters as stipulated in the Concession Agreement;

iv. Carry out annual audits to verify that term and conditions of the Concession Agreement are complied with by both the Parties;

v. Carry out all duties specified in the Concession Agreement; and

vi. If required mediate and assist in resolving disputes between both the Parties to the Concession Agreement

3) **Interaction with the Authority**

   The Independent Expert shall

   i. Interact with the Authority on a regular basis;

   ii. Monitor the progress with respect to the implementation schedule and report to the Authority on regular basis

4) **Period of Services**

   The period of services shall be for a period of 3 (three) years from the date of appointment, unless the Concession Agreement is terminated earlier.
Q. Schedule Q - Escrow Agreement

THIS ESCROW AGREEMENT is entered into on this the .......... day of .......... 20....

AMONGST

1. .................................. LIMITED, a company incorporated under the provisions of the Companies Act, 1956/Companies Act 2013 and having its registered office at ................. (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. .................................. name and particulars of Lenders’ Representative and having its registered office at ................. acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3. .................................. name and particulars of the Escrow Bank and having its registered office at ..........(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4. The .................................. (Implementing Agency), established under the______________, represented by its Chairman and having its principal offices at ________________(hereinafter referred to as the “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A) The Authority has entered into a Concession Agreement dated ................. with the Concessionaire (the “Concession Agreement”) for CONSTRUCTION, OPERATION & MAINTENANCE OF STORAGE FACILITY on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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:

1. DEFINITIONS AND INTERPRETATION

a) Definitions

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

- “Agreement” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained therein;

- “Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

- “Cure Period” means the period specified in this Agreement for curing any breach or default...
of any provision of this Agreement by the Concessionaire, and shall commence from the
date on which a notice is delivered by the Authority or the Lenders’ Representative, as the
case may be, to the Concessionaire asking the latter to cure the breach or default specified
in such notice;

- “Escrow Account” means an escrow account established in terms of and under this
Agreement, and shall include the Sub-Accounts;
- “Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;
- “Lenders” Representative” means the person referred to as the Lenders’ Representative in
the foregoing Recitals;
- “Parties” means the parties to this Agreement collectively and “Party” shall mean any of
the Parties to this Agreement individually;
- “Payment Date” means, in relation to any payment specified in Clause 4.1, the date(s)
specified for such payment; and
- “Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the
monies specified in Clause 4.1 would be credited every month and paid out if due, and if not
due in a month then appropriated proportionately in such month and retained in the
respective Sub Accounts and paid out therefrom on the Payment Date(s).

b) Interpretation

i. References to Lenders’ Representative shall, unless repugnant to the context or
meaning thereof, mean references to the Lenders’ Representative, acting for and on
behalf of Senior Lenders.

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

iii. References to Clauses are, unless stated otherwise, references to Clauses of this
Agreement.

iv. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession
Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

a) Escrow Bank to act as trustee

i. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the
Authority, the Lenders’ Representative and the Concessionaire in connection
herewith and authorises the Escrow Bank to exercise such rights, powers, authorities
and discretion as are specifically delegated to the Escrow Bank by the terms hereof
together with all such rights, powers, authorities and discretion as are reasonably
incidental hereto, and the Escrow Bank accepts such appointment pursuant to the
terms hereof.

ii. The Concessionaire hereby declares that all rights, title and interest in and to the
Escrow Account shall be vested in the Escrow Bank and held in trust for the
Authority, the Lenders’ Representative and the Concessionaire, and applied in
accordance with the terms of this Agreement. No person other than the Authority, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

b) Acceptance of Escrow Bank

i. The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders’ Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

c) Establishment and operation of Escrow Account

i. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ………………………. (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

ii. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

iii. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders’ Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

d) Escrow Bank’s fee

i. The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

e) Rights of the parties

i. The rights of the Authority, the Lenders’ Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders’ Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.
f) **Substitution of the Concessionaire**

i. The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. **DEPOSITS INTO ESCROW ACCOUNT**

A. **Deposits by the Concessionaire**

i. The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

   a. all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;

   b. all funds received by the Concessionaire from its share-holders, in any manner or form;

   c. all Fee levied and collected by the Concessionaire;

   d. any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Storage Facility; and

   e. all proceeds received pursuant to any insurance claims.

ii. The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

B. **Deposits by the Authority**

i. The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

   f. Grant and any other monies disbursed by the Authority to the Concessionaire;

   g. all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and

   h. Termination Payments:

   ii. Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any License Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.
C. Deposits by Senior Lenders

i. The Lenders’ Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Concessionaire’s Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

D. Interest on deposits

i. The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

A. Withdrawals during Concession Period

i. At the beginning of every month, or at such shorter intervals as the Lenders’ Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

a. all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;

b. all payments relating to construction of the Storage Facility, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

c. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

d. O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;

e. License Fee due and payable to the Authority;

f. monthly proportionate provision of Debt Service due in an Accounting Year;

g. Premium due and payable to the Authority;
h. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;

i. monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

j. any reserve requirements set forth in the Financing Agreements; and

k. balance, if any, in accordance with the instructions of the Concessionaire.

ii. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders’ Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders’ Representative, if fresh information received during the course of the year makes such modification necessary.

B. Withdrawals upon Termination

i. Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

   a. all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;

   b. 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

   c. outstanding License Fee;

   d. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,} and any claims in connection with or arising out of Termination;

   e. retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 35 of the Concession Agreement;

   f. outstanding Debt Service including the balance of Debt Due;

   g. outstanding Subordinated Debt;

   h. incurred or accrued O&M Expenses;

   i. any other payments required to be made under the Concession Agreement; and

   j. balance, if any, in accordance with the instructions of the Concessionaire:
ii. Provided that the disbursements specified in Sub-clause (j) of this Clause shall be undertaken only after the Vesting Certificate has been issued by the Authority.

C. Application of insufficient funds

i. Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

D. Application of insurance proceeds

i. Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Storage Facility, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

E. Withdrawals during Suspension

i. Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 32 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

A. Segregation of funds

i. Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

B. Notification of balances

i. 7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders’ Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders’ Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

C. Communications and notices

i. In discharge of its duties and obligations hereunder, the Escrow Bank:
a. may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

b. may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

c. shall, within 5 (five) business days after receipt, deliver a copy to the Lenders’ Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

d. shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders’ Representative in connection herewith.

D. No set off

i. The Escrow Bank agrees not to claim or exercise any right of set off, banker’s lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

E. Regulatory approvals

i. The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

A. Escrow Default

i. Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

   a. the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
b. the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

c. the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

ii. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT
A. Duration of the Escrow Agreement

i. This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

B. Substitution of Escrow Bank

i. The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

C. Closure of Escrow Account

i. The Escrow Bank shall, at the request of the Concessionaire and the Lenders’ Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT
A. Supplementary escrow agreement

i. The Lenders’ Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for
detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. **INDEMNITY**
   
   **A. General indemnity**

   i. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders’ Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

   ii. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

   iii. The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

   **B. Notice and contest of claims**

   i. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the
Indemnified Party and shall bear all costs involved in contesting the same. The
Indemnified Party shall provide all cooperation and assistance in contesting any claim
and shall sign all such writings and documents as the Indemnifying Party may
reasonably require.

10. DISPUTE RESOLUTION

A. Dispute resolution

i. Any dispute, difference or claim arising out of or in connection with this Agreement,
which is not resolved amicably, shall be decided finally by reference to arbitration to
a Board of Arbitrators comprising one nominee of each Party to the dispute, and
where the number of such nominees is an even number, the nominees shall elect
another person to such Board. Such arbitration shall be held in accordance with the
Rules of Arbitration of the International Centre for Alternative Dispute Resolution,
New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties,
and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

ii. The Arbitrators shall issue a reasoned award and such award shall be final and
binding on the Parties. The venue of arbitration shall be Delhi and the language of
arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

A. Governing law and jurisdiction

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

B. Waiver of sovereign immunity

i. The Authority unconditionally and irrevocably:

   a. agrees that the execution, delivery and performance by it of this Agreement
      constitute commercial acts done and performed for commercial purpose;

   b. agrees that, should any proceedings be brought against it or its assets,
      property or revenues in any jurisdiction in relation to this Agreement or any
      transaction contemplated by this Agreement, no immunity (whether by
      reason of sovereignty or otherwise) from such proceedings shall be claimed
      by or on behalf of the Authority with respect to its assets;

   c. waives any right of immunity which it or its assets, property or revenues
      now has, may acquire in the future or which may be attributed to it in any
      jurisdiction; and

   d. consents generally in respect of the enforcement of any judgement or
      award against it in any such proceedings to the giving of any relief or the
      issue of any process in any jurisdiction in connection with such proceedings
      (including the making, enforcement or execution against it or in respect of
any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

C. Priority of agreements

i. In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

D. Alteration of terms

i. All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

E. Waiver

i. Waiver by any Party of a default by another Party in the observance and performance of any provision 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 authorised representative of the Party; and

   c. shall not affect the validity or enforceability of this Agreement in any manner.

ii. Neither the failure by any 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 any Party to another Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

F. No third party beneficiaries

i. This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

G. Survival

i. Termination of this Agreement:

   a. shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

   b. except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any
obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

ii. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

H. Severability

i. If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

I. Successors and assigns

i. This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

J. Notices

i. All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

K. Language

i. All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

L. Authorised representatives
i. Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

M. Original Document

i. This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.
R. SCHEDULE R - Letter Of Credit

DATE: ..........  
To: .......... Limited (the “Concessionaire”)

From: (Specify the name and address of the bank issuing the Letter of Credit)§ (the “Bank”)  
The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of 
credit (the “Letter of Credit”) No. .......... in favour of the Concessionaire named above, 
subject to the following terms and conditions:

On the instructions of the Authority, we hereby establish this Letter of Credit in favour 
of the Concessionaire in the maximum aggregate amount of Rs. *** (Rupees ***)$ (the 
“Monthly Payment”) payable once every month upon notice received from the Authority to 
this effect.

The Letter of Credit shall come into force with immediate effect and shall be valid and 
effective upto the 31st (thirty first) day of March, 20-- (indicate the year falling after the 
year in which the Letter of Credit is issued) (the “Expiry Date”), and shall be automatically 
and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of 
expiry, for the period of the financial year that commences immediately after the Expiry 
Date, and shall continue to be so renewed until the end of the Concession Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the 
purposes hereof.

This Letter of Credit provides security to the Concessionaire for the payment obligations of 
the Authority under the Concession Agreement dated .......... entered into between the 
Authority and the Concessionaire (the “Concession Agreement”) for a Storage Facility at 
__________in __________district in the State of ________ on design, build, finance, 
operate and transfer basis.

§ As provided in Article 25 of the Concession Agreement, the bank issuing the Letter of Credit should be 
the bank where at least 40% (forty per cent) of the Authority’s total monthly revenues are deposited.

£ As provided in Clause 25.1.1 of the Concession Agreement, this amount shall be equal to 120 % of the 
Fixed Charge payable by the Authority to the Concessionaire.

Any reference to the Concession Agreement or other agreement is for information only 
and does not in any way incorporate the terms and conditions of such Concession 
Agreement or agreement into the terms and conditions of this Letter of Credit. 
The Concessionaire may draw upon this Letter of Credit by presenting a written demand 
for payment (by way of mail, courier or by hand) to the Bank along with the following 
documents:

i. a copy of the Monthly Invoice (as defined in the Concession Agreement) issued by 
the Concessionaire to the Authority, any amounts whereof have remained unpaid; 

Version: 22/02/2016
ii. a certificate from the Concessionaire, under the hand of an officer not below the rank of a Director of the Concessionaire, to the effect that the Monthly Invoice (as defined in the Concession Agreement) is in accordance with the Concession Agreement and that the amount due has remained unpaid and has not been disputed by the Authority.

The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Concessionaire has a right as between itself and the Authority to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Concessionaire that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Concessionaire is required to do for making effective its demand for payment in accordance with the Letter of Credit.

The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Concessionaire that the Bank elects not to renew this Letter of Credit for any such additional period.

Partial withdrawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

The Letter of Credit shall be automatically replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.

All costs and expenses in connection with this Letter of Credit are to be on account of the Authority.

Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.

This Letter of Credit is governed by the Laws of India.

All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To:...... (Name of Authority representative)
      ..... (Designation)
      ..... (Address, telephone and fax numbers)

To:...... (Name of the Bank representative)
      ..... (Designation)
      ..... (Address, telephone and fax numbers)

To:...... (Name of the Concessionaire representative)
      ..... (Designation)
Signed and sealed this ......... day of ............, 20... at ............ .

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:
  i. The Letter of Credit should contain the name, designation and code number of the
     officer(s) signing the Letter of Credit
  ii. The address, telephone number and other details of the Head Office of the Bank as
      well as of issuing Branch should be mentioned on the covering letter of issuing
      Branch.
S. Schedule S - Criteria for Chartered Accountants

I. Panel of Chartered Accountants
   I. Pursuant to the provisions of Clause 28.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “Panel of Chartered Accountants”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule S.

II. Invitation for empanelment
   1. The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:
      a. the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956/Companies Act 2013, of which at least ten should have been public sector undertakings;
      b. the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
      c. the firm or any of its partners should not have been disqualified or blacklisted by the Comptroller and Auditor General of India or the Authority; and
      d. the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.
   2. Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 100,00,00,000 (Rs. one hundred crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

III. Evaluation and selection
   1. The information furnished by each firm shall be scrutinized and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).
   2. The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 10 (ten) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

IV. Consultation with the Concessionaire
   1. The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

V. Mutually agreed panel
   1. The Authority shall, after considering all relevant factors including the comments, if
any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

2. After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule S.
T. SCHEDULE T - VESTING CERTIFICATE

1. The Chairman, Food Corporation of India (the “Authority”) refers to the Concession Agreement dated ................. (the “Agreement”) entered into between the Authority and ....................... (the “Concessionaire”) for CONSTRUCTION, OPERATION & MAINTENANCE OF STORAGE FACILITY (the “Storage Facility”) on design, build, finance, operate and transfer (“DBFOT”) basis.

2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 33.4 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Storage Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this .................. day of .............., 20......... at Delhi.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

FOOD CORPORATION OF INDIA by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.
U. SCHEDULE U - SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the .................. day of ........... 20....

AMONGST

1. The Food Corporation of India, established under the Food Corporation Act 1964, represented by its Chairman and having its principal offices at 16-20, Barakhamba Lane, New Delhi (hereinafter referred to as the “Authority” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);

2. .................... LIMITED, a company incorporated under the provisions of the Companies Act, 1956/Companies Act 2013 and having its registered office at ..................., (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

3. .........................name and particulars of Lenders’ Representative and having its registered office at ....................... acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

a) The Authority has entered into a Concession Agreement dated ...................... with the Concessionaire (the “Concession Agreement”) for CONSTRUCTION, OPERATION & MAINTENANCE OF STORAGE FACILITY (the “Storage Facility”) on design, build, finance, operate and transfer (“DBFOT”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

b) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

c) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

d) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession 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:
1 DEFINITIONS AND INTERPRETATION

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956/Companies Act 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

“Parties” means the parties to this Agreement collectively and “Party” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.

1.3 ASSIGNMENT

1.3.1 Assignment of rights and title

1.3.1.1 The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

1.4 SUBSTITUTION OF THE CONCESSIONAIRE

1.4.1 Rights of substitution

1.4.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’
Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

1.4.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Storage Facility as Concessionaire either individually or collectively).

1.4.2 Substitution upon occurrence of Financial Default

1.4.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “Notice of Financial Default”) along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

1.4.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

1.4.2.3 At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Storage Facility in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders’ Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders’ Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

1.4.3 Substitution upon occurrence of Concessionaire Default

1.4.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders’ Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders’ Representative to make a representation, stating the intention to substitute the Concessionaire by a
Nominated Company.

1.4.3.2 In the event that the Lenders’ Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders’ Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders’ Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

1.4.4 Procedure for substitution

1.4.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders’ Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Storage Facility including the Concession to the Nominated Company upon such Nominated Company’s assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

1.4.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders’ Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

1.4.4.3 Upon selection of a Nominated Company, the Lenders’ Representative shall request the Authority to:
   a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Storage Facility in accordance with the provisions of the Concession Agreement;
   b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
   c) enter into a Substitution Agreement with the Lenders’ Representative and the Nominated Company on the same terms as are contained in this Agreement.

1.4.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders’ Representative,
give a reasoned order after hearing the Lenders’ Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders’ Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

1.4.5 Selection to be binding

1.4.5.1 The decision of the Lenders’ Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders’ Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire’s shares. It is hereby acknowledged by the Parties that the rights of the Lenders’ Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders’ Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders’ Representative.

1.5 PROJECT AGREEMENT

1.5.1 Substitution of Nominated Company in Project Agreement

1.5.1.1 The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company’s assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

1.6 TERMINATION OF CONCESSION AGREEMENT

1.6.1 Termination upon occurrence of Financial Default

1.6.1.1 At any time after issue of a Notice of Financial Default, the Lenders’ Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

1.6.2 Termination when no Nominated Company is selected

1.6.2.1 In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders’ Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in
Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

1.6.3 **Realisation of Debt Due**

1.6.3.1 The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders’ Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders’ Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

1.7 **DURATION OF THE AGREEMENT**

1.7.1 **Duration of the Agreement**

1.7.1.1 This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

a) Termination of the Agreement; or

b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

1.8 **INDEMNITY**

1.8.1 **General indemnity**

1.8.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders’ Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

1.8.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

1.8.1.3 The Lenders’ Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders’ Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders’ Representative, its officers, servants and agents.

1.8.2 **Notice and contest of claims**
1.8.2.1 In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

1.9 DISPUTE RESOLUTION
1.9.1 Dispute resolution
1.9.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.
1.9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

MISCELLANEOUS PROVISIONS
1.10 Governing law and jurisdiction
1.10.1 This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

1.11 Waiver of sovereign immunity
1.11.1 The Authority unconditionally and irrevocably:
   a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
   b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
   c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
   d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the
issue of any process in any jurisdiction in connection with such proceedings
(including the making, enforcement or execution against it or in respect of
any assets, property or revenues whatsoever irrespective of their use or
intended use of any order or judgement that may be made or given in
connection therewith).

1.12 Priority of agreements
1.12.1 In the event of any conflict between the Concession Agreement and this
Agreement, the provisions contained in the Concession Agreement shall prevail
over this Agreement.

1.13 Alteration of terms
1.13.1 All additions, amendments, modifications and variations to this Agreement shall
be effectual and binding only if in writing and signed by the duly authorised
representatives of the Parties.

1.14 Waiver
1.14.1 Waiver by any Party of a default by another Party in the observance and
performance of any provision 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
authorised representative of the Party; and
c) shall not affect the validity or enforceability of this Agreement in any
manner.

1.14.2 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
another Party shall be treated or deemed as waiver of such breach or
acceptance of any variation or the relinquishment of any such right hereunder

1.15 No third party beneficiaries
1.15.1 This Agreement is solely for the benefit of the Parties and no other person or
entity shall have any rights hereunder.

1.16 Survival
1.16.1 Termination of this Agreement:
a) shall not relieve the Parties of any obligations hereunder which expressly or by
implication survive termination hereof; and
b) except as otherwise provided in any provision of this Agreement expressly limiting
the liability of either Party, shall not relieve either Party of any obligations or
liabilities for loss or damage to the other Party arising out of or caused by acts or
omissions of such Party prior to the effectiveness of such termination or arising out
of such termination.

1.16.2 All obligations surviving the cancellation, expiration or termination of this
Agreement shall only survive for a period of 3 (three) years following the date of
such termination or expiry of this Agreement.

1.17 Severability
1.17.1 If for any reason whatever any provision of this Agreement is or becomes
invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

1.18 Successors and assigns

1.18.1 This Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

1.19 Notices

1.19.1 All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

1.20 Language

1.20.1 All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

1.21 Authorised representatives

1.21.1 Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

1.22 Original Document

1.22.1 This Agreement may be executed in three 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.
THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ........ day of 20...... hereunto affixed in the presence of .........., Director, who has signed these presents in token thereof and ........., Company Secretary / Authorised Officer who has countersigned the same in token thereof 5:

SIGNED, SEALED AND DELIVERED

For and on behalf of FOOD CORPORATION OF INDIA by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders’ Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. 2.

____________________________

5 To be affixed in accordance with the articles of association of the Concessionaire.
V. Schedule V - Procedural Guidelines on movement of Food Grains

The Authority has to follow the following operational guidelines for movement of Food Grains to and from the Storage Facility:

a. arrange, at its cost and expense, for delivery of the Food Grains for storage to the Storage Facility;

b. arrange, at its cost and expense, for dispatch of Food Grains from the Storage Facility;

c. arrange, Bags at its cost and expense, for bagging operation in the Storage Facility;

d. provide at-least 48 hours’ notice to the Concessionaire, in writing, for receipt into the Storage Facility;

e. provide at-least 72 hours’ notice, in writing, to the Concessionaire before placing indent for dispatch of Food Grain from the Storage Facility;

f. arrange for transportation of empty Bags, as and when required, to and from the Storage Facility;

g. designate representatives authorised to issue instruction to the Concessionaire relating to operations including acceptance and dispatch of Food Grain;

h. shift Food Grains consignment not accepted by the Concessionaire as not meeting the Grain Acceptance Specifications within 48 hours from the Storage Facility;
W. Schedule W - Statutory Permits and Compliances

The silo operator should comply with all applicable statutory permits and compliances. The applicable permits and compliances are listed below. The list of permits and compliance is indicative and not comprehensive. The operator should do proper due diligence on the requirement and compliances. The following permits will be required by the silo operator:

a) Change of Land Use (CLU) if the site is under notified area
b) Permission of panchayat for the land use change if the site is under non notified area and intimation to the State Town and Country Planning
c) Warehousing license
d) Inspectorate of Factories for site drawings approval and testing of the pressure vessels
e) Inspectorate of Labour prior to commencing the installation and post commissioning
f) Inspectorate of Electrical for electrical installation and DG sets safety
g) State Electricity Board for power connections
h) State Environment & Pollution Board clearance
i) Weights & measures for stamping the weighing scales
j) Related State Government revenue departments for commercial dealings
k) Clearance from local airport authorities if there is air traffic around the site for height clearance and from the Air Force if the air base is there
l) Local fire department for fire safety plans