CONCESSION AGREEMENT

BETWEEN

Food Corporation of India

(THE AUTHORITY)

AND

............................................................LTD.

(THE CONCESSIONAIRE)

FOR

CONSTRUCTION, OPERATION & MAINTENANCE OF SILO COMPLEX UNDER DESIGN, BUILD, FINANCE, OWN & OPERATE (DBFOO) MODEL

DATED..............................................
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CONCESSION AGREEMENT

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

BY AND BETWEEN:

FOOD CORPORATION. OF INDIA, a body corporate having perpetual succession formed under the Food Corporations Act, 1964 having its Headquarters at ________ acting through ______________ (hereinafter "Authority", which expression shall, unless the context otherwise requires include its administrators, successors and assigns) of One Part;

AND

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

The Authority and the Concessionaire shall collectively be known as Parties and individually as Party.

WHEREAS:

A) The Government of India (GOI) intends to minimise post-harvest losses, preserve the quality of grains and thereby increasing the quantity and quality of food grains through creation of modern infrastructure for the bulk handling and storage of food grains through private sector participation.

B) In pursuance of GOI’s policy, the Authority has been nominated as nodal agency by Government of India for creation of modern storage facilities for Food Grains through construction of Silos Complexes through Public Private Partnership (PPP) at different locations across the country.

.......................... 

1 The serially numbered footnotes are for guidance and should be omitted in the signed document  
2 The provisions in curly parenthesis and blank spaces shall be retained in the concession agreement and shall be suitably modified / filled after completion of the bid process to reflect the particulars related to the selected bidder 
All project specific provisions in this document have been enclosed in square parenthesis and may be modified, as necessary, at the time of finalising the bid document.
C) The Project envisages the establishment and operation at selected location a number of facilities comprising large, integrated storage Silo Complex as per Standards and Specifications attached as per Schedule-C.

D) The Authority has decided that the Silo Complex shall be developed, implemented and operated by the private sector concessionaire on DBFOO basis in accordance with the terms hereof including without limitation at Standards and Specifications to provide Services to the Authority during the Concession Period in consideration of payment of Storage and Handling Charges by the Authority.

E) The Authority had accordingly invited RFP (Request for Proposal) for selection of developer for Construction, Operation and Maintenance of Silo Complex on the technical and commercial terms prescribed by the authority from the prospective bidders for undertaking the project.

After evaluation of the bids received, the Authority had accepted the bid of the second party herein the selected bidder and issued its Letter of Award No.……….. dated ……. (hereinafter called the “LOA”), as per Schedule N, to the selected bidder requiring, inter alia, the execution of this Concession Agreement for the Project at …………… (location).

F) The selected {bidder / consortium} has since promoted and incorporated the Concessionaire as a limited 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 and exercise the rights of the selected bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project (copy of letter attached as Schedule O). The Concessionaire has further represented to the effect that it has been promoted by the selected bidder for the purposes hereof.

G) Vide its letter dated…………, the Authority has agreed to the said request of the selected bidder / Concessionaire (copy of letter attached as Schedule P), and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOO basis, on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows.
Part I : Preliminary
ARTICLE 1

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“Acceptance Quantity” means the total quantity of Food Grain nominated by the Authority, taking into consideration the unused Capacity at the Silo Complex, as the quantity to be received by the Concessionaire for storage at the Silo Complex as per Clause 11.2.1;

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

“Account Bank” shall mean the scheduled commercial bank where the Concessionaire shall maintain the Designated Bank Account;

“Accounting Year” means the financial year commencing from 1st April of any calendar year and ending on 31st March of the following calendar year;

“Acquisition Cost” means with respect to the Food Grain, the acquisition cost of the Food Grain as declared by the Government of India / Authority for the year in consideration after taking into account the pooled cost of grain and procurement incidentals;

“Actual Availability” shall have the meaning ascribed to it in Clause 11.9.3

“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 Commencement 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;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.38% (zero point three eight 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 Terminal 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. The total Equity shall be considered at maximum of 30% of Total Project Cost for the purpose of calculation of Adjusted Equity;

“Agreement” or “Concession Agreement” means (a) this Agreement including its Recitals, the Schedules hereto and any amendments thereto; and (b) the LOA issued by the Authority dated………...and any amendments thereto;

“Applicable Laws” means all laws, promulgated or brought into force and effect by Government Of India (GOI) or state Government of [___ 3] in which the Project is coming up including regulations, rules, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement;

“Applicable Permits” means all clearance, permits, authorizations, consents, no-objections, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project during the subsistence of this Agreement;

3 Name of state government where the Project is located
“Associate” means in relation to selected bidder {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 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;

“Availability” Availability of the Storage Capacity shall mean, the capacity available for storage of Foodgrains 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 part of the Storage Capacity which is being utilised by the Authority for storage of Foodgrains shall be included in the computation of Availability;

“Authority Default” shall have the meaning set forth in Clause 20.2.1;

“Authority Indemnified Person” shall have the meaning set forth in Clause 24.1.1

“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 fulfil any obligations of the Authority under this Agreement;

“Bank” means any scheduled bank incorporated in India;

“Bid” means the documents in their entirety comprised in the bid submitted by the {selected bidder/consortium} in response to the Request for Proposal in accordance with the provisions thereof;

“Bid Security” means the security provided by the {selected bidder / consortium} to the Authority along with the Bid for the sum of Rs............lakhs (Rupees............. Only) in accordance with the Request for Proposal and which is to remain in force until substituted by the Performance Security;

“Capacity” means the sum of the Food Grain storage capacity of each of the Long Term Storage Silos, as specified in Schedule B, and installed as part of the Project Facilities and as certified by the IE&A;

“COD” means the commercial operations date of the Project and shall be the date on which the Independent Engineer & Auditor has issued the Completion Certificate certifying Project Completion in accordance with this Agreement;

“CPI (IW)” means the Consumer Price Index for Industrial Workers as published by the Ministry of Statistics and Programme Implementation, GOI and shall include any index
which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Service Charges in accordance with the provisions of Article 28, the revision due on April 1 of any year shall be computed with reference to CPI (IW) as on January 31 of that year;

“Change in Law” means the occurrence of any of the following after the due date of the Bid:

(a) the enactment of any new Indian law;
(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 as defined herein that have a direct effect on the Project; or
(f) imposition of new Taxes on the revenues of the Concessionaire; or
(g) provision of a new subsidy scheme from Government of India or inclusion of project as part of an existing subsidy scheme of Government of India.

“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 {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline

- below 100% (hundred per cent) thereof during Construction Period and till the 3rd (third) anniversary of COD and
- below 26% (twenty six percent) after the 3rd (third) anniversary of COD;

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, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning ascribed thereto in Clause 10.10;

“Change of Scope Notice” shall have the meaning ascribed thereto in Clause 10.10.2

“Company” means the Company acting as the Concessionaire under this Agreement;
“Commencement Date” as defined in Clause 10.1.2;

“Completion Certificate” means the Certificate issued by the Independent Engineer & Auditor pursuant to Clause 10.7;

“Concession” shall have the meaning ascribed thereto in Article 3;

“Concession period” means the period starting on the Commencement Date and ending on the Terminal Date or Termination Date, whichever is earlier;

“Concessionaire” shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

“Concessionaire Default” shall have the meaning set forth in Clause 20.1.1;

[“Consortium” means the consortium consisting of (i)_________________, (ii), _____________, (iii) __________________ and (iv)___________________ formed / acting pursuant to the Joint Bidding Agreement dated..........................entered into by them, for the purpose of submitting their proposal for undertaking the Project and in the event of their being accepted by the Authority to implement the Project through the Special Purpose Vehicle formed and incorporated by them in India;]

“Construction Period” means the period beginning from the Commencement Date and ending on the COD;

“Construction Plan” shall have the meaning ascribed to it in Clause 10.2.2

“Construction Works or Works” means all works and things necessary to complete the Project thereof in accordance with this Agreement;

“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 agreement or a material contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

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

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
(c) not in any way be extended by any period of Suspension under this Agreement; provided that if cure of any breach by the Concessionaire required any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer & Auditor hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer & Auditor to accord their approval;

“Damages” shall have the meaning ascribed thereto in Clause 1.2.1(q); 

“Designated Bank Account” means such account of the Concessionaire in Account Bank identified for the purpose of receipt of all the dues from the Authority;

“Debt Due” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Termination Date:

(a) the principal amount of debt provided by the Lenders under the Financing Documents for part-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 Termination Date;

(b) all accrued interest, financing fees and charges payable under the Financing Documents on, or in respect of, the debt referred to in sub-clause (a) above till the Termination Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Termination Date, (ii) any penal interest or charges payable under the Financing Documents to the Lenders and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default;

“Dispatch Notice” shall have the meaning ascribed to in Clause 11.6.1;

“Dispatch Point” shall have the meaning ascribed to it in Clause 11.6.13;

“Dispatch Report” shall have the meaning ascribed to it in Clause 11.6.12;

“Dispute” shall have the meaning set forth in Clause 25.1;

“Dispute Resolution Mechanism” means the procedure for Dispute resolution set forth in Article 25;

“Document” or “Documentation” means documentation printed or in written form or in electronic storage devices like tapes, discs, drawings, computer programmes, written reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;
“Drawings” means all the drawings, calculations and documents pertaining to the Project as per the set Standards and Specifications to be submitted by the Concessionaire as per the Agreement and shall include “as built” drawings of the Project;

“DBFOO” means ‘Design, Build, Finance, Own and Operate basis of Public Private Partnership;

“Economic Cost” means with respect to the Food Grain, the economic cost of the Food Grain as declared by the Government of India / Authority for the year in consideration;

“EPC Contract” means contract or contracts entered into by the Concessionaire with one or more contractors for the design, engineering, procurement of materials and equipment, construction and completion of the Project in accordance with the provisions of this Agreement;

“Emergency” means a condition or situation that is likely to endanger the security of the individuals on or about the Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets and the Food Grain stock stored in the Silo Complex;

“Encumbrances” means, in relation to Project Assets, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, attachment, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project;

“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 shall for the purposes of this Agreement including 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;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Documents;

“Financing Documents” means the documents executed by the Concessionaire in respect of financial assistance to be provided by the 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 Project and includes amendments or modifications;
“Financial Year” means the year starting from 1 April of year and ending on 31st March of the succeeding year;

“Fixed Storage Charge” means the Capacity-linked charge payable by the Authority to the Concessionaire under the Agreement as per mechanism specified in Clause 15.1;

“Force Majeure” or “Force Majeure Event” shall mean an act, event, condition or occurrence specified in Article 18;

“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% (one per cent) of the total Storage Capacity during a continuous period of 24 (twenty four) hours;

“Food Grain” means wheat;

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

“GOI” means the Government of India;

“Grain Acceptance Specifications” shall mean the Food Grain specifications included under Schedule E.

“Good Industry Practice” means those 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 similar 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;

“Government Agency / Instrumentality” means GOI, State Governments or any ministry, department, commission, board, instrumentality or agency, under the control of GOI or state Governments having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

“Harvest Season” means a continuous period of 60 (sixty) 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.
“**Handling Charge**” means that component of Storage and Handling Charge payable by the Authority to the Concessionaire under the Agreement towards bag related unloading and loading activities as per mechanism specified in Clause 15.1;

“**Incentive**” means a payment due to the Concessionaire, in accordance with the provisions of this Agreement, for any delivery, performance or outcome, as the case may be, which is better than the standards specified in respect thereof;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 17, and includes all insurances required to be taken out by the Concessionaire under Clause 17.1 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;

“**Independent Engineer & Auditor**” or “**IE&A**” shall have the meaning ascribed thereto in Article 13;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 24;

“**Indirect Political Event**” shall have the meaning ascribed thereto in Clause 18.3;

“**Letter of Award**” means the letter of award referred in Recital (G);

“**Lead Member**” shall have the meaning set forth in Recital (E);

“**Letter of Commencement**” shall have the letter to be issued as per Clause 10.1.2;

“**Lender(s)**” means financial institutions, banks, funds or trusts who provide or refinance the debt component of the cost of the Project (including guarantees, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to / trustees for the holders of debentures / bonds or other security issued by the Concessionaire to meet the cost of the Project;

“**Long Term Storage Silo**” means the each of the flat bottom sheet metal silos built as per Standards and Specifications with Food Grain storage Capacity as specified in Schedule B and used for longer period storage of Food Grain in the Silo Complex;

“**MT**” shall mean metric tonne;

“**Major Overhaul**” means the complete repair, restoration and renovation of a Long Term Storage Silo after removal of Food Grain therefrom;
“Maintenance Manual” shall have the meaning ascribed to it in Clause 12.3.1;

“Maintenance Programme” shall have the meaning ascribed to it in Clause12.3.1;

“Maintenance Requirements” shall have the meaning set forth in Clause 12.1

“Material Adverse Effect” means a major adverse effect of any act or event on the
ability of either Party to perform any of its obligation 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;

“Material Breach” means a breach by either Party of any of its obligation in this
Agreement which shall be deemed to have a Material Adverse Effect on the other Party;

“Mid-Term Construction Milestone” shall have the meaning ascribed thereto in Clause
10.2.4;

“Non Availability” means any partial or total lack of Availability;

“Non Political Event” shall have the meaning ascribed thereto in Clause 18.2;

“Normative Availability” means the level of Availability as stipulated in Performance
Standards under Schedule F;

“Operation & Maintenance or O&M” means the operation and maintenance of the
Project during the Operation Period as per Standards and Specifications and provision
of Services and includes but is not limited to functions of maintenance and
performance of other services incidental thereto in terms of this Agreement;

“O&M Manual” means the manual on standard operating procedures on Operation &
Maintenance to be submitted by the Concessionaire as per Clause 10.7.7

“Operation Period” means the period commencing from the date of issue of
Completion Certificate and ending at the end of 360th months from that date unless
terminated earlier or modified subject to Articles 18 and 23;

“Parties” means the parties to this Agreement collectively and “Party” shall mean any
of the parties to this Agreement individually;

“Performance Standards” means the standards for performance during the Operation
Period as stipulated in Schedule F which should be adhered to by the Concessionaire;

“Performance Security” shall have the meaning ascribed in the Article 9;
“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 Silo Complex as per procedure described in Article 11;

“Pre-Dispatch Test” means the test of quality and quantity of Food Grain to be carried out by the Concessionaire prior to dispatch the Food Grain from the Silo Complex as per procedure described in Article 11;

“Price Index” shall comprise:

(a) 70% (seventy per cent) of WPI; and

(b) 30% (thirty per cent) of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine

“Political Event” shall have the meaning ascribed thereto in Clause 18.4;

“Procurement Price” means the highest procurement price per quintal, paid or payable by the Authority for procurement of Food Grains during the period of one year immediately preceding the date on which the Procurement Price is being determined for the purposes of this Agreement

“Project” means the development, design, construction, financing, procurement, engineering, operation and maintenance of Silo Complex in accordance with the provision of this Agreement and shall include all incidental and auxiliary works and services relating to or in respect of the Project;

“Project Agreements” means this Agreement, the Engineering, Procurement and Construction (EPC) Contract, if any, the O&M Contract, if any, and any other agreements or contracts entered into by the Concessionaire with the Authority or others relating to the Project during the subsistence of this Agreement;

“Project Assets” means all physical and other assets relating to and forming part of the Project including but not limited to (i) rights over the Site in the form of license, lease, ownership, right of way or otherwise, (ii) tangible assets such as civil works including the foundation, silos including Long Term Storage Silo, conveyor system, drainage works, rail siding, lighting facilities, mechanical handling equipment, weighing equipment, electrical installations, DG sets, telephone and other communication systems and equipment for the Project, (iii) Project Facilities situated on the Site including office (iv) the rights of the Concessionaire under the Project Agreements, (v)
financial assets, such as security deposits for electricity supply, telephone etc. (vi) insurance proceeds and (vii) Applicable Permits and authorizations relating to or in respect of the Project;

“Project Completion” shall mean completion of Construction Works related to the Project as per the Standards and Specification, receipt of other required approvals including from the Indian Railway along with ascertainment of the completion of Construction Work by the IE&A;

“Project Facilities” means all the amenities and facilities situated on the Site, including as per capacity requirements specified in Schedule-B;

“Project Location” means the location as specified in the Letter of Award referred to in the Recital G;

“Reliability” shall have the meaning set forth in Clause 12.17;

“RFP” shall have the meaning ascribed to it in the Recital ‘E’;

“RFP” shall have the meaning ascribed to it in the Recital ‘F’;

“Rs.” Or “Rupees” Or “INR” means the lawful currency of the Republic of India;

“Safety Requirements” shall have the meaning set forth in Clause 12.12;

“SBI Base Rate” means the base rate per annum as fixed from time to time by the State Bank of India, and in the absence of such rate, the average of the base rates fixed by the Bank of India and the Bank of Baroda and failing that any other arrangement that substitutes such base rate as mutually agreed between the Parties;

“Scheduled Commercial Operation Date” or “SCOD” shall mean the 720th day from the Commencement Date subject to Articles 18 and 23;

“Scheduled Maintenance” shall have the meaning set forth in Clause 12.4.4:

“Services” means those services to be performed by the Concessionaire under this Agreement as listed down in Schedule-D;

“Silo Complex” means and includes the modern Food Grain storage facility to be constructed under the Project and in terms of this Agreement and is inclusive of the
sheet metal silos for long term storage of the Food Grain, loading & unloading system, mechanised handling systems, process tower, laboratory facilities for quality testing, weigh bridge, fumigation system, bagging system, rail siding, rake bulk loading / unloading system, [storage warehouse], truck parking facility, electrical system, process control systems, administrative office and all assets as further elaborated in Schedule-B required to provide Service to the Authority under this Agreement;

“Silo Complex Configuration” means the selected configuration option for the Project, out of the three options, as specified in the RFP for the Project and stated in Schedule B;

“Site” means the parcel of land owned or leased by the Concessionaire for the Project;

“Standards and Specifications” means the standards and specifications, as applicable to Project Configuration, relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule-C and read together with Schedules B, D, E and F and any modifications thereof, or additions as included in the design and engineering for the Project submitted by the Concessionaire to and expressly approved by the Authority;

“Statutory Auditors” means firm of Chartered Accountants duly licensed to practice in India acting as independent statutory auditors of the concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment or replacement thereof, for the time being in force and duly appointed by the Concessionaire;

“Storage and Handling Charges” means combination of three separate charges, being Fixed Storage Charges, Variable Charges and Handling Charges, payable by the Authority to the Concessionaire for the Services provided under the Agreement as per mechanism mentioned in Clause 15.1;

“TPH” shall mean tons per hour when used to describe capacities and output of Project Facilities;

“Taxes” means any Indian statutory taxes and duties charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project, on the construction, operation and maintenance thereof and on the Project Assets, but excluding any taxes and duties on corporate income and any interest, penalties and other sums in relation thereto imposed on any account whatsoever;

“Termination” means the termination of this Agreement and the Concession hereunder prior to the Terminal Date;

“Terminal Date” means the last day of the Operation Period or the date on which this Agreement expires by efflux of time;
“Termination Date” means the date on which this Agreement and the Concession hereunder is terminated by a Termination Notice;

“Termination Notice” means the communication issued in accordance with this Agreement by any one Party to the Party terminating this Agreement;

“Termination Payment” means the amounts payable by the Authority to the Concessionaire under this Agreement upon the Termination of this Agreement as per Clauses 18.9 and 21.3;

“Tests” mean the tests to be carried out by the Concessionaire to determine the compliance of the Construction Work and Project Facilities with the Standards and Specifications;

“Total Project Cost” means the lowest of the following:

i. a sum of {Rs _______ Crores};

ii. actual capital cost of the Project upon completion of the Project as certified by the Statutory Auditors; or

iii. total Project cost as set forth in Financing Documents;

“Variable Charge” shall have the meaning as set forth in clause 15.1.5.

“Wholesale Price Index” or “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 latest monthly WPI published no later than 30 (thirty) days prior to the date of consideration hereunder.

Any expression not defined above shall have the meaning as defined or described under the appropriate provisions of the Agreement;

1.2. Interpretation

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

a) any reference to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision

Estimate Project Cost as indicated in the RFP
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 Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;

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 words importing singular shall include plural and vice versa;

e) 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;

f) terms and words beginning with capital letters and defined in the Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;

g) 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;

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

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

j) any reference to day shall mean a reference to a calendar day;
k) any reference to month shall mean a reference to a calendar month as per Gregorian calendar;

l) the Schedules 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;

m) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

n) references to Recitals, Articles, Clauses, Sub-clauses, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Clauses, Sub-clauses, paragraphs, and Schedules of or to this Agreement;

o) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer & Auditor shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Independent Engineer & Auditor, as the case may be, in this behalf and not otherwise;

p) 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;

q) the damages payable by either Party to the other 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”);

r) wherever the expression ‘Authority’ occurs, it includes, for the limited purpose of use of storage facility of the Silo Complex, its nominees being its licencees or agents (Nominee);and
s) “lakh” means a hundred thousand (100,000) and ‘crore’ means ten million (10,000,000).

1.3. Measurements and arithmetic conventions

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

1.4. Priority of contract documents and errors/discrepancies

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 the Agreement, 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
   b) all other agreement 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. 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 the 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 the Schedules and Annexes, the Schedules shall prevail;

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


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

e) between any value written in numerals and that in words, the latter shall prevail.
Part II : The Concession
ARTICLE 2

2. SCOPE OF PROJECT

2.1. Scope of the Project

The Project shall be executed on the Site at .........\(^5\), which is described in Schedule-A of this Agreement. The scope of the Project shall mean and include, during the Concession Period:

a) Design, construction and finance the Silo Complex for long term storage of Food Grains together with provision of Project Facilities as specified in Schedule-B in conformity with the Standards and Specifications;

b) Operation and Maintenance of the Silo Complex; and

c) Performance and fulfilment of all other obligations in accordance with this Agreement.

\(^5\) Location as specified in the Letter of Award
ARTICLE 3

3. GRANT OF CONCESSION

3.1. The Concession

3.1.1. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Limits, the Authority hereby grants to the Concessionaire the Concession set forth herein, including the exclusive right, license and authority during the subsistence of this Agreement to implement the Project at the Site mentioned at Schedule A in [.............] for the Concession Period on Design, Build, Finance, Own, Operate (DBFOO) basis and seek Storage and Handling Charges for the Services under the provisions of this Agreement and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject and in accordance with the terms and conditions set forth herein.

3.1.2. Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle or oblige the Concessionaire to undertake the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

a) Procure land, as per specifications laid down in the RFP and the Concession Agreement, on registered ownership or under registered lease of not less than 35 (thirty five) years from Commencement Date, for the construction of Silo Complex, including rail siding;

b) Design, finance and build Silo Complex at the Project Location as per laid down Standards and Specifications and as per capacities stipulated in Schedule B;

c) Manage, Operate and Maintain the Silo Complex as per laid down Standards and Specifications, Performance Standards, Grain Acceptance Specifications and provide Services on exclusive basis to the Authority or its nominee;

6 Location as per LOA to be mentioned
d) Receive Food Grains, in [bulk and/or bag], procured by and directed through the Authority or its assignees or its nominees {or farmers} as per stipulations laid down in the Agreement;

e) Store and preserve the Food Grains in a scientific manner and in accordance with stipulations laid down in the Agreement;

f) Release stored Food Grains on instruction from the Authority in [bagged and / or bulk form];

g) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under the Concession including, weighing, {de-bagging}, handling and conveying within the Silo Complex, cleaning, quality testing, storage, bagging, stacking, loading onto {railway wagons and/or trucks} and such all other costs incidental to the operation of the Silo Complex and towards the maintenance of the Silo Complex as per the Standards and Specifications;

h) Perform and fulfil all of the Concessionaire’s obligations under and accordance with this Agreement; and

i) Demand, collect and appropriate Storage and Handling Charges from the Authority as per the terms of this Agreement.

3.1.3. The Concession Period shall be a sum total of Construction Period and Operation Period and subject to any extension under Articles 18 and 23, shall not exceed a period of 384 (three hundred and eighty four) months from the Commencement Date.
ARTICLE 4

4. CONDITIONS PRECEDENT

4.1. Conditions Precedent (CP)

4.1.1. Save and except as expressly provided in the Agreement in Articles 4, 9, 14, 18, 25 and 26 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 Conditions Precedent required to be satisfied by the Concessionaire prior to the Commencement Date shall be deemed to have been fulfilled when the Concessionaire shall have within a period of 150 (one hundred and fifty) days from the date of this Agreement:

a) provided Performance Security, as per terms of Article 9 of this Agreement, to the Authority;

b) achieved Financial Close as per Clause 14.1 and provide a copy of Financing Documents to the Authority;

c) delivered to the Authority [from the Consortium Members, their respective] confirmation, in original, of the correctness of [its /their] representations and warranties set forth in 7.1.1 of this Agreement;

d) 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;

e) arranged Site/Land parcel for the Silo Complex including for rail siding & approach road and submitted all the required documents to the satisfaction of the Authority regarding its ownership / lease and usage rights on the same and in compliance with specifications as per the Standards and Specifications on size, accessibility and other factors;

f) obtained in-principle approval from Indian Railways on feasibility of rail siding and other relevant approvals with regard to the rail siding;
g) procured all Applicable Permits under the Applicable Laws such that the construction can commence; and

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion and subject to such conditions as it may deem fit, extend the timeline for satisfying any of the Conditions Precedent, set forth in this Clause 4.1.2 provided that such extension is subject to a maximum of 30 (thirty) days, if requested by the selected bidder, to be reckoned from the date of issue of letter/email from the Authority; provided further that in respect of Clause 4.1.2 (i) where the Authority may, at its discretion, extend for a further 90 (ninety) days extension in case of delay for reasons beyond the control of Concessionaire. For avoidance of doubt, the extension in respect of Clause 4.1.2 (i) shall be up to maximum of 120 (one hundred and twenty) days beyond the original stipulated period to be reckoned from the date of issue of letter/email from the Authority.

4.1.3. The Authority shall within 150 (one hundred and fifty) days from the date of this Agreement appoint a reputed firm, as the Independent Engineer & Auditor as per Article 13; provided that the Concessionaire has provided the Performance Security as per Article 9. The Conditions Precedent required to be satisfied by the Authority prior to the Commencement Date shall be deemed to have been fulfilled when the Authority shall have appointed the Independent Engineer & Auditor as per Article 13.

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.

4.1.6. In the event the Condition Precedent as per Clause 4.1.2 (e) is not fulfilled within the stipulated time, as extended, the bid security shall be forfeited.

4.2. **Damages for delay by the Concessionaire**
4.2.1. If the Conditions Precedent set forth in Clause 4.1.2 have not been satisfied by the Concessionaire within the stipulated period, including extension if granted by the Authority, and (i) the delay has not occurred as a result of failure by the Authority to fulfil its obligation under Clause 4.1.3 or other breach of this Agreement by the Authority or (ii) due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% of Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% of Performance Security. In the event the total Damages under this Clause reach the maximum level stipulated herein, it will constitute a Concessionaire Default and the provisions of Clause 21.1 shall apply.

4.3. Damages for delay by the Authority

4.3.1. If the Conditions Precedent set forth in Clause 4.1.3 have not been satisfied by the Authority within the stipulated period, and (i) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or (ii) due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% of Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of Performance Security. In the event the total Damages under this Clause 4.3.1 reaches the maximum level stipulated herein, the Concessionaire may terminate the Agreement in accordance with the provisions of Clause 21.2 and the Authority shall return the Performance Security on such Termination of the Agreement.
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 land, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Silo Complex as per the laid down Standards and Specification 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. The Concessionaire shall provide the facility of Silo Complex 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, together as the only charges payable as per terms of this Agreement for the Services.

5.1.4. 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.

5.1.5. 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, including under Clause 3.1.2:

   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 and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

   b) Be solely liable for compliance of all requirements related to the Project as per the Standards and Specifications;
c) Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for material, methods, processes and systems used or incorporated in the Project;

d) Perform and fulfil its obligations under the Financing Documents;

e) Support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;

f) Meet and comply with the specifications of Indian Railways with respect to rail siding;

g) Maintain proper records of stock and movements and of the books of accounts relating to expenditure towards the construction, operation and maintenance of Silo Complex, Food Grain received, stored and released, receipts from the Authority and other receipts and provide to the Authority information as stipulated herein;

h) Purchase and maintain insurance cover as stipulated in Article 17 at its own cost and expense, including towards the premium and all incidental costs;

i) Be responsible for safe storage of empty bags in Silo Complex and loading/unloading of empty bags on trucks arranged by the Authority for transportation of the empty bags to/from silo complex as and when required;

j) Pay all Taxes and Duties, levies charges, fees, impositions and the like including Stamp Duty payable under the Indian Stamp Act 1899 and The Registration Act 1908 and the rules and regulations made thereunder, property tax, local levies as applicable on the Project under the relevant Central, State and local laws and rules;

k) Reimburse the Authority one half of the cost towards professional fee and related charges of the IE&A as per terms of the Agreement. Where the Concessionaire fails to reimburse the said fees and charges within the stipulated time in terms of this Agreement, it shall be deemed that the Concessionaire has authorised the Authority hence forth to deduct
by way of adjustment of the same from the Storage and Handling Charges payable by the Authority throughout the Concession Period;

l) Comply, at its own cost, with all statutory requirements related to personnel contractors or sub-contractors at all times during the Concession Period;

m) Employ such qualified and experienced personnel at the Project as is required to carry out the Services and take care of Operation and Maintenance of Silo Complex;

n) Allow representatives of the Authority, its agents and the IE&A reasonable access to the Project Site / Silo Complex for monitoring, inspection and supervision and to carry out their respective duties in respect of the Project;

o) Make reasonable efforts to maintain harmony and good industrial relations;

p) Not transfer shares of the Concessionaire unless such transfers are in accordance with the terms of this Agreement including provisions of Clause 5.3;

q) Ensure and procure that its Contractors possess appropriate and adequate technical and financial capability and skills and comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire’s obligation under this Agreement;

r) Neither assign, transfer or sublet or create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or part of silo asset nor transfer, lease or part possession thereof, save and except as expressly permitted under the terms herein.

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. Upon demand from the Authority at any time during the Concession Period to furnish the drafts and/or copies of Project Agreements any amendments or replacements thereto, 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 Documents 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.

5.3. 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:

   a) 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

   b) 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 situate 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 situate 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

5.4.1. 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 under Applicable Laws, if any required, and the obligation to apply for and obtain the same shall and will always be that 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

5.5.1. 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

5.6.1. 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 shall not be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged in this Agreement.

5.7. Liability for Personnel

5.7.1. 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 Authority is compelled to make any payments/contributions or discharge any responsibility/liability of the Concessionaire, 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 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.

5.7.2. 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.

5.7.3. 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.

5.7.4. 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.

5.7.5. The Concessionaire shall be liable for making contributions in accordance with the provisions of the EPF & MP Act and the scheme framed there-under as also in compliance with the Employees State Insurance Act in respect of the labour employed by him.

5.7.6. The Concessionaire shall pay not less than minimum wages to the workers engaged by them as notified by the appropriate Authority from time to time during the currency of concession agreement.
5.7.7. 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 Govt./Central Govt. from time to time pertaining to the contract, including all labour laws and the laws as applicable.

5.7.8. If as a result of the Concessionaire’s failure to provide any of the statutory benefits under any labour welfare enactments, the liability falls on the Authority, such amounts incurred by the Authority will be recovered from the amount payable to the Concessionaire by the Authority under this Agreement without prejudice to the right of the Authority such other legal recourse against the Concessionaire including termination of the contract.

5.8. Others

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

5.8.2. The Concessionaire shall permit the Authority to prominently display its name and logo at the entrance of the Silo Complex and such other locations as the Authority may deem fit. Cost of such display boards shall be borne by the Authority.
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 undertakes, 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 request from the Concessionaire, provide reasonable support to the Concessionaire in procuring Applicable Permits. However, non-rendering of any support by the Authority shall not absolve the Concessionaire of its obligation to obtain all Applicable Permits;

b) Ensure timely release of Storage and Handling Charges to the Concessionaire on performance of the obligation as provided herein;

c) Support and cooperate with the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;

d) Appoint a suitably qualified agency as Independent Engineer & Auditor (IE&A) at reasonable compensation within the specified period as defined in Clause 13.1.1. The compensation to the IE&A shall be paid by the Authority; however, the same shall be reimbursed to the extent of one-half by the Concessionaire;

e) [Co-ordinate with State Government and other Government agencies for declaration of Silo Complex as mandi yard under the applicable regulation in all areas where wheat is being procured by the Authority];

f) Provide the Concessionaire 500 metric ton (MT) of Food Grain for trial runs of the silo prior to issue of Completion Certificate on terms specified in Clause 10.6.3;
g) During the Operation Period,

i) arrange, at its cost and expense, for delivery of the Food Grain for storage to the Silo Complex;

ii) arrange, at its cost and expense, for dispatch of Food Grain from the Silo Complex;

iii) arrange, at its cost and expense, for bags for bagging operation in the Silo Complex;

iv) provide at least 48 hours notice, in writing, for receipt of Food Grain at the Silo Complex to the Concessionaire;

v) provide at least 72 hours notice, in writing, to the Concessionaire before placing indent for dispatch of Food Grain from the Silo Complex by rail or by road;

vi) arrange for transportation of empty bags, as and when required, to and from the Silo Complex;

vii) designate representatives authorised to issue instruction to the Concessionaire relating to operations including acceptance and dispatch of Food Grain;

viii) Shift Food Grain consignment not accepted by the Concessionaire as not meeting the Grain Acceptance Specifications within 48 hours from the Silo Complex; and

ix) Allow the Concessionaire to use the rail siding for other commercial purposes as per the terms specified in Clause 16.1.1 of this Agreement.
ARTICLE 7

7. REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Concessionaire

7.1.1. 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 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 / Consortium Members}, together with {its/their} Associates,

i. hold not less than 100% (hundred percent) of its issued and paid up Equity as on the date of this Agreement and for a period till 3 (three) years from COD; and that no member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the

{Part in curly brackets to be deleted if not applicable}
Request for Proposal shall hold less than 26% (twenty six per cent) of such Equity for the period till 3 (three) years from COD and

ii. that the {selected bidder / Consortium Members}, together with {its/their} Associates shall continue to hold not less than 26% (twenty six percent) during the balance Operation Period after 3 (three) years from COD;

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) 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;

o) 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.

p) all information provided by the Concessionaire being {selected bidder/ Consortium Members} in response to the 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

7.2.1. 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; and

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

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.
ARTICLE 8

8. DISCLAIMER

8.1. Disclaimer

8.1.1. The Concessiionaire acknowledges that prior to the execution of this Agreement, the Concessiionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Standards and Specifications, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, accessibility of Site, feasibility of rail siding to the Silo Complex, issues related to land acquisition 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 Concessiionaire 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 Concessiionaire, {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

Project Implementation 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 120 (one hundred and twenty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Scheduled Bank incorporated in India for a sum equivalent to Rs. ________\(^8\) crore (Rupees ________________) during Construction Period and Rs ________\(^9\) crore (Rupees ________________) during Operation Period in the form set forth in Schedule K (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. The bank guarantee towards Performance Security provided prior to the Letter of Commencement shall have a validity of not less than 36 (thirty six) months. On receipt of the Performance Security as stipulated herein, the Authority shall forthwith return the Bid Security to the Concessionaire.

9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event the Performance Security is not provided by the Concessionaire within a period of 120 (one hundred and twenty) 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.

9.1.3. The Concessionaire shall maintain the Performance Security throughout the Concession Period. The Concessionaire shall 45 (forty five) days prior to the

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\(^8\)5% of the Total Project Cost. 
\(^9\)5% of the Total Project Cost
expiry of validity of bank guarantee provided towards the Performance Security, replace the bank guarantee with a fresh bank guarantee in similar form or extend the validity period of the bank guarantee for a period not less than 24 (twenty four) months. In the event the Concessionaire fails to extend the validity or provide fresh Performance Security as per the requirement herein, the same shall constitute a Concessionaire Default and the Authority may at its discretion invoke the bank guarantee provided towards Performance Security.

9.2. Appropriation of Performance Security

9.2.1. Upon the occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder 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 of the Performance Security, the Authority shall grant a period of 30 (thirty) days to the Concessionaire to provide either a fresh Performance Security or replenish, through another guarantee, the part amount so encashed failing which Authority shall, notwithstanding anything contained in this Agreement relating to Termination, be entitled to Terminate this Agreement in accordance with Article 21.

9.3. Release of Performance Security

9.3.1. The Performance Security shall remain in force and effect from the Commencement Date till 180 days after the Terminal Date. In the event of Termination of the Agreement due to Concessionaire Default, the Authority shall forfeit the Performance Security. In the event of Termination upon Authority Default or Termination under Force Majeure, subject to deduction of dues payable to the Authority including Damages and compensation, the Performance Security shall be returned within a period of 30 days from the Termination Date.
ARTICLE 10

10.PROJECT IMPLEMENTATION

10.1. Obligations prior to commencement of construction

10.1.1. Prior to the commencement of Construction Works, the Concessionaire shall undertake and comply with all Conditions Precedent as stipulated under Clause 4.1.2. On satisfaction of all the Conditions Precedent as stipulated under Clause 4.1.2, the Concessionaire shall inform in writing the IE&A and the Authority of its compliance along with all the supporting documents. The IE&A shall, within a period of 15 (fifteen) days of receipt of such notice from the Concessionaire, undertake the review and satisfy itself on the compliance of all the Conditions Precedent as stipulated under Clause 4.1.2, and advise in writing to the Authority of its satisfaction with respect to the compliance by the Concessionaire. The Authority may at its discretion take such steps as required to verify the compliance of the Conditions Precedent by the Concessionaire. The Authority shall ensure that such steps for verification are completed within 15 (fifteen) working days from the receipt of IE&A’s letter under this Clause 10.1.1.

10.1.2. On satisfaction of the requirements as stipulated in the above Clause 10.1.1, the Authority shall issue the Letter of Commencement of construction activity. The date of the issue of Letter of Commencement shall be the Commencement Date (“Commencement Date”).

10.2. Construction of Project

10.2.1. On receipt of the Letter of Commencement from the Authority and on and after the Commencement Date, the Concessionaire shall commence Construction Work for the Silo Complex as per the Construction Plan and in conformity with the Standards and Specifications and the Applicable Permits procured.

10.2.2. Within [30 (thirty) days] of receipt of Letter of Commencement, the Concessionaire shall submit the Designs and Drawings along with a construction plan specifying its construction methodology, procurement, engineering and construction plan, construction time schedule and quality assurance procedures (together “Construction Plan”) complying with the Standards and Specifications, capacities as per Schedule B and all Applicable
Permits procured by it for carrying out the Construction Works related to the Silo Complex to the IE&A and the Authority. The IE&A and Authority shall complete their initial reviews of Construction Plan within [15 (fifteen) days] of the submission of the same by the Concessionaire. In the event the IE&A and/or the Authority seeks clarifications and/or suggests modification, if any, to the Construction Plan, the Concessionaire shall satisfy the IE&A and/or Authority on the issues raised, including making suitable modification in its Construction Plan as required.

10.2.3. The Concessionaire shall complete the Construction Works including the rail siding within the period between the Commencement Date and the Scheduled Commercial Operation Date.

10.2.4. The Concessionaire shall ensure that, by the end of the 12th (twelfth) month from the Commencement Date, that mid-term construction milestone (“Mid-Term Construction Milestone”) is achieved. The Mid-term Construction Milestone shall imply the achievement of all of the following:

(i) at least 33 % (thirty percent) by value of Total Project Cost has been expended;

(ii) masonry work relating to (a) base of {Long Term Storage Silos, pre-shipping silo / receiving silo} upto aeration floor level, (b) pit and foundation of process tower, (c) foundation of {pre-storage silo}, (d) dump pit construction are completed;

(iii) 90% of boundary wall has been completed; and

(iv) major components for Long Term Storage Silos, {pre-storage silo, pre-shipping silo, receiving silo} are procured and available at Site.

The components mentioned herein shall be as specified in Schedule B. The Concessionaire shall, within 15 (fifteen) days from the end of 12th (twelfth) month from Commencement Date, submit a report to IE&A and Authority confirming the actual status of compliance on the Mid-Term Construction Milestone. The IE&A shall, within 15(fifteen) days of receipt of Concessionaire’s report in this regard, carry out a physical review of the status of compliance on Mid-term Construction Milestone and submit a report to the Authority and Concessionaire.
10.2.5. The design, procurement and construction of the Silo Complex undertaken by the Concessionaire shall be in complete compliance with the Standards and Specifications and Schedule B. The Concessionaire shall be solely liable for compliance of all requirements related to the Silo Complex as per the Standards and Specifications.

10.2.6. The Concessionaire shall undertake all necessary measures for the project implementation, including appointment of personnel, contractors, procurement of equipment and material and procurement of permits and arrangement of finances in timely manner for carrying out the Construction Work of the Silo Complex.

10.2.7. The design, installation and construction of the Silo Complex shall be in compliance with the applicable regulations and Good Industry Practice, including but not limited to regulations applicable to seismic zones, wind velocity, environment, fire and safety. The Concessionaire shall be solely liable for compliance of such requirements. The Concessionaire shall seek permission and approvals, as required, from respective Government Instrumentalities on these aspects.

10.2.8. The Concessionaire shall construct the rail siding as per and in conformation with the specifications of Indian Railways or any other relevant authority. The Concessionaire shall be solely responsible for compliance of such requirements. On completion of the construction of rail siding, the Concessionaire shall procure approval from the Indian Railways authority for commencement of operation on the rail siding.

10.2.9. The Concessionaire shall take all safety measures required under Applicable Laws and as expected as per Good Industry Practice. The Concessionaire shall be solely responsible for maintaining safety at the Project site.

10.2.10. The Authority and IE&A shall have the right, but not the obligation, to review the submissions related to the Construction Plan and other aspects related to the Construction Work of the Silo Complex and provide comments, if any. The Authority and the IE&A shall provide their detailed observation and comments, if any, within 15 (fifteen) working days of submission by the Concessionaire so as not to adversely impact the project implementation schedule. Such submissions shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
10.3. Appointment of Contractors

10.3.1. In order to fulfil the objectives of this Agreement, the Concessionaire may appoint any person as Contractor, at its own cost and risk, for any works relating to the Construction Work of the Project; provided further such person(s) are capable of discharging the obligations under this Agreement for and on behalf of the Concessionaire.

10.3.2. 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.

10.3.3. Prior to the appointment of a Contractor for any substantial work, the Concessionaire shall inform the IE&A of the appointment and the qualification of such contractors. The IE&A 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 IE&A, if any.

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

10.4. Quarterly progress reports

10.4.1. During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer & Auditor a quarterly report on the progress of the Construction Works and shall promptly give such other relevant information as may be required by the IE&A.

10.5. Inspection

10.5.1. During the Construction Period, the Independent Engineer & Auditor (IE&A) shall inspect the Project at least once a quarter 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, Standards and Specifications and capacities as per Schedules B. It shall send a copy each 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 IE&A shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

10.6. Tests

10.6.1. For determining that the Construction Works conform to the Standards and Specifications and capacities as per Schedule B, the Independent Engineer & Auditor (IE&A) 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 IE&A 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 IE&A and furnish the results thereof to the IE&A.

10.6.2. In the event that results of any tests conducted under this Clause 10.6.2 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer & Auditor in this behalf. The IE&A 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 Standards and Specifications and capacities as per Schedule B, and the procedure set forth in this Clause 10.6.2 shall be repeated until such Construction Works conform to stipulated requirements. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 10.6.2 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 Engineer & Auditor forthwith.

10.6.3. Upon request of Concessionaire, the Authority shall provide to the Concessionaire 500 (five hundred) metric tons (MT) of Food Grains for carrying out tests of the Silo Complex. The Food Grain so provided shall be returned to the Authority after the trial runs; provided the Authority may instruct the Concessionaire to retain the stock provided under this Clause 10.6.3 for storage. The cost towards transportation of Food Grain to and from the Silo Complex shall be borne by the Authority, provided that if such costs are to be incurred
more than once, the cost towards transportation after the first time shall be borne by the Concessionaire. The Concessionaire shall take all due care of the Food Grain as per Standards and Specifications. No Storage and Handling Charge shall be payable on Food Grain provided under this Clause 10.6.3 till the Completion Certificate is issued. In the event of loss of the Food Grain, the Concessionaire shall make good the loss.

10.7. Completion Certificate

10.7.1. At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the IE&A, with a copy to the Authority for its information, of its intent to subject the Silo Complex to Tests. The date and time of each of the Tests shall be determined by the IE&A in consultation with the Concessionaire, and notified to the Authority, who may designate its representative to witness the Tests.

10.7.2. The IE&A shall observe, monitor and review the results of the Tests to determine compliance of the Project with Standards and Specifications and if it is reasonably anticipated or determined by the IE&A during the course of any Test that the performance of the Project or any part thereof does not meet the Standards and Specifications or not in conformity with the Applicable Permits granted, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies.

10.7.3. Upon completion of each Test, the Concessionaire shall provide to the IE&A and the Authority copies of all Test data including detailed Test results.

10.7.4. For the Test relating to the rail siding, the Concessionaire shall co-ordinate with the Indian Railways authorities who may carry out the Tests as per their specifications and procedures. The Concessionaire shall invite the IE&A and the Authority for the Test for the rail siding. Upon completion of the Test as required, the Concessionaire shall seek approval of the Indian Railways authorities to commence operations on the rail siding. Upon receipt of the approval of the Indian Railways to commence operation in respect of rail siding, the Concessionaire shall submit a certified copy of the same with the Authority and the IE&A.

10.7.5. The Concessionaire shall be responsible for obtaining approval from other Government Instrumentalities. The Concessionaire shall inform the IE&A of
the requirements of approvals for commencement from other agencies and invite the IE&A to attend the tests required for such approvals.

10.7.6. On obtaining the required approvals from the Government Instrumentalities as required, including from Indian Railway as per Clause 10.7.4, the Concessionaire shall forward to the IE&A certified copy of the approvals so received. Upon receipt of information under this Clause 10.7.6, the IE&A shall satisfy itself that all the required approvals are in place. In the event the IE&A is of the view that any required approval is not in place, it shall, in writing, inform the Concessionaire, with a copy to the Authority, the pending requirements. The IE&A shall extend all reasonable support to the Concessionaire in getting the required approvals from various Government Instrumentalities.

10.7.7. At least 30 days prior to the SCOD, or if Project Completion is likely to be achieved earlier then such likely dates, the Concessionaire shall submit to the IE&A (i) draft version of ‘as-built’ drawings along with required specification details of all the equipments, (ii) a manual detailing the standard operating procedure for operations of the Silo Complex (“Operation Manual”) prepared in line with Standards and Specifications, (iii) copies of insurance covers obtained and other relevant documents related to the O&M plan. The IE&A shall review the same and provide its comments in writing to the Concessionaire on variances with the Standards and Specifications and other improvements or modifications required in its opinion. The Concessionaire shall incorporate the comments and observations from Independent Engineer & Auditor, or if not incorporated, communicate in writing the reasons as to why changes or modifications are not required in its opinion. Such submissions shall be completed before issuance of Completion Certificate.

10.7.8. Subject to Clause 10.7.9, upon Project Completion, the IE&A shall forthwith recommend to the Authority for issue of Completion Certificate. Within 14 days of receipt of such recommendation from the IE&A, the Authority shall carry out its review of the Construction Work, if required in its discretion, and instruct the IE&A to issue, within 3 days of receipt of instruction, the Completion Certificate for the Project to the Concessionaire.

10.7.9. In the event the Project Completion is achieved before the SCOD, the IE&A shall seek clarification from the Authority on its intent to use the Silo Complex prior to SCOD and only on confirmation from Authority in writing and as per
process mentioned herein, issue the Completion Certificate. For clarification, the Completion Certificate shall not be issued before SCOD without specific approval of the Authority.

10.8. Entry into Commercial Service

10.8.1. The construction and development of the Project shall be deemed to be complete when the Completion Certificate is issued under the provisions of Clause 10.7.8 or 10.7.9, and accordingly the Commercial Operation Date (the “COD”) of the Project shall be the date on which such Completion Certificate is issued. The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to receive the Storage and Handling Charge from the Authority in accordance with the provisions of Article 15.

10.9. Damages due to delay in Project Completion

10.9.1. Subject to any of the provisions of this Agreement providing excuse from performance, as the case may be, of any of the obligations of the Concessionaire under this Agreement, the Concessionaire shall pay to the Authority Damages at the (i) rate of 0.125% (zero point one two five percent) of the Performance Security for each day of delay beyond 60 (sixty) days from end of 12th (twelfth) month from Commencement Date in achievement of Mid-Term Construction Milestone, subject to a maximum of 20% (twenty percent) of Performance Security, and (ii) at the rate of 0.25% (zero point two five percent) of the Performance Security for each day of delay in Project Completion beyond the SCOD, subject to a maximum of 40% (forty percent) of Performance Security. The Parties agree that the Damages as provided is a genuine pre-estimate of the damages the Authority is likely to suffer and is not by way of a penalty. In case the delay exceeds 180 (one hundred and eighty) days, for reasons other than Force Majeure, the Authority shall have the right to terminate this Agreement and the consequences of Termination as laid down in Article 21 shall apply. The Concessionaire shall deposit the Damages so levied by the Authority within the time specified. The Authority may, at its discretion recover any amounts with respect to damages, if not paid within the time, from the Performance Security. In the event the Concessionaire achieves Project Completion by SCOD, the Damages recovered by the Authority for failure in achievement of Mid-Term Construction Milestone shall be returned, without interest, to the Concessionaire.
10.10. **Change of Scope**

10.10.1. 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 (“Change of Scope”). Provided no such Change of Scope shall be made in the Construction Period, if in the reasonable judgment of the Parties, it is likely to lead to delay in Project Completion or during the Operation Period, if in the reasonable judgement of the Parties, it is likely to have Material Adverse Effect on the provision of Services by the Concessionaire. The costs for carrying out required additional work as contemplated in Change of Scope shall be borne by the Authority.

10.10.2. In the event the Authority determines 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”).

10.10.3. Upon receipt of a Change of Scope Notice, the Concessionaire shall, provide to the Authority, the following:

   a.) Its estimation of the adverse impact, if any, which the Change of Scope is likely to have on the Construction Work or the Operation, as applicable; and

   b.) The cost to be incurred by the Concessionaire for and in respect of such Change of Scope

10.10.4. Upon receipt of the information as per the Clause 10.10.3, the Authority shall, if it decides to proceed with the Change of Scope, convey its agreement or otherwise of the assessment of the Concessionaire. If the Concessionaire does not notify any adverse impact of a Change of Scope notified under the Change of Scope Notice within 30 (thirty) Days of the receipt thereof and/or the Authority does not disagree with the cost assessment of the Concessionaire, the Authority shall issue an order requiring the Concessionaire to proceed with the implementation of such Change of Scope. If an adverse impact is notified by the Concessionaire and / or the Authority disagrees with the cost assessment, the Parties shall in good faith modify the Change of Scope envisaged so as to remove the adverse impact/agree to the cost
implication for carrying out the Change of Scope within a period of 30 (thirty) Days of notification of the adverse impact/cost. In the event that the Parties are unable to mutually agree to a Change of Scope and / or the cost of implementing the same, they may seek intervention of the IE&A to resolve the differences and upon the final mutual agreement of the desired Change of Scope and its cost implication and its reimbursement including cost of suspension of Services, if any, the Parties may enter into a supplementary agreement in respect of the Change of Scope.
ARTICLE 11

11. OPERATION OF SILO COMPLEX

11.1. Provision of Services

11.1.1. The Concessionaire hereby agrees to provide the Services exclusively to the Authority or its assignees, against the payment of the Storage and Handling Charges by the Authority to the Concessionaire in accordance with the Article 15. The Authority agrees to accept from the Concessionaire the Services during the Operation Period and make timely payments of the Storage and Handling Charges to the Concessionaire in accordance with the Article 15 for the Services offered under this Agreement. The provision of exclusivity in this clause shall not restrict the Concessionaire in respect of additional commercial activity permissible under Article 16.

11.1.2. Subject to the provisions of this Agreement, the Concessionaire shall provide the Services under this Agreement from the Commercial Operation Date till the Terminal Date or Termination Date, whichever is earlier.

11.1.3. The Concessionaire shall provide the Services as per stipulations under this Agreement and carry out all the activities which are necessary to provide the Services and perform the Concessionaire's obligations with all due diligence, efficiency and economy, in accordance with the Performance Standards, Good Industry Practice, generally accepted professional techniques and practices used in operations of similar nature and in conformity with best international standards, and shall observe sound management, technical and engineering practices, employ appropriate advanced technology and safe environmentally acceptable and effective equipment, machinery, materials and methods.

11.1.4. The Concessionaire shall, at its costs and risk, employ adequately trained personnel and deploy and maintain an adequate information technology (IT) system at the Silo Complex for carrying out Operation and Maintenance of the Silo Complex, monitoring of stock of Food Grain, provision of Services, maintaining records, and managing other activities related to its obligation under this Agreement.
11.2.  Determination of available storage capacity

11.2.1. The Concessionaire shall from time to time, but not less than once a quarter, inform the Authority and the IE&A in writing of the unused Food Grain storage Capacity available in each of the Long Term Storage Silo in the Silo Complex. The Concessionaire shall especially inform the Authority and the IE&A when the unused Food Grain storage Capacity reaches the level of 15% (fifteen) of total Capacity. The IE&A may carry out inspection of the Silo Complex to verify such submissions made by the Concessionaire. Based on the submissions made by the Concessionaire, as verified by the IE&A, the Authority shall determine the Acceptance Quantity for the Silo Complex and shall, sufficiently in advance and not less than 48 (forty eight) hours in advance, instruct the Concessionaire to receive Food Grain from the Authority or its nominees {or from the farmers directly}.

11.2.2. The Concessionaire shall be obligated to receive and store the Acceptance Quantity in the Silo Complex as instructed by the Authority subject to provisions of this Agreement.

11.3.  Receipt of Food Grain in Silo Complex

11.3.1. The Authority shall be responsible for, directly or indirectly, procuring and transporting Food Grain, subject to the Acceptance Quantity, to the Acceptance Point within the Silo Complex. 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}.

11.3.2. Subject to the Acceptance Quantity determined under process determined at Clause 11.2, the Concessionaire shall receive and accept all consignments of Food Grain received at the gates of Silo Complex subject to the consignment of Food Grain meeting the Grain Acceptance Specification, as per Schedule E, 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, animal-pulled cart or rail rake, where one vehicle is distinguishable from another vehicle.
11.3.3. Each consignment of the Food Grain received at the Silo Complex 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 Silo Complex 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 IE&A.

11.3.4. 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 E. 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.

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

1. [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;]

2. [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;]

3. [In case of Food Grain received in bulk form by rail, a minimum of [6(six)] samples per wagon;]

4. [In case of Food Grain received in bagged form by rail, a minimum of [10%] of the bags from across the consignment to be probed for samples.]
11.3.6. The quantity test for the Pre-Acceptance Test shall be carried out as per the weighment test specified in clause 11.7. The same shall be duly recorded in the Acceptance Report.

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

11.3.8. 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 Silos shall be the sole responsibility of the Concessionaire and shall be carried by the Concessionaire at its own cost.

11.3.9. 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.

11.3.10. The Concessionaire shall maintain real-time information of the number of consignments of Food Grain entering the gates of Silo Complex, 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 Acceptance Specifications, average quality of Food Grain accepted and other relevant details. The Concessionaire shall provide consolidated information to the Authority at least [once every 7(seven) days during Harvest Season and] [within 2 (two) days of receipt of consignment by rail]. The Concessionaire shall maintain proper consignment-wise record and consolidated reports for inspection on future dates.

11.3.11. The Concessionaire shall be overall responsible for managing all the activities within the Silo Complex related to receipt and acceptance of Food Grain. The Concessionaire shall ensure that the operation activities are carried out as per the Standards and Specifications and meet the Performance Standards.
11.3.12. [The Authority shall make payment of all dues to a farmer in case the Food Grain is procured from the farmer directly at the Silo Complex. The Concessionaire shall not be required to make any payment to any person bringing the Food Grain to the Silo Complex for handing over to the Concessionaire for storage.]

11.4. Pre-storage treatment of Food Grain

11.4.1. 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 B. The costs and expenses associated with the Pre-Storage Treatment shall be borne solely by the Concessionaire.

11.4.2. 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 above the Grain Acceptance Specifications. In such cases where the cleaning activities leads to release of dust and residue, the same shall be weighed and examined by the Authority’s Representative within [15 (fifteen)] days of request from the Concessionaire prior to its disposal.

11.5. Storage of Food Grain

11.5.1. After the Pre-Storage Treatment, the Concessionaire shall move the Food Grain to one of the Long Term Storage Silos, as specified in Schedule B, for long term storage. The Concessionaire shall prepare a loading plan which will determine the consignment-wise loading of the Long Term Silo. Such loading plan should be shared by the Concessionaire within 24 hours from the receipt of notice under Clause 11.2.1. 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 [48 (forty eight) hours] of receipt of request from the Concessionaire. The Authority may also inform the same while informing the Concessionaire of the Acceptance Quantity.
11.5.2. The Concessionaire shall carry out preservation activities, including aeration, fumigation, sanitation activities as required and in accordance with the Standards and Specifications.

11.5.3. The Concessionaire shall carry out regular physical inspections of the Food Grain stored in the Silo Complex, at intervals of not more than [15 (fifteen)] days, to ascertain the quality of Food Grain stored in the Silo Complex. 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 Project Facilities 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 Silo Complex.

11.5.4. 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 of Food Grain in the Long Term Storage Silo 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 E.

11.5.5. 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 Silo Complex at point in time, 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.

11.5.6. The Concessionaire shall be responsible for storing the Food Grain in compliance with Standards and Specification and within 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.
11.6. Dispatch of Food Grains

11.6.1. In the event the Authority wishes to move Food Grain out of the Silo Complex, 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, whether the movement is to be by rail or by road] and the associated timelines. The Authority shall take into consideration the Project Facilities and the related capacities and the Maintenance Programme prior to issuing any Dispatch Notice.

11.6.2. 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 from the Silo Complex without the Dispatch Notice from the Authority.

11.6.3. Upon issuance of the Dispatch Notice, the Authority shall ensure that sufficient transportation arrangement, in terms of sufficient number of trucks, rail wagons suitable for carrying bulk load, rail wagons suitable for carrying bagged load, as required, is made available at the Silo Complex 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.

11.6.4. [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 B, within the Silo Complex at no cost to the Concessionaire. The Concessionaire shall be responsible for unloading of bags brought in vehicles arranged by the Authority.]

11.6.5. [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 B, 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.]
11.6.6. [In the event the Food Grain is to be dispatched in bulk form by rail, the Concessionaire shall move the required quantity as per Dispatch Notice to the Bulk Rake Loading System, as specified in Schedule B, and load Food Grain onto the bulk rail wagons.]

11.6.7. [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 B, for bulk loading of trucks.]

11.6.8. Prior to dispatch of Food Grain from the Silo Complex, the Concessionaire shall carry out quality inspection on the Food Grain being dispatched as part of 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 metric ton (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 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 E.

11.6.9. 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 11.6.8, 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.

11.6.10. Prior to dispatch of Food Grain from the Silo Complex, 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 11.7.

11.6.11. The Authority shall nominate its representative at the Silo Complex during the time of dispatch to witness the quality and quantity test under the Pre-Dispatch Test.
11.6.12. 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 Silo Complex. 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 IE&A.

11.6.13. 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, being road vehicle or rail wagons 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 Silo Complex. The loading point of transportation vehicle shall be considered as the Dispatch Point (the “Dispatch Point”) for the purpose of this Agreement.

11.7. Weighment of Food Grain

11.7.1. [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, as measured at the weighbridge, 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.]

11.7.2. [In case of Food Grain consignment received by rail, the determination of the quantity of the consignment for the Pre-Acceptance Test shall be done at the online weigher specified in Schedule B. The weighment process shall be done in the presence of Authority’s Representative. The Concessionaire shall keep records of the weighments carried out at the online weighers. The weighment at the online weigher and the weighment receipt, as reported by the Authority / rail receipt, of the consignment received. The weighment at the online weigher and the weighment receipt, as reported by the Authority / rail receipt, of the consignment received should be reconciled and any difference between the]
same needs to the same needs to be recorded and reported by the Concessionaire to the Authority and IE&A.

11.7.3. 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 B or such similar provision. The Concessionaire shall keep records of the weighments carried at the online weighers.

11.8. **Stock Audit & Inspections**

11.8.1. The Independent Engineer & Auditor (IE&A) shall carry out an audit of the Food Grain stock (“Stock Audit”) in the Silo Complex in terms of the quality and quantity once months. Based on its Stock Audit, the IE&A shall submit a Stock Audit Report to the Authority covering the aspects discussed in this clause and other related issues as it may deem important for the purpose.

11.8.2. For the purpose determining the quantity for Stock Audit, the IE&A shall review the Pre-Acceptance Reports, the readings recorded at the weighbridge and online weighers, records of the information technology (IT) system, physical readings and Dispatch Report. The IE&A shall ensure that all the records are verified. The IE&A shall also carry out a physical audit of the stock in every once in {3 (three)} years.

11.8.3. For the purpose of determining the quality for Stock Audit, the IE&A shall carry out quality tests on random samples drawn from the Silo Complex. The IE&A shall also verify the records including Pre-Acceptance Reports, Dispatch Reports, Concessionaire’s inspection reports and such other reports as prepared by the Concessionaire. The IE&A shall also inspect the laboratory, monitoring equipments, IT systems, fumigation systems and other facilities used in monitoring and preservation of Food Grains to determine if they are in good working conditions.

11.8.4. The IE&A shall ensure that the weighment equipments are properly calibrated as per statutory requirements, and that recalibration is carried out atleast [once in a financial year].

11.8.5. The Authority may, by itself or through its authorised representatives or nominee inspect the Food Grain stock at any time after intimating the Concessionaire of such inspection. The Authority maybe accompanied by a
representative of the Concessionaire during such inspections. However, absence of such representative shall not hinder the Authority from independently conducting such inspection. The Authority may require the Concessionaire to carry out such tests to determine the quality and quantity of the Food Grain stock.

11.8.6. The Concessionaire shall provide the IE&A and Authority all reasonable assistance in carrying out the Stock Audit and inspections and shall provide, free of cost, all information and copies of records as required by IE&A and the Authority for carrying for the purpose of Stock Audit and inspections.

11.9. Damages payable in shortfall in compliance during Operation Period

11.9.1. In the event in providing the Services, the Concessionaire fails to comply with the performance parameters set out in Schedule-F, as certified by the IE&A, the Concessionaire shall be liable to pay Damages to the Authority at the rates/on the basis of calculations set forth in Schedule J.

11.9.2. In the event of Actual Availability is below the levels of Normative Availability, as stipulated in Schedule-F, the same shall be considered as shortfall and the Concessionaire shall be liable to pay Damages to the Authority as stipulated in Schedule J, provided that such shortfall is not due to Force Majeure Event or due to suspension under Clause 19.1.2. The shortfall shall be measured as Normative Availability less Actual Availability where the Actual Availability shall be calculated as per methodology prescribed in Clause 11.9.3. Unless otherwise notified by the Concessionaire, or ascertained by the IE&A upon inspection or verification of records, the Availability in a time period shall be deemed to be 100%. It is agreed that if upon inspection or verification by IE&A, it is ascertained by IE&A that the Services were not available as required in any past period, the adjustment for the same shall be done in a near future period, at past rates for Fixed Storage Charge.

11.9.3. The Actual Availability (“Actual Availability”) shall mean the availability as derived in the following manner and expressed in percentage terms:

\[
\text{Actual Availability in a period} = \left[1 - \frac{\text{period of Non-Availability}}{\text{Total period}}\right] \times 100
\]
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 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.

11.9.4. 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 lead 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 per the norm prescribed in the Standards and Specifications. The shortfall in quantity shall be recorded for every consignment dispatched. The Damages of such shortfall, based on the records for every consignment, shall be assessed by the IE&A at physical audit of the stock and the Damages so calculated, at rates prescribed in Schedule J, shall be payable by the Concessionaire to the Authority.

11.10. Property right on the Food Grains stored in the Silo Complex

11.10.1. The Food Grains received and stored at the Silo Complex shall at all times be the sole and absolute property of the Authority or its nominees and the Concessionaire shall at no time create any lien or encumbrance on the same.

11.10.2. The Concessionaire shall hold in trust for the Authority and be a bailee for consideration of the Food Grains or any other materials, that may be given, handed over or entrusted to or otherwise come into its custody or possession on account of Authority and shall, excepting the case of defined Acceptable Process Losses, be liable to make good any loss caused to the Authority as a result of pilferage, theft, robbery, damage or destruction of the Food Grains while the Food Grains are in the Concessionaire's custody.

11.10.3. It is expressly agreed that right over the Food Grain shall always remain with the Authority or its assignees. The Concessionaire shall conduct its business in such a manner so as to give a clear indication to the third parties that the property of Food Grains belongs to the Authority or its assignees. The
Concessionaire shall render to the Authority proper account for all such property.

11.10.4. The Concessionaire shall not sell, transfer, assign, lease, alienate, mortgage, charge, hypothecate, pledge or otherwise create any encumbrances on or in any way charge by way of security or in any other manner all or any of the Food Grains or allow any of the Food Grains to be subjected to any attachment, lien, or subject to transfer, possessions or custody by an officer of court like a Receiver or of any revenue authority in any proceedings to which it might become a party or which might otherwise be brought against it by a third party.

11.11. Appointment of Contractor

11.11.1. In order to carry out the operations of the Silo Complex, the Concessionaire may appoint any person(s) as Contractor(s), at its own cost and risk, for any works related to operations of the Silo Complex; provide that such person(s) are capable for carrying out the required work for and on behalf of the Concessionaire.

11.11.2. 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.

11.11.3. Prior to the appointment of a Contractor for any substantial work, the Concessionaire shall inform the IE&A of the appointment and the qualification of such contractors. The IE&A 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 IE&A, if any.

11.11.4. The appointment of Contractors shall not in any way relieve the Concessionaire of its obligations as set out in this Agreement and the IE&A’s consent to the appointment of such Contractors shall not impose any obligation or liability whatsoever on the Authority in this respect.
ARTICLE 12

12. MAINTENANCE OF SILO COMPLEX

12.1. Maintenance requirements

12.1.1. The Concessionaire shall procure that at all times during the Operation Period, the Silo Complex conforms to the maintenance requirements set forth in Schedule-G (the “Maintenance Requirements”).

12.1.2. In the event maintenance requirements are stipulated on the Silo Complex by other Government Instrumentalities including Indian Railways, the Concessionaire shall, at its costs, ensure compliance with same.

12.2. Appointment of Contractors

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

12.2.2. 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.

12.2.3. Prior to the appointment of a Contractor for any substantial work, the Concessionaire shall inform the IE&A of the appointment and the qualification of such contractors. The IE&A 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 IE&A, if any.

12.2.4. The appointment of Contractors shall not in any way relieve the Concessionaire of its obligations as set out in this Agreement and the IE&A’s consent to the appointment of such Contractors shall not impose any obligation or liability whatsoever on the Authority in this respect.
12.3. Maintenance Manual

12.3.1. No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with IE&A, evolve a repair, operation and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Silo Complex in conformity with the Standards and Specifications, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the IE&A. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 12.3 shall apply, mutatis mutandis, to such revision.

12.3.2. Without prejudice to the provision of Clause 12.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

12.4. Maintenance Programme

12.4.1. On or before COD and no later than 45 (forty five) days prior to the beginning of each Financial Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the IE&A, 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 Silo Complex;
(e) intervals at which the Concessionaire shall carry out periodic maintenance;
(f) arrangements and procedures for carrying out safety related measures;
(g) intervals for major maintenance works and the scope thereof; and
(h) intervals of carrying out intermediate and periodic overhaul of the equipment.

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

12.4.2. Within 15 (fifteen) days of receipt of the Maintenance Programme, the IE&A 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.

12.4.3. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 12.4.1 and 12.4.2 shall apply mutatis mutandis to such modifications.

12.4.4. Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 12.4 and as notified to the Authority under the provisions of Clause 19.1.1 shall be deemed to be scheduled maintenance (the “Scheduled Maintenance”). For the avoidance of doubt, any closure, suspension or reduction of Capacity arising out of Scheduled Maintenance shall be deemed as Non- Availability of storage Capacity.

12.5. Major Overhaul

12.5.1. The Concessionaire may undertake Major Overhaul of a Long Term Storage Silo not 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 Long Term Storage 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 a Financial Year.

12.5.2. The Availability of the Silo Complex 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 Long Term Storage Silo being subjected to Major Overhaul does to the Capacity.
12.6. **Safety, breakdowns and accidents**

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

12.6.2. The Concessionaire’s responsibility for rescue operations on the Silo Complex 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 Silo Complex.

12.7. **Unscheduled Maintenance**

12.7.1. Any maintenance, repair or rectification of the Silo Complex 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 Silo Complex under the provisions of Clause 12.7 shall be deemed to be Unscheduled Maintenance. It is further agreed that any closure, suspension or reduction of Capacity arising out of Unscheduled Maintenance shall be deemed as Non-Availability of Capacity and excluded from the computation of Availability.

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

12.8.1. 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 0.1% (zero point one per cent) of Fixed Storage Charge. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.8.2. The Damages set forth in Clause 12.8.1 may be assessed and specified forthwith by the IE&A; 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.

12.9. **Restoration of loss or damage to the Silo Complex**

12.9.1. Save and except as otherwise expressly provided in this Agreement, in the event that the Silo Complex 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 Silo Complex conforms to the provisions of this Agreement.

12.10. **Modifications to the Silo Complex**

12.10.1. The Concessionaire shall not carry out any material modifications to the Silo Complex save and except where such modifications are necessary for the Silo Complex to operate in conformity with the Standards and Specifications, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the IE&A 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 IE&A may make within 15 (fifteen) days of receiving the Concessionaire’s proposal. For the avoidance of doubt, if any modification to the Silo Complex has a material effect on the safety of users or integrity of system operation, the same shall be subject to safety related certification in accordance with Applicable Laws. For the avoidance of doubt, all modifications made hereunder shall comply with the Standards and Specifications, Applicable Laws and the provisions of this Agreement.

12.11. **Excuse from performance of obligations**

12.11.1. The Concessionaire shall not be considered in breach of its obligations under this Agreement if Non-Availability of the whole or any part of the Silo Complex is 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 Silo Complex 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 Silo Complex.

(d) Notwithstanding the above, the Concessionaire shall ensure and procure Availability of all unaffected parts of the Silo Complex provided they can be operated safely.

12.12. Safety Requirements

12.12.1. 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 Silo Complex. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Silo Complex, and shall comply with the safety requirements set forth in Schedule H (the “Safety Requirements”).

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

12.13. Inspection by Independent Engineer & Auditor (IE&A)

12.13.1. The IE&A shall carry out a detailed inspection on the facilities once in quarter to verify if the Silo Complex is being maintained as per maintenance requirements as stipulated in Clause 12.1. Based on its inspection, the IE&A shall submit a report to the Concessionaire and the Authority on the state of facilities, compliance with maintenance requirements, deviations from Maintenance Plan, likely adverse impact of provision of Services by the Concessionaire and related matters the IE&A deems as important.

12.14. Inspection by the Authority

12.14.1. The Authority shall have the right, by itself or through its authorised representatives or nominee to inspect the Facilities at any time after intimating the Concessionaire of such inspection. The Authority may be accompanied by a representative of the Concessionaire during such inspections. However, absence of such representative shall not hinder the Authority from independently conducting such inspection.
12.14.2. The Concessionaire, at its own cost agrees to provide the Authority such information and records and copies thereof as may reasonably be requested for by the Authority during the course of such inspection.

12.15. Implementation of recommendation by the Authority / IE&A

12.15.1. Based on their inspection(s), the Authority and/or IE&A shall communicate to the Concessionaire and the IE&A / the Authority, its findings. After joint discussions between the Concessionaire, the Authority and the IE&A and taking into consideration the views of the Authority and the IE&A, the Concessionaire shall formulate an action plan (requisite corrective measures and time frame for completion) for implementation by the Concessionaire and submit the same for consideration of the Authority and the IE&A. Based on agreement on the matter with the Authority and the IE&A, the Concessionaire shall take all steps as envisaged in the plan discussed herein and report to the Authority and IE&A on the progress. Such submissions shall not relieve or absolve the Concessionaire of its obligations and liabilities under this Agreement in any manner whatsoever.

12.16. Advertising on the Silo Complex

12.16.1. The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site without consent of the Authority.

12.17. 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 any 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 Article 15.

12.18. ISO certification

12.18.1. 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 Project Facility, and shall provide a certified copy thereof to the Authority forthwith.

12.18.2. In the event of default in obtaining the certifications specified in Clause 12.8.1, 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 Project Facility.

12.18.3. If the period of default in obtaining the ISO certifications under this Clause 12.18 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 13

13. INDEPENDENT ENGINEER AND AUDITOR

13.1. Appointment of Independent Engineer & Auditor (IE&A)

13.1.1. The Authority shall within 150 (one hundred and fifty) days from the execution of this Agreement appoint a consulting firm, or a consortium of consulting firms, with expertise in engineering and post-harvest agriculture science, as the Independent Engineer & Auditor, referred to as ‘IE&A’ herein for the Project as per guidelines contained in Schedule L. The appointment shall be initially made 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 as per guidelines laid down in Schedule L to be the Independent Engineer & Auditor for a period of 3 (three) years and such procedure shall be repeated after expiry of each appointment.

13.1.2. Prior to the appointment of the IE&A, the Authority shall inform the Concessionaire of the selection and intention of the Authority to appoint the selected firm as Independent Engineer & Auditor (“Selected Firm”) and the fee quoted by the selected firm.

13.1.3. The fee and related expenses of the IE&A shall be paid by the Authority. One half of such fee and related expenses shall be reimbursed, within 15 days of receipt of such intimation, by the Concessionaire. Such reimbursement shall be done by the Concessionaire to the Authority on a quarterly basis, or such periodicity as requested by the Authority. In case of failure to make such payments within the stipulated time, without prejudice to the remedies provided hereinbefore, the Authority shall have the right to recover such payments from the Storage and Handling Charges payable by the Authority as under Article 15.

13.1.4. The Authority may at its discretion select one firm, or a consortium of firms, as the Independent Engineer & Auditor for one or more than one Project.

13.2. Duties and functions

13.2.1. The IE&A shall, for the purposes of this Agreement, act for ensuring compliance of the Parties with this Agreement. The IE&A shall discharge its
duties and functions substantially in accordance with the terms of reference set forth in Schedule-J.

13.2.2. The IE&A shall submit regular periodic reports (at least once every quarter) to the Authority in respect of its duties and functions set forth in Schedule-J.

13.3. Termination of appointment

13.3.1. If the Authority has reason to believe that the IE&A is not discharging its duties and functions in a fair, efficient and diligent manner, the Authority may at its discretion terminate the appointment of IE&A. In the event that the appointment of the IE&A is terminated hereunder, the Authority shall forthwith engage another Independent Engineer & Auditor in accordance with Clause 13.1.

13.3.2. If the Concessionaire has reason to believe that the IE&A 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 IE&A. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and IE&A for an amicable resolution of the Dispute. The final decision to terminate the IE&A vests with the Authority. In the event that the appointment of the IE&A is terminated hereunder, the Authority shall forthwith engage another IE&A in accordance with Clause 13.1.

13.4. Dispute resolution

13.4.1. If either Party disputes any advice, instruction, decision, direction or award of the IE&A, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall first be attempted to be resolved through the Dispute Resolution Mechanism in accordance with clause 25.1.
Part V: Financial Covenants
ARTICLE 14

14. FINANCIAL CLOSE

14.1. Financial Close

14.1.1. The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 150 (one hundred and fifty) days from the date of this Agreement as stipulated in Clause 4.1.2.

14.1.2. The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall provide to the Authority, a true copy of the Financing Document with the Lender.

14.1.3. The Authority agrees to allow, upon request of the Concessionaire, creation of charge in favour of the Lender on the Project Assets and lien in favour of the Lender on all Designated Bank Account of the Concessionaire.

14.1.4. The Concessionaire shall ensure that Financing Document shall incorporate such provisions which in clear and unconditional terms recognise the property rights of the Authority under the Clause 11.10.
ARTICLE 15

15. STORAGE AND HANDLING CHARGES

15.1. Storage and Handling charges

15.1.1. 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, 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.

15.1.2. In the event, COD is earlier than the SCOD, the Authority may, at its sole discretion, start utilizing the Silo Complex against payment of the Storage and Handling Charges.

15.1.3. The Storage and Handling Charge payable by the Authority to the Concessionaire shall have the following components to be calculated as per Schedule I:

   a) Fixed Storage Charge;

   b) Variable Charge;

   c) Handling Charges; and

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

15.1.4. The payment towards the Fixed Storage Charge to be made to the Concessionaire by the Authority shall be calculated as per Schedule I. The Fixed Storage Charges shall be payable on the Capacity of the Silo Complex, irrespective of the actual usage of the Silo Complex by the Authority but subject to the Availability of the facility. The Fixed Storage Charge, in Rupees per ton per year, to be quoted by the successful bidder will not be indexed till COD and will be applicable for the first financial year of operation (Base unit rate of Fixed Storage Charge). The applicable Fixed Storage Charge for the subsequent Accounting Year shall be determined by decreasing the Base unit
rate of Fixed Storage Charge for the immediately preceding Accounting Year by 2% (two per cent) thereof. For the avoidance of doubt, the Fixed Storage Charge for the second and third Accounting Year 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 quoted by the successful bidder. The payment towards Storage Charges shall be made on a monthly basis.

15.1.5. The Variable Charge for storage of Foodgrains shall be Rs. 0.57 (Rupees zero point five seven) per quintal per month for Foodgrains actually stored in the Storage Facility for any month or part thereof in the Accounting Year in which COD occurs. It is clarified that the variable charge of Rs. 0.57 per quintal per month will not be changed/indexed till COD. The payment towards the Variable Charges to be made to the Concessionaire by the Authority shall be calculated as per Schedule I. The Variable Charge for the first financial year of Operation Period shall be as mentioned in Schedule I and which shall be then the base for calculating the Variable Charge in the subsequent year. The total payment towards Variable Charge in a period shall be based on the actual quantity of Food Grain stored in the Silo Complex for any month or part thereof. The payment towards Variable Charges shall be made on a monthly basis.

Quantity of food grains in the month is to be determined by computing the daily average of actual quantity stored in Silo Complex over the month

15.1.6. The payment towards the Handling Charge to be made to the Concessionaire by the Authority shall be calculated as per Schedule I. The Handling Charges shall be provided for unloading, debagging, drying, cleaning, bagging and loading of Food Grains, and such other services as may be mutually agreed between the Parties, in accordance with the provisions of this Agreement. The payment towards Handling Charges shall be made on a monthly basis.

15.1.7. In the event of Actual Availability is above the level of Normative Availability, as stipulated in Schedule-F, the same shall be considered as excess and the Concessionaire shall be eligible to receive Incentives from the Authority as stipulated in Schedule J. The excess shall be measured as Actual Availability less Normative Availability, where the Actual Availability shall be calculated as per methodology prescribed in Clause 11.9.3.. The Variable and Handling Charges shall be payable on the actual quantity of Food Grain stored/handled in terms of provisions of the clauses 15.1.5 and 15.1.6
15.1.8. [Without prejudice to any other rights or remedies which the Authority may have under this Agreement, if the Silo Complex is complete except for the rail siding, the Authority may, at its discretion and with consent of the Concessionaire, start utilizing the Silo Complex except for rail siding provided that the payment to be made to the Concessionaire for such usage shall be at 60% of base unit rates of the Fixed Storage Charges, calculated as per Schedule I, pro-rated for the actual proportion of Capacity utilised and the actual period of storage. The Variable Charges shall be at 60% of base unit rates calculated as per Schedule I. The Handling Charges shall be payable at 100% of applicable base unit rates, calculated as per Schedule I, for the actual number of bags handled.]\(^{10}\)

15.1.9. The Fixed Storage, Variable and Handling charges payable under this Article 15 shall be the only payment made by the Authority to the Concessionaire towards provision of Services as per the terms of the Agreement.

**15.2. Escalation of Storage Charge**

15.2.1. The Storage Charge shall be revised annually with effect from April 1 every year to reflect the variation in Price Index occurring between the Reference Index Date for January of the year in which COD occurs and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken.

15.2.2. The Variable Charge shall be revised annually with effect from April 1 every year to reflect the variation in Price Index occurring between the Reference Index Date for January of the year in which COD occurs and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken.

15.2.3. The Handling Charges shall be revised annually with effect from April 1 every year to reflect the variation in CPI (IW) to the extent of 80% (eighty per cent) thereof, occurring between the Reference Index Date for January of the year in which COD occurs and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken.

\(^{10}\) Clause 15.1.8 applicable only for silos in procuring zones (silo configuration option 1)
15.3. Invoices

15.3.1. With effect from the COD, at the end of each calendar month, the Concessionaire shall prepare and submit to the Account Bank with copy to the Authority, an invoice ("Invoice") for Storage and Handling Charges for the Silo Complex 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 despatched during that month in accordance with weighment readings for that month and the closing stock of Food Grain;

b) The Storage Charges for the month calculated as per Schedule I

c) The Variable Charges for the month calculated as per Schedule I

d) The Handling Charges for the month calculated as per Schedule I;

e) adjustment, including adjustments for past period, if any;

f) arrears, if any; and

g) taxes, if any.

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

15.4. Mode of Payment

15.4.1. 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 the credit to the Designated Bank Account through its Account Bank as per mechanism stipulated in Clause 15.8. 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.
15.4.2. 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”).

15.5. Disputed Amounts

15.5.1. 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 Account Bank of the Disputed Amounts.

15.5.2. The Authority through the Account Bank shall pay the Undisputed Amounts of Invoice on or before the Payment Due Date.

15.5.3. If the parties do not, within 30 (thirty) days, of the communication of dispute in writing, resolve any dispute arising under this Clause 15.6, either Party may refer the matter for dispute resolution as set out in Article 25.

15.5.4. In the event the Dispute 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.

15.6. Delay in Payment

15.6.1. 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 15.5, 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.

15.6.2. The non-payment of the disputed amount, as per Clause 15.5, shall not amount to a breach by the Authority under this Agreement.

15.7. **Right to set-off**

15.7.1. 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.

15.8. **Payment Security Mechanism**

15.8.1. In order to assure payment of the Authority’s obligation to the Concessionaire under this Agreement, the Authority shall, prior to the COD, establish with ..................11 (“Account Bank”) a no lien bank account with revolving cash-credit limit of a sum equivalent to 1.5 (one and half) months of estimated annual Storage Charges as applicable for the relevant Financial Year and authorise the Account Bank to issue payment to the Concessionaire for unpaid Undisputed Amounts of Invoices raised by the Concessionaire in respect of the Project built under this Agreement.

15.8.2. Upon the presentation of an unpaid Invoice, the Account Bank shall release to the Concessionaire on the Payment Due Date Undisputed Amounts. The amounts under this Clause15.8.2 shall be released directly into the Designated Bank Account of the Concessionaire with an advice by the Account Bank to both the Parties for such activity.

15.8.3. The Authority undertakes not to create any charge or encumbrance on the Payment Security Deposit and to clear the dues of the Account Bank for the Payment Security Deposit such that the Payment Security Deposit is adequately maintained.

15.8.4. The administrative charge by the Account Bank shall be borne equally between the Parties and shall be duly deducted from amounts released by the Account Bank.

11 A scheduled commercial Bank which is agreeable to extend such facility to the Authority
15.9. Security Creation by Concessionaire

15.9.1. 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 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.

15.10. Escrow mechanism

15.10.1. The Concessionaire shall, prior to COD, give an irrevocable standing instruction to the Bank, where the Designated Bank Account is established, to make payments towards due and payable amounts first in respect of statutory dues and then in respect of dues to the Lenders in priority to all other payments. The Authority or its Account Bank shall make the payment of all due and payable amounts to the Concessionaire into the Designated Bank Account in accordance with clause 15.4. The Concessionaire shall, in advance, advise the Bank on the amounts payable along with other supporting documents as required.

15.11. Damages for lower Reliability

In the event that the Reliability in a quarter exceeds 1 (one) Forced Closure in the Silo Complex, the Concessionaire shall pay to the Authority Damages equal to 2.5% (two point five per cent) of the Fixed Storage Charge payable for the storage Capacity of the Silo Complex in accordance with the provisions of Clause 15.1 and 15.2 for each such Forced Closure in excess of 1 (one).
ARTICLE 16

16. Additional Commercial Activity

16.1.1. The Concessionaire may, on prior written approval from the Authority, use the rail siding for additional commercial activities for third parties. Upon request from the Concessionaire along with a detailed plan on the usage and its satisfaction that such additional commercial activities are not likely to have adverse impact on the Operation and Maintenance of the Silo Complex or adverse impact on the ability of the Concessionaire to deliver its Service and along with written assurance from the Concessionaire that the requirements of the Silo Complex shall at all time be given top priority, the Authority shall allow the Concessionaire to commercially use the rail siding established as part of the Silo Complex for additional commercial purposes as proposed by the Concessionaire subject to mutual agreement as per Clause 16.1.5. The Authority may prescribe safeguard measures to protect the silo operations, provided if any approval of the Railway authorities is required for the additional commercial activity, such approval shall have to be obtained by the Concessionaire well before approaching the Authority for its approval.

16.1.2. Notwithstanding the prior approval for such operations granted by the Authority, in the event such operations are found to hamper the Operation and Maintenance of the Silo Complex in any way, the Authority reserves the right to withdraw / suspend such approval at its sole discretion. All costs in regard to such withdrawal / suspension shall be borne by the Concessionaire.

16.1.3. Upon receipt of such approval in writing, the Concessionaire may commence with such additional commercial activity. However, the Concessionaire shall ensure that the requirements of the Operation and Maintenance of the Silo Complex are given top priority at all times and that such commercial operation does not impact the silo operations in any manner. The Concessionaire shall comply with all safeguard measures as proposed by the Authority to the satisfaction of the Authority.

16.1.4. The Authority may take help of experts to assess the likely impact of the activities as proposed by the Concessionaire. In the event the Authority decides to appoint any expert or requires the Independent Engineer & Auditor to carry out such studies to assess the impact of the proposed activity, the cost of such studies shall be reimbursed to the Authority at actual by the Concessionaire.
16.1.5. In the event the Concessionaire carries out additional commercial activity as envisaged under this clause, the Concessionaire shall share with the Authority 5 (five) percent of gross revenues, less Taxes, derived by the Concessionaire from such commercial activity.

16.1.6. In the event the Authority seeks to use the rail siding for its own purposes other than related to the Project, the Authority shall request the Concessionaire for such uses. The Concessionaire shall provide its approval if it is of the opinion that such operations will not lead to any disruption in the operations of the Silo Complex. The rates payable by the Authority shall be at 5% (five percent) of the terminal rates chargeable by Indian Railways for a similar facility in the area. In addition, all charges payable by the Concessionaire to the Indian Railways in respect of the Authority’s usage of rail siding shall be compensated at actuals.
ARTICLE 17

17. INSURANCE

17.1. Insurance during Concession Period

17.1.1. The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurance as may be required under the Financing Documents, and the Applicable Laws, 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 and liabilities that may devolve on the Authority as a consequence of any event, happening, any act or omission of the Concessionaire during the Concession Period.

17.1.2. Notwithstanding the requirements as per Clause 17.1.1, the Concessionaire shall at all times during the Operation Period at its own cost maintain insurance cover at \([\text{Acquisition Cost} / \text{Economic Cost}]^{12}\) as declared by the Authority for each year, including for all Force Majeure events for which insurance covers are available, for the stock of Food Grains, at Capacity level as specified in Schedule B, in custody of the Concessionaire to cover for loss and damage of Food Grains. The Concessionaire shall ensure that in such insurance policy covering the stock of Food Grains, the Authority shall be the primary and sole beneficiary.

17.1.3. Notwithstanding the requirements as per Clause 17.1.1, the Concessionaire shall at its own cost maintain fidelity insurance to indemnify the Authority against all losses and damages the Authority may suffer due to the conduct of the Concessionaire. The Concessionaire shall ensure that in such insurance policy the Authority shall be the beneficiary.

17.2. Evidence of Insurance Cover

17.2.1. The Concessionaire shall furnish to the Authority and Independent Engineer & Auditor notarised copy of certificates of insurance policies procured by the Concessionaire along with evidence of premia paid on such policies for the Silo

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12 At Acquisition Cost for Silo Option 1 in procuring regions / At Economic Cost for Silo Option 2 in consuming regions
Complex and Food Grains. In case of insurance of Food Grain stocks as stipulated in the clause 17.1.2 the Concessionaire shall furnish to the Authority the Original Insurance Policy after retaining notorised copies with him and Independent Engineer & Auditor.

17.3. Remedy for failure to insure

17.3.1. If the Concessionaire fails 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.

17.4. Waiver of subrogation

17.4.1. All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 17 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 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.

17.5. Concessionaire’s waiver

17.5.1. 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, successors, 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.
17.6. Application of insurance proceeds

17.6.1. In the event of damage to the Food Grain stock in the custody of the Concessionaire, the Authority shall have the first right of compensation from the proceeds from all insurance claims, except life and injury, to the extent of the Economic Cost for Silo Option 2 & 3 in consuming regions and Acquisition Cost for Silo Option 1 in procuring regions of the stock damaged due to the occurrence of the event in regard to which the insurance claims are received by the Concessionaire.
Part VI : Force Majeure, Suspension and Termination
ARTICLE 18

18. FORCE MAJEURE

18.1. Force Majeure Event

18.1.1. As used in this Agreement, a Force Majeure Event shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Clauses 18.2, 18.3 and 18.4 respectively hereinafter which prevent the Party claiming Force Majeure (the “Affected Party”) from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party, (ii) which are of incapacitating nature impairing the Affected Party’s ability to carry out its obligation under this Agreement, (iii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care, including through expenditure of reasonable sums of money and following Good Industry Practice and (iv) has a Material Adverse Effect on the Affected Party.

18.2. Non Political Force Majeure Events

18.2.1. For purposes of Clause 18.1, Non-Political Events shall mean one or more of the following acts or events:

a) acts of God or events beyond the reasonable control of the Affected Party which could not reasonably have been expected to occur, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire (to the extent originating from a source external to the Site or beyond design specifications for the Construction Works) or landslide;

b) radioactive contamination or ionizing radiation;

c) 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 Project for a period exceeding a continuous period of 21 (twenty one) days in a Financial Year, and not being an Indirect Indian Political Event set forth in Clause 18.3 hereof;
d) 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;

e) any event or circumstance of a nature analogous to any of the foregoing; and

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.

18.3. Indirect Political Force Majeure Events:

18.3.1. For Purposes of Clause 18.1, 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 which prevents the Affected party from performing any of its obligations for a continuous period of not less than 21 (twenty one) days from the date of its occurrence.

b) industry wide or state wide or nation wide strikes or industrial action which prevent the Affected party from performing any of its obligations for a continuous period of not less than 21 (twenty one) days from the date of its occurrence; or

c) 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; or

d) any Indirect Political Event that causes a Non-Political Event; or

e) any event or circumstances of a nature analogous to any of the foregoing.
18.4. Political Force Majeure Events

18.4.1. For purposes of Clause 18.1, Political Event shall mean one or more of the following acts or events by or on account Government Of India (GOI), the Authority, or any other Governmental Agency:

a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 23;

b) expropriation or compulsory acquisition by any Government Agency of any Project Assets or rights of the Concessionaire or of the Contractors; or

c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any consent or approval required by the Concessionaire to perform their respective obligations under the Project Agreement (other than a consent the obtaining of which is Condition Precedent) provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire’s inability or failure to comply with any condition relating to grant, maintenance or renewal of such consents or permits.

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.

18.5. Duty to Report:

18.5.1. 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, extent and Material Adverse Impact of each Force Majeure Event which is the subject of any claim for relief under this Article 18 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, to alleviate the impact of such Force Majeure Event; and

d) any other information relevant to the Affected Party’s claim.

18.5.2. The Affected Party shall not claim any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party and Independent Engineer & Auditor in writing of the occurrence of the Force Majeure event as soon as reasonably practicable, and in any event within 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligation under this Agreement.

18.5.3. For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Clause 18.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

18.6. Effect of Force Majeure Event on the Concession

18.6.1. Upon the occurrence of any Force Majeure Event prior to the Commencement date, the period set forth in Clause 4.1.2 for fulfilling Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Events.

18.6.2. At any time after the Commencement Date, if any Force Majeure Event occurs:

a) before COD, the Concession Period and the SCOD 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 Services, the Concessionaire shall suspend the Services provided the Concessionaire shall make all reasonable efforts to preserve the Food Grains in custody of the Concessionaire and/or allow the Authority
right to undertake such measures as reasonable in view of the Authority to preserve the Food Grains during such period, provided the costs shall be borne in a manner set forth in Clause 18.7;

c) after COD, whereupon the Concessionaire is unable to provide Services despite making best efforts or it is directed by the Authority to suspend Services and consequently it is ineligible to receive Fixed Storage Charge, the Operation Period shall be extended by the period, equal in length to the period during which the Concessionaire was rendered ineligible to receive Fixed Storage Charge as a direct consequence of Force Majeure Event.

18.7. Allocation of costs arising out of Force Majeure

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

18.7.2. Upon occurrence of a Force Majeure Event after the Commencement 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 or Indirect Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to other Party any costs thereof; and

   b) 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 avoidance of doubt, Force Majeure Costs shall not include any debt related obligations but shall include O&M Expenses and all other costs directly attributable to the Force Majeure Event over and above the Storage and Handling Charges paid by the Authority.

18.7.3. Save and except as expressly provided in this Article 18, 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.
18.8. Termination due to Force Majeure Event

18.8.1. If the period of Force Majeure continues or is in the reasonable judgement of the Parties likely to continue beyond a period of 120 (one hundred and twenty) days, the Parties may mutually decide to terminate this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) days be entitled to terminate this Agreement subject to provisions of Clauses 18.9 and 18.10.

18.9. Termination Payment for Force Majeure Events:

18.9.1. Upon Termination of this Agreement pursuant to Clause 18.8, Termination Payment of the Concessionaire shall be made in accordance with the following:

   a) If the Termination is on account of a Non-Political Event or an Indirect Political Event, the Authority shall not be liable to make any Termination Payment under this Clause 18.9.1. Upon Termination under Clause 18.8, the Authority shall return the Bid Security and/or Performance Security provided by the Concessionaire if the same has not been returned by the Authority; or

   b) If the Termination is on account of Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal that would be payable under the Clause 21.3.2 as if it were an Authority Default. Upon Termination under Clause 18.8, the Authority shall return the Bid Security and/or Performance Security provided by the Concessionaire if the same has not been returned by the Authority.

   Provided that the proceeds from such insurance on the Project Assets shall be considered for the above calculation and that all proceeds from insurance on Food Grains shall be remitted to the Authority and further that no Termination Payment shall be due from the Concessionaire to the Authority under this Clause 18.9.1.

18.9.2. Provided the Authority shall be entitled to deduct from the Termination Payment any amount due and recoverable by the Authority from the Concessionaire as on the Termination Date.
18.9.3. In addition to the Termination Payment, the Authority shall pay to the Concessionaire the payment due under Clauses 15.1 for Services satisfactorily performed by the Concessionaire prior to the date of Termination.

18.9.4. Subject to Clause 18.10, the Concessionaire hereby expressly agrees that the Termination Payment under this Clause 18.9 shall constitute full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement due to Force Majeure events and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

18.10. Obligation related to Food Grains post Termination

18.10.1. In the event of issue of Termination Notice under Clause 18.8, the Concessionaire shall allow access to the Authority or its nominee to take possession of and to move out the stock of Food Grains in the custody of the Concessionaire. The Concessionaire shall extend full support to the Authority in the act of moving out the stock of Food Grains out of the Silo Complex. Subject to Clause 18.12, the Concessionaire shall take all due care of the Food Grain stock during the extended period of storage as would be required as per Standards and Specifications.

18.10.2. In the event the Authority is unable to move out the Food Grain stock on or before the Termination Date, for the first block of 90(ninety) days from the Termination Date, the Storage and Handling Charges shall be payable by the Authority at 115% (one hundred and fifteen percent) of the normal rates, as calculated under Article 15. After the expiring of the initial 90(ninety) days, the Storage and Handling Charges payable by the Authority shall be at 130% (one hundred and thirty percent) of the normal rates, as calculated under Article 15, till the date the Food Grain stock is completely moved out of the Silo Complex. Subject to Clause 18.12, the Concessionaire shall extend all support to the Authority required to move the Food Grain stock out of the Silo Complex and shall take due care of the Food Grain stock during such period as it may continue to remain in the Silo Complex.

18.11. Dispute Resolution

18.11.1. 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 Mechanism at Article 25, provided 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.

18.12. Excuse from performance of obligations

18.12.1. If the Affected Party is rendered wholly or partially unable to perform its obligation 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 written notice to that effect and shall promptly resume performance of its obligations hereunder.
ARTICLE 19

19. SUSPENSION OF SERVICES

19.1. Suspension by the Concessionaire

19.1.1. The Concessionaire shall provide a notice of minimum of 15 (fifteen) days before suspending the Services completely for undertaking maintenance works, without incurring any liability whatsoever in relation thereto and in the said notice shall indicate the period for which the Services would remain suspended. The suspension of Services by the Concessionaire under this Clause 19.1.1 beyond the level specified in Schedule F (Normative Availability) shall be considered as a breach of this Agreement by the Concessionaire.

19.1.2. Subject to Article 15, in the event the full payment against the admissible amount is not made by the Authority to the Concessionaire within the stipulated period, the Concessionaire shall, after a 30 (thirty) days notice, be entitled to suspend or disconnect the Services to the Authority. On full payment by the Authority for an outstanding Invoice in accordance with Article 15, the suspension shall get lifted.

19.1.3. The Concessionaire shall suspend / reduce or curtail / regulate the Services without any notice to the Authority if any of the following occurs:

   a) In the event of contamination or on an assessment by the Concessionaire that in the interest of health and safety suspension is necessary or appropriate;

   b) Failure of equipment at any part of the Silo Complex for the period of failure;

   c) Any event in the assessment of the Concessionaire being an emergency, or having a bearing on public health, safety and environment;

   d) Force Majeure.

19.1.4. The Concessionaire shall obtain confirmation of its action to suspend services from the Independent Engineer & Auditor, within 12(hours) of its occurrence, and such confirmation would be on record with the Concessionaire for scrutiny by the Authority on demand.
19.1.5. The Concessionaire, on a best effort basis, will endeavour to resume the Services within twenty-four hours of suspension in the event of circumstances defined herein, unless otherwise notified. For the avoidance of doubt, any closure, suspension or reduction in Availability arising out of suspension, for reasons other than Force Majeure or as under Clause 19.1.2, shall be deemed as shortfall in Availability.

19.1.6. Notwithstanding the rights of the Concessionaire, it shall be obliged to use its best endeavours and take all measures that are reasonably in its control to ensure the provision of the Services.

19.2. Cost of Suspension

19.2.1. The Parties agree that the cost for suspension of Services and re-commencement shall be borne by the Concessionaire.
ARTICLE 20

20. EVENT OF DEFAULT

20.1. Default by the Concessionaire

20.1.1. Subject to Article 18, Concessionaire shall be deemed to be in material default or breach of this Agreement ("Concessionaire Default") in the event of any of the following:

a) failure to meet Conditions Precedent set forth in Clause 4.1.2 within the stipulated time;

b) failure to meet project timelines, including intermediate and final completion timelines, as stipulated under this Agreement;

c) Construction Work at the Project Site is abandoned for more than 90 (ninety) days during the Construction Period;

d) the Performance Security is not maintained in terms of the provisions hereof;

e) Material Breach with regard to Operation and Maintenance of the Silo Complex as per Standards and Specifications;

f) material quality and quantity loss of Food Grain in custody of the Concessionaire, wherein the a material quantity and quality loss shall imply that Damages payable due to shortfall in quantity and quality under this Agreement are beyond [20% (twenty percent)] of the annual Fixed Storage payable to the Concessionaire in the relevant Financial Year;

g) material failure to provide Services as per the terms of this Agreement;

h) failure by Concessionaire to maintain the Actual Availability in a Financial Year of atleast [98% (ninety eight percent)] level, unless such failure is due to Force Majeure or for reasons attributable to the Authority;
i) any act by Concessionaire restricted under Clause 11.10.4 which has the effect of impacting the property rights of the Authority under this Agreement;

j) any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;

k) the Concessionaire passing a resolution for voluntary winding up;

l) appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;

m) the Concessionaire abandons or expresses its intention to revoke / terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;

n) change in ownership other than as permitted under Clause 5.3;

o) 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;

p) a material default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority;

q) other such events as specified in the Agreement.

20.2. Default by the Authority

20.2.1. Subject to Article 18, the Authority shall be deemed to be in breach of this Agreement (“Authority Default”) in the event of any of the following:

a) failure to make payments to the Concessionaire as per the terms of this Agreement;
b) material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

c) any representation made or warranties given by the Authority under this Agreement is found to be false or misleading and such default has a Material Adverse Effect on the Concessionaire;

d) 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;

e) Other such default event as specified in the Agreement and such default has a Material Adverse Effect on the Concessionaire.

20.3. Cure Period in case of Event of Default

20.3.1. In the event of default under this Agreement, a Cure Period, of upto a period of 30 (thirty) days extendable, at the discretion of Affected Party, by another 30 (thirty) days from the occurrence of an event of default, unless otherwise expressly specified for a breach under this Agreement, shall be provided by the Affected Party to the Party at default to cure the default.

20.3.2. In the event of default under this Agreement is not cured before the expiry of the Cure Period provided for the same under this Agreement and the default continues such that the operations cannot be carried out normally and the default has Material Adverse Effect on the Affected Party, in such a case the Affected Party may call for termination of the Agreement.

20.4. Compensation for default by the Concessionaire

20.4.1. Subject to the provisions of Clause 20.6.1, in the event of the Concessionaire being in material default or Material Breach of this Agreement, it shall pay to the Authority by way of Damages, losses, all direct costs and compensation 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 20.4.1 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. Without prejudice to whatever
is stated herein above, the Authority shall have the right to adjust the Damages etc., payable as stated herein from the Storage and Handling Charges and/or Performance Security.

20.5. Compensation for default by the Authority

20.5.1. Subject to the provisions of Clause 20.6.1, in the event of the Authority being in material default or breach of this Agreement at any time after the Commencement Date, it shall pay to the Concessionaire by way of Damages, losses and 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 under this Clause 20.5.1 for any Material Breach or default in respect of which Damages have been expressly specified in this Agreement.

20.6. Mitigation of costs and damage

20.6.1. 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 21

21. TERMINATION

21.1. Termination for Concessionaire Default

21.1.1. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default and failure of the Concessionaire to cure the Concessionaire Default within the Cure Period, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire. The Termination under this Article shall be effective 7 days from the issue of Termination Notice (“Termination Date”).

21.2. Termination for Authority Default

21.2.1. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default and failure of the Authority to cure the Authority Default within the Cure Period, the Concessionaire shall, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority. The Termination under this Article shall be effective 7 days from the issue of Termination Notice.

21.3. Termination Payment

21.3.1. Upon the termination of this Agreement pursuant to Clauses 21.1.1 and 21.2.1 of the Agreement, the Authority shall pay the Concessionaire the payment due under Article 15 for Services performed by the Concessionaire, as per Standards and Specifications laid down in the agreement, prior to the date of termination less amounts due, if any, to the Authority from the Concessionaire under the provisions of this Agreement.

21.3.2. In case of termination of this Agreement by the Concessionaire for an Authority Default pursuant to Clause 21.2.1 any time after the issue of Letter of Commencement, the Authority shall in addition to the payment in the above Clause 21.3.1, pay the Concessionaire 150% of Adjusted Equity or 150% of Equity, whichever is lower. The Authority shall return the Performance
Security to the Concessionaire if it has not already been returned. In case of any dispute, the same shall be settled through the Dispute Resolution Mechanism.

21.3.3. Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, in case of termination of this Agreement by the Authority for a Concessionaire Default pursuant to Clause 21.1.1, the Authority shall forfeit the Performance Security provided under this Agreement. In the event the Concessionaire failed to provide the Site as stipulated in Clause 4.1.2(e), the bid security shall be forfeited by the Authority as Damages.

21.3.4. The Concessionaire hereby expressly agrees that the Termination Payment, if any, under this Article 21 shall constitute 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, subject to the provisions of Clause 21.4.

21.4. Obligation on Termination

21.4.1. Upon issue of Termination Notice under this Article, the Concessionaire shall hand over the Food Grain stock to the Authority following the normal operational processes and provide all such handling services required in the process of dispatch of the stock from the Silo Complex. The Authority shall be obliged to clear the stock within a period of 90 (ninety) days from the Termination Date. During this period, the Concessionaire shall take due and proper care of the Food Grain stock as expected under the normal course of operations.

21.4.2. In the event the Authority is unable to clear the stock completely within the period of 90 (ninety) days provided after the Termination Date, the Authority shall inform the Concessionaire of its plan, including timelines, of complete dispatch of Food Grain from the Silo Complex (“Evacuation Plan”) and seek additional but reasonable time from the Concessionaire. The Concessionaire shall provide to the Authority such reasonable time as required and during such period extend all normal Services towards the Silo Complex. Such additional time should not exceed beyond a period of 180 (one hundred and eighty) days from the Termination Date or such reasonable period as acceptable to Concessionaire. During additional time of storage beyond the Termination Date, the Authority shall make payment of Storage and Handling
Charges to the Concessionaire, on pro-rata basis, at a higher rate than the normal rates as calculated under Article 15 provided the termination is on account of Authority Default. For the period of first 90 (ninety) days from Termination Date, such higher rates shall be 150% (one hundred and fifty percent) of the normal rates which shall increase to 200% (two hundred percent) of normal rates after the expiry of 90 (ninety) days from Termination Date of extended period. In the event of the termination on account of Concessionaire Default, the payment shall be limited to 100% of normal rates as per Schedule I. The Storage Charges shall be payable by the Authority to the Concessionaire in advance with the first advance being payable on or before the Termination Date.

21.5. Survival of rights

21.5.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 21.3.4, 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.
Part VII: Miscellaneous
ARTICLE 22

22. ASSIGNMENT AND CHARGES

22.1. Restrictions on assignment and charges

22.1.1. The Concessionaire shall not assign this Agreement 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.

22.1.2. Subject to the provision of Clause 22.2, 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 Project 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.

22.2. Permitted assignment and charges

22.2.1. The restraints set forth in Clause 22.1 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 Project;

   b) mortgages/pledges/hypothecation of goods/assets including Project Assets and their related documents of title, a charge on the Designated Bank Account, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Lenders under the Financing Documents and/or for working capital arrangements for the Project; and

   c) liens or encumbrances required by any Applicable Law.

22.3. Assignment by the Authority

22.3.1. 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.
ARTICLE 23

23. CHANGE IN LAW

23.1. Increase in costs

23.1.1. 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 5 lakh (Rs five lakh) and 0.5% (zero point five percent) of the annual Fixed Storage Charge in any Financial Year, during the Operation Period, the Concessionaire may notify the Authority and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notification by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 45 (forty five) days and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.

23.1.2. Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to the Clause 23.1.1, the Concessionaire may by notice in writing require the Authority to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in cost increase, reduction in return or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Concessionaire. The Authority shall make payment of such compensation within 45 (forty five) days of receiving such notice or with interest @ SBI Base Rate if the payment thereof is delayed beyond such 45 (forty five) days. If the Authority shall dispute the quantum of such compensation claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Mechanism as stipulated in Article 25.
23.2.  Reduction in costs

23.2.1. If as a result of Change in Law, the Concessionaire enjoys a reduction in costs or increase in net after tax return or other financial benefit, the aggregate financial effect of which exceeds the higher of Rs 25 lakh (Rs twenty five lakh) and 0.5% (zero point five percent) of the annual Fixed Storage Charge in any Financial Year, during the Operation Period, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notification by the Authority as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 45 (forty five) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

23.2.2. Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to the Clause 23.2.1, the Authority may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Authority’s Representative. The Concessionaire shall make such payment within 45 (forty five) days of receiving such notice or with interest @ SBI Base Rate if the payment is delayed beyond such 45 (forty five) days. The Authority shall also have the right to offset such amount as claimed herein with the payments made under Clause 15.1. If the Concessionaire shall dispute such claim of the Authority, the same shall be finally settled in accordance with the Dispute Resolution Procedure as stipulated in Article 25.
ARTICLE 24

24. LIABILITY AND INDEMNITY

24.1. General Indemnity

24.1.1. 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”) or 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 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.

24.1.2. The Authority will indemnify, defend, save and hold harmless the Concessionaire against defect in title and/or the rights of the Concessionaire in the land comprised in the Site, and/or 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 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.

24.2. Indemnity by the Concessionaire

24.2.1. Without limiting the generality of Clause 24.1, 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, levies, fees and any other statutory dues 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.

24.2.2. Without limiting the generality of the provisions of this Article 24, 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 Project, 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.
24.2.3. The Concessionaire shall indemnify the Authority against all claims whatsoever arising out of any Statute/Law in force in respect of the personnel engaged by him directly or indirectly for the Project.

24.3. Notice and contest of claims

24.3.1. 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 24 (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.

24.4. Defence of Claims

24.4.1. 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 24, 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 Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
24.4.2. If the Indemnifying Party has exercised its rights under Clause 24.3, 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).

24.4.3. If the Indemnifying Party exercises its rights under Clause 24.3, 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 24.4.3 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.
24.5. No consequential claims

24.5.1. Notwithstanding anything to the contrary contained in this Article 24, 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.

24.6. Survival on Termination

24.6.1. The provisions of this Article 24 shall survive Termination.
ARTICLE 25

25. DISPUTE RESOLUTION/GOVERNING LAW AND JURISDICTION

25.1. Dispute Resolution/ Governing Law and Jurisdiction

25.1.1. 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 mediation procedure set forth in Clause 25.2.

25.1.2. 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.

25.2. Mediation

25.2.1. In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer & Auditor (IE&A) to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, 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 25.1.1 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 25.3.

25.3. Arbitration

25.3.1. Any Dispute which is not resolved amicably by mediation, as provided in Clause Error! Reference source not found., shall be referred to arbitration by a
Board of Arbitrators appointed in accordance with Clause 25.3.2. The 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 (No 26 of 1996). The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

25.3.2. 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.

25.3.3. The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 25 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.

25.3.4. 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.

25.3.5. 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.

25.3.6. Pending the submission of and/or decision on a dispute, difference or claim or until the arbitral award is published; the parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such award.
ARTICLE 26

26. MISCELLANEOUS

26.1 Governing Law and jurisdiction

26.1.1 This Agreement shall be construed and interpreted in accordance with the laws of India.

26.2 Waiver of immunity

26.2.1 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).

26.3 Waiver

26.3.1 Waiver, including partial or conditional waiver, by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement.
i. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

ii. shall not be effective unless it is in writing and executed by a duly authorized representative of the party; and

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

26.3.2. 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.

26.4. 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 Engineer & Auditor of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project 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.

26.5. 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.
26.6. **Survival**

Termination of this Agreement

(a) shall not relieve the Concessionaire or the Authority of any obligations hereunder which expressly or by implication survives 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.

All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or expiry of this Agreement.

26.7. **Entire Agreement:**

The Agreement and the Schedules constitutes 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 valued and effective unless expressly previously approved in writing by the Authority and executed by the person expressly authorized by a resolution of the Authority in this behalf.

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 Proposals, as the case may be, shall be deemed to form part of this Agreement and treated as such.

26.8. **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 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 this Agreement or otherwise.

26.9. No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

26.10. 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.

26.11. Successors and assigns

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

26.12. Notices

Any notice or other communication to be given by 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 letter delivered by hand or by registered acknowledgement due pre-paid post or speed post to the address given and marked for the 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;

b) in the case of the Authority, be given by letter delivered by hand or by registered acknowledgement due pre-paid post or speed post to the address given and marked for the attention of the person set out below or to such other person as the Authority may from time to time designate by notice to the Concessionaire.
26.13. 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.


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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of

(Signature) (Name) (Designation)

In the presence of:

1.  

2.  
Schedules
Schedule A : Site

The Site

The Site of the Project shall include the land, building, structures, rail siding, approach road and related facilities of the Silo Complex.

The details of the land for the Site are as follows:

| Project Location

| Name of the village/town / city where the land (site) is located |
| Survey numbers of the land parcel (site) |
| Total area for creation of Silo facility |
| Total area for Railway siding |
| Railway loading stations/block station and distance from of the Site from the same |
| Nearest National / State Highway and distance of the site from the same |
| Nature of title/right on land - already owned / procured. |

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13 As per details provided after award of LOA
Annex-I of Schedule A

{Site Map}
## Schedule B : Project Facilities

### Capacity requirements at Silo Complex

The Concessionaire shall make available the following facilities available as part of the Project from the COD:

| Silo Complex Configuration | [ Option 1 / Option 2]
|----------------------------|------------------------|
| Long Term Storage Silos    | 4¹⁵ numbers of flat bottom sheet metal silos, each of [12,500 Metric Ton] built as per Standards and Specifications totaling to a Capacity of 50,000¹⁶ Metric Ton (MT)
|                            | Each of the Long Term Storage Silo shall be fitted with stationary vents and mechanical ventilators, aeration fans and aeration floors and temperature monitoring system
|                            | The Long Term Storage Silos are to be top loading and bottom discharge. The intake capacity of the conveying system attached to each of the Long Term Storage Silo should be minimum 150 Tons Per Hour (TPH) and discharges of the silos including the discharge by sweep augur at minimum 60 Tons Per Hour (TPH).
| Truck parking area         | Of area sufficient to allow for parking of 20 (twenty) 3-axle trucks, 4 (four) cars & 24 (twenty four) two-wheelers
| Lorry Weighbridge          | [2]¹⁷ numbers of weighbridge with minimum weighing capacity of 60 MT
| Laboratory for quality testing | 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,

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¹⁴ Configuration Option as per the Bid Documents  
¹⁵ 4 silos in case of Option 1 & 2  
¹⁶ 60,000 MT in case of Option 1 & 2  
¹⁷ 2 nos in Configuration Option 1 & 2
<table>
<thead>
<tr>
<th>Section</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>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>
<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 150 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>Grain intake system #</td>
<td></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 150 Tons Per Hour (TPH) and discharge should be at minimum at 150 Tons Per Hour (TPH). Top chain conveyors to have access from ground by ladder and be equipped with catwalk for facilitating inspection.</td>
</tr>
<tr>
<td>Process Tower</td>
<td>Comprising of Cleaner and online weigher of minimum 150 Tons Per Hour (TPH) capacity to be sequenced vertically in a tower along with...</td>
</tr>
<tr>
<td><strong>Bulk Truck Loading System</strong></td>
<td>the provision of bag filter in one of the floor and separate dust collection bins on the ground floor</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Bagging system @</strong></td>
<td>One silo of minimum 50 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><strong>Rake Bulk Loading system #</strong></td>
<td>Semiautomatic weigher and bagger mechanism is required which can be two stations of 30 Tons Per Hour (TPH each), with individual surge bins of 50 MTs each</td>
</tr>
<tr>
<td><strong>Bulk Rake Unloading System @</strong></td>
<td>1 (one) flat bottom sheet metal silo of 4000 MT capacity (“Pre-shipping Silos”) having aeration floor, aeration fans, temperature monitoring system, and provision of fumigation connected through two material handling system in a combination comprising of chain conveyors and bucket elevators, each with handling capacity 350 Tons Per Hour (TPH), online weigher of matching capacity and rake loading system of 1400 Tons Per Hour (TPH).</td>
</tr>
</tbody>
</table>
| **Bag Storage Warehouse**     | Unloading system shall comprise of a dump pit having two hopper of about 50 MT each connected through a chain conveyor & bucket elevator to the Receiving Silo.  

Each conveying system shall be of capacity 350 Tons Per Hour (TPH) adding up to total capacity of 700 Tons Per Hour (TPH).  

The Receiving Silo to be a flat bottom sheet metal silo of 4000 MT having aeration floor, aeration fans and provision of fumigation.  

_The dump pit of the Bulk Rake Unloading System to be also used in case Food Grain received in bagged form by rake._ |

| **Bag Storage Warehouse**     | Warehouse of covered storage capacity of atleast 200 MT and a CAP storage capacity of 500 MT of foodgrain for Option 1 & 2. The Warehouses should comply with warehouse related norms of Food Corporation of India / Central Warehousing Corporation.  

The Warehouse should have good cross ventilation and have the requisite plinth level and should be rodent and fire proof. |
<table>
<thead>
<tr>
<th>Rail Siding</th>
<th>The terminal with the railway track shall be as per the Private Freight Terminal Policy of Indian Railway as the concessionaire would be allowed to handle goods other than that of FCI. The track inside the terminal shall be built as per the specifications of Indian Railways. As far as possible, the unloading dump pit should be at the entrance of the siding to accommodate the full rake length inside the terminal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road connectivity</td>
<td>The Silo complex should have good connectivity with the National Highway or Scheduled State Highway or a major District Road through a paved road with a width of not less than 7 meters</td>
</tr>
<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 (Silo Configuration Option 1)

@ - In silos in consuming regions (Silo Configuration Option 2)

The above specifications of Project Facilities should be read along with the Standards and Specification.
Schedule C: Standards and Specifications

1. Project Background - Conceptual Plan and Silo Layout

Introduction

This section lays down the conceptual plan, components and layout for the silo complex for bulk storage. The silo complex, including silo storage, handling facility along with rail siding, should be designed and built with the following objectives:

- Ensure safe long term storage 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

Options for Configuration of Silo Storage Complex

While the silo complex will provide facility for safe long term storage for Food Grain in all facilities, the handling requirement will vary depending upon the location of the silo. The silo facilities will be located in a) wheat producing and b) wheat consuming areas. The handling facility will vary with the location of the silo in either of the areas Keeping these factors in consideration, two options for silo configuration are recommended.

The Option 1 for silo complex facility, to be located in Food Grain producing areas, will have facility for receiving Food Grain in bulk and bagged form by road and off take / issue in bulk and by rail and road. The Options 2 for silo complex facility, to be located in wheat consuming areas, will have facility for receiving Food Grain in bulk and bagged form by rail and road and off take / issue in bulk and bagged form by road.

The Option 1 for silo complex facility to be located in Food Grain producing areas will have long term silo capacity of 50,000 MT. The Option 2 for silo complex facility, to be located in wheat consuming areas, will have long term silo storage of 50,000 MT.

The salient differentiating features of the abovementioned options for silo configuration is presented in the table below. The conceptual layout plans with major components of each option are discussed in detail in the following sections.

The applicable Standard & Specification will be as applicable to the Silo Complex Configuration stated in Schedule B.
Table 1: Option for Silo Storage Configuration

<table>
<thead>
<tr>
<th>Parameters</th>
<th>Option 1</th>
<th>Option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Term Silo Storage Capacity</td>
<td>50,000 MT</td>
<td>50,000 MT</td>
</tr>
<tr>
<td><strong>By Rail</strong></td>
<td>No</td>
<td>In Bulk &amp; Bag</td>
</tr>
<tr>
<td>Intake</td>
<td>In Bulk &amp; Bag</td>
<td>In Bags (at the railway siding intake)</td>
</tr>
<tr>
<td><strong>By Road</strong></td>
<td>In Bulk &amp; Bag</td>
<td>No</td>
</tr>
<tr>
<td>Off take / Issue</td>
<td>In Bulk &amp; Bag</td>
<td>In Bulk &amp; Bag</td>
</tr>
</tbody>
</table>

Silo Complex Layout: Option 1

The Silo Complex will have the following components:

1. Separate Entry and exit for the vehicles
2. Electronic Weigh bridges for gross and tare weight at the middle of the entry and exit gates
3. Truck parking for 20nos. 3-axle trucks, 4 cars and 24 two-wheelers
4. Administration office at a suitable location
5. Laboratory for quality testing
6. Unloading station for receiving the bags for bulking or bulk trolleys
7. Pre Storage silos and its material handling equipments
8. Process tower
9. Long term storage silos
10. Fumigation system
11. Bulk Truck loading system
12. Bagging facility and bags storage warehouse
13. Railways siding
14. Rake loading system for bulk rake having pre shipping silos.
15. Electrical Sub station
16. Pump house and work shop
17. Fire fighting system
18. Rain water harvesting
19. Provision of power backup to run the plant and equipment
20. Approach Road from NH/SH/major Dist. Road.
Figure 1: Plan & Elevation for Option 1 (Indicative)

Figure 2: Facility Layout for Option 1 (Indicative)
Silo Complex Layout: Option 2

The Silo Complex will have the following components:

1) Separate Entry and exit for the vehicles
2) Electronic Weigh bridges for gross and tare weight at the middle of the entry and exit gates
3) Truck parking for 20 nos. 3-axle trucks, 4 cars and 24 two-wheelers
4) Administration office at a suitable location
5) Laboratory for quality testing
6) Unloading station for bulk rake or bagged rake bulking and truck unloading from road transport.
7) Receiving silos and its material handling equipments
8) Process tower
9) Long term storage silos
10) Fumigation system
11) Weighing and Bagging system
12) Bags storage warehouse
13) Bulk Truck loading system
14) Railways siding
15) Bagged cargo loading system
16) Electrical Sub station
17) Pump house and work shop
18) Fire fighting system
19) Rain water harvesting
20) Provision of power backup to run the plant and equipment
21) Approach Road from NH/SH/major Dist. Road.
Figure 4: Facility layout for Option 2 (Indicative)
2. General Silo Storage requirement and Specifications

Introduction

The silo facility options recommended in Section 2 will use combination of four types of silos - Long Term Storage Silos, Pre Storage silos, Pre Shipment silos and Receiving silos.

All long term storage silo will have capacity of 12,500 MT each. In case of a 50,000 MT silo facility capacity under Option 1, two pre storage silos of 250 MT each, four long term storage silos of 12,500 MT each and one Pre Shipping silos of 4000 MT is recommended. In case of a 50,000 MT under Option 2, one receiving silo of 4000 MT and four long term storage silos of 12,500 MT each is recommended.

<table>
<thead>
<tr>
<th></th>
<th>Option 1</th>
<th>Option 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Term Storage</td>
<td>4 silos of 12,500 MT</td>
<td>4 silos of 12,500 MT</td>
</tr>
</tbody>
</table>
All the silos are required to be galvanized corrugated bolted sheet metal structures. The silos should have flat bottom with sweep augur except for 250 MT capacity pre-storage silos which should be hopper bottom, with its loading system from the top and discharge or reclaim from the bottom by gravity. The silo facility should be constructed in a manner that protects the silos & other equipment from water accumulation or flooding.

The silo facility discussed herein is to be used for storage of wheat grain. The wheat is granular free flowing free from larger impurities is supposed to be stored. The bulk density for Indian wheat 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. The diameter, eave height and overall height could be decided by the operator around these parameters keeping the hydrostatic pressure on the wheat at an optimum levels.

**Components of Silo**

<table>
<thead>
<tr>
<th>Essential Components of Silos Storage</th>
<th>Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Galvanized corrugated Bolted Sheet metal silo having hot dip galvanizing of not less than 350gm/meter sq. capable of lasting for 30 years.</td>
<td>Water Tight and relatively air tight</td>
</tr>
<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>Temperature monitoring system</td>
<td>12500 MTs silos should have 13 to 15 temperature cables having 9 to 11 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>
</tbody>
</table>
Wheat shifting system
Material handling system enabling shifting of wheat from one silo to another incase it is required to cool the wheat to atmospheric temperature

Internal Process Quality Control (IPQC)
Material Handling system should have provision to re circulate the wheat for drawing the samples for lab analysis required for IPQC

3. 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 option 1 &amp; 2 for silos complex minimum 7 acres and for railway siding minimum 4 acres. The plot should have good connectivity from State or National highways or major district roads</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Boundary wall with separate entry and exit</td>
<td>1.8 meter high boundary wall made of bricks/stone and mortar having 0.75 meter concertina wire coils protected 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>Pit less or pit type having steel platform with minimum 8 load cells. It should be at least 16 meter long and capable of weighing minimum 60 MT load. For option 1 &amp; 2 two weigh bridges.</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, 1977 of India</td>
</tr>
<tr>
<td>4</td>
<td>Truck Parking</td>
<td>For parking 20nos. 3-axle trucks, 4 cars and 24 two-wheelers</td>
<td>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</td>
</tr>
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</tr>
<tr>
<td>5</td>
<td>Administration Office</td>
<td>Suitably designed office block to accommodate the requisite staff for ease of working</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Bagged Warehouse</td>
<td>A warehouse of covered storage capacity of atleast 200 MT and a CAP storage capacity of 500 MT of foodgrain for Option 1 &amp; 2 as per FCI specifications. This warehouse needs to be adjacent to the railway siding and the ware house volume which houses the bagging machines could be arranged in such a way that there is an ease of loading the rakes. The plinth level of the warehouse should be level to the railways wagon door entry step. All kinds of ventilations system should be installed as per FCI warehouse design requirements.</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Laboratory for Lab testing</td>
<td>A suitably designed lab to test 40 samples per hour should have a requisite working space</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Unloading station for receiving the bags for bulking or bulk trolleys</td>
<td>A dumping station (for option1 only) which should have minimum 16X3 meter area with a capability of unloading of 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 150 Tons Per Hour (TPH). Provision of one hydraulic tippling of 9X3 meter should be there within the same area of dumping.</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Pre storage silos &amp; its Material Handling</td>
<td>For option 1 two hopper bottom pre storage silos of 250 MTs required having intake and out take at minimum 1:2011 which is an adaption of the European Standard code EN 1993-4-1:2011. 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 1993-4-1:2011. Construction as per FCI/CWC norms</td>
<td></td>
</tr>
</tbody>
</table>

"Guidelines for Use of Interlocking Concrete Block Pavement" Indian Roads Congress
<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
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<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>Process tower</td>
<td>A suitably designed structure is required to accommodate cleaner and online weigher in a gravity flow at minimum 150 TPH flow. The structure should adhere to the site notification on wind pressure and seismic zone. This valid for options 1 &amp; 2.</td>
<td>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>
</tr>
<tr>
<td>11</td>
<td>Long Term Storage Silos</td>
<td>The flat bottom silos should have components as been explained in chapter 2 “General Silos Storage requirements and 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 150 TPH and the reclaim capacity minimum 60 TPH. Its conveyors, elevators, catwalk, internal &amp; external ladder should be hot dip galvanized. The tunnel should have appropriate ventilation. The volume of silo should be minimum 16666 meter cube.</td>
<td>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 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>
</tr>
<tr>
<td>12</td>
<td>Fumigation system</td>
<td>A close loop system either having an external fan of 5000 meter cube or with silos aeration fan or phosphine generator is required for the fumigation The phosphine formulation should be as per BIS 1980. Irrespective of formulation used, be it aluminum phosphide or phosphine granules, a system needs to be designed for 1.5 g/meter cube phosphine gas.</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Weighing and Bagging System</td>
<td>Load cell based a semi automatic weighing &amp; bagging system along with a stitching machine having single or two</td>
<td>The electronic weighing system shall conform to IS-1436 (1991)</td>
</tr>
<tr>
<td></td>
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<tr>
<td></td>
<td></td>
<td>machines having combined capacity of 60 TPH and reasonable mechanical system to stack &amp; load bagged wheat for loading into the trucks or railway wagons. The accuracy of the weigher should be minimum 0.01%.</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>Bags Storage warehouse</td>
<td>warehouse of covered storage capacity of atleast 200 MT and a CAP storage capacity of 500 MT of foodgrain is required which should be fire proof and rodent proof. Plinth level and aeration should be as per FCI/CWC specification</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Bulk truck Loading system</td>
<td>A 60 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 wheat from the online weigher.</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Railway Siding</td>
<td>The terminal with the railway track shall be as per the Private Freight Terminal Policy of Indian Railway as the concessionaire would be allowed to handle goods other than that of FCI. The track inside the terminal shall be built as per the specifications of Indian Railways. As far as possible, the unloading dump pit should be at the entrance of the siding to accommodate the full rake length inside the terminal. The design and specifications of the siding would be as per the laid down specification of Indian Railways</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Rake Loading system for bulk rake having pre shipping silo</td>
<td>For option 1, a pre shipping flat bottom silo of 4000 MTs having intake capacity of 60 TPH and discharge at two conveying system of 350 MTs minimum to the bulk rake loading system which has inbuilt online weigher and rake loading capacity of 1400 Tons Per Hour (TPH) minimum. The rake loading system to be installed just above the railway siding. It should have temperature monitoring system having temperature cables of 8 or more having 9 to 11 temperature Silos design as per Long term silos specifications, the online weigher as per the electronic weigh bridges specifications.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Category</td>
<td>Description</td>
<td>Reference</td>
</tr>
<tr>
<td>---</td>
<td>--------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>-----------</td>
</tr>
<tr>
<td>18</td>
<td>Electrical sub station</td>
<td>A substation having requisite capacity is required which would have free access to the entry of the State Electricity Board officials. (For all Silo Configuration Option 1 &amp; 2)</td>
<td>As per the State Electrical Inspectorate specifications</td>
</tr>
<tr>
<td>19</td>
<td>Fire Fighting System</td>
<td>A suitably designed fire fighting 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.</td>
<td>As per State Fire department specifications</td>
</tr>
<tr>
<td>20</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.</td>
<td>As per local authority norms.</td>
</tr>
<tr>
<td>21</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. (For all Silo Configuration Option 1 &amp; 2)</td>
<td>As per State Electrical Inspectorate norms</td>
</tr>
<tr>
<td>22</td>
<td>Bulk Rake Unloading with receiving silos</td>
<td>For option 2 bulk unloading of the wagons is done at 700 Tons Per Hour (TPH) having two conveying system (chain conveyor &amp; elevator) of 350 Tons Per Hour (TPH) each from the two discharge hoppers of 50 MTs. The wheat is conveyed to a 4000 MTs silos having aeration floor, aeration system, sweep augur and temperature monitoring system like silos of bulk rake loading silo. The reclaim from silos is at 150 Tons Per Hour (TPH).</td>
<td>Receiving silos as per the Long term silos specifications</td>
</tr>
</tbody>
</table>
• The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, boundary wall, watch and ward arrangements for the safety and security of the Storage Facility

4. Performance Standards –

Refer Schedule F

5. Grain acceptance specifications:

Refer Schedule E

6. 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 is done at the time of intake by bulk trucks, farmer’s trolleys, bagged trucks, bagged rake or bulk rakes, 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 wheat 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 fumigation and other as a curative fumigation. Beyond two fumigation a care needs to be taken for phosphine residue as per Prevention of Food Adulteration Act or similar regulations.</td>
</tr>
<tr>
<td>4</td>
<td>Delivery Requirement</td>
<td>For bulk rake and bagged rake three day prior notice, 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 silo complex facility should be available at least 95% of the time per year &amp; 100% during Harvest Season and any stoppages or maintenance should be informed to FCI well in advance.</td>
</tr>
</tbody>
</table>
A well thought system for operational management system conforming all the requirements in a transparent way needs to be planned and written and shared. A PLC/SCADA system is a good enabler for the purpose which serves well for safe operations as well.

FCI representative will inspect by appointing a third party company to verify the dry run testing of the silos complex equipments and thereafter for on load testing for the final acceptance certification. The equipments would be tested for the capacities and dimensions as been required by FCI

Pre and post commissioning stages the facility management should conform to the State Environment & Pollution norms. Any deviation would lead to strict action

A well laid out safety plan 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

7. Statutory Permits and Compliances:

The Concessionaire shall 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. Among others, the following permits will be required for the Silo Complex:

a) 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 & shifting of H.T. overhead transmission lines if required over the proposed long term silo facility & process tower

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

m) Divisional railways for the railways siding permission and installation & commissioning and for the railway traffic movements.

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.
Schedule D : Services to be provided by Concessionaire

The Concessionaire shall during the Operation Period provide the following Services to the Authority:

1. Receive and handle Food Grains at the Acceptance Point at Silo Complex brought in by [road / rail] in bags or bulk by the Authority or its nominee [or farmers] as per instructions of the Authority;

2. Accept Food Grain meeting Grain Acceptance Specifications. Food Grains not confirming to the Grain Acceptance Specifications shall be rejected and returned from the Silo Complex;

3. Undertake pre-storage treatment of cleaning and weighing of Food Grains such that it meets the norms as per Standards and Specifications;

4. Provide suitable facility for collection, weighment and disposal of tailings from the cleaning system;

5. After pre-storage treatment, handle and store Food Grains in the Long Term Storage Silos as well as preserve and maintain the quality of the Food Grains at the same level as it was at the time of acceptance at Acceptance Point;

6. As per instructions from the Authority, bag Food Grains, stack, load trucks and/or trains, arranged by the Authority, with Food Grains in bagged /bulk form; and

7. Load empty bags onto trucks arranged by the Authority
Schedule E : Grain Acceptance Specifications

The Schedule shows the maximum permissible limits of different Refractions in Fair Average Quality (FAQ) of Wheat as been notified in FY2012. The FAQ norms are notified every year. The FAQ for the applicable year needs to be complied with.

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 content not to be in excess of 12%

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 cut 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.
# Schedule F: Performance Standards

The Project Facilities and Operation and Maintenance of the Silo Complex are required to meet the following specifications:

<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 20nos. 3-axle trucks, 4 cars and 24 two-wheelers at one point of time</td>
</tr>
<tr>
<td>2.</td>
<td>Bagged Warehouse</td>
<td>Warehouse of covered storage capacity of atleast 200 MT and a CAP storage capacity of 500 MT of foodgrain for Option 1 &amp; 2 size</td>
</tr>
<tr>
<td>3.</td>
<td>Service speed at unloading point for configuration option 1</td>
<td>Minimum 40 vehicle of payload capacity of 3.25 MT or equivalent be unloaded per hour</td>
</tr>
<tr>
<td>4.</td>
<td>Delivery of bagged wheat</td>
<td>Minimum 1000 MTs per 10 hours during a day’s working</td>
</tr>
<tr>
<td>5.</td>
<td>Quality testing parameter for intake or off take of wheat</td>
<td>Intake as per prevailing FAQ of Government of India., described in Schedule E.</td>
</tr>
<tr>
<td>6.</td>
<td>Wheat intake capacity for Option 1</td>
<td>At minimum 150 Tons per Hour (TPH) totaling to minimum 2500 MTs per day</td>
</tr>
<tr>
<td>7.</td>
<td>Intake &amp; discharge capacity of pre storage silos</td>
<td>Minimum 150 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>8.</td>
<td>Cleaner &amp; Online weigher capacity of the process tower</td>
<td>Minimum 150 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>9.</td>
<td>Intake capacity of Long term storage silos</td>
<td>Minimum 150 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>10.</td>
<td>Discharge capacity of Long term storage silos</td>
<td>Minimum 60 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>11.</td>
<td>Bagging capacity</td>
<td>Capacity of 60 Tons Per Hour (TPH) with output not less than 50 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td></td>
<td>Specifications</td>
<td>Description</td>
</tr>
<tr>
<td>---</td>
<td>----------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>12.</td>
<td>Truck loading capacity of bagged wheat</td>
<td>Minimum 100 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>13.</td>
<td>Bulk rake loading capacity</td>
<td>Minimum 3500 MTs per five hours including wagon indexing time</td>
</tr>
<tr>
<td>14.</td>
<td>Pre Shipping silos discharge capacity</td>
<td>Minimum 700 Tons Per Hour (TPH)</td>
</tr>
<tr>
<td>15.</td>
<td>Free time for loading bags for the rake</td>
<td>9 hours or as per prevailing railways guidelines, whichever is lower</td>
</tr>
<tr>
<td>16.</td>
<td>Stock auditing and quality audit</td>
<td>Once in a month</td>
</tr>
<tr>
<td>17.</td>
<td>Dust loss</td>
<td>Maximum 0.05% of the intake quantity if the storage is beyond one year</td>
</tr>
<tr>
<td>18.</td>
<td>Normative Availability</td>
<td>Availability not less than 98% (ninety eight per cent) of the Storage Capacity during any Accounting Year of the Concession Period (Normative Availability). Provided further that the Availability shall be 100% during the Harvest Season.</td>
</tr>
</tbody>
</table>

The above specifications of Project Facilities should be read along with the Standards and Specification.
Schedule G : Maintenance requirements

1. Maintenance Requirements

1.1. The Concessionaire shall, at all times, operate and maintain the Silo Complex 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-G (the “Maintenance Requirements”).

1.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-G 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 12.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2. Repair/rectification of defects and deficiencies

2.1. 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-G within the time limit set forth therein.

2.2. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3. Other defects and deficiencies

3.1. In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.

3.2. In respect of any defect or deficiency not specified in Annex - I of this Schedule-G, the IE&A 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 IE&A.
4. Extension of time limit

4.1. Notwithstanding anything to the contrary specified in this Schedule-G, 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 IE&A and conveyed to the Concessionaire and the Authority with reasons thereof.

5. Emergency repairs/restoration

5.1. Notwithstanding anything to the contrary contained in this Schedule-G, if any defect, deficiency or deterioration in the Silo Complex 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

6.1. The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Silo Complex in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the IE&A may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Authority and the IE&A at any time during office hours.

7. Display of Schedule-G

7.1. The Concessionaire shall display a copy of this Schedule-G at the Silo Complex.
Annex – I

*(Schedule-G)*

**Repair/Rectification of Defects and Deficiencies**

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex- I of Schedule-G 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>
Schedule H : Safety Requirements

1. Guiding Principles

1.1. 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.

1.2. 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.

1.3. 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 - H.

2. Obligations of the Concessionaire

2.1. 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

3.1. The Concessionaire shall develop, implement and administer a safety programme for the Silo Complex 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.

3.2. The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Silo Complex. 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.
3.3. 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 3.1 of this Schedule-H for averting or minimising such accidents in future.

3.4. 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 IE&A. Within 15 (fifteen) days of receipt of such communication from the Concessionaire, the Authority and the IE&A 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 IE&A may specify.

4. Costs and expenses

4.1. Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be borne by the Concessionaire in accordance with the provisions of Clause 12.12.2.
Schedule I:

1.) Base Unit Rates

i. The Base Unit Rates for Fixed Storage Charge as set forth in the Bid of the selected bidder in its Bid and applicable to the Concessionaire are as follows:

<table>
<thead>
<tr>
<th>Base Unit Rate of Fixed Storage Charges</th>
<th>Rs per Ton per year</th>
<th>As per Bid</th>
<th>Rs ....................</th>
</tr>
</thead>
</table>

The base rate is applicable for the first Financial Year of the Operation Period.

ii. The schedule of Base Unit Rate for Variable Charges:

<table>
<thead>
<tr>
<th>Variable Charges</th>
<th>Rs per quintal per month</th>
<th>Rs. 0.57 per quintal per month for Food Grains actually stored in the Silo Complex</th>
</tr>
</thead>
</table>

- Quantity of food grains in the month is to be determined by computing the daily average of actual quantity stored in Silo Complex over the month

iii. The schedule of Base Unit Rate for Handling Charges for different set of activities are specified below:

<table>
<thead>
<tr>
<th>1</th>
<th>Bag Handling Charges for Unloading from trucks / trolley / and debagging including sampling, testing &amp; weighment (“Unloading charges”)</th>
<th>Rs per bag (of 50 Kg)</th>
<th>As specified by the Authority</th>
<th>Rs3.76</th>
</tr>
</thead>
</table>

| 2 | Charges for delivery at storage facility directly from the vehicle not requiring any de-bagging (“weighment charges”) | Rs. Per 50 kg of food grain | As specified by the Authority | Rs. 2.51 |
### Charges for Bagging

Including stitching & evacuation ("Bagging Charges")

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Rate</th>
<th>Specification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Charges for Bagging including stitching &amp; evacuation (“Bagging Charges”)</td>
<td>Rs. per bag (of 50 Kg)</td>
<td>As specified by the Authority</td>
<td>Rs. 2.31</td>
</tr>
</tbody>
</table>

### Stacking of Bags

(“Stacking Charges”)

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Rate</th>
<th>Specification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>Stacking of Bags (“Stacking Charges”)</td>
<td>Rs. per bag (of 50 Kg)</td>
<td>As specified by the Authority</td>
<td>Rs. 1.58</td>
</tr>
</tbody>
</table>

### Loading charges for loading of bags directly on a vehicle

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Rate</th>
<th>Specification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Loading charges for loading of bags directly on a vehicle</td>
<td>Rs per bag (of 50 Kg)</td>
<td>As specified by the Authority</td>
<td>Rs1.77</td>
</tr>
</tbody>
</table>

### Loading charges for loading of bags directly on a vehicle, where breaking of stacks is required

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Rate</th>
<th>Specification</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Loading charges for loading of bags directly on a vehicle, where breaking of stacks is required</td>
<td>Rs per bag (of 50 Kg)</td>
<td>As specified by the Authority</td>
<td>Rs. 2.11</td>
</tr>
</tbody>
</table>

The base rates shall be applicable for the first financial year of Operation Period (Base Year)

2.) Calculation of Fixed Storage Charges payable in a month

**Total Storage Charges payable for a month in nth Financial Year in Rupees =**

\[
\text{(Unit Rate for Storage Charges for n}^{\text{th}} \text{ Financial Year in Rs per ton per year)} \times \text{(Capacity in Tons)} \times (1/12) \times \text{(Normative availability)}
\]

**Where**

Unit rate for Storage Charge for the n\(^{th}\) Financial Year in Rs per ton per year=[Base Unit Rate of Storage Charges as at Table 1 above in Rs per ton per year] \(X [1-2\%]^{n-1} \times [1 + (70\% \text{ (WPI}_{n}\text{−WPI}_{b})/ \text{WPI}_{b})+(30\% \text{ \times (CPI}_{n}\text{−CPI}_{b})/ \text{CPI}_{b})]

**Wherein**

- WPI\(_n\) is the Wholesale Price Index (All Commodities) for month of January immediately preceding the date of revision; and
• WPI_b is the Wholesale Price Index (All Commodities) for month January of the Financial Year immediately preceding the start of the Base Year mentioned at Point 1 above

• CPI_n 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; and

• CPI_b 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 at Table 1 above

• Capacity is as specified in Schedule B.

• In case the period is less than a full calendar month, the Storage Charges shall be payable on a pro-rata basis.

3.) Calculation of Variable Charges payable

Total Variable Charges payable for a month in the n\textsuperscript{th} Financial Year in Rupees = 
(\text{Unit Rate of Variable Charge for the n\textsuperscript{th} Financial Year in Rs per ton}) \times (\text{quantity of Food Grain actually stored in the month in ton})

Where

Unit Rate of Variable Charge for the n\textsuperscript{th} Financial Year in Rs per Ton = 
(Base Unit Rate of Variable Charge in Rs per Ton as per Table 2) \times [1 + (70\% \times \frac{WPI_n - WPI_b}{WPI_b}) + (30\% \times \frac{CPI_n - CPI_b}{CPI_b})]

• WPI_n is the Wholesale Price Index (All Commodities) for month of January immediately preceding the date of revision; and

• WPI_b is the Wholesale Price Index (All Commodities) for month January of the Financial Year immediately preceding the start of the Base Year mentioned at Point 1 above
• CPI\textsubscript{n} 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; and

• CPI\textsubscript{b} 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 at Table 1 above

• Quantity of food grains in the month is to be determined by computing the daily average of actual quantity stored in Silo Complex over the month

4.) **Calculation of Handling Charges**

The Handling Charges shall be payable for actual bags handled as part of the activities mentioned as Table 3 above. No separate Handling Charges shall be payable for activities other than specified at Table 3 above. The total Handling Charges payable shall be as follows:

\[
\text{Total Handling Charges payable for bag related handling in the } n^{\text{th}} \text{ Financial Year in Rupees} = \\
(\text{Unit Rate of Handling Charges for } n^{\text{th}} \text{ Financial Year in Rs per bag }) \times (\text{No of bags unloaded/de-bagged/loaded/stacked})
\]

Where

• Unit Rate for Handling Charges for \( n^{\text{th}} \) Financial Year in Rs per bag

\[= [\text{Base Unit Rate of Handling Charges as per Table 3 above}] \times [1 + (80\% \times (\text{CPI}_{n} - \text{CPI}_{b})) / \text{CPI}_{b}]\]

• CPI\textsubscript{n} 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; and

• CPI\textsubscript{b} 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 at Table 1 above

• Bags handled to be determined from Pre-Acceptance Report and Dispatch Report
### Schedule J: Damages for shortfall in Services and Non-Conformance on quality and quantity

<table>
<thead>
<tr>
<th><strong>Quantity loss at the time of stock taking</strong></th>
<th><strong>Damages payable for shortfall in quantity of Food Grains at the time of dispatch shall be higher of</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Procurement Price plus 20% (twenty per cent) thereof:</td>
</tr>
<tr>
<td></td>
<td>• the highest wholesale price at which a transaction of sale of Food Grains occurred during the preceding 6 (six) months at the nearest wholesale market for Food Grains; and</td>
</tr>
<tr>
<td></td>
<td>• The Economic Cost published by FCI. The Economic Cost in the year the loss is reported to be considered.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Quality loss at the time of dispatch</strong></th>
<th><strong>Value cut as applicable under FAQ norms</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If the stock is not in compliance with FAQ norms, Damages payable at Economic Cost</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Delay in handling trucks/ trains</strong></th>
<th><strong>Damages at the rate of Rs 20 per ton for every hour of delay beyond the stipulated time for handling trucks &amp; train (rail rake).</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>In case, the railways levies higher demurrage charges than calculated as per abovementioned norms for the delay in loading / unloading trains beyond stipulated period in Performance Standard, the same shall be payable by the Concessionaire as the penalty.</td>
</tr>
<tr>
<td></td>
<td>The deviation is to be calculated on average quarterly basis</td>
</tr>
<tr>
<td></td>
<td>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>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Excess in Availability above Normative</strong></th>
<th><strong>In the event that the Actual Availability in any month exceeds the Normative Availability, the Concessionaire</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Availability levels (as per section 11.9.2)</td>
<td>shall be entitled to payment of an Incentive which shall be calculated on a pro rata basis equivalent to one half of the proportion that the Fixed Storage Charge bears to the Normative Availability. For the avoidance of doubt and by way of illustration, the Parties agree that if the pro rata Fixed Storage Charge for 1% (one per cent) of Normative Availability is Rs. x, the Incentive payable for Actual Availability of 0.8% (zero point eight per cent) in excess of Normative Availability shall be Rs. 0.4x. The Parties further agree that the Incentive shall not be due or payable for more than 1% (one per cent) in excess of the Normative Availability.</td>
</tr>
<tr>
<td>Shortfall in Availability below Normative Availability levels (as per Section 11.9.2)</td>
<td>In the event that Actual Availability at any time is less than the Normative Availability, the Fixed Storage Charge payable for the relevant month shall be proportionately reduced and in addition, such reduction shall be multiplied by a factor of 0.5 (zero point five) for determination of Damages. Provided that the aforesaid factor of 0.5 (zero point five) shall be deemed to be 2 (two) during the period of Harvest Season. For the avoidance of doubt and by way of illustration, the Parties agree that if the pro rata Fixed Storage Charge for 1% (one per cent) of Normative Availability is Rs. x, the Damages payable for reduction of 1% (one per cent) in Actual Availability below the level of Normative Availability shall be Rs. 0.5x, which shall be in addition to the pro rata reduction of Rs. x in the Fixed Storage Charge payable for the relevant month. Provided that the Damages payable during the Harvest Season shall be Rs. 2x.</td>
</tr>
</tbody>
</table>
Schedule K : Performance Security

[To be issued by a Schedule Bank incorporated in India and having a net worth of at least Indian Rupees one thousand crores only and having a branch in New Delhi].

From: ......................................................

[Name of the Bank, and its Branch Address]

To:

_________________________

_________________________

1. The Authority vide letter no. __________ dated __________ has issued Letter of Award to __________ (the “Successful Bidder”) for Construction of Silo Complex at__________ for the state of__________, India.

2. __________ (the “Successful Bidder”) has promoted and incorporated a Special Purpose Vehicle in the form of a limited liability company ________________ the “Concessionaire”) having its registered office in the State of ____________ to enter into a Concession Agreement for undertaking, inter alia, the Project and to perform and discharge all its obligations thereunder.

3. In order to perform and discharge all its obligations concerning the “Project”, the Concessionaire is required to give Food Corporation of India (the “Authority”) a guarantee by a recognized bank based in India in the sum of Rs. ________________ on (Indian Rupees ________________) as security for compliance by the Concessionaire with its obligations under the Concession Agreement during the construction period.

4. At the request of the Successful Bidder and / or the Concessionaire, the Guarantor has agreed to give Authority the said guarantee on the terms set out therein.

5. We, [Name of Bank] (The” Guarantor”) with its registered office at (Address of Head Office), unconditionally guarantee to pay Authority upon first written demand and without any deduction any sum claimed by the Authority upto a
maximum of Rupees ________________ (Indian rupees ________________ only) *(the “Guaranteed Sum”)* Subject to the conditions set out below.

6. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from Authority, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make the payment to the Authority.

7. The Guarantor waives any requirement that Authority demand any debt or payment from the Concessionaire before presenting it with a demand under this Guarantee.

8. Authority shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, in accordance with the Concession Agreement. Such notification by the Authority, shall be conclusive and binding on the Guarantor.

9. No underlying dispute as between Authority and the Concessionaire nor any pending application for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to the Authority by the Guarantor and the existence of any disputes or difference or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guarantee.

10. This guarantee is valid and effective its date. This guarantee and the Guarantor’s obligations under it will terminate on the Commercial Operations Date of the Project as advised to the Guarantor in writing by the Authority.

11. The Guarantor agrees that its obligation to pay any demand made by the Authority before the termination of this Guarantee will continue until the amount demanded has been paid in full.

12. This Guarantee shall be valid and effective upto __________________ 18(Date of validity of the Bank Guarantee for Performance Security) for enabling __________________

---

18 Period of not less than 36 months for bank guarantee during Construction Period and not less than 24 months during Operation Period
Authority to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand, if the claim is lodged within the claim validity period and the obligation to pay is subject to normal limitation for payment of claims upon a guarantee. Time is of essence for payment and in the event of failure to make payment, Guarantor shall be obliged to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor’s failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided is no excuse for delayed payment or non-payment of the Guaranteed Sum.

13. No change in the constitution of the Concessionaire or of the Guarantor shall be a ground for release of the Guarantee and no variation in the concession agreement made post selection of the bidder, or post making of the bid, shall constitute a variation, which would, subject to the terms and conditions of this agreement, discharge the Guarantor. The Guarantor shall notwithstanding such change, be found to make payment upon the Guarantee on demand.

14. The Guarantor agrees that no change, addition to or other modifications to the terms of the Concession Agreement or to any documents which have or may be made between Authority and the Concessionaire will in any way release it from any liability under this Guarantee and that it waives any requirement for notice of any such change, addition or modification.

15. The Guarantor agrees that it will not assign its obligations under this Guarantee without the prior written consent of Authority. Authority will not unreasonably withhold its consent if the proposed assignee is of at least equal financial standing to the Guarantor and the assignee assumes in writing the obligations of the Guarantor under this Guarantee at the same time or before the assignment.


SEAL OF [THE BANK] __________________________________________

NAME OF [THE BANK] SIGNATURE __________________________________________

NAME __________________________________________
Schedule L : Selection and Terms of Reference for Independent Engineer & Auditor

I. Selection of Independent Engineer & Auditor (IE&A)

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, mutates 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 Engineer & Auditor shall be selected on the basis of the lowest price bid from among the qualified bidders.

II. Fees and expenses of Independent Engineer & Auditor (IE&A)

1. The Authority shall ensure that the payments to the IE&A 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&A shall be borne equally by the Authority and the Concessionaire in accordance with this Agreement.

III. Appointment of government entity as Independent Engineer & Auditor (IE&A)

1. Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer 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 Engineer & Auditor (IE&A).
III. Terms of Reference for Independent Engineer & Auditor (IE&A)

A. Duties & Responsibilities

The Independent Engineer & Auditor shall perform its duties under the Agreement during the Concession Period starting from the Commencement Date as follows:

i. To review and comment all activities associated with Construction Works of the Project to ensure compliance with the terms of the Concession Agreement.

ii. Report to the Authority on technical, operational and financial aspects including progress on at least quarterly basis during the Construction Period.

iii. Carry out duties set out in the Concession Agreement.

The Independent Engineer & Auditor 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

During the Construction Period

iv. Review and comment the Construction Plan prepared by the Concessionaire with respect to the requirements for Construction Works as specified in the Concession Agreement;

v. Review and comment on the adequacy of engineering investigations including but not limited to geo-technical and topographical aspects;

vi. Review the proposed quality assurance and quality control procedures for the construction stage of the Projects;

vii. Review the safety measures proposed for the construction of the Project;

viii. Supervise works on sample basis and to oversee the materials and workmanship of the Construction Works;

ix. Review the quality assurance and quality control during the Construction Works.
x. 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;

xi. Ensure that the construction, procurement and installation and commissioning work is carried out in accordance with the Standards and Specifications and Good Industry Practice;

xii. Identify delays in completion and recommend to the Concessionaire the remedial measures to expedite the progress;

xiii. Review “as-built” drawings for design parameters and performance of the works prepared by the Concessionaire;

xiv. Supervise and monitor various tests as required for the works

xv. Issue the Completion Certificate in accordance with the provisions of the Concession Agreement;

xvi. Review and suggest improvements on the O&M Plan

xvii. Design a Management Information System (MIS) for monitoring of the Project by the Authority

xviii. If required mediate and assist in resolving disputes between both the Parties to the Concession Agreement

C. During the Operation Period

i. Carry out audits at the Silo Complex 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 Silo Complex 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

D. Interaction with the Authority

The Independent Engineer & Auditor 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

E. 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.
Schedule M: FAQ norms
Schedule N: LOA issued by the Authority
Schedule O: Request of the Concessionaire to accept the SPV (Clause – H, Page- 10 of DCA)
Schedule P: Letter of Authority for accepting the SPV floated by the Concessionaire
Annexure A : RFP Documents submitted by the Concessionaire
Annexure B : RFP Documents submitted by the Concessionaire