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Overview of the framework

Need for a framework

Traditional warehouses for shortage of foodgrains have been built in the public sector mainly by Central Warehouse Corporation (CWC), Food Corporation of India (FCI) and the State Warehousing Corporations (SWCs). A large number of warehouses built in the private sector have also been hired by the public sector for storage of foodgrains procured for the public distribution system. However, the total storage capacity continues to be short of the requirement of FCI which has been procuring ever increasing supplies of foodgrains under its price support operations. Besides shortage of warehousing capacity, there is virtually a complete absence of modern storage facilities like silos, which can store foodgrains for longer periods while preserving their quality. Government of India has, therefore, decided to create modern storage facilities with a capacity of 2 (two) million tonnes in the first phase.

Need for modern storage

Significant investment would be required for building modern storage capacity and much of it would have to be mobilised from the private sector. Experience over the past decade suggests that infrastructure projects across sectors have witnessed a significant interest from both domestic as well as foreign investors following the policy initiatives taken by the Government of India to promote Public Private Partnerships (PPP) in building and operating such projects. However, a pre-requisite for private participation of this nature and scale is the adoption of a comprehensive policy and regulatory framework which is necessary for addressing the complexities of PPP and for balancing the interests of users and investors. In particular transformation of rules will need to be accompanied by a change in the institutional mind set.

Need for private investment

For building and operating storage projects through PPP, a precise policy and regulatory framework is being spelt out in this Model Concession Agreement for storage of foodgrains (MCA). This framework addresses the issues which are typically important for limited recourse financing of infrastructure projects, such as mitigation and unbundling of risks; allocation of risks and rewards; symmetry of obligations between the principal parties; precision and predictability of costs and obligations; reduction of transaction costs; force majeure; and termination. It also addresses other important concerns such as independent monitoring, dispute resolution and financial support from the Government.

A comprehensive framework is a pre-requisite for PPP

The MCA provides the basis for optimal utilisation of resources on the one hand and adoption of international best practices on the other. The objective is to secure value for public money in the form of efficient and cost-effective services.

Elements of financial viability

The three critical elements that determine the financial viability of storage projects

are the concession period, storage charges and capital costs. The concession period for a storage project may normally be fixed at thirty years in line with the life of a typical steel silo. This timeframe should enable a robust project structure with cost-effective storage charges. The MCA also provides for determining the storage charges broadly in line with the prevailing storage charges paid by FCI to CWC.

Since two of the three parameters stated above would be virtually pre-determined, capital cost is the variable that will determine the financial viability of a storage project. Adoption of cost-effective specifications would, therefore, be essential for reducing capital costs in order to improve viability. Yet the project may not attain the financial viability necessary for servicing the capital and operational costs. As a result, bidders may require a capital grant/subsidy from the project authority (the “**Authority**”) in order to reduce their capital investment for arriving at an acceptable rate of return. Where bidders do not seek any grant and are instead willing to make a financial offer to the Authority, they will be free to quote a premium to be paid to the Authority.

Storage Charges

The MCA provides for storage of foodgrains against payment of storage charges which are divided into two parts, viz., Fixed Charge and Variable Charge. Fixed Charge is to be paid for the storage capacity made available by the Concessionaire. Variable Charge is payable for the actual quantity of foodgrains stored in the facility. The MCA also provides for charges to be paid for other services such as unloading, bagging, stacking and loading of foodgrains.

Storage charges should be determined with care and precision

The MCA provides for an annual reduction in the Fixed Charge to account for the depreciated value of the project assets. It has been stipulated that the storage charges subsequent to the first year of operation may be determined by reducing the same to the extent of a pre-determined percentage in the band of 1 to 2 per cent per annum. The Concession Agreement also provides for variation in the storage charges to the extent of variations in Price Index.

Indexation to WPI

Third party usage of unutilised capacity

To avoid idling of capacity, the Concessionaire has been permitted to hire out the vacant storage space to third parties in the event that the available capacity is not utilised by the Authority. In such cases, 40 per cent of the revenues earned by the Concessionaire from such third parties shall be shared with the Authority.

Technical parameters

Unlike the normal practice of focussing on construction specifications, the technical parameters proposed in the MCA are based mainly on output specifications as these have a direct bearing on preserving the quality of foodgrains stored in the facility. Only the core requirements of design, construction, operation and maintenance of the storage facility have been specified, leaving enough room

Technical parameters for level of service

for the Concessionaire to innovate and add value.

In sum, the framework focuses on the ‘what’ rather than the ‘how’ in relation to the delivery of services by the Concessionaire. This would provide the requisite flexibility to the Concessionaire in evolving and adopting cost-effective designs without compromising on the quality of storage of foodgrains. Cost efficiencies would occur because the shift to output-based specifications would provide the private sector with a greater opportunity to innovate and optimise on designs in a way normally denied to it under conventional input-based procurement specifications.

Performance standards

The Concessionaire would not only procure the construction of the storage facility, it would also provide a service in the form of storage of foodgrains. The efficiency of the Concessionaire would normally reflect in the quality of service provided to the Authority. The MCA, therefore, identifies the key performance indicators relating to operation and maintenance of the storage facility and stipulates penalties for failure to achieve the requisite levels of performance.

Performance standards to be enforced

In particular, the Concessionaire is required to ensure the availability of storage capacity at the pre-determined normative levels. The number of forced closures in a quarter year has been capped in order to ensure system reliability. Losses of foodgrains must also remain within the specified normative levels.

The MCA requires the Concessionaire to declare the availability of the storage facility. Normally, the storage facility will be deemed as available to the extent of the specified storage capacity. In the event of any defect or deficiency, the Concessionaire must declare the actual availability so that its storage charges are computed accordingly. The MCA stipulates stiff penalties in case of mis-declaration by the Concessionaire.

For monitoring the key performance indicators, monthly status reports and inspections of the Independent Expert have been prescribed. The Concessionaire is also required to maintain the requisite ISO certifications for the storage facility.

Selection of Concessionaire

Selection of the Concessionaire will be based on open competitive bidding. All project parameters such as the concession period, storage charges, technical parameters and performance standards are to be clearly stated upfront. Based on these terms, the short-listed bidders will be required to specify their financial offer without any conditions. The bidder who seeks the lowest grant or offers the highest premium, as the case may be, should win the contract.

Competitive bidding on single parameter will be the norm

Risk allocation

As an underlying principle, risks have been allocated to the parties that are best suited to manage them. Project risks have, therefore, been assigned to the private sector to the extent it is capable of managing them. The transfer of these risks and responsibilities to the private sector would increase the scope of innovation leading to efficiencies in costs and services.

Risk allocation and mitigation are critical

The commercial and technical risks relating to construction, operation and maintenance are being allocated to the Concessionaire, as it would be best suited to manage them. On the other hand, all direct and indirect political risks are being assigned to the Authority.

The MCA provides for extension of the concession period in order to compensate the Concessionaire for specified events. In case the stipulated extension of concession period cannot be granted, the MCA provides for a pre-determined monetary compensation to be paid to the Concessionaire.

Extension of concession period

Financial close

Unlike other agreements for private infrastructure projects which neither define a time-frame for achieving financial close, nor specify the penal consequences for failure to do so, the MCA stipulates a time limit of 120 days for achieving financial close (extendable for another 90 days on payment of a penalty), failing which the bid security shall be forfeited. By prevalent standards, this is a tight schedule, which is achievable only if all the parameters are well defined and the requisite preparatory work has been undertaken.

Project implementation must commence as per agreed timeframe

The MCA represents the comprehensive framework necessary for enabling financial close within the stipulated period. Adherence to such time schedules will usher in a significant reduction in costs besides ensuring timely provision of the needed infrastructure. This approach would also address the typical problem of infrastructure projects not achieving financial close for long periods.

Construction of the storage facility

Handing over possession of the land required for construction of the storage facility and obtaining of environmental clearances are being proposed as conditions precedent to be satisfied by the Authority before financial close. Procurement of applicable permits has been proposed as a condition precedent to be satisfied by the Concessionaire. In order to facilitate the process, the Authority would provide reasonable support and assistance to the Concessionaire in procuring the aforesaid licence and permits.

The MCA defines the scope of the project with precision in order to enable the Concessionaire to determine its costs and obligations. Additional works may be undertaken within a specified limit, but only if the entire cost thereof is borne by

the Authority.

Before commencing the commercial operation of the storage facility, the Concessionaire will be required to subject it to specified tests for ensuring compliance with the specifications relating to safety and quality of service.

Service quality and safety must be ensured

Operation and maintenance

Operation and maintenance of the storage facility is proposed to be governed by strict standards with a view to ensuring a high level of service for the Authority. Any violations of these standards would attract stiff penalties. In sum, operational performance would be the most important test of service delivery.

Maintenance standards will be enforced strictly

Right of substitution

The project assets may not constitute adequate security for lenders. It is the project revenue streams that constitute the mainstay of their security. Lenders would, therefore, require assignment and substitution rights so that the concession can be transferred to another company in the event of failure of the Concessionaire to operate the project successfully. The MCA accordingly provides for such substitution rights.

Lenders will have the right of substitution and mortgage

As security for recovery of debt due in the event of termination, creation of a mortgage on the storage facility has been stipulated in the MCA. This is expected to provide added comfort to the lenders.

Force majeure

The MCA contains the requisite provisions for dealing with force majeure events. In particular, it affords protection to the Concessionaire against political actions that may have a material adverse effect on the project. The MCA also provides for relief to the Concessionaire upon occurrence of an unforeseen event.

Concessionaire will be protected against political actions

Termination

In the event of termination, the MCA provides for a compulsory buy-out by the Authority, as the site, including the storage facility, is owned by the Authority. Termination payments have been quantified precisely as compared to the complex formulations in most concession agreements relating to infrastructure projects. Political force majeure and defaults by the Authority would qualify for adequate compensatory payments to the Concessionaire and will thus guard against any discriminatory or arbitrary action by the Authority. Such termination payments shall not be less than the product of forty and the fixed charge due and payable for and in respect of the last month of the Concession Period when such fixed charge was paid. Further, the project debt would be fully protected by the Authority in the event of termination, except for three situations, namely, (a) when termination occurs as a result of default by the Concessionaire, 90 per cent of the debt will be

Pre-determined termination payments should provide predictability

protected, (b) in the event of non-political force majeure such as Act of God (normally covered by insurance), 90 per cent of the debt not covered by insurance will be protected, and (c) when termination occurs on account of Concessionaire Default during Construction Period, the Concessionaire shall bear the initial expenditure equal to 40 per cent of the Total Project Cost and for the expenditure in excess of such 40 per cent, an amount equal to 90 per cent of the debt attributable to such expenditure will be protected.

Upon expiry of the specified concession period, the Concessionaire would be entitled to a termination payment equal to 20 times the fixed charge payable in the last month of the Concession Period when such fixed charge was paid.

Monitoring and supervision

Day-to-day interaction between the Authority and the Concessionaire has been kept to the bare minimum by following a ‘hands-off’ approach, and the Authority shall be entitled to intervene only in the event of a material default. Checks and balances have, however, been provided for ensuring full accountability of the Concessionaire.

Independent supervision is essential

Monitoring and supervision of construction, operation and maintenance is proposed to be undertaken through an Independent Expert (a qualified firm) that will be selected by the Authority through a transparent process. Its independence would provide added comfort to all stakeholders, besides improving the efficiency of project implementation. The MCA provides for a transparent procedure to ensure selection of well-reputed statutory auditors, as they would play a critical role in ensuring financial discipline. As a safeguard, the MCA also provides for appointment of additional or concurrent auditors.

Specifications & Standards

The accountability for providing a safe and reliable storage facility for preservation of foodgrains ultimately rests with the Authority and the MCA, therefore, refers to the Specifications and Standards that the Concessionaire must conform to. The Specifications and Standards are, therefore, included in the MCA and shall be binding on the Concessionaire. The MCA stipulates only the basic requirements of design and construction while greater emphasis has been placed on specifying the output specifications that have a direct bearing on the level and quality of storage.

Payment Security

With a view to providing payment security to the Concessionaire, the MCA stipulates a Default Escrow Account and a Letter of Credit to be provided by the Authority. The Letter of Credit is to be provided for an amount equivalent to 125 per cent of the Fixed Charge payable for the storage facility for one month. This Letter of Credit can be invoked by the Concessionaire in the event that the payment against the monthly invoice is not made within the specified time. The

Support and guarantees by the Government are essential

funds in the Default Escrow Account can be used for payments due to the Concessionaire on account of Storage Charges as well as for termination payments. Further, if the Concessionaire is unable to recover his dues from the Default Escrow Account and the Letter of Credit, he may do so by hiring out the storage facility to third parties. In the event the Authority does not set up the Default Escrow Account or the Letter of Credit and the Concessionaire is unable to recover his dues by hiring storage capacity to third parties, he may recover his dues by sale of the foodgrains in his custody.

Miscellaneous

The MCA addresses other important issues such as dispute resolution, suspension of rights, change in law, insurance, defects liability, indemnity, redressal of public grievances and disclosure of project documents. It incorporates the best practices that would enable a fair and transparent framework for private participation.

An effective dispute resolution mechanism is critical

Conclusion

Together with the Schedules, the proposed contractual framework addresses the issues that are likely to arise in financing of storage projects on DBFOT basis. The proposed regulatory and policy framework contained in the MCA is critical for attracting private participation with the concomitant efficiencies and lower costs, necessary for accelerating growth.

Private participation should improve efficiencies and reduce costs

Part I
Preliminary

CONCESSION AGREEMENT^s

THIS AGREEMENT¹ is entered into on this the day of....., 20.....

BETWEEN

1 The Food Corporation of India represented by *** and having its principal offices at ***** (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

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

WHEREAS:

(A) The Authority had resolved to procure an integrated storage facility for storage of Foodgrains comprising [4 (four)] Silos with a design storage capacity of [50,000 (fifty thousand)] metric tonnes, at *** in district *** in the State of *** (the “**Storage**”

^s **Instructions for Bidders**

The draft Concession Agreement issued to the Bidders may be customised for bid-specific purposes in accordance with the instructions below:

Note 1: The provisions in curly brackets are to be retained in the draft Concession Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid-specific particulars in the Concession Agreement. (See Appendix-I)

Note 2: Blank spaces are to be retained in the draft Concession Agreement and shall be suitably filled by the Bidders after the issue of LOA in order to reflect bid-specific particulars in the Concession Agreement. However, blank spaces shall be retained in all Schedules which contain formats that are to be used after the Concession Agreement is executed. (See Appendix-I)

Note 3: Footnotes marked “£” are to be retained in the draft Concession Agreement. These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Concession Agreement. However, footnotes marked “\$” or “\$\$” shall be retained in the Concession Agreement as a part thereof. (See Appendix-I)

¹ **Instructions for customisation of this document by the Authority**

This Model Concession Agreement (the “MCA”) may be customised for project-specific use in accordance with the instructions below:

Note I: Serially numbered footnotes in this MCA are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bidding Documents. (See Appendix-II)

Note II: All project-specific provisions in this MCA have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Concession Agreement to Bidders. (See Appendix-II)

Note III: The asterisks in this MCA should be substituted by project-specific particulars before issuing the draft Concession Agreement to Bidders. (See Appendix-II)

Note IV: Notes I, II, III and IV shall be omitted prior to issuing of the draft Concession Agreement.

Facility”) on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions set forth in this Agreement.

- (B) The Authority had accordingly invited proposals by its Request for Qualification dated *** (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the above referred Storage Facility on DBFOT basis and had shortlisted certain bidders including, *inter alia*, the {the selected bidder/ consortium comprising and (collectively the “**Consortium**”) with as its lead member (the “**Lead Member**”)}.
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Award No. dated (hereinafter called the “**LOA**”) to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Agreement within 30 (thirty) days of the date of issue thereof.
- (E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/ Consortium under the LOA,} including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.
- (F) {By its letter dated, the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof}.
- (G) The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 49) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of ***, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) reference to a “**business day**” shall be construed as reference to a day (other than a Sunday) on which banks in the State where the Storage Facility is situate are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) 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;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or

other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (w) references to Recitals, Articles, Clauses, Sub-clauses, Provisos or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses, Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to anything to the contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (z) capitalised terms used in the Agreement, but not defined herein, shall be construed in accordance with Good Industry Practice.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/ or the Independent Expert, shall be provided free of cost and in 3 (three) copies, and if the Authority and/ or the Independent Expert is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof or referred to herein,
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
- (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
- (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
- (f) between any value written in numerals and that in words, the latter shall prevail.

Part II
The Concession

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) construction and procurement of the Storage Facility [, including a Railway siding,] on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- (b) operation and maintenance of the Storage Facility in accordance with the provisions of this Agreement;
- (c) storage and preservation of Foodgrains, including provision of Storage Services, in accordance with the provisions of this Agreement; and
- (d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project and provide Storage Services (the “**Concession**”) for a period of 30 (thirty) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

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

- (a) Right of Way, access and licence to the Licensed Premises for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and construct the Storage Facility;
- (c) manage, operate and maintain the Storage Facility in accordance with this Agreement;
- (d) procure Availability of the Storage Capacity, on an exclusive basis, to the Authority for use under and in accordance with the provisions of this Agreement, save and except as expressly provided in the Agreement;
- (e) to receive payments from the Authority in respect of the Storage Services;
- (f) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (g) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (h) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Storage Facility nor sell, transfer, exchange, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.2 Extension of Concession Period

3.2.1 In the event that extension of the Concession Period shall have become due under and in accordance with the provisions of this Agreement, the Concessionaire shall apply to the

Authority forthwith for extension of the Concession Period in accordance with the provisions of this Agreement.

- 3.2.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that extension of the Concession Period due to the Concessionaire in accordance with the provisions of Clauses 13.5.4, 35.6.2 and 36.3 is not granted by the Authority for any reason, the Authority shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Concessionaire a lump sum amount computed in accordance with this Clause 3.2.2 in lieu of the Fixed Charge that would have been payable to the Concessionaire if the Concession Period were extended in accordance with this Agreement. For computation of the aforesaid lump sum amount payable hereunder, the monthly Fixed Charge due and payable for and in respect of the last month of the Concession Period, when such Fixed Charge was due and payable, shall be deemed as the base and the amount so determined shall be reduced by 5% (five per cent) for the following month and the same computation shall be repeated for every subsequent month for the purposes hereof. For the avoidance of doubt and by way of illustration, the Parties agree that if the monthly Fixed Charge for the last month of the Concession Period is Rs. 1 crore (Rupees one crore) and the period of foregone extension is 2 (two) months, the amount payable for and in respect of the first and second months shall be a sum of Rs. 95 lakh (Rupees ninety five lakh) and Rs. 90.25 lakh (Rupees ninety point two five lakh) respectively. The Parties further agree that payment for a part month shall be computed on a proportionate basis. The Parties also agree that the payment of such amount shall be deemed to form part of Secured Obligations and may be recovered by the Concessionaire under and in accordance with the provisions of Article 29.

3.3 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, substitute itself by any other public entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 29.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 25, 35, 45 and 48, 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**”). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Clauses 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 4.1.1.
- 4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 60 (sixty) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:
- (a) procured for the Concessionaire the Right of Way to the Licensed Premises in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
 - [(b) procured Applicable Permits, if any, relating to environmental protection, conservation and forest clearance;] and
 - [(d) obtained the required permission from Railway authorities for building a Railway Siding;]
 - (e) executed and procured execution of the Default Escrow Agreement in accordance with the provisions of Clause 29.1.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire within a period of 120 (one hundred and twenty) days from the date of this Agreement shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
 - (b) executed and procured execution of the Substitution Agreement;
 - (c) executed and procured execution of the Escrow Agreement;
 - (d) procured all the Applicable Permits specified in Part-I of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be

fulfilled under such Applicable Permits, as on the date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement, are fulfilled;

- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority {from the existing promoters/selected bidder/Consortium Members, their respective} confirmation of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof.

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

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within the period specified in that

Clause, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, within a period of 180 (one hundred and eighty) days from the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Storage Facility and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Concessionaire shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.
- 5.1.4 The Concessionaire shall install, operate and maintain the Storage Facility in accordance with the Specifications and Standards and the Maintenance Requirements such that its Availability is not less than 98% (ninety eight per cent) of the Storage Capacity during any Accounting Year of the Concession Period (the “**Normative Availability**”). For the avoidance of doubt and by way of illustration, the Normative Availability for a designed Storage Capacity of 10,000 (ten thousand) MT shall be an average Availability of 9,800 (nine thousand and eight hundred) MT for an Accounting Year and where the context so requires, the Normative Availability for any month shall also be an average Availability of 9,800 (nine thousand and eight hundred) MT for that month.

Explanation:

Availability of the Storage Capacity shall mean, the capacity available for storage of 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.

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

- (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Storage Facility;
- (c) perform and fulfil its obligations under the Financing Agreements;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement or Applicable Laws;
- (g) procure that all equipment and facilities comprising the Storage Facility are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (h) procure the Normative Availability of the Storage Capacity for use by and on behalf of the Authority;
- (i) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (j) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

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

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the

Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt of the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority. For the avoidance of doubt, it is expressly agreed that the obligation under this Clause 5.3.1 and the representation in Clause 7.1(k) shall apply to the Concessionaire only in the event any person, together with its Associates, holds 33% (thirty three per cent) or more of its paid up share capital as on the date of submitting the Application in response to the Request for Qualification.

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 25% (twenty five per cent) or more 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:

- (i) 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, 2011 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;
- (ii) 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

- (iii) 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 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Obligations relating to employment of trained personnel

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

5.6 Obligations relating to medical aid

For providing aid and assistance in medical emergencies relating to the Storage Facility, the Concessionaire shall set up and operate a medical aid post (the “**Medical Aid Post**”) equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.7 Obligations relating to taxes

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

5.8 Obligations relating to Storage operations

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

5.9 Obligations relating to information

- 5.9.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 5.9.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

5.10 Sole purpose of the Concessionaire

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

5.11 Branding of Storage Facility

The Storage Facility or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Storage Facility to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may, in its discretion, display its own name below the name of the Storage Facility in parenthesis as "(operated by ***)". It is further agreed that the Storage Facility shall be known, promoted, displayed and advertised by the name of *****.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, 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 Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring the Applicable Permits required from any Government Instrumentality for implementation and operation of the Storage Facility;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) procure that no barriers are erected or placed on or about the Storage Facility by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, or law and order;
- (d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Storage Facility;
- (e) assist the Concessionaire in procuring police assistance for removal of trespassers and for security on or at the Storage Facility;
- (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement and Applicable Laws; and
- (h) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging their obligations under this Agreement and the Project Agreements.

6.2 Obligations relating to refinancing

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

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, 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 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 {existing promoters /selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 33% (thirty three per cent) of {its/their} issued and paid up Equity as on the date of this Agreement; {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 Request for Qualification shall, during the Construction Period, hold less than 26% (twenty-six per cent) of such Equity which shall also be no less than 5% (five per cent) of the Total Project Cost;}
- (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 or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Storage Facility shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession

or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;

- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects; and
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Licensed Premises, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III
Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 90 (ninety) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)² in the form set forth in Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 90 (ninety) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 38. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 38.

² Calculated @ approximately 5% (five per cent) of the amount specified in the definition of Total Project Cost.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 40% (forty per cent) of the Total Project Cost including, Equity Support, if any; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified in this Clause 9.3, the Authority shall release the Performance Security forthwith.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 32.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of Concessionaire Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

9.6 References to Performance Security

References to Performance Security occurring in this Agreement for and in respect of any period prior to the delivery of the Performance Security by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

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

10.2 Licence, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Licensed Premises for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Premises pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Storage Services, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing roads within the Site or an alternative thereof are open to traffic at all times during the Concession Period.

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

- 10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Licensed Premises are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Licensed Premises

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Licensed Premises. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Licensed Premises to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Licensed Premises during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Licensed Premises required and necessary for the Storage Facility. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Storage Facility without which the Completion Certificate or Provisional Certificate may not be granted. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 5,000 (Rupees five thousand) per day for every 500 (five hundred) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.
- 10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Expert in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Licensed Premises not being granted to the Concessionaire or any construction on such part of the Licensed Premises remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Expert hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.
- 10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for ancillary buildings and Associated Services or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement and upon procurement thereof, such land shall vest in the Authority and form part of the Licensed Premises; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from the Appointed Date, instead of 90 (ninety) days as specified in Clause 10.3.4.

10.4 Premises to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Licensed Premises shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and

occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Licensed Premises for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Licensed Premises.

10.5 Protection of Licensed Premises from Encumbrances

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Expert

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

10.8 Geological and archaeological finds

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

instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

ARTICLE 11

UTILITIES, ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Storage Facility. The cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 Felling of trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Storage Facility. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

ARTICLE 12

CONSTRUCTION OF STORAGE FACILITY

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Expert its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

12.2 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Storage Facility as set forth in Schedule-H, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Expert for review.
- (b) By submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.
- (d) If the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Expert for review. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

- (e) No review and/or observation of the Independent Expert and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Expert or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 12.2, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the location and layout of the Storage Facility and general arrangement drawings thereof and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2 shall apply *mutatis mutandis* to the review and comments hereunder.
- (g) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Storage Facility as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Storage Facility and of the buildings and structures forming part of the Site.

12.3 Construction of Storage Facility

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Storage Facility as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The [365th (three hundred and sixty fifth) day]³ from the Appointed Date shall be the scheduled date for completion of the Storage Facility (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Storage Facility shall be completed on or before the Scheduled Completion Date.
- 12.3.2 The Concessionaire shall construct the Storage Facility in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the

³ If this period is modified, the milestones specified in Schedule-G may also be modified accordingly.

Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

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

[12.4 Construction of Railway Siding⁴

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of a railway siding, including railway tracks, on the land earmarked for this purpose in Schedule-A and as specified in Schedule-B (the “**Railway Siding**”). The Concessionaire agrees and undertakes that construction of the Railway Siding shall be completed on or before the Scheduled Completion Date.

12.4.2 The Parties agree that the provisions of this Agreement shall apply mutatis mutandis to the construction, operation and maintenance of the Railway Siding.]

⁴ Clause 12.4 may be omitted if Railway Siding is not included in the Project.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. Provided, however, that the Independent Expert may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Expert for discharging its functions hereunder. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out

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

13.4 Delays during construction

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

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any person or property. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to hereinabove.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 35.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

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

13.6 Video recording

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

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

- 14.1.1 No later than 30 (thirty) days prior to the likely completion of the Storage Facility, the Concessionaire shall notify the Independent Expert of its intent to subject the Storage Facility to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Expert, and in the event the Independent Expert delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Expert and shall ensure that Tests are completed in time either by the Independent Expert or any substitute thereof.
- 14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Storage Facility with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Storage Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Storage Facility with Specifications and Standards.

14.2 Completion Certificate

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

14.3 Provisional Certificate

- 14.3.1 The Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the “**Provisional Certificate**”) if the Tests are successful and the Storage Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the

Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Concessionaire (the “**Punch List**”); provided that the Independent Expert shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued if the Tests undertaken in terms hereof establish that the Storage Facility can be safely and reliably placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4 Completion of Punch List items

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

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

14.4.3 Notwithstanding anything to the contrary contained in Clause 14.4.2, the Parties hereto expressly agree that the Completion Certificate shall, subject to the provisions of this Agreement, be issued if the tested storage capacity is capable of providing at least 90% (ninety per cent) of the Storage Capacity; provided, however, that for every shortfall of 1% (one per cent) or part thereof as compared to the Storage Capacity, the Fixed Charge set forth in Clause 27.3 shall be deemed to be reduced by 1.5% (one point five per cent) thereof; provided further that upon reduction of the Fixed Charge hereunder, the Storage Capacity shall be deemed to be reduced in accordance with the capacity specified in the Completion Certificate and the provisions of this Agreement shall apply as if the Storage

Capacity is the capacity determined hereunder. For the avoidance of doubt, the Concessionaire may at any time rectify the shortfall hereunder and require the Independent Expert to issue a revised Completion Certificate under and in accordance with this Article 14 and the revised Completion Certificate, if any, shall be deemed to be the Completion Certificate, from the date thereof, for the purposes of this Agreement, including the determination of Fixed Charge.

14.5 Withholding of Provisional or Completion Certificate

- 14.5.1 If the Independent Expert determines that the Storage Facility or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire. Upon receipt of such a report from the Independent Expert and after conducting its own inspection, if the Authority is of the opinion that the Storage Facility is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Storage Facility and direct the Independent Expert to withhold issuance of the Provisional Certificate or the Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. Provided, however, that the Concessionaire shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the Concessionaire.

14.7 Safety certification prior to COD

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

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Storage Facility shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14 and the commercial operation date of the Storage Facility shall [, subject to the provisions of Clause 15.1.3,] be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Storage Facility shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect the Fixed Charge in accordance with the provisions of Article 27, provided, however, that the entry of Storage Facility into commercial service shall always be subject to compliance with the provisions of Clause 14.7. For the avoidance of doubt, the Parties expressly agree that if the Storage Facility is substantially completed but COD is delayed for reasons attributable to the Authority, 20% (twenty per cent) of the Fixed Charge shall be due and payable hereunder as if COD has occurred for the Project or any section thereof, as the case may be, in addition to the extension of Concession Period under and in accordance with Clause 36.3.

15.1.2 In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Storage Facility into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the Independent Expert for any reason attributable to the Independent Expert or the Authority, as the case may be, the Concessionaire may declare COD and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD hereunder, the Dispute Resolution Procedure shall apply.

[15.1.3 The Parties expressly agree that the 1st (first) Harvest Season for and in respect of the Storage Facility shall be deemed to commence on the 1st (first) day of May occurring after completion of the Storage Facility and accordingly, COD of the Storage Facility shall be deemed to occur on the 1st (first) day of May falling immediately after the date of the Provisional Certificate or Completion Certificate, as the case may be. Provided, however, that the Authority may, in its discretion, declare any date falling between the date of Provisional Certificate or Completion Certificate, as the case may be, and the date of commencement of the Harvest Season to be the COD.]

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if Provisional Certificate or Completion Certificate, as the case may be, is not issued prior to the 90th (ninetieth) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.25% (zero point two five per cent) of the

amount of Performance Security for delay of each day until the Provisional Certificate or Completion Certificate, as the case may be, is issued.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Storage Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Storage Facility and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable.

- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Expert, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

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

16.4 Restrictions on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Storage Facility by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Storage Facility and issuing the Provisional Certificate.
- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Authority[‡], and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

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

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 42.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

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

[‡] The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

- (a) ensuring safe, hygienic and efficient storage of Foodgrains in the Storage Facility, including prevention of loss or damage thereto, during normal operating conditions;
- (b) undertaking operation and maintenance of the Storage Facility in an efficient, coordinated and economical manner, in compliance with the Specifications and Standards, and procure Availability of the Storage Capacity to the Authority in accordance with the provisions of this Agreement and Applicable Laws;
- (c) procuring that the Availability of the Storage Capacity is not less than the Normative Availability;
- (d) minimising disruption to storage and movement of Foodgrains in the event of accidents or other incidents affecting the safety and use of the Storage Facility by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (e) carrying out periodic preventive maintenance of the Storage Facility;
- (f) undertaking routine maintenance including prompt repairs of all elements and components of the Storage Facility so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
- (g) undertaking major maintenance including Major Overhaul, replacement of components and parts, repairs to structures, and repairs and refurbishment of associated facilities including equipment;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Storage Facility;
- (i) protection of the environment and provision of equipment and materials therefor;
- (j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Storage Facility and for providing Storage Services;

- (k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (l) complying with Safety Requirements in accordance with Clause 17.16;
- (m) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and
- (n) maintaining reliability in operating the Storage Facility.

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

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads or other structures situated on the Licensed Premises.

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

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

17.3.1 No later than 90 (ninety) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Expert, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Storage Facility in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and 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.

17.4 Maintenance Programme

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

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Storage Facility;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) frequency 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.

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

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

17.4.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4 or as notified to the Authority under the provisions of Clause 27.7.2 shall be deemed to be scheduled maintenance (the “**Scheduled Maintenance**”). For the avoidance of doubt, any closure, suspension or reduction of Storage Capacity arising out of Scheduled Maintenance shall be deemed as Non-Availability of Storage Capacity.

17.5 Major Overhaul

- 17.5.1 The Concessionaire may, as and when necessary, undertake Major Overhaul of a Silo, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Authority, at least 1 (one) year in advance, and requiring the Authority to evacuate Foodgrains from such Silo prior to the scheduled date of commencement of Major Overhaul. Provided that a Major Overhaul shall not be scheduled during the Harvest Season or during a period of 6 (six) months following the Harvest Season. For the avoidance of doubt, unless the Parties mutually agree, not more than 1 (one) Silo shall be subjected to a Major Overhaul during the course of an Accounting Year.
- 17.5.2 The Normative Availability of the Storage Facility shall be deemed to be reduced during the period of Major Overhaul and such reduction shall bear the same proportion as the capacity of the Silo being subjected to Major Overhaul does to the Storage Capacity.
- 17.5.3 The Fixed Charge due and payable to the Concessionaire shall be reduced proportionately to the extent of reduction in Availability of the Storage Facility during the period of Major Overhaul. For the avoidance of doubt, the Parties agree that the evacuation of a Silo shall cause disruption in the operations of the Authority and consequently, the Concessionaire shall be liable to pay Damages equal to 25% (twenty five per cent) of the Fixed Charge payable for a period of 1 (one) month following the recommissioning of such Silo.

17.6 Safety, breakdowns and accidents

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

17.7 De-commissioning due to Emergency

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

event the Authority does not approve the de-commissioning of the Storage Facility by the Concessionaire under this Clause 17.7.1, it may refer the matter to the Independent Expert for determination of the facts and if any Dispute remains thereafter, the Dispute Resolution Procedure shall apply.

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

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

17.8 Section closure

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

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

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

17.9 Unscheduled Maintenance

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

17.10 Damages for breach of maintenance obligations

17.10.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 1% (one per cent) of the Fixed Charge, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Expert. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

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

17.11 Authority's right to take remedial measures

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

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

17.12 Overriding powers of the Authority

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

reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

- 17.12.2 In the event that the Concessionaire, upon notice under Clause 17.12.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.12.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.11 along with the Damages specified therein.
- 17.12.3 In the event of a national emergency, civil commotion or any other act specified in Clause 35.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Storage Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 35. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.12.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.13 Restoration of loss or damage to the Storage Facility

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

17.14 Modifications to the Storage Facility

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

the safety of Users and other persons, the same shall be subjected to the tests and certification specified in Clause 14.7. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.15 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if Non-Availability of the whole or any part of the Storage Facility 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 Storage Facility except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Storage Facility:

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

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

17.16 Safety Requirements

17.16.1 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 Storage Facility, Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Storage Facility, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).

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

17.17 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the approach to or exit from the Storage Facility except for reasons of Emergency, national security, or law and order. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the

Storage Facility that may cause a material adverse effect on the movement to and from the Storage Facility.

17.18 Installation and operation of CCTV

The Concessionaire shall install and operate a closed circuit television system to monitor the Storage Facility and such other parts of the Storage Facility as may be necessary and expedient for safe storage and movement of the Foodgrain therein.

17.19 Advertising on the Storage Facility

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

ARTICLE 18

MONITORING OF OPERATION AND MAINTENANCE

18.1 Monthly status reports

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

18.1.2 During Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Independent Expert a monthly management report which shall be a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Storage Facility's operational performance; and
- (c) key financial parameters for the month, as benchmarked against the monthly budget, the reasons for shortfall, if any, and proposals to remedy the same.

18.2 Reports of unusual occurrence

18.2.1 Prior to the close of each day, the Concessionaire shall furnish to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, on the Storage Facility relating to the safety and security of the Storage Facility and Foodgrains or the persons affected by it. A weekly and monthly summary of such reports shall also be sent within 7 (seven) days of the closing of each week and month, as the case may be. For the purposes of this Clause 18.2.1, accidents and unusual occurrences at the Storage Facility shall include:

- (a) death or injury to any person;
- (b) any damage or obstruction on the Storage Facility;
- (c) disablement of any element or system of the Storage Facility during operation thereof;
- (d) communication failure affecting the operation of the Storage Facility;
- (e) smoke, fire, theft, trespass or other breach of security on the Storage Facility;

- (f) flooding of the Storage Facility; and
- (g) such other relevant information as may be reasonably required by the Authority or the Independent Expert.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 18.2.1, has occurred on that day.

18.2.2 In the event of an Emergency, the Concessionaire shall furnish a report, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such Emergency, setting out the details of the same and the measures taken to mitigate the impact thereof.

18.3 Inspection

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

18.4 Tests

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

18.5 Remedial measures

18.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 18.4 and furnish a report in respect thereof to the Independent Expert and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

18.5.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Storage Facility into compliance with the Maintenance Requirements and the procedure set forth in this Clause 18.5 shall be repeated until the Storage Facility

conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.10.

ARTICLE 19

SECURITY OF THE STORAGE FACILITY

19.1 Security

- 19.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the Storage Facility in accordance with the provisions of this Agreement, the Authority acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the Storage Facility for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences in such manner and to such extent as it may reasonably determine; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Storage Facility and such agreement may *inter alia* provide for sharing of costs as may be agreed upon.
- 19.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Storage Facility and shall be responsible for the security arrangements for the Storage Facility in order to maintain orderly conduct of its business and the security thereof.
- 19.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Storage Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Storage Facility, without unduly or unreasonably disrupting the operations of the Storage Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations for and in respect of the security of the Storage Facility.
- 19.1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.
- 19.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Storage Facility without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

19.2 Insurance Premium

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

ARTICLE 20

CHANGE IN SPECIFICATIONS

20.1 Modification of Specifications

Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Storage Facility (the “**Modified Specifications**”).

20.2 Effect of modification in Specifications

In the event that the Authority introduces any Modified Specifications which require material alterations in the Storage Facility, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16; provided, however, that in the event that such Change in Scope causes any increase or decrease, as the case may be, in the O&M Expenses of the Concessionaire, the Variable Charge shall be modified in accordance with the principles specified in Article 42.

ARTICLE 21

INDEPENDENT EXPERT

21.1 Appointment of Independent Expert

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-O, to be the independent consultant under this Agreement (the “**Independent Expert**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority shall appoint an Independent Expert for a further term of 3 (three) years in accordance with the provisions of Schedule-O, and such procedure shall be repeated after expiry of each appointment.

21.2 Duties and functions

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

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

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

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

21.3 Remuneration

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

21.4 Termination of appointment

21.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 21.1.

21.4.2 If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written

representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1.

21.5 Authorised signatories

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

21.6 Dispute resolution

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

21.7 Interim arrangement

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

ARTICLE 22

ACCEPTANCE AND DISPATCH OF FOODGRAINS

22.1 Notice for Intake and Dispatch of Foodgrains

- 22.1.1 The Authority shall, at least 3 (three) days prior to movement of Foodgrains into or out of the Storage Facility, as the case may be, by notice inform the Concessionaire of the quantity of Foodgrains that the Concessionaire shall receive for storage in the Storage Facility (the “**Intake Notice**”) or the quantity of Foodgrains that the Concessionaire shall dispatch from the Storage Facility (the “**Dispatch Notice**”), as the case may be. The notice shall specify the anticipated time and date of arrival of Foodgrains at the Storage Facility or the time and date of dispatch of Foodgrains from the Storage Facility, as the case may be. For the avoidance of doubt, the Parties agree that the period of Intake Notice may be reduced to 4 (four) hours during the Harvest Season. The Parties further agree that in the event the quantity of Foodgrains specified in the Dispatch Notice is 1,000 (one thousand) metric tonnes or more, the period of notice hereunder shall not be less than 4 (four) days for every 1,000 (one thousand) metric tonnes, and the Concessionaire shall complete the Bagging and stacking within the period specified in the Dispatch Notice.
- 22.1.2 The Authority shall specify the quantity of Foodgrains in its Intake Notice and the Dispatch Notice as its best estimate in good faith, but may revise the same no later than 12 (twelve) hours prior to the time and date of arrival or dispatch of Foodgrains, as the case may be. Provided, however, that any increase in quantities hereunder shall be subject to the period of notice specified in Clause 22.1.1.
- 22.1.3 The receipt and dispatch of Foodgrains shall ordinarily be undertaken within the Operating Hours. Provided that the Authority may require the Concessionaire to receive or dispatch Foodgrains round-the-clock during the Harvest Season or on the days when a railway rake is being loaded or unloaded, as the case may be.
- 22.1.4 If at any time the Concessionaire fails or becomes aware that it is likely to fail in accepting the quantity specified in an Intake Notice or a part thereof or in dispatching the quantity specified in a Dispatch Notice, or a part thereof, as the case may be, it shall notify the Authority, as soon as reasonably practicable, but no later than 12 (twelve) hours from the time of receipt of such notice, of: (a) such actual or anticipated failure; (b) the reason for such failure; (c) the likely duration of such failure; and (d) the aggregate quantity of Foodgrains that it will be unable to accept or dispatch, as the case may be. Any such failure in respect of the Intake Notice, unless attributable to the Authority or to a Force Majeure Event, shall be deemed to be Non-Availability to the extent thereof and treated as such in accordance with the provisions of this Agreement. In the event of any failure in respect of the Dispatch Notice, unless attributable to the Authority or to a Force Majeure Event, the Authority shall be entitled to recover from the Concessionaire Damages calculated at the higher of (a) 50% (fifty per cent) of the Bagging Charges and Stacking Charges computed with respect to the quantity of Foodgrains that was not available for dispatch within the period specified in the Dispatch Notice, and (b) the

actual demurrage and wharfage charges, if any, incurred by the Authority on account of such failure.

- 22.1.5 Any notice issued by the Concessionaire pursuant to the provisions of Clause 22.1.4 shall at all times conform with the provisions of Clause 27.7, and any violation thereof may be construed as Mis-declaration thereunder.

22.2 Delivery of Foodgrains by the Authority

The Authority shall deliver Foodgrains at the Storage Facility in accordance with the quantity, date and time specified in the Intake Notice, and in conformity with the specifications of Foodgrains specified in Schedule-M for and in respect of the Foodgrains determined suitable for storage at the Storage Facility (the “**Foodgrains Specifications**”). For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, modify the Foodgrains Specifications to meet the exigencies, if any, during a specified period and the Foodgrains received at the Storage Facility during such period shall, subject to Applicable Laws, conform to such modified Foodgrains Specifications; provided that corresponding modifications shall be deemed to have been made in respect of the storage of such Foodgrains and the dispatch thereof. For the avoidance of doubt, the Parties agree that the Foodgrains conforming with such modified Foodgrains Specifications shall, to the extent possible, be segregated and stored in a separate Silo.

22.3 Acceptance of Foodgrains by the Concessionaire

- 22.3.1 Upon arrival of Foodgrains at the Storage Facility, the Concessionaire may draw random samples thereof and conduct a visual inspection to determine their conformity with Foodgrains Specifications. In the event it appears necessary to conduct any Foodgrains Tests prior to Unloading, the Concessionaire may detain the Vehicle for upto 1 (one) hour and conduct Foodgrains Tests on random samples comprising at least one sample per tonne and if the results of such Foodgrains Tests establish that the Foodgrains are not within the acceptable limits of Foodgrains Specifications, it may reject the Foodgrains and require the Vehicle to leave the Storage Facility.
- 22.3.2 Prior to accepting Foodgrains at the Storage Facility, the Concessionaire shall undertake testing and weighment thereof in accordance with the provisions of this Agreement.
- 22.3.3 For determining that the Foodgrains conform with the Foodgrains Specifications, the Concessionaire shall conduct tests in accordance with the procedure set out in Schedule - N (the “**Foodgrains Tests**”).
- 22.3.4 The Concessionaire shall be obliged to accept the Foodgrains that conform with the Foodgrains Specifications, as determined by the Intake Report, and shall be deemed to have taken custody of such Foodgrains upon signing of the Intake Report.

22.4 Curing and rejection of Foodgrains

- 22.4.1 If the Intake Report determines that the Foodgrains contain moisture in excess of the limit specified in the Foodgrains Specifications, but within the ceiling of 0.5% (zero point five

per cent) specified in Clause 28.3.1, the Concessionaire shall undertake Drying in accordance with the provisions of Clause 28.3. Provided, however, that in such an event, the modified quantity to be specified in the Intake Report shall be equivalent to the quantity of Foodgrains determined as if it contains moisture content equivalent to the maximum limit specified in the Foodgrains Specifications.

- 22.4.2 If the Intake Report determines that the Foodgrains contain foreign materials in excess of the limit specified in the Foodgrains Specifications, but within the ceiling specified in Clause 28.4.1, the Concessionaire shall undertake Cleaning in accordance with the provisions of Clause 28.4. Provided, however, that in such an event, the modified quantity to be specified in the Intake Report shall be equivalent to the quantity of Foodgrains determined as if it contains foreign material equivalent to the maximum limit specified in the Foodgrains Specifications.
- 22.4.3 Save as provided in Clauses 22.4.1 and 22.4.2, if the Intake Report determines that any Foodgrains do not conform with the Foodgrains Specifications, the Concessionaire may by notice reject such Foodgrains within a period of 12 (twelve) hours from their arrival and require the Authority to undertake their removal from the Storage Facility within 72 (seventy two) hours of such notice. In the event the Concessionaire fails to reject any Foodgrains hereunder, such Foodgrains shall be deemed as fit and proper for storage in accordance with this Agreement. For the avoidance of doubt, the Parties agree that the Authority may require the Concessionaire to Bag and load the rejected Foodgrains in accordance with the provisions of Clauses 28.5 and 28.6.
- 22.4.4 The Foodgrains to be delivered at the Storage Facility shall have been harvested no earlier than about 6 (six) months from the date of delivery at the Storage Facility and the Authority agrees and undertakes not to deliver Foodgrains that have been harvested prior to such 6 (six) months. For the avoidance of doubt, the Parties agree that Foodgrains harvested more than about 6 (six) months prior to the date of delivery shall be deemed as not conforming with the Foodgrains Specifications and liable to rejection by the Concessionaire, save and except as provided in Clause 22.4.5. The Parties further agree that the restriction of 6 (six) months specified herein shall not apply to transfer of Foodgrains from any other silo to the Storage Facility.
- 22.4.5 Notwithstanding the provisions of Clauses 22.4.3 and 22.4.4, the Authority may require the Concessionaire to store Foodgrains not conforming with the Foodgrains Specifications and such Foodgrains shall, to the extent possible, be segregated or stored in a separate Silo. For the avoidance of doubt, the Parties expressly agree that the Foodgrains Specifications shall not apply to such Foodgrains and the Concessionaire's obligations in respect thereof shall be restricted to compliance with Applicable Laws and Good Industry Practice. The Parties further agree that the provisions of Clause 22.2, insofar as they relate to modified Foodgrains Specifications, shall apply *mutatis mutandis* to the Foodgrains stored hereunder.

22.5 Weighment

- 22.5.1 The Concessionaire shall undertake weighment of Foodgrains upon their arrival at, and prior to their dispatch from, the Storage Facility in accordance with the provisions of this Clause 22.5.

22.5.2 For weighment of Foodgrains, the Concessionaire shall, at its own cost, provide, maintain and operate a facility in accordance with the provisions of this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.

22.5.3 The Authority shall nominate a person who shall observe and verify the weighment of Foodgrains at the Storage Facility on arrival or dispatch thereof, as the case may be. The results of such weighment shall be recorded in the Intake Report or Dispatch Report, as the case may be, and shall be signed by the Authority's nominee in verification thereof, a copy of which shall be sent to the Authority for its record.

22.5.4 In the absence of manifest error, all the measurements, readings and values taken at the facility specified in Clause 22.5.2 and in accordance with the procedure specified in Clause 22.5.3 shall be deemed to be the applicable measurements, readings and values.

22.6 Testing

22.6.1 The Concessionaire shall undertake Foodgrains Tests upon arrival of, and prior to dispatch of, Foodgrains at the Storage Facility in accordance with the provisions of this Clause 22.6.

22.6.2 The Concessionaire shall, at its own cost, provide, maintain and operate a facility for testing of Foodgrains in accordance with Good Industry Practice, Applicable Laws and Applicable Permits.

22.6.3 The Authority shall nominate a person who shall observe and verify the Foodgrains Tests at the Storage Facility. The results of such Foodgrains Tests shall be recorded in the form set out in Annex-I of Schedule-N (the "**Intake Report**") and Annex-II of Schedule-N (the "**Dispatch Report**"), as the case may be, and shall be signed by the Authority's nominee in verification thereof after weighment of the respective Vehicle at the exit gate, a copy of which shall be sent to the Authority for its record.

22.6.4 In the absence of manifest error, all the readings and values taken at the testing facility specified in Clause 22.6.2 and in accordance with the procedure specified in Clause 22.6.3 shall be deemed to be the applicable readings and values.

22.7 Dispatch of Foodgrains

22.7.1 The Concessionaire shall dispatch the Foodgrains from the Storage Facility in accordance with the quantity, date and time specified in the Dispatch Notice, and in conformity with the Foodgrains Specifications.

22.7.2 Upon receipt of a Dispatch notice, the Concessionaire shall retrieve Foodgrains from the Silos for dispatch thereof on a "first-in first-out" basis such that the Silo containing the oldest Foodgrains is evacuated first, save and except when directed otherwise by the Authority. For the avoidance of doubt, the Foodgrains stored in Bags in accordance with the provisions of Clause 23.1.3 shall ordinarily be dispatched first.

- 22.7.3 Prior to dispatch of Foodgrains, the Concessionaire shall undertake the testing, weighment, Bagging and Loading thereof in accordance with the provisions of this Agreement.
- 22.7.4 For determining that the Foodgrains conform with the Foodgrains Specifications, the Concessionaire shall conduct Foodgrains Tests.
- 22.7.5 The Authority shall be obliged to accept the Foodgrains that conform with the Foodgrains Specifications, as determined by the Dispatch Report, and shall be deemed to have taken custody of such Foodgrains upon signing of the Dispatch Report.
- 22.7.6 The Authority shall provide a sufficient number of Vehicles to carry Foodgrains from the Storage Facility in conformity with the time and date specified in its Dispatch Notice and the Concessionaire shall Load such Vehicles in conformity with the provisions of this Agreement and Good Industry Practice. For the avoidance of doubt, the Parties agree that in the event the Authority fails to lift the Foodgrains within 3 (three) days of the time and date specified in the Dispatch Notice, such Dispatch Notice shall be deemed to have been withdrawn and the Authority shall, in respect of the withdrawn Dispatch Notice, pay Damages equivalent to 25% (twenty five per cent) of the Loading Charges specified in Clause 28.6.2
- 22.7.7 The Concessionaire shall be deemed to have dispatched Foodgrains to the Authority upon Loading thereof on the Vehicles provided by the Authority, whereupon the risk and obligations in respect of such Foodgrains, including transportation thereof, shall be deemed to be transferred to the Authority.

22.8 Rejection of Foodgrains

- 22.8.1 In the event that a Dispatch Report determines any Foodgrains to be not in conformity with the Foodgrains Specifications, such Foodgrains shall be deemed to have been rejected by the Authority (the “**Rejected Foodgrains**”). Provided that where any Foodgrains contain moisture or foreign material in excess of the limit specified in the Foodgrains Specifications, the Concessionaire may Dry or Clean, as the case may be, such Foodgrains at its own cost and subject the same to Foodgrains Tests, and if such Foodgrains Tests determine the Foodgrains to be in conformity with Foodgrains Specifications, such Foodgrains shall be deemed to be fit and proper for dispatch in accordance with this Agreement.
- 22.8.2 The Concessionaire shall remove the Rejected Foodgrains from the Storage Facility within a period of 7 (seven) days from the date of the Dispatch Report and shall pay to the Authority, Damages equal to the product of the Procurement Price and the quantity of Rejected Foodgrains, expressed in quintals, within 30 (thirty) days of the date of the Dispatch Report.
- 22.8.3 Notwithstanding anything to the contrary contained in this Article 22, the Parties agree that the quality of Foodgrains is likely to deteriorate with time and in the event

Foodgrains are stored for more than 3 (three) years from the estimated date of their harvest, such Foodgrains shall not be liable to rejection on the ground that they are not in conformity with the Foodgrains Specifications. Provided, however, that the Authority may reject such Foodgrains if the Concessionaire shall have failed in undertaking the storage thereof in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, but only if such failure was notified and established by the Authority as and when it had occurred.

22.9 Handling of Bags

- 22.9.1 If the Foodgrains are delivered in Bags, the Concessionaire shall ensure that the Bags are opened such that they can be re-used for carrying Foodgrains. In the event of undue damage to the Bags, the Concessionaire shall replace the damaged Bags with Bags of similar specifications which can be used for carrying Foodgrains in accordance with the provisions of this Agreement and Good Industry Practice.
- 22.9.2 The Authority shall deliver to the Storage Facility, no later than 2 (two) days prior to the date of the Dispatch Notice, sufficient quantity of Bags required for the dispatch of Foodgrains in accordance with the relevant Dispatch Notice. The Authority may, in its discretion, instruct the Concessionaire to procure the Bags on its behalf and at the Authority's cost within a period of 15 (fifteen) days of a notice to this effect. For the avoidance of doubt, the Parties agree that in the event of delay in supply of Bags by the Authority, the date specified in the Dispatch Notice shall be extended by the period of delay hereunder.

ARTICLE 23

STORAGE OF FOODGRAINS

23.1 Storage of Foodgrains

- 23.1.1 The Concessionaire shall, prior to storage of Foodgrains in Silos, undertake screening and cleaning thereof in accordance with the provisions of this Agreement and Good Industry Practice.
- 23.1.2 Save as provided in this Agreement, the Concessionaire shall receive, process and store the Foodgrains at the Storage Facility in conformity with the processes specified in Schedule-Q and in accordance with Good Industry Practice.
- 23.1.3 The Concessionaire shall, at all times during the Operation Period, maintain and keep available, a ready stock of [200 (two hundred) MT]⁵ of Foodgrains in Bags for immediate dispatch thereof upon receipt of a Dispatch Notice. For the avoidance of doubt, the Authority agrees that it shall undertake dispatch of Foodgrains such that no Foodgrains are stored in Bags for a period exceeding 9 (nine) months. The Authority further agrees that it shall pay to the Concessionaire Stacking Charges for the aforesaid stock at the rate specified in Clause 28.5.3.
- 23.1.4 The Concessionaire shall fumigate the Silos as often as required in accordance with Applicable Laws and Good Industry Practice, but not less than once in every 6 (six) months.

23.2 Storage on Covered Area Plinth

- 23.2.1 In the event the quantity delivered by the Authority exceeds the Availability of the Storage Facility, the Concessionaire shall inform the Authority forthwith and store the excess Foodgrains on Covered Area Plinth (CAP); provided that the Concessionaire's obligation to store Foodgrains on CAP shall not exceed 5 (five) per cent of the Storage Capacity. For the avoidance of doubt, the Parties expressly agree that the Storage Charges due and payable for storage on CAP shall be restricted to Variable Charges. The Parties further agree that the Foodgrains Specifications shall not apply to Foodgrains stored on CAP for a period exceeding 180 (one hundred and eighty) days. The Parties also acknowledge that there shall be no Debagging, Cleaning or processing for and in respect of Foodgrains stored on CAP.
- 23.2.2 In the event that storage space shall have become available in the Silos, the Authority may by notice require the Concessionaire to shift the quantity of Foodgrains specified therein from CAP to Silos, and thereupon the Concessionaire shall shift the Foodgrains as if it is accepting, testing and processing the arrival of Foodgrains at the Storage Facility

⁵ To be increased to 2,500 MT/rake load in producing areas.

in accordance with the provisions of this Agreement and on payment of charges associated therewith.

23.3 Handling Losses

The Authority acknowledges that after acceptance of Foodgrains pursuant to the provisions of Clause 22.3, the Concessionaire shall undertake cleaning and processing thereof in accordance with the provisions of this Agreement. The Parties expressly agree that a reduction of [0.1% (zero point one per cent)] in the weight of Foodgrains delivered to the Concessionaire shall be deemed to be a consequence of such cleaning and processing (the “**Handling Losses**”) and the same shall be deducted from the quantity of Foodgrains accepted by the Concessionaire for storage at the Storage Facility and reckoned as such for the purposes of Storage Charges and dispatch of Foodgrains. [Provided, however, that the Parties have expressly agreed not to give effect to the aforesaid reduction of Handling Losses for and in respect of Foodgrains received at the Storage Facility prior to the 3rd (third) anniversary of COD, and all Foodgrains received at the Storage Facility during such period shall be deemed to have been accepted and stored as if there were no Handling Losses.]

23.4 Shortfall in Quantity

23.4.1 A shortfall in the quantity of Foodgrains stored in the Storage Facility (the “**Shortfall**”) shall, save and except a Force Majeure Event, be deemed to occur when

- (a) the aggregate quantity of Foodgrains dispatched by the Concessionaire during any Accounting Year or within 1 (one) week thereafter is less than the aggregate quantity notified by the Authority in the Dispatch Notices issued in that Accounting Year;
- (b) during any inspection and stock taking, it is found by the Authority or the Independent Expert, as the case may be, that the weight of Foodgrains stored in Silos, as determined by the volume thereof, combined with the weight of Foodgrains stored in Bags is less than the stock carried on the books of the Concessionaire and the Authority for and in respect of the Storage Facility;
- (c) the weighted average moisture content of the Foodgrains dispatched in any month, as evidenced by the Dispatch Reports, is greater than the moisture content specified in the Foodgrains Specifications;
- (d) the weighted average of foreign material in the Foodgrains dispatched in any month, as evidenced by the Dispatch Reports, is greater than the foreign material content specified in the Foodgrains Specifications;
- (e) the weighted average moisture content of the Foodgrains dispatched in an Accounting Year, as evidenced by the Dispatch Reports, is greater than the weighted average moisture content of the Foodgrains stored in the Storage Facility during the immediately preceding Accounting Year;
- (f) the weighted average of foreign material in the Foodgrains dispatched in an Accounting Year, as evidenced by the Dispatch Reports, is greater than the weighted

average of foreign material in the Foodgrains stored in the Storage Facility during the immediately preceding Accounting Year; or

- (g) any other shortfall or loss to the Foodgrains that occurs for any reason whatsoever, other than for the events specified in Sub Clauses (a) to (f) above, after issue of an Intake Report and prior to issue of a Dispatch Report in respect of such Foodgrains.

Explanation: The weight of Foodgrains stored in a Silo shall be determined as a factor of the volume of Foodgrains ascertained with reference to the scaled rulers specified in Schedule D. For this purpose, the Independent Expert shall, once every year, take a sample of Foodgrains of not less than 2 (two) cubic metres from the Silo (such sample to be taken from different depths of the Silo at random, and not just from the surface) and weigh such sample to determine the volume to weight ratio. The volume to weight ratio so determined from the sample shall be extrapolated to the volume of Foodgrains stored in such Silo to determine the weight of Foodgrains therein. In determining the weight of Foodgrains hereunder, a margin of error of +/- 0.1% (plus/ minus zero point one per cent) shall be permissible with reference to the stock carried on the books of the Concessionaire and the Authority.

23.4.2 The Independent Expert shall:

- (a) within 15 (fifteen) days of the close of each Accounting Year during the Operation Period, conduct an audit to determine the Shortfall under the provisions of Sub-Clauses (a), (b), (e) and (f) of Clause 23.4.1;
- (b) within 7 (seven) days of the close of each month during the Operation Period, conduct an audit to determine the Shortfall under the provisions of Sub-Clauses (c), (d) and (g) of Clause 23.4.1,

and communicate its report to the Authority and the Concessionaire within 3 (three) days of such audit:

Provided that the Authority may, in its discretion, require the Independent Expert to conduct additional audits under Sub Clauses (a) or (b) above, at any other time.

23.4.3 If the Independent Expert shall determine any Shortfall under the provisions of this Clause 23.4, the Concessionaire shall pay to the Authority, Damages in accordance with the provisions of Clause 27.10, within 30 (thirty) days of the date of such determination.

23.4.4 The Concessionaire agrees and undertakes that it shall, at all times, make best efforts in accordance with Good Industry Practice, to minimise the quantum of Shortfall or losses.

23.5 Title, care and custody of Foodgrains

The Concessionaire agrees and undertakes to be in the position of a bailee in respect of the Foodgrains in its custody and shall take due care for preserving the Foodgrains, as required of a bailee. Without limiting the generality of the above:

- (a) the sole and absolute property in the Foodgrains at the Storage Facility save and except foodgrains stored for and on behalf of third parties, shall at all times remain

- with the Authority and the Concessionaire shall provide a visible notification at the premises of the Storage Facility that such Foodgrains are owned by the Authority;
- (b) the Concessionaire agrees that nothing in this Agreement or under law shall confer in any circumstance, any right, title or interest in the Foodgrains or any part thereof, in favour of the Concessionaire and the Concessionaire agrees not to make any claim over the Foodgrains;
 - (c) the Concessionaire shall store and handle the Foodgrains of the Authority, separate from any other foodgrain being stored in the Storage Facility in accordance with the provisions of this Agreement, and shall not undertake or permit any mingling or mixing thereof; and
 - (d) the Concessionaire shall be liable for any loss or damage arising out of a breach by the Concessionaire of any of its obligations under this Agreement and it shall not be a defense for the Concessionaire to claim or plead that the standard of care required to be exercised by it as a bailee under Section 151 of the Indian Contract Act, 1872 is different from the standards set out in this Agreement.

23.6 Records of Storage Facility

The Concessionaire shall maintain records in respect of current stocks, intake, storage and dispatch of the Foodgrains in accordance with the provisions of this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits.

23.7 Reporting of stocks

The Concessionaire shall furnish to the Authority and the Independent Expert the following reports of Foodgrain stocks within the time specified below:

- (a) on every Monday, a weekly report stating the opening stock of Foodgrains, the quantities received, any Shortfall or loss to the Foodgrains and the quantities dispatched, the closing stock of the Foodgrains, for the preceding week, and the anticipated intake and dispatch of the Foodgrains during the following week in pursuance of any Intake Notice and Dispatch Notice received from the Authority;
- (b) within 30 (thirty) days of the close of each quarter of an Accounting Year, a quarterly report stating the opening stock of the Foodgrains, the quantities received, any Shortfall or loss to the Foodgrains, the quantities dispatched and the closing stock of the Foodgrains for the preceding Quarter; and
- (c) within 30 (thirty) days of the close of each Accounting Year, an annual report stating the opening stock of the Foodgrains, the quantities received, any Shortfall or loss to the Foodgrains, the quantities dispatched, the closing stock of the Foodgrains and such other information as the Authority may reasonably require, for the preceding Accounting Year.

ARTICLE 24

KEY PERFORMANCE INDICATORS

24.1 Key Performance Indicators⁶

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Storage Facility such that it achieves or exceeds the performance indicators specified in this Article 24 (the “**Key Performance Indicators**”).

24.2 Availability

The Concessionaire shall procure that during the Operation Period, the Availability of the Storage Capacity is not less than the Normative Availability and Incentives and Damages in relation to Availability shall be payable or recoverable, as the case may be, by the Authority in accordance with the provisions of Article 27.

24.3 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 27.

24.4 Shortfall

The Authority may, in its discretion and at its own expense, and no more than once in every 3 (three) months, conduct inspections and/or tests in accordance with Good Industry Practice, to ascertain the Shortfall, and Damages in relation to such Shortfall shall be payable by the Concessionaire to the Authority in accordance with the provisions of Article 27.

24.5 Monthly report

The Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with the Key Performance Indicators specified in this Article 24 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Storage Facility. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 24.6.

⁶ The Key Performance Indicators specified here are indicative in nature and may be modified by the Authority, as necessary, to reflect project-specific requirements.

24.6 ISO certification

- 24.6.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, the applicable ISO certifications, including ISO /TS 22003:2007, or a substitute thereof for all the facilities at the Storage Facility, and shall provide a certified copy thereof to the Authority forthwith.
- 24.6.2 In the event of default in obtaining the certifications specified in Clause 24.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certifications for all facilities of the Storage Facility.
- 24.6.3 If the period of default in obtaining the ISO certifications under this Clause 24.6 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 Charge for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

Part IV
Financial Covenants

ARTICLE 25

FINANCIAL CLOSE

25.1 Financial Close

25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days⁷ from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (one hundred and twenty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

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

25.2 Termination due to failure to achieve Financial Close

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 35.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination,

⁷ This period should conform with the period specified in Clause 4.1.3.

release the Bid Security or Performance Security, as the case may be, forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

ARTICLE 26

GRANT

{26.1 Grant

- 26.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. (Rupees)^{\$}, in accordance with the provisions of this Article 26 (the “**Grant**”).
- 26.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 26.2, and the balance remaining, if any, shall be disbursed as O&M Support in accordance with the provisions of Clause 26.3.}

{26.2 Equity Support

- 26.2.1 Subject to the conditions specified in this Clause 26.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “**Equity Support**”).
- 26.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than 150% (one hundred and fifty per cent) of the Equity, and shall be further restricted to a sum not exceeding 30% (thirty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 26.2.2 shall include Equity Support.
- 26.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.
- 26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.
- 26.2.5 Subject to the provisions of the Scheme of Financial Support to Public Private Partnership in Infrastructure as notified by the Central Government (the “**Scheme for Financial Assistance**”), the Authority shall, for funding the Grant specified in Clause 26.1.1, use its best endeavours and provide all reasonable support to the Concessionaire for obtaining viability gap funding under the Scheme for Financial Assistance. For the avoidance of doubt, it is expressly agreed that in the event of the Concessionaire being able to receive such viability gap funding for the Project, the same shall, for the purposes

^{\$} The amount of Grant payable hereunder shall be determined by competitive bidding.

of this Agreement be deemed to be Grant by the Authority hereunder, to be disbursed in accordance with the provisions of the Scheme for Financial Assistance. It is further agreed that the Authority shall at all times discharge its obligation to disburse Grant under and in accordance with this Article 26 whether or not funds are disbursed to the Concessionaire under the Scheme for Financial Assistance.}

{ 26.3 O&M Support[£]

26.3.1 The balance of the Grant, if any, remaining after disbursement of the Equity Support shall be disbursed to the Concessionaire in accordance with Clause 26.3.2 for meeting O&M Expenses and Debt Service of the Project (the “**O&M Support**”).

26.3.2 The O&M Support shall be disbursed by the Authority in quarterly instalments and the first such instalment shall be released within 90 (ninety) days of COD. Each instalment shall be a sum equal to 10% (ten per cent) of the Equity Support and such instalments shall be disbursed by the Authority until the Grant is exhausted.}

{ PREMIUM^{££}

26.4 Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority the following sums by way of premium (the “**Premium**”):

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

[£] Clause 26.3 shall be omitted if the Grant determined by competitive bidding is 30% (thirty per cent) or less.

^{££} In the event that the Concessionaire does not seek any Grant from the Government and offers to pay a Premium instead, the provisions of Clauses 26.1, 26.2 and 26.3 relating to Grant shall be substituted by the provisions of Clause 26.4 relating to Premium, which Clause shall be renumbered. The title of this Article shall also be substituted by the word “Premium”.

ARTICLE 27

STORAGE CHARGES

27.1 Storage Charges

The Authority shall pay to the Concessionaire a sum, determined in accordance with the provisions of this Article 27, as the monthly charge for provision of Storage Services, and shall be the aggregate of the Fixed Charge and the Variable Charge (the “**Storage Charges**”). For the avoidance of doubt, the Parties agree that the Service Charges payable for Associated Services shall be in addition to, and independent of Storage Charges.

27.2 Base Fixed Charge

27.2.1 The monthly base fixed charge for the Accounting Year in which COD occurs shall be the product of [Rs. 57.50 (Rupees fifty seven and paise fifty)]⁸ and the Normative Availability⁹ (the “**Base Fixed Charge**”) for and in respect of the Normative Availability of Storage Capacity for the relevant month, and the same shall be revised annually in accordance with the provisions of this Article 27. For the avoidance of doubt, the Parties agree that the Base Fixed Charge for a part of any month shall be determined on a proportionate basis. The Parties further agree that the Base Fixed Charge hereunder has been fixed with reference to the Accounting Year [2012-13]. By way of illustration, the Parties agree that if the Normative Availability is 9,800 MT, the Base Fixed Charge shall be the product of [Rs. 57.50] and 9,800 i.e. [Rs. 5,63,500 (Rupees five lakh sixty three thousand and five hundred)].

27.2.2 The Base Fixed Charge for the Accounting Year in which COD occurs shall be the sum specified in Clause 27.2.1, and for each subsequent Accounting Year, the applicable Base Fixed Charge shall be determined by decreasing the Base Fixed Charge for the immediately preceding Accounting Year by 2% (two per cent) thereof. For the avoidance of doubt and by way of illustration, the Base Fixed Charge for the Accounting Year in which COD occurs shall be the amount specified in Clause 27.2.1, and for the second and third Accounting Years it shall be a sum equal to 98% (ninety eight per cent) and 96.04% (ninety six point zero four per cent) respectively of the amount specified in Clause 27.2.1.

⁸ The Base Fixed Charge indicated in Clause 27.2.1 is at April 1, 2012 price level. This is to be indexed to Price Index and fixed by the Authority prior to invitation of bids. For the North Eastern states, the Base Fixed Charge shall be 1.25 times the amount provided in Clause 27.2.1.

⁹ In the event construction of a Railway Siding without provision of bulk handling facilities is included in the Scope of the Project, the Base Fixed Charge shall be Rs. 79.20 (Rupees seventy nine point two zero) per MT per month at April 1, 2012 prices. In the event construction of Railway Siding with provision of bulk handling facilities is included in the Scope of the Project, the Base Fixed Charge shall be Rs. 84.80 (Rupees eighty four point eight zero) per MT per month at April 1, 2012 prices. These charges shall be indexed to Price Index and fixed prior to invitation of Bids.

27.3 Fixed Charge

The Base Fixed Charge determined in accordance with Clause 27.2.2 shall be revised annually to reflect the variation in Price Index occurring between the Reference Index Date for January of the year specified in Clause 27.2.1 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken (the “**Fixed Charge**”). For the avoidance of doubt and by way of illustration, if the Price Index increases by 10% (ten per cent) between the Reference Index Dates for January [2014] and January [2016], the Fixed Charge for the Accounting Year commencing from April 1, [2014] shall be 110% (one hundred and ten per cent) of the Base Fixed Charge for that Accounting Year.

27.4 Variable Charge

27.4.1 The variable charge payable for the Foodgrains actually stored for any month or part thereof shall be as specified in Clause 27.4.2 (the “**Variable Charge**”).

27.4.2 The Variable Charge for storage of Foodgrains shall be [Rs. 0.50 (Rupees zero point five zero)] 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 and shall be revised annually to reflect the variation in Price Index occurring between the Reference Index Date for January of the year specified in this Clause 27.4.2 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken. For the avoidance of doubt, the Parties agree that the Variable Charge hereunder has been fixed with reference to the Accounting Year [2012-13].

27.5 Computation of Storage Charges

The sum total of the Fixed Charge, as determined in accordance with the provisions of Clause 27.3 and the Variable Charge, as determined in accordance with the provisions of Clause 27.4 shall be the Storage Charges payable for provision of Storage Services in each month of the relevant Accounting Year.

27.6 Service Charges

The Service Charges payable by the Authority to the Concessionaire for providing services such as Unloading, Debugging, Cleaning, Drying, Bagging and Loading shall be as specified in Article 28, and the sum total of Service Charges determined thereunder shall be payable for and in respect of each month of the relevant Accounting Year.

27.7 Declaration of Availability

27.7.1 Unless otherwise notified by the Concessionaire, the Availability of Storage Capacity shall be deemed to be 100% (one hundred per cent) at all times. In the event that Availability declines or is likely to decline below 100% (one hundred per cent) at any time, the Concessionaire shall, as soon as reasonably practicable, but no later than 24 (twenty four) hours after it knew, or ought reasonably to have known, of the occurrence of the cause or circumstances leading to a reduction in Availability, declare to the

Authority forthwith the extent of Non-Availability with the particulars and period thereof.

- 27.7.2 The Concessionaire shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Concessionaire shall, as soon as may be, notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 72 (seventy two) hours prior to its occurrence.
- 27.7.3 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Storage Capacity, or less than the reduced Availability notified under Clause 27.7.2, an event of mis-declaration of Availability (the “**Mis-declaration**”) shall be deemed to have occurred and Availability for the relevant Accounting Year shall, for the purposes of payment of Fixed Charge, be deemed to be reduced as if the Mis-declaration had occurred for a period of 6 (six) months during that Accounting Year. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to Concessionaire under this Agreement.
- 27.8.4 Notwithstanding the provisions of Clause 27.7.3, any reduction in Availability arising out of decommissioning due to Emergency or a Force Majeure Event or any cause specified in Clause 17.15 shall not be deemed to be Mis-declaration if the Concessionaire shall have notified the Authority in accordance with the provisions of Clauses 17.7, 17.15 or 35.5, as the case may be.

27.8 Incentives and Damages for Availability

- 27.8.1 In the event that the Availability in any month exceeds the Normative Availability, the Concessionaire 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 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 Charge for 1% (one per cent) of Normative Availability is Rs. x, the Incentive payable for 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.
- 27.8.2 In the event that Availability at any time is less than the Normative Availability, the Fixed 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 Charge for 1% (one per cent) of Normative Availability is Rs. x, the Damages payable for reduction of 1% (one per cent) in 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 Charge payable

for the relevant month. Provided that the Damages payable during the Harvest Season shall be Rs. 2x.

27.8.3 The Parties expressly agree that within 30 (thirty) days of the close of every Accounting Year, the cumulative monthly Availability for such year shall be determined and the Incentive or Damages, as the case may be, shall be computed with reference to the Normative Availability for that year. The amount so arrived at shall, subject to the provisions of Clauses 27.13.3 and 27.14, be adjusted against the Incentives or Damages determined for the respective months of the year and the balance remaining shall be adjusted in the following Monthly Invoice.

27.9 Damages for lower Reliability

In the event that the Reliability in a quarter exceeds 1 (one) Forced Closure in the Storage Facility, the Concessionaire shall pay to the Authority Damages equal to 2.5% (two point five per cent) of the Fixed Charge payable for the Storage Facility in accordance with the provisions of Clause 27.3 for each such Forced Closure in excess of 1 (one).

27.10 Damages for Shortfall

In the event of a Shortfall at any time, the Concessionaire shall pay Damages to the Authority which shall be calculated and paid such that for a Shortfall of every quintal or part thereof, the Damages for such Shortfall quantity shall be the higher of:

- (a) Procurement Price plus 20% (twenty per cent) thereof;
- (b) the highest wholesale price at which a transaction of sale of Foodgrains occurred during the preceding 6 (six) months at the nearest wholesale market for Foodgrains; and
- (c) the relevant Economic Cost published by FCI.

27.11 Audit and payment of Incentives and Damages

27.11.1 Save and except as expressly provided in this Agreement, the Independent Expert shall:

- (a) within 7 (seven) days of the close of each month falling after COD, conduct an audit based on documents to be made available by the Concessionaire and the Authority, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators;
- (b) within 15 (fifteen) days of the close of each quarter falling after COD, conduct a physical audit at the Storage Facility, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators; and
- (c) within the period specified in Clause 23.4.2, conduct an audit to determine the Shortfall.

27.11.2 Upon completion of the audit under the provisions of Clause 27.11.1, the Independent Expert shall compute and communicate to the Concessionaire and the Authority, by written notice, the Incentives or Damages, as the case may be, payable to or by the Concessionaire, as the case may be, in accordance with the provisions of Clauses 27.8, 27.9 and 27.10.

27.11.3 The Parties agree that the Incentives or Damages, as the case may be, shall be due and payable within 30 (thirty) days of the date of their determination by the Independent Expert under this Clause 27.11 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year. The Parties further agree that the Authority shall be entitled to set off the Damages against the Storage Charges or any other amounts payable by the Authority during the subsequent months.

27.11.4 The payment of Damages under this Clause 27.11 shall relieve the Concessionaire of its obligation to make good any losses of Foodgrains, save and except as expressly provided in this Agreement.

27.12 Taxes and duties

27.12.1 It is expressly agreed by the Parties that the Storage Charges shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 27.12.2. It is further agreed that the Concessionaire shall pay all taxes and duties, including the taxes and duties specified in Clauses 27.12.2, in accordance with Applicable Laws.

27.12.2 The Storage Charges and Incentives payable by the Authority under this Article 27 shall be exclusive of Service Tax, Value Added Tax or General Sales Tax, or any replacement thereof, if applicable, and any Service Tax, Value Added Tax or General Sales Tax thereon shall be paid by the Concessionaire and reimbursed by the Authority upon submission of necessary particulars by the Concessionaire.

27.12.3 Any payment to be made by the Authority shall be subject to tax deduction at source, if required to be made by the Authority as per Applicable Laws.

27.13 Billing and payment

27.13.1 Commencing from the month following the month in which COD occurs, the Concessionaire shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Authority, an invoice in the agreed form (the “**Monthly Invoice**”) signed by the authorised signatory of the Concessionaire setting out the computation of the Fixed Charge, Variable Charge and Service Charges to be paid by the Authority to the Concessionaire in respect of the immediately preceding month in accordance with the provisions of this Agreement.

27.13.2 The Concessionaire shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of Availability for the period billed; (c) official documents in support of the variation in Price Index as specified in Clauses 27.3 and 27.4; (d) detailed

calculations of the Storage Charges in accordance with Article 27; (e) detailed calculations of the Incentives and/or Damages to the extent provided by the Independent Expert in accordance with the provisions of Clause 27.11; (f) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (g) details of the Revenue Share payable by the Concessionaire in respect of use of the Unutilised Capacity and Other Business; (h) details in respect of other Damages payable in accordance with the provisions of this Agreement; and (i) the net amount payable under the Monthly Invoice.

- 27.13.3 The Authority shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 27.13.1 (the “**Payment Due Date**”), make payment of the amount claimed directly, through electronic transfer, to the designated bank account of the Concessionaire, save and except any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”).
- 27.13.4 All Damages and any other amounts due and payable by the Concessionaire in accordance with the provisions of this Agreement may be deducted from the Storage Charges due and payable to the Concessionaire and in the event the deductions hereunder exceed the Storage Charges in that month, the balance remaining shall be deducted from the Storage Charges due and payable to the Concessionaire for the immediately following month.

27.14 Disputed Amounts

- 27.14.1 The Authority shall, within 10 (ten) days of receiving an invoice, notify the Concessionaire of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Authority shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.
- 27.14.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 27.15.

27.15 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 27.13. In the event of delay beyond such period, the Authority shall pay interest for the period of delay, calculated at the rate specified In Clause 48.4.1.

27.16 Discount for early payment

The Parties expressly agree that in the event the Authority pays the Storage Charges within 15 (fifteen) days of the date of submission of the invoice thereof, the Authority shall be entitled to deduct 0.5% (zero point five per cent) of the amount specified in the Monthly Invoice by way of discount for early payment.

ARTICLE 28

SERVICE CHARGES

28.1 Associated Services

- 28.1.1 The Concessionaire shall provide associated services including Unloading, Debagging, Drying, Cleaning, Bagging and Loading of Foodgrains, and such other services as may be mutually agreed between the Parties, in accordance with the provisions of this Agreement (the “**Associated Services**”).
- 28.1.2 The Concessionaire shall, at its own cost, procure, maintain and operate the facilities and equipment required for providing Associated Services in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 28.1.3 The charges payable for the Associated Services shall include the Unloading Charges, Drying Charges, Cleaning Charges, Bagging Charges, Loading Charges, Stacking Charges, Weighment Charges, Bulk Loading Charges and such other charges as the Parties may mutually agree upon (the “**Service Charges**”).

28.2 Unloading and Debagging of Foodgrains

- 28.2.1 Upon arrival of a Vehicle for delivery of Foodgrains at the Storage Facility, the Concessionaire shall undertake the unloading thereof in accordance with the provisions of this Agreement and Good Industry Practice (the “**Unloading**”).
- 28.2.2 If the Foodgrains are delivered in Bags, the Concessionaire shall open the same for transfer of the Foodgrains to elevator hoppers of the Silos and shall roll up empty Bags and load them back on the respective Vehicles in accordance with the provisions of this Agreement and Good Industry Practice (the “**Debagging**”).
- 28.2.3 The Authority shall pay to the Concessionaire charges for Unloading and Debagging, including sampling, testing and weighment, calculated at the rate of [Rs. 3.25 (Rupee three and paise twenty five)] per Bag (the “**Unloading Charges**”).
- 28.2.4 In the event the Foodgrains delivered at the Storage Facility do not require any Debagging and are transferred directly from Vehicles to the Storage Facility, the Authority shall, in lieu of the Unloading Charges specified in Clause 28.2.3, pay to the Concessionaire charges for sampling, testing and weighment, calculated at the rate of [Rs. ** (Rupees *****) per Bag/ mutually agreed upon by the Parties in conformity with the prevailing market rates for similar services] (the “**Weighment Charges**”).

28.3 Drying of Foodgrains

- 28.3.1 In the event of the Intake Report determining that the Foodgrains contain moisture in excess of the limit specified in the Foodgrains Specifications, but such excess is within a limit of 0.5% (zero point five per cent) of the weight of Foodgrains, the Concessionaire

shall undertake Drying thereof to bring the same in conformity with the Foodgrains Specifications.

28.3.2 In the event the Foodgrains contain moisture in excess of the limit of 0.5% (zero five per cent) specified in Clause 28.3.1, the Concessionaire may by notice reject such Foodgrains within a period of 12 (twelve) hours from their arrival and require the Authority to undertake their removal from the Storage Facility within 72 (seventy two) hours of such notice. In the event of failure of the Authority to remove the rejected Foodgrains within the time specified herein, the Concessionaire may forfeit such Foodgrains and remove them from the Storage Facility at its own cost, and dispose them in such manner as it deems fit.

28.3.3 For undertaking Drying in accordance with the provisions of Clause 28.3.1, the Authority shall pay to the Concessionaire charges for Drying at rates mutually agreed upon by the Parties in conformity with the prevailing market rates for similar services (the “**Drying Charges**”).

28.4 Cleaning of Foodgrains

28.4.1 In the event of the Intake Report determining that the Foodgrains contain foreign material in excess of the limit specified in the Foodgrains Specifications, but such excess is within a limit of 0.5% (zero point five per cent) of the weight of Foodgrains, the Concessionaire shall undertake Cleaning thereof to bring the same in conformity with the Foodgrains Specifications.

28.4.2 In the event of Foodgrains containing foreign materials in excess of the limit of 0.5% (zero point five per cent) specified in Clause 28.4.1, the Concessionaire may be notice reject such Foodgrains within a period of 12 (twelve) hours from their arrival and require the Authority to undertake their removal from the Storage Facility within 72 (seventy two) hours of such notice. In the event of failure of the Authority to remove the rejected Foodgrains within the time specified herein, the Concessionaire may forfeit such Foodgrains and remove them from the Storage Facility at its own cost, and dispose them in such manner as it deems fit.

28.4.3 For undertaking Cleaning in accordance with the provisions of Clause 28.4.1, the Authority shall pay to the Concessionaire charges for Cleaning at rates mutually agreed upon by the Parties in conformity with the prevailing market rates for similar services (the “**Cleaning Charges**”).

28.5 Bagging of Foodgrains

28.5.1 If the Authority requires delivery of Foodgrains in Bags, the Concessionaire shall transfer Foodgrains into Bags, duly stitched and stencilled, in accordance with the provisions of this Agreement and Good Industry Practice (the “**Bagging**”). For the avoidance of doubt, the required string, stencil and colour shall be provided by the Authority to the Concessionaire for carrying out Bagging and stencilling.

28.5.2 The Authority shall pay to the Concessionaire charges for Bagging, including stitching and evacuation, calculated at the rate of [Rs. 2 (Rupees two)] per Bag (the “**Bagging Charges**”).

28.5.3 The Authority shall pay to the Concessionaire charges for stacking of Bags calculated at the rate of [Rs. 1.37 (Rupees one and paise thirty seven)] per Bag (the “**Stacking Charges**”).

28.6 Loading of Foodgrains

28.6.1 Upon arrival of Vehicles for loading and dispatch of Foodgrains, the Concessionaire shall undertake loading thereof in accordance with the provisions of this Agreement and Good Industry Practice (the “**Loading**”).

28.6.2 The Authority shall pay to the Concessionaire charges for Loading calculated at the rate of [Rs. 1.53 (Rupee one and paise fifty three)] per Bag for loading directly on a Vehicle and where breaking of stacks is required, the charges shall be [Rs. 1.83 (Rupee one and paise eighty three)] per Bag (the “**Loading Charges**”).

28.6.3 In the event the Foodgrains to be dispatched from the Storage Facility do not require any Bagging and are transferred directly from the Storage Facility to Vehicles or trains, as the case may be, the Authority shall pay to the Concessionaire, in lieu of Loading Charges specified in Clause 28.6.2, charges for bulk loading calculated at rates mutually agreed upon by the Parties in conformity with the prevailing market rates for similar services (the “**Bulk Loading Charges**”).

28.7 Turn-around of Vehicles

The Concessionaire shall procure and ensure that the total turnaround time of a Vehicle between the time it arrives at the weighbridge of the Storage Facility for Loading or Unloading, as the case may be, to the time it departs from the weighbridge shall not exceed 2 (two) hours. In the event of any delay beyond 2 (two) hours, the Concessionaire shall pay to the custodian of such Vehicle, damages equal to Rs.100 (Rupees one hundred) for every delay of 15 (fifteen) minutes or part thereof. Provided that the aforesaid rate of damages shall be increased by Rs. 10 (ten) in each Accounting Year after 2014-15. For the avoidance of doubt, the Concessionaire agrees and undertakes to pay the damages specified herein without any demand by the custodian of a Vehicle and shall prominently display a notice to this effect so that every custodian of Vehicles is aware of its right under this Clause 28.7.

28.8 Revision of Charges

Each of the charges specified in this Article 28 have been determined with reference to the Accounting Year [2012-13] and shall be revised annually to reflect the variation in CPI (IW) to the extent of 80% (eighty per cent) thereof, occurring between the Reference Index Date for January preceding the Accounting Year specified in this Clause 28.8 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken.

28.9 Billing and payment

The provisions of Clauses 27.12 to 27.16 shall apply *mutatis mutandis* to billing and payment of Service Charges.

ARTICLE 29

PAYMENT SECURITY

29.1 Default Escrow Account

- 29.1.1 The Authority and the Concessionaire shall, prior to the Appointed Date, execute a default escrow agreement with the Authority's bank substantially in the form specified in Schedule-R (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Concessionaire. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where at least 30% (thirty per cent)¹⁰ of the Authority's total monthly Revenues are normally deposited (the "**Default Escrow Bank**"). The Authority expressly agrees and undertakes that throughout the term of the Concession Period, no less than 30% (thirty per cent) of its total Revenues shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 15% (fifteen per cent) of the annual Fixed Charge (the "**Maximum Monthly Payment**") shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 29.1 and the Default Escrow Agreement.
- 29.1.2 The Authority and the Concessionaire shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at Schedule-S (the "**Deed of Hypothecation**"), whereby the Authority shall hypothecate to the Concessionaire an amount equal to Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.
- 29.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to 10% (ten per cent) of the annual Fixed Charge (the "**Minimum Monthly Payment**") shall be withheld in the Default Escrow Account for payment to the Concessionaire against such Monthly Invoice and the balance remaining shall be available to the Authority for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.
- 29.1.4 The Authority shall procure that the Concessionaire has the first priority charge on the Revenues deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.
- 29.1.5 The Parties agree and acknowledge that upon Termination and on failure of the Authority to make the Termination Payment within 30 (thirty) days of demand by the Concessionaire, Revenues equal to the Maximum Monthly Payment, deposited into the

¹⁰ In the case of FCI, 30% may be substituted by 10% at all places in this Agreement i.e. Clause 29.1.1, Schedule-R: Clauses 2.4, 4.1.2, 4.3, 5.6.3, 6.1 (j) and 8.1 (a), and Schedule-T (footnote).

Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Concessionaire until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Authority expressly agrees and undertakes that 30% (thirty per cent) of its total monthly Revenues shall continue to be deposited into its account with the Default Escrow Bank until its liability for and in respect of the Termination Payment is fully discharged.

29.2 Letter of Credit

- 29.2.1 The Authority shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Concessionaire, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Minimum Monthly Payment (the “**Letter of Credit**”), which may be drawn upon by the Concessionaire for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-T and shall come into effect on COD, and shall be modified once every year to reflect the revision in Minimum Monthly Payment in accordance with the provisions of this Agreement.
- 29.2.2 The Letter of Credit shall be procured by the Authority from a bank where at least 30% (thirty per cent) of the Authority’s total monthly Revenues are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Authority.
- 29.2.3 In the event of Authority’s failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Concessionaire may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Authority, pay the amount due upon the Concessionaire presenting the following documents, namely:
- (a) a copy of the Monthly Invoice which has remained unpaid; and
 - (b) a certificate from the Concessionaire to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due has remained unpaid.
- 29.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, the Authority shall, within a period of 15 (fifteen) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 29.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Minimum Monthly Payment, except to give effect to such revision once in every 2 (two) years.
- 29.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

ARTICLE 30

UTILISATION OF CAPACITY

30.1 Utilisation of Storage Capacity

- 30.1.1 Storage Capacity shall be deemed to be earmarked and reserved for exclusive utilisation by the Authority, and the Concessionaire shall be entitled to receive payment of Storage Charges for Availability thereof in accordance with the provisions of this Agreement.
- 30.1.2 In the event that any part of the Storage Capacity is released and de-reserved with mutual consent, the same shall be deemed to be unutilised capacity (the “**Unutilised Capacity**”). The Concessionaire may, subject to the provisions of this Agreement, let out the Unutilised Capacity for storage of foodgrains belonging to third parties; provided that the revenues from use of Unutilised Capacity hereunder shall be subject to payment of Revenue Share under and in accordance with the provisions of Clause 30.2.
- 30.1.3 Subject to the provisions of Clause 30.1.1, the Parties expressly acknowledge and agree that the Authority may utilise, or cause to be utilised, the Storage Capacity for storage of Foodgrains owned by any other public or private entity; provided, however, that the Authority shall at all times be responsible and liable for discharging all its obligations under this Agreement, including the payment of Storage Charges and Service Charges.

30.2 Obligation to share revenues

- 30.2.1 The Concessionaire shall pay to the Authority, 40% (forty per cent) of the revenues accruing from all charges including proceeds of any rentals, deposits, capital receipts or insurance claims, received in each month for and in respect of the Unutilised Capacity (the “**Revenue Share from Unutilised Capacity**”). The Parties agree that the Revenue Share from Unutilised Capacity payable for any month shall be set off against the Storage Charges payable by the Authority for that month.
- 30.2.2 In the event of any dispute relating to the Revenue Share from Unutilised Capacity, the Dispute Resolution Procedure shall apply.

30.3 Revenue Statement

- 30.3.1 During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of the charges and other receipts from Unutilised Capacity and the Revenue Share from Unutilised Capacity, substantially in the form set forth in Schedule-U (the “**Revenue Statement for Unutilised Capacity**”). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions and contractual rights hereunder.
- 30.3.2 The Concessionaire shall, for each Accounting Year, consolidate the Revenue Statements for Unutilised Capacity and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Authority within 60 (sixty) days of the close of that Accounting Year.

30.4 Negotiable warehousing receipts

Without prejudice to any rights or obligations of the Parties under this Agreement, the Concessionaire may issue negotiable warehousing receipts under and in accordance with Applicable Laws for and in respect of the foodgrains of third parties stored in the de-reserved or released capacity, or in any Unutilised Capacity forming part of the Storage Capacity, on the express understanding that no right, lien, title, authority, privilege or discretion of the Authority shall in any manner be affected or subordinated to such negotiable warehousing receipts or any right or obligation incidental to or associated therewith.

ARTICLE 31

USE OF LICENSED PREMISES

31.1 Development and regulation of Licensed Premises

The Concessionaire may landscape and develop the Licensed Premises and regulate the use thereof in accordance with Good Industry Practice and in conformity with the provisions of this Agreement.

31.2 Restrictions on use

The Concessionaire shall not use or cause to be used any part of the Licensed Premises for any commercial purpose save and except as expressly provided in this Agreement, or where such use is primarily for the convenience of the users, such as provision of a cafeteria.

ARTICLE 32

ESCROW ACCOUNT

32.1 Escrow Account

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

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

32.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all revenues from the third party usage of Storage Capacity, revenues from other business and sale of Foodgrains;
- (c) all payments by the Authority, including Storage Charges and Service Charge;

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

32.3 Withdrawals during Concession Period

32.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;
- (b) all payments relating to construction of the Storage Facility, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Revenue Share due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

32.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 32.3.1, except with the prior written approval of the Authority.

32.4 Withdrawals upon Termination

32.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) Outstanding Revenue Share;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 40;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 32.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 39.

32.4.2 The provisions of this Article 32 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 32.4.1 have been discharged.

ARTICLE 33 INSURANCE

33.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

33.2 Insurance Cover

Without prejudice to the provisions contained in Clause 33.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Storage Facility;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

33.3 Insurance for Foodgrains

Subject to the provisions of Clause 33.4, the Concessionaire shall effect and maintain, during the Operation Period, such insurances for such maximum sums as may be specified by the Authority to cover any shortfall in or loss of Foodgrains and such other insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary

for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Operation Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured. For the avoidance of doubt, the aforesaid insurances shall include the value of Foodgrains stored, calculated with reference to the average procurement cost of such Foodgrains.

33.4 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 33. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

33.5 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 33 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

33.6 Remedy for failure to insure

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

33.7 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 33 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

33.8 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, 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.

33.9 Application of insurance proceeds

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

33.10 Compliance with conditions of insurance policies

The Concessionaire expressly acknowledges and undertakes to fully indemnify the Authority from and against all losses and claims arising from the Concessionaire's failure to comply with conditions imposed by the insurance policies effected in accordance with this Agreement.

ARTICLE 34

ACCOUNTS AND AUDIT

34.1 Audited accounts

- 34.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the revenues from Fixed Charges, Variable Charges, Service Charges, charges for Unutilised Capacity, Other Business and all incomes derived/collected by it from or on account of the Storage Facility and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 34.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 34.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Fixed Charges, (b) receipts on account of Variable Charges, (c) receipts on account of Service Charges, (d) revenues from Unutilised Capacity, (e) revenues from Other Business, and (f) such other information as the Authority may reasonably require.

34.2 Appointment of auditors

- 34.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-W. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 34.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

34.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

{34.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.}

34.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

34.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this Clause 34.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

34.5 Dispute resolution

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

Part V
Force Majeure and Termination

ARTICLE 35

FORCE MAJEURE

35.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 35.2, 35.3 and 35.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

35.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Storage Facility);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Storage Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 35.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver any critical equipment required for the Storage Facility and not available in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or

Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Licensed Premises that could not reasonably have been expected to be discovered through an inspection of the Licensed Premises; or
- (g) any event or circumstances of a nature analogous to any of the foregoing.

35.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents operation of the Storage Facility by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

35.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 42 and its effect, in financial terms, exceeds the sum specified in Clause 42.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

35.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 35 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

35.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

35.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 35.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

35.6 Effect of Force Majeure Event on the Concession

35.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfilment of Conditions Precedent and in Clause 25.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event .

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

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to provide the Storage Services despite making best efforts or it is directed by the Authority or any Governmental Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the aforesaid services on account thereof; provided that in the event of reduction in Storage Capacity on account of partial suspension of services which cause the Availability on any day to decline below 90% (ninety per cent) of the Average Daily Availability, the Authority shall extend the Concession Period in proportion to the loss of such Availability due to Force Majeure. For the avoidance of doubt, loss of 25% (twenty five per cent) in Availability for 4 (four) days as compared to the Average Daily Availability shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

35.7 Allocation of costs arising out of Force Majeure

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

35.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Storage Facility (the “**Force Majeure Costs**”) shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fixed Charge, Variable Charges, Service Charges, revenues from Unutilised Capacity, revenues from Other Business or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

35.7.3 Notwithstanding anything contained in this Clause 35.7, if during the occurrence of a Force Majeure Event, the Storage Capacity or part thereof is deemed available for any reason whatsoever, the Authority shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Clause 35.7.

35.7.4 Save and except as expressly provided in this Article 35, 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.

35.8 Compensation for loss of Foodgrains due to Force Majeure Event

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

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

35.9 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the

other Party without being liable in any manner whatsoever, save as provided in this Article 35, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

35.10 Termination Payment for Force Majeure Event

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

35.10.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity.

35.10.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 38.3.2 as if it were an Authority Default.

35.11 Dispute resolution

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

35.12 Excuse from performance of obligations

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

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

- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

35.13 Relief for Unforeseen Events

35.13.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 35.13.

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

35.13.3 The conciliation tribunal referred to in Clause 35.13.2 shall conduct its proceedings in accordance with the provisions of Article 45 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 35.13.

35.13.4 The conciliation tribunal referred to in this Clause 35.13 shall conduct preliminary proceedings to satisfy itself that -

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

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 35.13.

35.13.5 Upon completion of the conciliation proceedings referred to in this Clause 35.13, the conciliation tribunal may by a reasoned order make recommendations which shall be:

- (a) based on a fair and transparent justification;

- (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
- (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
- (d) quantified and restricted in terms of relief or remedy.

35.13.6 Within 15 (fifteen) days of receiving the order referred to in Clause 35.13.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of the Agreement.

ARTICLE 36

COMPENSATION FOR BREACH OF AGREEMENT

36.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 36.5, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 36.1 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.

36.2 Compensation for default by the Authority

Subject to the provisions of Clause 36.5, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Fixed Charges, Variable Charges, Service Charges and revenues from Unutilised Capacity or Other Business, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

36.3 Extension of Concession Period

Subject to the provisions of Clause 36.5, in the event that a material breach or default of this Agreement set forth in Clause 36.2 causes delay in achieving COD or leads to reduction in the realisation of Fixed Charge, as the case may be, the Authority shall, in addition to payment of compensation under Clause 36.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the payment of Fixed Charge was reduced on account thereof, as the case may be; and in the event of reduction in Fixed Charge where the daily collection is less than 90% (ninety per cent) of the Average Daily Fixed Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fixed Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in realisation of Fixed Charge, as compared to the Average Daily Fixed Charge for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

36.4 Compensation to be in addition

Compensation payable under this Article 36 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

36.5 Mitigation of costs and damage

The non-defaulting 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 37

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

37.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, subject to Applicable Laws and without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (a) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to receive any Fixed Charge, Variable Charge or Service Charges, and collect revenues from Unutilised Capacity or Other Business pursuant hereto, and (b) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

37.2 Authority to act on behalf of Concessionaire

37.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement, and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 32.3.

37.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 37.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Storage Facility and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

37.3 Revocation of Suspension

37.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall

revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

37.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 37.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

37.5 Termination

37.5.1 At any time during the period of Suspension under this Article 37, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 37.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 38 as if it is a Concessionaire Default under Clause 38.1.

37.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 37.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 38

TERMINATION

38.1 Termination for Concessionaire Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Storage Facility without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) the Concessionaire fails to achieve a monthly Availability of 80% (eighty per cent) for a period of 6 (six) consecutive months or for a cumulative period of 6 (six) months within any continuous period of 18 (eighteen) months, save and except to the extent of Non-Availability caused by (i) a Force Majeure Event, or (ii) an act or omission of the Authority, not occurring due to any default of the Concessionaire;
- (p) the Damages for Reliability exceed 5% (five per cent) of the Fixed Charge for each quarter during a period of 4 (four) consecutive quarters or for a cumulative period of 6 (six) quarters within any continuous period of 8 (eight) quarters;
- (q) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (r) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (s) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (t) 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;
- (u) a resolution for winding up of the Concessionaire is passed;
- (v) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect.
- (w) the Concessionaire fails to fulfil its obligations under Clause 28.7 and causes delays in relation to the turn-around of 10 (ten) or more Vehicles during each day in a continuous period of 7 (seven) days or causes such delays in respect of 10 (ten) or more Vehicles for a cumulative period of 15 (fifteen) days within any continuous period of 3 (three) months;
- (x) the entire quantity dispatched pursuant to a Dispatch Notice is found to be Rejected Foodgrains on 3 (three) consecutive occasions;
- (y) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (z) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (za) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (zb) The Concessionaire issues a Termination Notice in violation of the provisions of this Agreement; or
- (zc) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes or may cause a Material Adverse Effect on the Authority.

38.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 38.1.3.

38.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 38.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from

the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

38.2 Termination for Authority Default

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement;
- (c) the Authority has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Letter of Credit, within the period specified in this Agreement;
- (d) the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Storage Facility; or
- (e) 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.

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

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

38.3 Termination Payment

38.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover:

Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Clause 38.3.3.

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

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

Provided that the Termination Payment shall not be less than an amount equal to the product of 40 (forty) and the Fixed Charge due and payable for and in respect of the last month of the Concession Period when such Fixed Charge was due and payable.

38.3.3 Upon Termination on account of Concessionaire Default at any time prior to COD, no Termination Payment shall be due and payable for expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty per cent) and forming part of Debt Due, the provisions of Clause 38.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty per cent). For the avoidance of doubt and by way of illustration, if the total expenditure incurred prior to the Transfer Date is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 38.3.3, Total Project Cost shall mean the amount specified in Sub-clause (b) of the definition of Total Project Cost in Clause 49.1. The Parties also agree that for determining the Termination Payment under this Clause 38.3.3, the expenditure comprising the latest Project Milestone shall also be reckoned.

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

necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

38.3.5 Upon Termination on expiry of the Concession Period by efflux of time, Termination Payment equal to the product of 10 (ten) and the Fixed Charge due and payable in respect of the last month of the Concession Period when such Fixed Charge was paid, shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Storage Facility, shall have been acquired and installed after the 25th (twenty fifth)¹¹ anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 38.4.1, be made by the Authority to the Concessionaire.

38.3.6 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 38.3.5, in the event any Project Assets, essential for the efficient, economic and safe operation of the Storage Facility, shall have been acquired and installed after the 25th (twenty fifth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

38.3.7 The Concessionaire expressly agrees that Termination Payment under this Article 38 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

38.4 Certain limitations on Termination Payment

38.4.1 Termination Payment due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty five per cent) of the Total Project Cost.

¹¹ This date should conform with the date specified in Clauses 38.3.6 and 38.5.3.

38.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 38.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans into Indian currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.

38.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Storage Facility forthwith;
- (b) take possession and control of all Foodgrains, materials, stores, implements, construction plants and equipment on or about the Storage Facility;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Storage Facility or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 39.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

38.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 38.3.7, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment

Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 39

DIVESTMENT OF RIGHTS AND INTEREST

39.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Storage Facility and Foodgrains, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets of all defects and deficiencies so that the Storage Facility is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Storage Facility and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Storage Facility and shall be assigned to the Authority free of any Encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Storage Facility, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

39.2 Inspection and cure

- 39.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 40 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 39.
- 39.2.2 Immediately before the Transfer Date, the Independent Expert shall conduct an audit, in the presence of the Authority Representative and the representative of the Concessionaire, to determine the Shortfall, if any, in accordance with the provisions of Clause 23.4.1, and the Shortfall so determined shall be dealt with in accordance with the provisions of Clause 23.4.3. The Independent Expert shall prepare an inventory of the Foodgrains stored at the Storage Facility and such inventory shall be signed by the Authority Representative and the representative of the Concessionaire in verification thereof. Upon completion of the audit, the Authority shall be deemed to have taken possession and control of the Foodgrains stored at the Storage Facility.

39.3 Cooperation and assistance on transfer of Project

- 39.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Storage Facility.
- 39.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 39.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 39.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

39.4 Vesting Certificate

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

39.5 Divestment costs etc.

- 39.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 39.5.2 In the event of any Dispute relating to matters covered by and under this Article 39, the Dispute Resolution Procedure shall apply.

ARTICLE 40

DEFECTS LIABILITY AFTER TERMINATION

40.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Storage Facility for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Storage Facility during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Storage Facility conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 40.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 40 shall not apply if Termination occurs prior to COD.

40.2 Retention of Fixed Charge

- 40.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 40.2.3, a sum equal to 5 (five) times the monthly Fixed Charge payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 40.1.
- 40.2.2 Without prejudice to the provisions of Clause 40.2.1, the Independent Expert shall carry out an inspection of the Storage Facility at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Storage Facility is such that a sum larger than the amount stipulated in Clause 40.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.
- 40.2.3 The Concessionaire may, for the performance of its obligations under this Article 40, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 40.2.1 or 40.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 40. Upon furnishing of a Performance Guarantee under

this Clause 40.2.3, the retention of funds in the Escrow Account in terms of Clause 40.2.1 or 40.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 41

ASSIGNMENT AND CHARGES

41.1 Restrictions on assignment and charges

41.1.1 Subject to the provisions of Clauses 41.2, 41.3 and 41.5, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

41.1.2 Subject to the provisions of Clause 41.2, 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.

41.2 Permitted assignment and charges

The restraints set forth in Clause 41.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Storage Facility;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Storage Facility, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Storage Facility. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

41.3 Substitution Agreement

41.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-Y.

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

41.4 Assignment by the Authority

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

41.4.2 Any assignment under this Article 41 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

41.5 Mortgage of Project Assets

41.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon request made in this behalf by the Lenders' Representative, the Authority and the Concessionaire shall jointly execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide inter alia for the following.

- (a) As security for Debt Due, all Project Assets, excluding Foodgrains (the "Mortgaged Assets") shall stand mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed.
- (b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of 180 (one hundred and eighty) days from the Transfer Date.
- (c) The charge created over the Mortgaged Assets shall stand released and extinguished upon the Authority making the Termination Payment in accordance with the provisions of the Agreement.
- (d) In the event that Termination Payment is not made before expiry of 180 (one hundred and eighty) days from the Transfer Date, the Senior Lenders shall have the right and entitlement to use or dispose of the Mortgaged Assets for recovery of Termination Payment, and any recovery in excess of the Termination Payment shall be due and payable by the Senior Lenders to the Authority.
- (e) Upon taking over of the Mortgaged Assets by the Senior Lenders in accordance with the Mortgage Deed, the rights and title of the Senior Lenders and Concessionaire for and in respect of recovery of Termination Payment shall be deemed to be extinguished and the Termination Payment shall be deemed to have

been made in full by the Authority under and in accordance with the provisions of the Agreement.

- (f) The Mortgaged Assets shall expressly exclude all Foodgrains.
- (g) The Mortgage Deed shall expire and cease to have any force or effect upon the earlier of (i) repayment of Debt Due by the Concessionaire and (ii) the 20th (twentieth) anniversary of COD.

41.5.2 Pursuant to the provisions of Clause 41.5.1, the Lender's Representative shall prepare a draft Mortgage Deed substantially in conformity with this Clause 41.5 and furnish copies to the Authority and the Concessionaire for their review and comments. The Lender's Representative shall consider such comments and send a revised draft to the Authority and the Concessionaire for negotiations in good faith. In the event such negotiations do not conclude in the form of an agreed Mortgage Deed to be executed within 60 (sixty) days of the date of furnishing the first draft hereunder, the Dispute Resolution Procedure shall apply.

ARTICLE 42

CHANGE IN LAW

42.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10 lakh (Rupees ten lakh)¹² and 0.5% (zero point five per cent) of the Storage Charges in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased costs, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 42.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

42.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10 lakh (Rupees ten lakh) and 0.5% (zero point five per cent) of the Storage Charges in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had

⁸ This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding an amount of Rs. 10 lakh for every Rs.50 cr. of Total Project Cost. A similar modification should also be made in Clause 42.2.

there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 42.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

42.3 Protection of NPV

Pursuant to the provisions of Clauses 42.1 and 42.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. . For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

42.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 42 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

42.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users for and in respect of the capacity utilised by such Users.

ARTICLE 43

LIABILITY AND INDEMNITY

43.1 General indemnity

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

43.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the 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.

43.2 Indemnity by the Concessionaire

43.2.1 Without limiting the generality of Clause 43.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

43.2.2 Without limiting the generality of the provisions of this Article 43, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Storage Facility, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

43.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 43 (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.

43.4 Defence of claims

43.4.1 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 43, 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.

43.4.2 If the Indemnifying Party has exercised its rights under Clause 43.3, 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).

43.4.3 If the Indemnifying Party exercises its rights under Clause 43.3, 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;
- (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;
- (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 43.4.3 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.

43.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 43, 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.

43.6 Survival on Termination

The provisions of this Article 43 shall survive Termination.

ARTICLE 44

RIGHTS AND TITLE OVER THE SITE

44.1 Licensee rights

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

44.2 Access rights of the Authority and others

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

44.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Storage Facility at all times for the authorised persons and vehicles of the controlling body of such utility or road.

44.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Licensed Premises; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand therefor.

44.4 Restriction on sub-letting

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

ARTICLE 45

DISPUTE RESOLUTION

45.1 Dispute resolution

45.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 45.2.

45.1.2 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.

45.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to Chairman of the Board of Directors 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 45.1.1 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 45.3.

45.3 Arbitration

45.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 45.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 45.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

45.3.2 There shall be an arbitral tribunal comprising 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.

- 45.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 45 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.
- 45.3.4 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.
- 45.3.5 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.

45.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 45.3, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 46

DISCLOSURE

46.1 Disclosure of Specified Documents

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

46.2 Disclosure of Documents relating to safety

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

46.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 46.1 and 46.2, but subject to Applicable Laws, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 46.1 and 46.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 47

REDRESSAL OF PUBLIC GRIEVANCES

47.1 Complaints Register

- 47.1.1 The Concessionaire shall maintain a complaints office at the Storage Facility where it shall keep a register (the “**Complaint Register**”) open to the officials of the Authority and Users at all times for recording of complaints by such persons (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Storage Facility so as to bring it to the attention of all Users.
- 47.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 47.1.3 Without prejudice to the provisions of Clauses 47.1.1 and 47.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

47.2 Redressal of complaints

- 47.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 47.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal in accordance with Applicable Law, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 48

MISCELLANEOUS

48.1 Governing law and jurisdiction

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

48.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

48.3 Depreciation

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

48.4 Delayed payments

- 48.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the Bank Rate, and recovery thereof

shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

48.5 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

48.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

48.7 Exclusion of implied warranties etc.

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

48.8 Survival

48.8.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

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

48.9 Entire Agreement

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

48.10 Severability

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

48.11 No partnership

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

48.12 Third parties

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

48.13 Successors and assigns

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

48.14 Notices

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

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

{ Attention:
Designation:
Address:
Fax No:
Email: }

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

{ Name:
Designation:
Address:
Fax No:
Email: }; and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of

post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

48.15 Language

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

48.16 Counterparts

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

ARTICLE 49

DEFINITIONS

49.1 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:

“**Accounting Year**” means the financial year commencing from the first day of April of any calendar year and ending on the thirty-first day of March of the next calendar year;

“**Adjusted Depreciated Value**” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method) to reflect the variation occurring in Price Index between the date of procurement thereof and the Transfer Date;

“**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 Price Index, 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 Price Index occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point two two per cent)¹³ 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 Price Index occurring between COD and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for Augmentation, if any. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer

¹³ This number shall be substituted in each case by the figure arrived at upon dividing 80 by the number of months comprising the Concession Period. For example, the figure for a 30 year Concession Period shall be $80/360 = 0.222$ rounded off to two decimal points i.e. 0.22.

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 Price Index shall continue to be made;

“**Affected Party**” shall have the meaning as set forth in Clause 35.1;

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

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

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

“**Appointed Date**” means the date on which Financial Close is achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“**Approved Valuer**” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

“**Associate**” means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control with such Party {or Consortium Member} (as used in this definition, the expression “control” means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

“**Associated Services**” shall have the meaning as set forth in Clause 28.1.1;

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

“**Authority Default**” shall have the meaning as set forth in Clause 38.2.1;

“**Authority 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;

“**Availability**” shall have the meaning as set forth in Clause 5.1.4;

“**Average Daily Availability**” means the average daily Availability, in terms of percentage, determined for the month preceding the relevant Force Majeure Event;

“**Average Daily Fixed Charge**” means the amount arrived at by dividing the total Fixed Charge due and payable for the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Fixed Charge for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fixed Charge due and payable with respect to every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fixed Charge payable for any segment of the Storage Facility has not been realised for any reason, an assessment thereof shall be made by the Independent Expert to form part of the Average Daily Fixed Charge for such period;

“**Bag**” means a bag that can carry 50 (fifty) kilogram of Foodgrains or such other weight as the Parties may mutually determine. For the avoidance of doubt, Service Charges under this Agreement shall always be determined as if the Bags have a carrying capacity of 50 (fifty) kilogram of Foodgrains;

“**Bagging**” shall have the meaning as set forth in Clause 28.5.1;

“**Bagging Charges**” shall have the meaning as set forth in Clause 28.5.2;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

“**Bank Rate**” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect;

“**Base Fixed Charge**” shall have the meaning as set forth in Clause 27.2.1;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected bidder in response to the Request for Proposals in accordance with the provisions thereof and “**Bids**” shall mean the bids submitted by any and all pre-qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Bid Security**” means the security provided by the Concessionaire to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

CAP” or “**Covered Area Plinth**” means the storage of Foodgrains in the open with adequate precautions such as rat and dump proof plinths, use of dunnage and covering of stacks with

specially fabricated polythene covers.

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 15.1.1;

“**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 Bid Date:

- (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 Bid Date;
- (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 Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {existing promoters/selected bidder/Consortium Members}, together with {its/their} Associates in the total Equity to decline below (i) 33% (thirty three per cent) thereof during the Construction Period and until the 1st (first) anniversary of COD, and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; 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 {existing promoters/selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to the first anniversary of COD, shall constitute Change in Ownership;

“**Change of Scope**” shall have the meaning as set forth in Clause 16.1.1;

“**Cleaning**” means the process of reduction of foreign material (such as dust, fibre, stones or other foreign particles) from the Foodgrains, to be carried out at the Storage Facility, in accordance with the provisions of this Agreement and “**Clean**” shall be construed accordingly;

“**Cleaning Charges**” means the fee in Rupees per quintal as specified in Clause 28.4.3;

“**Company**” means the company acting as the Concessionaire under this Agreement;

“**Completion Certificate**” shall have the meaning as set forth in Clause 14.2;

“**Concession**” shall have the meaning as set forth in Clause 3.1.1;

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

“**Concession Period**” means the period starting on and from the Appointed Date and ending on the Transfer Date;

“**Concessionaire Default**” shall have the meaning as set forth in Clause 38.1.1;

“**Conditions Precedent**” shall have the meaning as set forth in Clause 4.1.1;

{“**Consortium**” shall have the meaning as set forth in Recital (B);}

{“**Consortium Member**” means a company specified in Recital (B) as a member of the Consortium;}

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

“**Construction Works**” means all works and things necessary to construct and complete the Storage Facility 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 material agreement or contract for construction, operation and/or maintenance of the Storage Facility or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

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

“**Damages**” shall have the meaning as set forth in Sub-clause (x) of Clause 1.2.1;

“**Debugging**” shall have the meaning as set forth in Clause 28.2.2;

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

provided further that the Debt Due, on or after COD, shall in no case exceed 85% (eighty five per cent) of the Total Project Cost;

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

“**Deed of Hypothecation**” shall have the meaning as set forth in Clause 29.1.2;

“**Default Escrow Account**” shall have the meaning as set forth in Clause 29.1.1;

“**Default Escrow Agreement**” shall have the meaning as set forth in Clause 29.1.1;

“**Default Escrow Bank**” shall have the meaning as set forth in Clause 29.1.1;

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

“**Dispatch Notice**” shall have the meaning as set forth in Clause 22.1.1;

“**Dispatch Report**” shall have the meaning as set forth in Clause 22.6.3;

“**Dispute**” shall have the meaning as set forth in Clause 45.1.1;

“**Disputed Amounts**” shall have the meaning as set forth in Clause 27.13.3;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 45;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 39.1;

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

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Storage Facility as set forth in Schedule-H, and shall include ‘as built’ drawings of the Storage Facility;

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

“**Drying Charges**” means the fee in Rupees per quintal as specified in Clause 28.3.3;

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

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

“**Encumbrances**” means, in relation to the Storage Facility, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Storage Facility, where applicable herein but excluding utilities referred to in Clause 11.1;

“**Equity**” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

“**Equity Support**” shall have the meaning as set forth in Clause 26.2.1;

“**Escrow Account**” means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and

expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“**Escrow Agreement**” shall have the meaning as set forth in Clause 32.1.2;

“**Escrow Bank**” shall have the meaning as set forth in Clause 32.1.1;

“**Escrow Default**” shall have the meaning as set forth in Schedule-V;

“**FCI**” means the Food Corporation of India;

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

“**Financial Default**” shall have the meaning as set forth in Schedule-Y;

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

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

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“**Fixed Charge**” shall have the meaning as set forth in Clause 27.3;

“**Foodgrains**” means wheat or such other foodgrains as the Parties may mutually agree upon;

“**Foodgrains Specifications**” shall have the meaning as set forth in Clause 22.2;

“**Foodgrains Tests**” shall have the meaning as set forth in Clause 22.3.3;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 35.1;

“**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;

“**GOI**” means the Government of India;

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

“**Government**” means the Government of the State;

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

“**Grant**” shall have the meaning as set forth in Clause 26.1.1;

“**Handling Losses**” shall have the meaning as set forth in Clause 23.3;

“**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;

“**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;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 43;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 43;

“**Independent Expert**” shall have the meaning as set forth in Clause 21.1;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 35.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 33, and includes all insurances required to be taken out by the Concessionaire under Clauses 33.1 and 33.3 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;

“**Intake Notice**” shall have the meaning as set forth in Clause 22.1.1;

“**Intake Report**” shall have the meaning as set forth in Clause 22.6.3;

“**Intellectual Property**” means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Key Performance Indicators**” shall have the meaning as set forth in Clause 24.1;

“**LOA**” or “**Letter of Award**” means the letter of award referred to in Recital (D);

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

“**Lenders’ Representative**” means the person duly authorised by the Senior Lenders to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

“**Letter of Credit**” shall have the meaning as set forth in Clause 29.2.1;

“**Licensed Premises**” shall have the meaning as set forth in Clause 10.2.2;

“**Loading**” shall have the meaning as set forth in Clause 28.6.1;

“**Loading Charges**” shall have the meaning as set forth in Clause 28.6.2;

“**MT**” means a unit of weight in the metric system equal to 1,000 kilograms;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3.1;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 17.4.1;

“**Maintenance Requirements**” shall have the meaning as set forth in Clause 17.2;

“**Major Overhaul**” means the complete repair, restoration and renovation of a Silo after removal of Foodgrains therefrom;

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

“**Maximum Monthly Payment**” shall have the meaning as set forth in Clause 29.1.1.

“**Minimum Monthly Payment**” shall have the meaning as set forth in Clause 29.1.3.

“**Mis-declaration**” shall have the meaning as set forth in Clause 27.7.3;

“**Monthly Invoice**” shall have the meaning as set forth in Clause 27.13.1;

“**Nominated Company**” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

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

“**Non-Political Event**” shall have the meaning as set forth in Clause 35.2;

“**Normative Availability**” shall have the meaning as set forth in Clause 5.1.4;

“**O&M**” means the operation and maintenance of the Storage Facility and includes all matters connected with or incidental to such operation and maintenance, and provision of Storage Services and facilities in accordance with the provisions of this Agreement;

“**O&M Contract**” means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning as set forth in Clause 18.3;

“**O&M Support**” shall have the meaning as set forth in Clause 26.3.1;

“**Operating Hours**” mean the period between 8:00 a.m. and 6:00 p.m. on all days other than Sundays and bank holidays;

“**Operation Period**” means the period commencing from COD and ending on the Transfer Date;

“**Panel of Chartered Accountants**” shall have the meaning as set forth in Clause 34.2.1;

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

“**Payment Due Date**” shall have the meaning set forth in Clause 27.13.3;

“**Performance Security**” shall have the meaning as set forth in Clause 9.1.1;

“**Political Event**” shall have the meaning as set forth in Clause 35.4;

“**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;

“**Procurement Price**” means the highest procurement price per quintal, paid or payable by the Authority for procurement of Foodgrains 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 construction, operation and maintenance of the Storage Facility in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, all agreements relating to any material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement or any agreement for procurement of goods and services involving a consideration of upto Rs. 10 crore (ten crore)¹⁴;

“**Project Assets**” means all physical and other assets relating to and forming part of the Project including:

(a) rights over the Site in the form of licence, Right of Way or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and loading/unloading facilities ;

(c) Project Facilities situated on the Site;

(d) buildings and immovable fixtures or structures forming part of the Storage Facility;

(e) all rights of the Concessionaire under the Project Agreements;

(f) financial assets, such as receivables, security deposits etc;

(g) insurance proceeds; and

(h) Applicable Permits and authorisations relating to or in respect of the Storage Facility;

“**Project Completion Schedule**” means the progressive Project Milestones set forth in Schedule-G for completion of the Storage Facility on or before the Scheduled Completion Date;

¹⁴ This may be fixed at the higher of; (a) 2% (two per cent) of Total Project Cost and (b) Rs. 10 (Rupees ten) crore.

“**Project Facilities**” means all the amenities and facilities situated on the Site, as described in Schedule-C;

“**Project Milestones**” means the project milestones as set forth in Schedule-G;

“**Provisional Certificate**” shall have the meaning as set forth in Clause 14.3.1;

“**Punch List**” shall have the meaning ascribed to it in Clause 14.3.1;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

[“**Railway Siding**” shall have the meaning as set forth in Clause 12.4.1;]

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

“**Reference Index Date**” means, in respect of the specified month, that last day of the preceding month with reference to which the Price Index or CPI (IW), as the case may be, is revised;

“**Rejected Foodgrains**” shall have the meaning ascribed to it in Clause 22.8.1;

“**Reliability**” shall have the meaning as set forth in Clause 24.3;

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

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

“**Revenue Share**” means and refers to the Revenue Share from Unutilised Capacity and the Revenue Share from Other Business;

“**Revenue Share from Unutilised Capacity**” shall have the meaning as set forth in Clause 30.2.1;

“**Revenue Statement for Unutilised Capacity**” shall have the meaning as set forth in Clause 30.3.1;

“**Revenues**” means all of the present and future funds, payment obligations, monies, claims, bills and any other property whatsoever which may from time to time be derived from or accrue to or be offered or due to the Authority in the form of cash receipts or receivables from any and all sources, save and except any capital receipts of the Authority for and in relation to any capital expenditure for creation of assets;

“**Right of Way**” means the constructive possession of the Licensed Premises, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described,

necessary for construction, operation and maintenance of the Storage Facility in accordance with this Agreement;

“**Safety Requirements**” shall have the meaning as set forth in Clause 17.16.1;

“**Scheduled Completion Date**” shall have the meaning as set forth in Clause 12.3.1;

“**Scheduled Maintenance**” shall have the meaning as set forth in Clause 17.4.4;

“**Scope of the Project**” shall have the meaning as set forth in Clause 2.1;

“**Secured Obligations**” means:

- (a) the amounts due to the Default Escrow Bank from the Authority in relation to the Letter of Credit;
- (b) obligations of the Authority for payment of Storage Charges and Incentives under and in accordance with this Agreement; and
- (c) obligation of the Authority to make Termination Payment under and in accordance with this Agreement upon termination thereof;

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

“**Service Charges**” shall have the meaning as set forth in Clause 28.1.3;

“**Shortfall**” shall have the meaning ascribed to it in Clause 23.4.1;

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

“**Site**” shall have the meaning as set forth in Clause 10.1;

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

“**Stacking Charges**” shall have the meaning ascribed to it in Clause 28.5.3;

“**State**” means the State or the Union Territory, as the case may be, in which the headquarters of the Authority are situate and “**State Government**” means the government of that State or Union Territory;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 34.2.1;

“**Storage Capacity**” shall mean the designed storage capacity of [50,000 (fifty thousand)] metric tonnes of Foodgrains at the Storage Facility and shall include the equipment and other capacity required for providing all Storage Services and Associated Services to the extent specified in this Agreement;

“**Storage Charges**” shall have the meaning as set forth in Clause 27.1;

“**Storage Facility**” shall have the meaning set forth in Recital A;

“**Storage Services**” means the provision of all the storage services, including Associated Services, by the Concessionaire in accordance with the provisions of this Agreement;

“**Subordinated Debt**” means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six) month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Substitution Agreement**” shall have the meaning as set forth in Clause 41.3.1;

“**Suspension**” shall have the meaning as set forth in Clause 37.1;

“**TPH**” means MT per hour.

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

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

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

“**Termination Payment**” means the amount payable by the Authority to the Concessionaire, under and in accordance with the provisions of this Agreement, upon Termination;

“**Tests**” means the tests set forth in Schedule-I to determine the completion of Storage Facility in accordance with the provisions of this Agreement;

“**Total Project Cost**” means the capital cost incurred on construction and financing of the Storage Capacity and shall be limited to the lowest of:

- (a) the capital cost of the Storage Capacity, {less Equity Support} as set forth in the Financial Package; and
- (b) a sum of Rs. ***** crore (Rupees ***** crore), less Equity Support¹⁵;

provided that in the event Price Index increases, on an average, by more than 3% (three per cent) per annum for the period between the Bid Date and COD, the amount hereinbefore specified shall be increased such that the effect of increase in Price Index, in excess of such 3% (three per cent), is reflected in the Total Project Cost;

provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

provided also that the Total Project Cost shall not exceed the actual capital cost of the Project upon completion of the Storage Facility {less Equity Support};

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

“**Unloading**” shall have the meaning as set forth in Clause 28.2.1;

“**Unloading Charges**” shall have the meaning as set forth in Clause 28.2.3;

“**Unscheduled Maintenance**” shall have the meaning as set forth in Clause 17.9;

“**Unutilised Capacity**” shall have the meaning as set forth in Clause 30.1.2;

¹⁵ This amount may be indicated on the basis of project-specific cost estimates, including financing charges; and this amount shall, after bidding, be reduced by a sum equivalent to the Equity Support. In determining this amount, the estimated cost of construction shall be increased by 20% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

“**User(s)**” shall mean the third parties using the Storage Facility or any part thereof, in accordance with the provisions of this Agreement and Applicable Laws;

“**Variable Charge**” shall have the meaning as set forth in Clause 27.4.1;

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

“**Vesting Certificate**” shall have the meaning as set forth in Clause 39.4;

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge, Variable Charge and Service Charges in accordance with the provisions of Clauses 27.3, 27.4.2 and 28.8 respectively, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year; and

“**Weighment Charges**” shall have the meaning as set forth in Clause 28.2.4.

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
THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[£] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

COUNTERSIGNED, SEALED AND
DELIVERED

For and on behalf of

FOOD CORPORATION OF INDIA

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence

of: 1.

2.

Schedules

SCHEDULE – A
(See Clause 10.1)
SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Storage Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A.
- 1.2 An inventory of the Licensed Premises including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for ancillary buildings, extension/ addition of Storage Capacity or for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

[2. Railway Siding

The land earmarked for Railway Siding has been described in Annex-II of this Schedule-A, and shall form part of the Site.]¹⁶

¹⁶ Paragraph 3 may be omitted if Railway Siding is not included in the Project.

Annex - I
(Schedule-A)

Site for the Storage Facility

[**Note:** Through suitable drawings and description in words, the land comprising the Site shall be specified briefly but precisely in this Annex-I. In the event there are any buildings or structures on the Site, the same shall be marked in the drawings and briefly described in words.]

Annex-II¹⁷
(Schedule-A)
(See Clause 12.4)

Site for Railway Siding

[**Note 1:** Through suitable drawings and description in words, the land earmarked for Railway Siding shall be specified briefly but precisely in this Annex-II.]

[**Note 2:** Description of the land shall include reference to the relevant land acquisition notification(s) for and in respect of the Site.]

¹⁷ Annex-II may be omitted if Railway Siding is not included in the Project.

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE STORAGE FACILITY

1. Development of the Storage Facility

- 1.1 Development of the Storage Facility shall include construction of the Storage Facility as described in this Schedule-B and in Schedule-C.
- 1.2 Construction of the Storage Facility shall conform with the provisions of Annex-I of this Schedule-B and Annex-I of Schedule-C.
- 1.3 Storage Facility shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule-D.

[2. Railway Siding¹⁸

Railway Siding shall be constructed as described in Annex-II of this Schedule-B.]

¹⁸ Paragraph 3 may be omitted if the Railway Siding is not included in the Project.

Annex - I
(Schedule-B)

Description of Storage Facility¹⁹

1. Description of Storage Facility

1.1 The Storage Facility shall be constructed as briefly described below:

Storage Capacity (MT)	Minimum number of Silos	Minimum capacity of each Silo (MT)	Minimum diameter of each Silo (meters)	Minimum Daily intake capacity of Storage Facility (MT/hour)
50,000	4	10,000	28	150

1.2 The Silos shall be constructed from bolted corrugated galvanised sheet metal and shall have a flat bottom with sweep augur. The galvanisation thickness, which is from hot dip process, should not be less than 350 grams/meter square, capable of lasting for 30 (thirty) years. The Silos shall be water tight and shall be constructed in a manner that protects the Silos, conveyors and all other equipment from accumulation of ground water. The support slab of Silos shall be elevated so that all equipment is situated at a level above the once-in-50-years flood level at the Site. The Silos shall be capable of withstanding seismic activity in accordance with the guidelines issued by the National Disaster Management Authority.

1.3 The Storage Facility shall include the systems and equipment specified in Paragraph 2 of this Annex-1.

1.4 The Storage Facility, including its systems and equipment, shall conform to Applicable Laws, Applicable Permits, provisions of this Agreement and Good Industry Practice.

2. Systems

2.1 The systems and equipment to be installed and operated as part of the Storage Facility shall include:

I. Pre-storage intake

(i) Vehicle weighment

Weighbridge with capacity of 60 MT

²⁰

¹⁹ The description of quantity of individual items may be modified to suit project-specific requirements.

²⁰ May be reduced to 1 (one) if the capacity of the Storage Facility is 25,000 MT or less.

(ii) Unloading from vehicles	
Rated unloading capacity (TPH)	30
(iii) Sampling system/Laboratory	
Number of samplers	2
II. Pre-storage Foodgrain treatment:	
(i) Cleaning	
Rated handling capacity (TPH)	150
III. Foodgrain handling (receiving & stacking)	
(i) Conveying	
(a) Rated capacity of each stream (TPH)	150
(b) Number of streams	1
IV. Preservation	
(i) Preservation	
(a) Temperature monitoring system (per Silo)	1
(b) Aeration system (per Silo)	1
(ii) Fumigation	
Type of fumigant	Aluminium Phosphide
V. Foodgrain handling	
(i) Reclaiming arrangement from Silo	
Rated capacity of the Unit (TPH)	60
(ii) Conveying	
Rated capacity (TPH)	60
VI. Foodgrain dispatch	
(i) Dispatch conveying	
Rated capacity of each stream (TPH)	60

(ii) Bagging System

Rated capacity (TPH) 60

VII. Plant Control

(a) Plant operation	1
(b) Foodgrain inventory	1
(c) Quality and preservation	1
(d) Truck identification and internal truck movement	1
(e) Environment and safety	1
(f) Disaster/Hazard management	1

2.2 The aforesaid systems and the equipment forming part thereof are briefly described below:

(a) Vehicle Weighment System

The Concessionaire shall provide at least 1 (one) weighbridge for weighment of truck/ vehicle loaded with Foodgrains. Suitable weighing instrumentation shall be installed at the weight station. A computer shall be provided at this station which will be linked to the Plant Control System. The weighbridge shall be calibrated in accordance with the provisions of Schedule D.

(b) Foodgrain Intake System

The Foodgrain Intake System shall have a minimum capacity of loading [1,500 (one thousand five hundred)] tonnes of Foodgrain per day into the Silos. The system is briefly described below:

(i) Unloading area

The unloading area shall consist of a covered concrete or steel building comprising at least [6 (six)] unloading stations, each with an unloading hopper located underground to handle 20 (twenty) tonnes of Foodgrains per hour (TPH). Each underground hopper shall have an opening at the ground level with grate and baffles for unloading Foodgrains from Vehicles. Each unloading hopper will be provided with a discharge chain conveyor having a basket type diverter valve at the conveyor discharge end.

The unloading area shall include dust suppression baffles and positive air aspiration. Drainage in the unloading area shall be provided to prevent accumulation of water. The unloading area shall also provide for weather protection structures such as roof and partial end walls over the unloading stations and unloading hoppers. The grade level at the top of unloading hoppers shall be at least 200 (two hundred) mm above ground level to prevent ground water ingress into the unloading hoppers.

1 (one) tippler shall be provided at the unloading area for receiving Vehicles carrying Foodgrains in bulk.

(ii) Tunnels

The unloading hopper tunnels and the receiving conveyor and reject conveyor tunnels shall be located below grade level running beneath the unloading area. The tunnels shall be equipped with drainage slopes, sump pits and sumps, and sensing and monitoring instrumentation.

(iii) Grating and baffle

The top of each unloading hopper shall be equipped with grating to prevent the ingress of birds into the unloading hoppers and to prevent humans from accidentally falling into the unloading hoppers. The underside of the baffle shall be equipped with a special baffle arrangement for dust abatement.

(iv) Drying area

Drying area for 10 MT of Foodgrains shall be provided at the Storage Facility.

(c) Testing System

Each sample testing station shall comprise the following instrumentation:

- (i) Moisture tester;
- (ii) Dockage tester (foreign material and by-products);
- (iii) Manual insert grain probes (stand-by);
- (iv) Sample divider;
- (v) Hand sieves; and
- (vi) Sensitive lab scale

The number of sample stations shall be such that at least 20 (twenty) samples per hour may be handled for a Storage Capacity of 25,000 MT or part thereof.

The system shall provide for a data entry table linked to the individual batch and displayed on the inspector's screen. The test data may be entered manually into the screen and the MIS should decide whether or not the batch is acceptable and pass the information to the Plant Control System which would then assign a destination to the batch.

(d) Foodgrain Cleaning System

Cleaners shall be provided for removal of dust, chaff and large foreign objects from Foodgrains upon receipt thereof and prior to storage in Silos. Such cleaners shall have a capacity identical to the Foodgrains Intake System.

(e) Silo Aeration System

Silo aeration system shall include the following components:

- (i) Internal perforated ducts on concrete channels;

- (ii) External ducting;
- (iii) Fans;
- (iv) Dampers;
- (v) Roof vents as required;
- (vi) Instrumentation (temperature monitoring system); and
- (vii) Air volume.

(f) Silo Fumigation System

A portable air recirculation power unit shall be installed to cater to all Silos. Each Silo shall be provided with a closed loop fumigation system comprising:

- (i) fixed plastic pipes to inject fumigants into the Silo aeration system;
- (ii) ducting at the bottom of the Silo; and
- (iii) fixed plastic pipes for collecting exhausted fumigant from the top of the Silo for recirculation thereof.

(g) Silo Temperature Monitor

A temperature monitoring and pest detection system shall be provided for each Silo. Each system shall consist of temperature sensing cables suspended vertically from the Silo roof and accessible from outside for maintenance. Each Silo shall be equipped with a controllable scanner capable of interfacing with the Plant Control System.

(h) Foodgrain Handling System

The Foodgrain Handling System shall have the capacity to reclaim and convey [60 (sixty)] MT of Foodgrains per hour, including the capacity to shift such Foodgrains from one Silo to another.

(i) Foodgrain Dispatch System

The Foodgrain Dispatch System should have the capacity to dispatch [60 (sixty)] MT of Foodgrains per hour. The system is briefly described below:

(i) *Storage of Bags*

A warehouse with a floor area of at least 100 (one hundred) square meter shall be provided for storage of Bags to be used for dispatch of Foodgrains.

(ii) *Bagging and storage of bagged Foodgrains*

The Bagging warehouse shall have a covered storage capacity of at least [200 (two hundred)] MT and a CAP storage capacity of at least [500 (five hundred)] MT of Foodgrains to be stored in Bags to enable dispatch of Foodgrains. Bagging lines having a minimum capacity of [60 (sixty)] tonnes per hour for automatic Bagging of Foodgrains shall also be installed in the warehouse.

The Bagging system shall consist of a transfer bag conveyor, Bagging surge bins, Bag machines and Bag stacking conveyor.

(iii) Dispatch of Foodgrains

The system shall have the capacity to dispatch [6 (six)] Vehicles in an hour. At least [4 (four)] loading bays shall be provided for dispatch of Foodgrains.

(j) Bins for disposal of foreign material

Separate bins shall be provided for bye-products and for foreign material comprising small rocks and other objects obtained after cleaning of Foodgrains prior to moving them into the Silos. Containers shall be provided for discharging chaff and grain dust obtained from the final cleaning process prior to dispatch of Foodgrains.

(k) Designated area for disposal of rejected Foodgrains

Covered area with protection from rain shall be provided for storing the rejected Foodgrains for a period of not more than 72 (seventy two) hours till they are removed by the Authority.

(l) Plant Control System

The Plant Control System shall be installed for operating the equipment in sequence, in accordance with the operational requirements of the Storage Facility. Equipment shall be interlocked through the Plant Control System so that the failure of one piece of equipment shall stop all other equipment upstream and also close all feed gates. It shall comprise, *inter alia*, the operation and control system, Foodgrain inventory control system, quality and preservation control system, Vehicle identification and movement control system and disaster/hazard management system.

[(m) Bulk Handling Facilities

Bulk Handling Facilities shall comprise:

- (a) a rake unloading system consisting of a dump pit having 2 (two) hoppers, and each hopper shall be connected through a chain conveyor and bucket elevator to the receiving Silo. The dump pit shall also be used in case Foodgrains are received in bagged form by rake.

Foodgrains received in bulk shall be first stored in pre-storage silos comprising 2 (two) hopper bottom Silos of 250 (two hundred and fifty) MT each equipped with stationary vents, aeration fans with a provision of fumigation. The intake capacity of each Silo shall be a minimum of 125 (one hundred and twenty five) TPH and the discharge shall be a minimum of 125 (one hundred and twenty five) TPH; and

- (b) a rake loading system consisting of 1 (one) flat bottom sheet metal pre-shipment Silo having aeration floor, aeration fans, temperature monitoring system and provision of fumigation connected through material handling system in a combination comprising chain conveyors and bucket elevators, online weigher of matching capacity and rake loading system.]

3. Project Facilities

Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

4. Specifications and Standards

The Storage Facility shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex - II²¹
(Schedule-B)
(See Clause 12.4)

Description of the Railway Siding

[1. Railway Siding

Railway Siding shall be constructed in accordance with the norms, specifications and standards prescribed by the Ministry of Railways from time to time with respect to the civil works, rail tracks, platforms and other structures.]

²¹ Annex-II may be omitted if Railway Siding is not included in the Project.

SCHEDULE – C

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

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

2 Project Facilities for Storage Facility

Project Facilities forming part of the Storage Facility and to be completed on or before COD are described in Annex-I of this Schedule-C.

Annex - I
(Schedule-C)

Project Facilities for Storage Facility

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Storage Facility. The Project Facilities shall include:

- (a) Vehicle parking area;
- (b) Fire hydrant system;
- (c) Reception, cafeteria and rest rooms;
- (d) Security equipment including Closed-circuit television (CCTV);
- (e) Public address system; and
- (f) Standby electricity generator.

2 Description of Project Facilities

The Project Facilities are briefly described below:

(i) Vehicle parking area

A parking area sufficient to accommodate [20 (twenty)] 3-axle trucks, [4 (four)] cars and [24 (twenty four)] two-wheelers shall be provided.

(ii) Reception, cafeteria and rest rooms

The reception area for visitors to the Storage Facility shall comprise covered area of not less than 100 (one hundred) square meter. The cafeteria and rest rooms shall be provided in an additional covered area of at least 150 (one hundred and fifty) square meter. This shall also include a first-aid room.

(iii) Fire hydrant system

A fire hydrant system shall be installed in conformity with Applicable Laws, Applicable Permits and Good Industry Practice and shall include adequate water storage, pumping capacity and distribution network.

The fire hydrant system shall include an exclusive storage of suitable capacity which shall be connected with 2 (two) or more sources of water supply with a dedicated motor and power source. Suitable pipe headers and branches shall be laid crisscrossing the Storage Facility with hydrates at required intervals. The storage shall be provided with a sufficient number of pumps including standby pumps. The pumps shall be both electric and diesel driven. Smoke detectors, fire alarms and water sprinklers shall also be provided in critical areas. The fire fighting system shall be controlled manually and by computer.

(iv) Security equipment including Closed-Circuit Television (CCTV)

All sections of the Storage Facility shall be equipped with a Closed-Circuit Television system capable of retaining recorded footage for a period of one month. The Concessionaire shall install and operate such other security equipment as may be required in accordance with Applicable Laws, Applicable Permits and Good Industry Practice for assurance of the security of personnel and Foodgrains at the Storage Facility.

(v) Public address system

The Concessionaire shall provide a public address system with speakers in all sections of the Storage Facility to ensure that announcements are capable of being heard in any and all parts of the Storage Facility.

(vi) Standby electricity generator

The Concessionaire shall install and operate standby arrangements for generation and supply of electricity such that in the event of failure of supply of electricity from the grid, the Storage Facility shall remain operational. For this purpose, the Concessionaire may install solar power systems, invertors, diesel generators or such other equipments as it may deem fit.

SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1. Storage Facility

1.1 The Storage Facility shall conform with the Specifications and Standards as specified in this Schedule – D and in this Agreement.

1.2 The Specifications and Standards applicable to the design and construction of the Storage Facility shall be as follows:

(a) **Building Code:**

National Building Code of India

(b) **Design Specifications:**

IS – 9178: Criteria for design of Steel Bins for storage of Bulk Materials*

Part I: General Requirements and Assessment of Loads

Part II: Design Criteria

Part III: Bins Designed for Mass Flow and Funnel Flow

* *(Bulk density of wheat in the IS shall be read as 750 kg/ cubic metre with compaction factor of about 5% (five per cent)).*

IS – 9215: Specifications for outdoor Steel Bins for Foodgrain Storage

SS EN 1993-4-1:2011: Design of Steel Structures-Silos

(c) **Construction Specifications:**

IS - 5503: General requirements for Silos for Grain Storage

Part I: Constructional requirements

Part II: Grain Handling Equipment and Accessories

EN-1992: Design of Concrete Structures*

EN-1997: Geotechnical Design*

**(Applicable for foundations)*

1.3 In case of any conflict or inconsistency in the provisions of the applicable Indian Standards or codes and International Standards or codes, the Indian Standards or codes shall apply.

- 1.4 In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:
- (i) Bureau of Indian Standards (BIS);
 - (ii) Relevant Standards or codes as applicable in the United States of America or the European Union or Singapore; and
 - (iii) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.
- 1.5 The latest version of the specified codes and standards which were notified/ published at least 60 (sixty) days prior to the Bid Date in respect of this Agreement shall apply.
- 1.6 In case of any inconsistency or conflict between the provisions of this Agreement and the applicable BIS Standards or Codes, the provisions of this Agreement shall apply.

2. Minimum capacity

The minimum capacity to be provided at the Storage Facility shall be as follows:

Item	Capacity
Space for storage of Foodgrains	[50,000] MT
Vehicle Weighment System	Suitable for Vehicles with a total load of upto [50] MT
Vehicle Parking Area	[20] Trucks, [4] cars and [24] two wheelers
Foodgrains Intake System	[1500] MT/day; [150] MT/hr
Cleaning System	[150] MT/hr
Bagging System	[60] MT/hr
Designated area for storage of bagged Foodgrain	[200] MT covered; [500] MT CAP
Shed for empty Bags	[100] sqm

3. Weighbridges

The Concessionaire shall at all times conform with the provisions of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 or any substitute thereof. It shall also conform with the standards specified by the Bureau of Indian Standards for and in respect of weighbridges.

4. Calibration of Silos

The Silos shall be calibrated and appropriately marked with at least 2 (two) scaled rulers to identify the aggregate volume of each Silo in fractions of [1/500th (one upon five hundredth)] of such aggregate volume. The scaled ruler shall be indelibly imprinted and

shall be in the form of concentric circles running on the inside wall of the Silo such that the volume of the Foodgrain stored in the Silos can be readily ascertained by reference to such scaled rulers. The Silo shall be designed with appropriate mechanisms to enable easy access to and reading of the scaled ruler for verification of the volume of Foodgrain stored in a Silo at any point of time.

[5. Railway Siding]

[To be described briefly but precisely.]

SCHEDULE –E

(See Clause 4.1.3)

APPLICABLE PERMITS

PART I

1 Applicable Permits prior to Appointed Date

1.1 The Concessionaire shall, as required under Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

- (a) Consent to establish and operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
- (b) Consent to establish and operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
- (c) No Objection Certificate under the Noise (Prevention and Control of Pollution) Rules 2000 issued by the Pollution Control Board having jurisdiction; and
- (d) Applicable Permits of the relevant local authorities, as per Applicable Laws, for construction and operation of the Storage Facility.

[1.2 Unless otherwise specified in this Agreement, Applicable Permits, if any, relating to environmental protection (including forest clearance) shall have been procured by the Authority as a Condition Precedent.]

PART II

2 Applicable Permits prior to COD

The following Applicable Permits shall be obtained prior to COD:

- (a) Warehousing Licence under the Warehousing (Development and Regulation) Act, 2007;
- (b) Applicable Permits for and in respect of Weights and Measures; and
- (c) Applicable Permits from the relevant Government Instrumentality in respect of fire fighting measures.

SCHEDULE –F

(See Clause 9.1)

PERFORMANCE SECURITY

.....,
.....
.....

WHEREAS:

- (A) (the “**Concessionaire**”) and the Food Corporation of India represented by (“**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of the Storage Facility at in district in the State of on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of [Rs. cr. (Rupees crore)] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

- 1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Trust upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
- 2. A letter from the Authority, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final,

and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.

3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 40% (forty per cent) of the Total Project Cost which is deemed to be Rs. cr. (Rupees crore) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the

Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of 20..... at

SIGNED, SEALED AND DELIVERED

For and on behalf of
the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE –G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance alongwith necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [90th (ninetieth)] day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction at the Site and expended not less than 10% (ten per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [(180th (one hundred and eightieth)] day from the Appointed Date (the “**Project Milestone-II**”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Silos and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Expert, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Expert to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [270th (two hundred and seventieth)] day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced installation of the Silos and expended not less than 60% (sixty per cent) of the Total Project Cost set forth in the Financial Package.

5 Scheduled Completion Date

- 5.1 The Scheduled Completion Date shall be the [365th (three hundred and sixty fifth)] day from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Storage Facility in accordance with this Agreement.

6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

SCHEDULE –H

(See Clause 12.2)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

- (a) A Functional Block Diagram;
- (b) Process Flow Diagram(s);
- (c) Process and Instrumentation Diagrams (P & ID);
- (d) General Arrangement Drawings (layouts, sections and elevations) for:
 - (i) Unloading and sampling station;
 - (ii) dispatch and sampling station;
 - (iii) weighing system for intake and dispatch of Foodgrains;
 - (iv) bag unloading and receiving systems;
 - (v) storage systems including capacity of Silos and their conveying systems; and
 - (vi) process tower including reject bins, cleaners, dust filters, bucket elevators, chain conveyors, belt conveyors, screw conveyors, spouting and ducting, and gates and diverters;
- (e) Silo bottom discharge arrangement;
- (f) Aeration system and fumigation system;
- (g) Silo temperature monitoring system;
- (h) Layout of ancillary buildings including security offices, weighing offices, electrical room and stand-by generator room, administrative office, control room, quality control laboratory, cafeteria and restrooms;
- (i) Fire hydrant system;
- (j) Fumigation system; and
- (k) Electric system.

SCHEDULE –I

(See Clause 14.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Storage Facility, notify the Independent Expert and the Authority of its intent to subject the Storage Facility to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Storage Facility.
- 1.2 The Concessionaire shall notify the Independent Expert of its readiness to subject the Storage Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

- 2.2 Visual and Physical Test

The Independent Expert shall conduct a visual and physical check of the Storage Facility, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

- 2.3 Trial run

The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run to determine that the Storage Facility is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment. In the event any Foodgrains are required for conducting the trial run, the minimum quantity necessary for this purpose shall be provided by the Authority. Any damage caused to such Foodgrains during the course of such trial run shall be borne by the Concessionaire and reimbursed to the Authority either in cash or in the form of equivalent Foodgrains.

2.4 Tests for equipment

The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Storage Facility and described in Paragraph 2 of Annex-I of Schedule-B.

2.5 Tests for weighment and testing facilities:

The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of weighment and testing facilities with the Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice and the calibration certificate issued by the manufacturers.

2.6 Environmental audit:

The Independent Expert shall carry out a check to determine conformity of the Storage Facility with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review:

The Independent Expert shall carry out a safety audit of the Storage Facility to determine its compliance with the provisions of Schedule-L and this Agreement.

2.8 Air compression and diesel generator sets:

The Independent Expert shall conduct or cause to be conducted Tests to determine that the air compression units of all utilities conform with their rated capacities; and the diesel generator sets are capable of being operated for 48 hours in full load and no load conditions.

3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Expert or such other agency or person as it may specify in consultation with the Authority.

4 Tests for Safety Certification

Tests for determining the conformity of the Storage Facility with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

5 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Expert shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

6 Tests during construction

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE –J
(See Clauses 14.2 & 14.3)
COMPLETION CERTIFICATE

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Concession Agreement dated (the “**Agreement**”) for development and operation of the Storage Facility at in district in the State of on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Storage Facility with the provisions of the Agreement, and I/We am/are satisfied that the Storage Facility can be safely and reliably placed in commercial service of the Authority and the users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Storage Facility have been completed, and the Storage Facility is ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name)
(Designation)
(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for development and operation of the Storage Facility at in district in the State of on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Storage Facility/section of the Storage Facility to determine compliance thereof with the provisions of the Agreement.

- 2 Construction Works forming part of the Storage Facility/section of the Storage Facility that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)[§] I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Storage Facility/section of the Storage Facility, pending completion thereof.

- 3 In view of the foregoing, I/We am/are satisfied that the Storage Facility/section of the Storage Facility can be safely and reliably placed in commercial service of the Authority and the users thereof, and in terms of the Agreement, the Storage Facility/section of the Storage Facility is hereby provisionally ready for entry into commercial operation on this the day of 20.....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
Concessionaire by:

(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name and Designation)
(Address)

[§] May be struck out if not applicable. Also strike out other parts which are not applicable.

SCHEDULE – K
(See Clauses 17.2 & 17.4)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Storage Facility in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the “**Maintenance Requirements**”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.10 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 - K 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-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in

conformity with Good Industry Practice. Such additional time shall be determined by the Independent Expert and conveyed to the Concessionaire and the Authority with reasons thereof.

5 Emergency repairs/restoration

Notwithstanding anything to the contrary contained in this Schedule-K, if any defect, deficiency or deterioration in the Storage Facility poses a hazard to safety or risk of damage to property, the Concessionaire shall promptly take all reasonable measures for eliminating or minimising such danger.

6 Inspection by the Concessionaire

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

7 Divestment Requirements

All defects and deficiencies specified in this Schedule-K shall be repaired and rectified by the Concessionaire so that the Storage Facility conforms to the Maintenance Requirements on the Transfer Date.

8 Display of Schedule - K

The Concessionaire shall display a copy of this Schedule-K at the Storage Facility along with the Complaint Register stipulated in Clause 47.1.

Annex - I
(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.²²

Nature of defect or deficiency	Time limit for repair/rectification
Breakdown of conveyor belts	24 hours
Breakdown of Elevator	24 hours
Breakdown of standby generating set	6 hours
Breakdown of, or defect in, silo temperature monitoring system	24 hours
Breakdown of, or defect in, weighbridge	24 hours
Breakdown of, or defect in, Foodgrain handling system	24 hours
Breakdown of, or defect in, fumigation system	7 days
Breakdown of, or defect in, Foodgrain dispatch system	24 hours
Breakdown of, or defect in, bagging machines	24 hours
Breakdown of, or defect in, laboratory equipment	24 hours
Breakdown of, or defect in, online samplers	24 hours
Breakdown of, or defect in, fire hydrant system	24 hours
Breakdown of, or defect in, plant control system	24 hours
Breakdown of, or defect in, Silo aeration system	24 hours
Breakdown of, or defect in, CCTV	12 hours
Breakdown of, or defect in, public address system	12 hours

²² The values and periods specified herein may be modified to suit project-specific requirements. Items not relevant to the Storage Facility may be deleted or substituted as necessary.

SCHEDULE –L

(See Clause 17.16)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about 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 - L.

2 Obligations of the Concessionaire

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 Storage Facility, staff, Users and other persons, which shall include 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 Storage Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 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 Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.1 of this Schedule-L for averting or minimising such accidents in future.

- 3.4 Once in every Accounting Year, the Authority shall 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 Concessionaire and the Independent Expert. Within 15 (fifteen) days of receipt of such communication from the Authority, the Concessionaire and the Independent Expert shall send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same and by notice direct the Concessionaire to carry out any or all of the recommendations with such modifications as the Authority may specify.

4 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-L, shall be borne by the Concessionaire in accordance with the provisions of Clause 17.16.2.

Annex - I
(Schedule-L)

Safety Guidelines

1 System integrity

In the design of the Storage Facility, particular care shall be taken to minimise the likely incidence of failure.

2 Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Storage Facility and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every quarter.

3 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the “**Disaster Management Manual**”) to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

4 Fire safety

4.1 The Concessionaire shall conform to the standards specified by the US National Fire Protection Association (NFPA) in NFPA-61-B.

4.2 To prevent fire in the Storage Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.3 To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Annex-1 of Schedule C.

4.4 Since grain dust is classified as an explosive, the safety measures in respect thereof shall include the following:

- (i) The Foodgrains received at the Storage Facility shall be cleaned to eliminate dust and dockage; and

- (ii) an efficient dust aspiration system covering all points where dust dispersal is expected shall be installed and operated. The dust shall be collected in cyclones to eliminate any possibility of environmental pollution.

5 Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to COD, evolve and adopt a manual for surveillance and safety of the Storage Facility (the “**Surveillance and Safety Manual**”), in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Storage Facility, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Surveillance and Safety Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

6 Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Storage Facility and all persons affected by it.

SCHEDULE-M

(See Clauses 22.2 & 22.7)

FOODGRAINS SPECIFICATIONS

1. Impurities in Foodgrains

The Concessionaire shall procure and ensure that the Foodgrains shall, prior to storage in the Storage Facility and before dispatch thereof from the Storage Facility, be free from obnoxious smell, discoloration, infestation, admixture of deleterious substances including toxic weed, seeds and argemone mexicana and lathyrus saltivers (khesari) in any form, and all other toxic material and impurities, save and except to the extent specified in Paragraph 2 of this Schedule-M.

2. Maximum limit for impurities

2.1 The Foodgrains may contain impurities, damaged grains and foreign material not exceeding, in weight, the following limits:

(a)	Moisture	12%
(b)	Foreign matter	0.75%
(c)	Weevilled Foodgrains	3%
(d)	Other foodgrains	2%
(e)	Damaged Foodgrains [§]	2%
(f)	Slightly damaged Foodgrains	6%
(g)	Shrivelled and broken Foodgrains	7%

2.2 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.

2.3 Kernels with glumes will not be treated as unsound grains. During physical analysis the glumes will be removed and treated as organic foreign matter.

2.4 Within the overall limit specified for damaged grains, ergot affected grains shall not exceed 0.05%.

2.5 Any contaminants, toxins and residues in Foodgrains shall not exceed the tolerance limits set forth in Applicable Laws.

[§] Within the overall limit specified for Damaged Foodgrains, ergot affected Foodgrains shall not exceed 0.05% by weight.

3. Reduction for dust loss

In the event the Foodgrains are stored at the Storage Facility for a period exceeding 1 (one) year, a dust loss equal to 0.05% (zero point zero five per cent) of the weight of Foodgrains accepted for storage at the Storage Facility shall be deducted by the Concessionaire in determining the quantity of Foodgrains to be dispatched to the Authority.

4. Additional payments for fumigation

In case of Foodgrains having living infestation, additional payment at the rate of Rupee 1 (one) per quintal shall be made to the Concessionaire for undertaking fumigation in accordance with Applicable Laws and Good Industry Practice.

5. Modifications in Foodgrains Specifications

The Authority may, by notice of at least 30 (thirty) days prior to commencement of a specified period, modify the Foodgrains Specifications for and in respect of the Foodgrains to be procured during such specified period and in such an event, the modified Foodgrains Specifications shall apply for the intake, storage and dispatch of such Foodgrains.

SCHEDULE-N

(See Clause 22.3.3)

FOODGRAINS TESTS

- 1 The Concessionaire shall, prior to accepting Foodgrains for storage in the Storage Facility and prior to dispatch thereof from the Storage Facility, as the case may be, take at least 1 (one) random sample per tonne of Foodgrains and test the same to determine the conformity thereof with Foodgrains Specifications.
- 2 The results of such Foodgrains Tests shall be recorded in the Intake Report in Annex-I and the Dispatch Report in Annex-II of this Schedule-N, as the case may be, and shall be signed by the Authority's nominee in verification thereof.

Sampling and testing methodology

- 3 The Concessionaire shall conform to the sampling and testing requirements specified in the codes listed below:

S.No.	IS/ BIS/ ISO Ref. No.	Description of Code
1.	2813	Terminology for Foodgrains
2.	IS: 4333 (Part 2)-2002 and ISO:712-1998	Method of Analysis & determination of moisture content in Foodgrains
3.	IS: 4333 (Part 3)-2002 and ISO:7971-2-1995	Method of Analysis of Foodgrains – Determination of Hectolitre Weight
4.	IS: 4333 (Part 4)-2002 and ISO: 520-1977	Determination of Mass of 1,000 Grains
5.	IS: 4333 (Part 1)-1996 (Reaffirmed 2001)	Method of Analysis for Foodgrains Part 1 Refractions (Second Revision)
6.	8972	Method of determination of co-efficient of friction of Foodgrains
7.	IS:11396-1985	Test Methods for determination for storability (safe storage life) of Foodgrains
8.	IS: 8184-1976 (Reaffirmed 1995)	Method for determination of ergot in Foodgrains
9.	IS: 6261-1971 (Reaffirmed 2000)	Methods for analysis for detection of insect and rodent contamination in grains and milled products

10.	IS: 5863 – 1985(Reaffirmed 2009)	Method for determination of malathion residues in food commodities
11.	IS:11374 – 1985 (Reaffirmed 2009)	Methods for determination of monocrotophos residues in foods
12.	IS: 5952-1970 (Reaffirmed 2004)	Methods for test for the estimation of parathion residues
13.	IS:11380 (Part 1) –1985 (Reaffirmed 2003)	Methods of sampling for the determination of pesticide residues: agriculture and food commodities
14.	IS:11301-1985 (Reaffirmed 2009)	Methods for determination of Phosalone residues in food commodities
15.	IS:14818 – 2000 and ISO:13690-1999	Cereals and Pulses and Milled Products – Sampling of Static Batches
16.	IS: 6169 – 1983 (Reaffirmed 2004)	Method of determination of BHC (HCH) residue in food commodities

4 In the absence of any specific provision for Foodgrains Tests in this Agreement, the following standards shall apply in order of priority:

- (i) Bureau of Indian Standards (BIS);
- (ii) Relevant codes as applicable in the United States of America or the United Kingdom; and
- (iii) Any other specifications/standards proposed by the Concessionaire and reviewed by the Independent Expert.

Annex - I
(Schedule-N)

Form of Intake Test Report

Identification No. for the truck/tractor trolley					
Acceptance Quantity specified by Authority					
Date of Intake specified by Authority					
Name of Mandi from which Foodgrain procured					
Date on which Foodgrain purchased from Mandi					
Name and license number of commission agent (if any)					
Weight (in MT) received at Storage Facility					
Date of receipt at Storage Facility					
Entry time of vehicle at gate					
Exit time of vehicle at gate					
Lot Nos.					
Samples	Moisture reading (In % by weight)	Foreign matter (In % by weight)	Contaminants and toxins (In %)	Weevilled Foodgrains (In % by weight)	Other observations, if any
Sample 1					
Sample 2					
Sample 3					
Average reading					
Accepted or Rejected	Accepted/Rejected				
Weight (in MT) of accepted Foodgrains					
Requires drying	Yes/No				

If yes, weight (in MT) of dried Foodgrains		
Requires cleaning	Yes/No	
If yes, weight (in MT) of cleaned Foodgrains		
Silo in which accepted Foodgrains stored		
	Name of Lab Technician	
	Signature	
	Name of nominated official of Authority	
	Signature	

Annex - II
(Schedule-N)

Form of Dispatch Test Report

Identification No.					
Dispatch Quantity specified by Authority					
Date for dispatch specified by Authority					
Bags received from the Authority (number)					
Weight (in MT) ready for dispatch from Storage Facility					
Date of readiness for dispatch from Storage Facility					
Lot Nos.					
Samples	Moisture reading (In % by weight)	Foreign matter (In % by weight)	Contaminants and toxins (In %)	Weevilled Foodgrains (In % by weight)	Other observations, if any
Sample 1					
Sample 2					
Sample 3					
Average reading					
Destination					
Accepted or Rejected	Accepted/Rejected				
Requires drying	Yes/No				
If yes, weight (in MT) of dried Foodgrain					
Requires cleaning	Yes/No				
If yes, weight (in MT) of cleaned					

Foodgrains		
Weight of rejected Foodgrains (in MT), after deducting weight of dried and cleaned Foodgrains		
Whether rejected Foodgrains replaced by conforming Foodgrains	Yes/No	
	Name of Lab Technician	
	Signature	
	Name of nominated official of Authority	
	Signature	

SCHEDULE –O

(See Clause 21.1)

SELECTION OF INDEPENDENT EXPERT

1 Selection of Independent Expert

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance *vide* OM No. 24(23)/PF-II/2008 dated 21 May, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Expert. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Expert hereunder.
- 1.2 In the event of termination of an Independent Expert appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-O.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-O.

2 Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with Schedule-P.

3 Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Construction Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 0.5% (zero point five per cent) of the Total Project Cost. Payments not exceeding such 0.5% (zero point five per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Expert during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

4 Selection every three years

No later than 3 (three) years from the date of appointment of Independent Expert pursuant to the provisions of Paragraph 1 of this Schedule-O, and every 3 (three) years

thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-O.

5 Appointment of government entity as Independent Expert

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Expert.

SCHEDULE-P

(See Clause 21.2.1)

TERMS OF REFERENCE FOR INDEPENDENT EXPERT

1 Scope

- 1.1 These Terms of Reference for the Independent Expert (the “**TOR**”) are being specified pursuant to the Concession Agreement dated (the “**Agreement**”), which has been entered into between the Authority and (the “**Concessionaire**”) for the Storage Facility at in district in the State of on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Storage Facility.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Expert

- 3.1 The role and functions of the Independent Expert shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - (iii) review, inspection and testing of Storage Facility as set forth in Paragraph 4;
 - (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 4;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;

- (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (ix) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
 - (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

- 4.1 The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys conducted as part of the Feasibility Report and any further revision thereof. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Expert shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Storage Facility sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Storage Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6 The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 4.7 The Independent Expert shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the

Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Storage Facility or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 4.8 The Independent Expert may inspect the Storage Facility more than once in a month if any lapses, defects or deficiencies require such inspections.
- 4.9 For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Expert shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 4.10 The sample size of the tests, to be specified by the Independent Expert under Paragraph 4.9, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Expert in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.
- 4.13 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the

Storage Facility is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.

- 4.14 If at any time during the Construction Period, the Independent Expert determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons in the zone of construction, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 4.15 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Expert to inspect such works, and within 3 (three) days of receiving such notice, the Independent Expert shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.16 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 4.17 The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 4.18 Upon reference from the Authority, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 4.19 The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.

5 Operation Period

- 5.1 In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

- 5.2 The Independent Expert shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Independent Expert shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.4 The Independent Expert shall scrutinise and verify the Intake Reports and the Dispatch Reports and shall also conduct audits to determine the Availability, Reliability and Shortfall in accordance with the terms of the Concession Agreement.
- 5.5 The Independent Expert shall ensure periodic calibration of Weighment and Testing Equipment as well as periodic check of all scientific testing equipment.
- 5.6 The Independent Expert shall assess the amount of Incentives and Damages, if any, payable or recoverable, as the case may be, under Clause 27.11 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.
- 5.7 The Independent Expert shall inspect the Storage Facility, at least once every quarter, preferably after receipt of the last monthly status report in the relevant quarter from the Concessionaire, but before the 20th (twentieth) day after the close of each quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Programme, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Storage Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.8 The Independent Expert may inspect the Storage Facility more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.9 The Independent Expert shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Storage Facility is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 5.10 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 5.11 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.

- 5.12 The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Storage Facility for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in Storage Facilities and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Expert shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.8.
- 5.13 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 18.5.
- 5.14 In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Storage Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6 Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Expert shall, in the presence of a representative of the Concessionaire, inspect the Storage Facility for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 39.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Storage Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 40.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 6.2 The Independent Expert shall inspect the Storage Facility once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 40, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7 Determination of costs and time

- 7.1 The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement.

- 8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Expert shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9 Other duties and functions

The Independent Expert shall perform all other duties and functions specified in the Agreement.

10 Miscellaneous

- 10.1 The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 10.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.
- 10.3 The Independent Expert shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send 1 (one) of the copies to the Authority along with its comments thereon.
- 10.4 The Independent Expert shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 10.5 Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 10.6 Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

SCHEDULE – Q

(See Clause 23.1.2)

PROCESS OF FOODGRAINS STORAGE

1 Process of Foodgrains storage

- 1.1 The Concessionaire shall procure that storage of Foodgrains in Silos shall preserve the quality of Foodgrains in conformity with the Foodgrains Specifications.
- 1.2 The processes to be followed in the course of storage of Foodgrains at the Storage Facility shall conform to Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

2 Weighing process

- 2.1 Every incoming Vehicle shall be weighed on the weighbridge. The time for monitoring turnaround period of such Vehicle shall commence when the Vehicle is placed on the weighbridge. The weight of the Vehicle including the Foodgrains, if any, shall be recorded and its driver shall be provided with a unique identification number and the destination.
- 2.2 Every outgoing Vehicle shall also be weighed in the manner provided hereinabove. The exit time will be recorded along with the weight of the outgoing Vehicle and its driver will be issued a certificate stating, among other information, the net weight of Foodgrains, if any, contained in the Vehicle.

3 Identification and tracking of Vehicles

Each Vehicle will be provided a unique tracking ID which will be used to track it throughout its movement at the Storage Facility.

4 Screening and testing of Foodgrains

Samples from the Foodgrains shall be tested for their conformity with Foodgrains Specifications and the accepted Foodgrains shall be transported to the Silo through a conveyor. The Foodgrains not accepted as a result of such testing shall be transported outside the Silos for curing or rejection, as the case may be, in accordance with the provisions of Clause 22.4 of the Agreement.

5 Intake Processing

On its way to the Silo, the Foodgrains shall pass through the Head House (Handling tower), where the following operations shall be performed:

- (a) Screening through a primary separator in order to remove the gross wastes such as clods of earth;

- (b) screening with a magnetic separator in order to remove any steel particles;
- (c) passing through a cleaning system;
- (d) weighing through a circuit-scale to ascertain the exact weight of Foodgrains to be stored; and
- (e) transfer by bucket elevators and chain conveyors into the Silos.

6 Ventilation

Foodgrains stored in the Silos shall be regularly ventilated and the temperature shall be maintained within the specified range.

7 Fumigation of the Foodgrains

Fumigation of Foodgrains shall be carried out in accordance with Applicable Laws and Good Industry Practice, and at regular intervals to procure that the quality thereof is maintained and that Foodgrains are not affected by insects, rodents or bad grain. For the avoidance of doubt, the Concessionaire shall carry out at least 2 (two) fumigation cycles, once as a preventive fumigation and the other as a curative fumigation, such that the phosphine residue shall not exceed the limits specified by Applicable Laws.

8 Dispatch of Foodgrains

Foodgrains to be dispatched from the Storage Facility shall be taken out of each Silo for transfer to the Bagging warehouse or a bulk loading facility, as the case may be. Samples shall be taken at the discharge point of the conveyor and transmitted to sample testing stations located in the laboratory. Testing shall be performed by the Concessionaire in the presence of a representative of the Authority. In case, a sample fails to meet the Foodgrains Specifications, the Plant Control System shall reject the Foodgrains.

SCHEDULE – R
(See Clause 29.1.1)

DEFAULT ESCROW AGREEMENT

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

AMONGST

1. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns);
2. (insert name and particulars of the Default Escrow Bank), through its branch, and having its registered office at (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. The Food Corporation of India represented by and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Authority has entered into a concession agreement dated with the Concessionaire (the “**Concession Agreement**”) for a Storage Facility with a design storage capacity of [50,000 metric tonnes], at in district in the State of on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Authority’s payment obligations to the Concessionaire under the Concession Agreement, the Authority is required to establish a default escrow account on the terms and conditions stated therein (the “**Default Escrow Account**”).

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Authority Account**” shall have the meaning set forth in Clause 2.4;

“**Authority Escrow Default**” shall have the meaning set forth in Clause 8.1;

“**Authority’s Lenders**” means the banks and/or financial institutions, which have provided or propose to provide financial assistance and/or other facilities and guarantees to the Authority and who have, for the repayment and/or discharge of obligations of the Authority been provided security by way of a charge on the Revenues of the Authority, as specified in Annex-I hereto;

“**Agreement**” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” shall have the meaning set forth in Recital A of this Agreement;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Authority, and shall commence from the date on which a notice is delivered by the Concessionaire to the Authority asking the latter to cure the breach or default specified in such notice;

“**Default Escrow Account**” shall have the meaning set forth in Recital B of this Agreement;

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

“**Security**” shall have the meaning set forth in Clause 3.1.

1.2 Interpretation

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

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Authority hereby appoints the Default Escrow Bank to act as trustee for the Concessionaire and the Authority in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Authority hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Concessionaire and the Authority, and applied in accordance with the terms of this Agreement. No person other than the Concessionaire and the Authority shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the Revenues of the Authority pursuant to the provisions of this Agreement and the Concession Agreement. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Authority with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessionaire and the Authority, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Authority shall open and establish the Default Escrow Account with the (insert name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Default Escrow Bank and the Authority shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Authority Account

The Default Escrow Bank and the Authority acknowledge that at least 30% (thirty per cent) of the Authority's total monthly Revenues are being deposited in the Authority's existing account at the Default Escrow Bank (the "**Authority Account**"), and the Authority undertakes to maintain the Authority Account and continue to deposit therein at least 30% (thirty per cent) of its total monthly Revenue, till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Authority. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Concessionaire and the Authority in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and the Concessionaire and the Authority shall have no other rights against or to the monies in the Default Escrow Account.

2.7 Substitution of the Concessionaire

The Parties acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of Security Interest

The Authority expressly agrees that it shall, on or before the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Concessionaire on the Revenues deposited into the Default Escrow Account pursuant to this Agreement, but not exceeding the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of Revenues deposited into the Authority Account from the Authority Account to the Default Escrow Account to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Authority and the Concessionaire, no later than 15 (fifteen) days commencing from the close of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of a Authority Escrow Default and until delivery of notice that the Authority Escrow Default has been cured and is no longer continuing, the Default Escrow Bank shall provide such statement of accounts to the Authority and the Concessionaire on a daily basis.

3.4 Protection of Concessionaire's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Concessionaire hereunder and the Security afforded to it herein for the full and timely performance by the Authority of the Secured Obligations in the manner contemplated under this Agreement and the Concession Agreement.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Authority upon a certificate signed by or on behalf of the Authority;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Authority in connection herewith; and
- (d) shall within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or document received by it from the Concessionaire in connection herewith.

3.7 No set off

The Default Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4 OBLIGATIONS OF THE AUTHORITY

4.1 General

4.1.1 The Authority covenants with the Concessionaire and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Concession Agreement and this Agreement.

4.1.2 The Authority hereby agrees and undertakes that until the termination of this Agreement, no less than 30% (thirty per cent) of its total monthly Revenue shall continue to be deposited into the Authority Account at the Default Escrow Bank and the Revenues therein shall be routed through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Authority agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Concessionaire, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Concessionaire.

4.2 Creation of Charge

4.2.1 The Authority hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Concessionaire over the Revenues routed through the Default Escrow Account in pursuance of this Agreement, which

charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Authority further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Authority's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Authority's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Concessionaire pursuant to the Deed of Hypothecation. The Authority expressly agrees that it shall procure and ensure that the rights of the Concessionaire hereunder are not prejudiced in any manner whatsoever.

- 4.2.2 The Authority agrees and undertakes to provide such other documents, certificates and agreements as the Concessionaire or the Default Escrow Bank may reasonably request in respect of creating a first charge in favour of the Concessionaire in accordance with Clause 4.2.1.
- 4.2.3 The Authority may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Concessionaire over the Revenues routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Concessionaire for any reason whatsoever.

4.3 Changes in revenue collection

No change shall be made or permitted by the Authority in its business operations or revenue collection policies which would result in the reduction or diversion of Revenues from the Authority Account such that its level falls below 30% (thirty per cent) of the total monthly Revenues of the Authority from any and all sources.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

- 5.1.1 All amounts deposited in the Authority Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The Parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.
- 5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, either the Authority or the Concessionaire may bring the decision of the Arbitrator, Commission or court, as

the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Authority

The Authority and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Authority Account, without any further authorisation or instructions from the Authority, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Authority irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Authority Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer such amounts in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Operation Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Minimum Monthly Payment is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Authority.

5.5 Drawal against Letter of Credit

- 5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Concession Agreement, the Concessionaire may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.
- 5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 15 (fifteen) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Minimum Monthly Payment.

5.6 Withdrawals upon Termination

- 5.6.1 Upon Termination of the Concession Agreement, if the Authority fails to make the Termination Payment to the Concessionaire within a period of 30 (thirty) days from the date of demand by the Concessionaire under and in accordance with the provisions of the Concession Agreement, the Concessionaire may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.
- 5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Concessionaire under and in accordance with the provisions of Clause 5.6.1, all amounts standing to the credit of the Default Escrow Account and deposited therein from time to time shall, subject to a monthly limit of the Maximum Monthly Payment, be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Concession Agreement.
- 5.6.3 The Authority expressly acknowledges and agrees that upon Termination of the Concession Agreement, it shall continue to deposit Revenues equal to 30% (thirty per cent) of its total monthly Revenues into the Authority Account in accordance with Clauses 2.4 and 4.1.2, and such Revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon have been paid in full. For the avoidance of doubt, the Authority agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Concessionaire or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Authority

The Authority hereby represents and warrants to the Concessionaire and the Default Escrow Bank as of the date of this Agreement and at all times that:

- (a) the Authority is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Agreement constitutes valid legal and binding obligations of the Authority, enforceable in accordance with the terms of this Agreement;
- (c) to the best of the knowledge of the Authority, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the

ability of the Authority to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;

- (d) the execution, delivery and performance of this Agreement by the Authority have been duly authorized by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - (ii) the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the Revenues of the Authority, routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;
- (f) on and after the date of execution of the Deed of Hypothecation, the Authority Lenders do not and shall not have any first ranking security charge, security interest or other encumbrance over the Revenues of the Authority routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with Clauses 4.2.1 and 4.2.3;
- (g) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect;
- (h) all filings and other actions necessary to create, perfect and protect a first priority security interest and charge with respect to the Security have been duly made or taken or shall be duly made as soon as possible and as of the said date, all such filings and actions shall be in full force and effect;
- (i) the particulars relating to the Authority's Lenders, as specified in Annex-I of this Agreement, shall be complete and accurate in all material respects and all such accounts are held and made in good faith; and
- (j) at least 30% (thirty per cent) of the Authority's total monthly Revenues are deposited in the Authority Account every month and shall continue to be deposited in the Authority Account till the termination of this Agreement in accordance with the terms herein.

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Authority and the Concessionaire as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a scheduled commercial bank and duly constituted under the Act, having its head office at and its branch among others, at and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement;
- (d) the execution, delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or
 - (ii) the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound; and
- (e) the Default Escrow Bank is not aware of any other charge or security interest or encumbrance granted over the Revenues of the Authority routed through the Default Escrow Account in favour of any other person other than the Concessionaire, save and except those created in favour of the Authority's Lenders as specified in Annex-I hereto.

6.3 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Default Escrow Bank and the Authority that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;

- (b) this Agreement constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Concessionaire has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Concessionaire before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Concessionaire to perform its duties and obligations under this Agreement.

7. AUTHORITY'S COVENANTS

7.1 The Authority covenants that:

- (a) It shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;
- (b) it shall procure all amendments, approvals, consents or waivers as may be required from the Authority's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the security interest contemplated hereby or by the Deed of Hypothecation;
- (c) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Revenues of the Authority routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation, in favour of the Concessionaire, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;
- (d) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:

- (i) the execution, delivery, performance and observance by the Authority of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
 - (iii) the creation and perfection of the charge over the Revenues routed through the Default Escrow Account pursuant to this Agreement;
- (e) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Agreement and the Deed of Hypothecation;
- (f) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (g) it shall inform the Concessionaire of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8 AUTHORITY ESCROW DEFAULT

8.1 Authority Escrow Default

Following events shall constitute an event of default by the Authority (an “**Authority Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessionaire:

- (a) the Authority commits breach of this Agreement by failing to deposit its Revenues equal to 30% (thirty per cent) of its total monthly Revenues in any month into the Authority Account as provided herein and fails to cure such breach by depositing the same into the Authority Account within a period of 5 (five) business days thereof;
- (b) the Authority does not deposit or cause to be deposited an amount equal to the Maximum Monthly Payment into the Default Escrow Account as provided herein and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Authority causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;

- (d) the Authority commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days;
- (e) the Authority fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Authority in this Agreement shall be or shall have been incorrect in any material respect;
- (g) the amount covered by the Letter of Credit is at any time less than the Minimum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Concessionaire is unable to draw on the Letter of Credit pursuant to the failure of the Authority to establish the Letter of Credit in accordance with the Concession Agreement; and
- (i) the Authority commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

9 TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Authority in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Authority may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Concessionaire, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Concessionaire. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred eighty) days notice in writing to the Authority and the Concessionaire resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Authority and the Concessionaire shall forthwith appoint a successor bank as Default

Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Authority and the Concessionaire. Provided that if a successor bank acceptable to the Concessionaire is found within a shorter period, the Concessionaire and Authority may waive the notice period of 180 (one hundred eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (i) cease therewith accepting any payments or deposits into the Default Escrow Account;
- (ii) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Concessionaire;
- (iii) when all such amounts have been transferred, close the Default Escrow Account; and
- (iv) within 30 (thirty) days of such closing, provide to the Authority and the Concessionaire a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Authority and the Concessionaire, made on or after the payment by the Authority of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Authority. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10 SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Authority shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary default escrow agreement, the provisions of this Agreement shall prevail.

11 INDEMNITY

11.1 General indemnity

11.1.1 The Authority will indemnify, defend and hold the Concessionaire and the Default Escrow Bank harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

11.1.2 The Concessionaire will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Authority's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessionaire, its officers, servants and agents.

11.1.3 The Default Escrow Bank will indemnify, defend and hold the Authority and the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Authority or Concessionaire's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 11.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall

bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

12 DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate 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.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 Governing law and jurisdiction

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

13.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

13.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

13.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

13.5 Waiver

13.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

13.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

13.7 Survival

13.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or

caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

13.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 12.1 of this Agreement or otherwise.

13.9 Successors and assigns

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

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to

which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Authority and the Concessionaire shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Authority and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

13.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13.15 Original Document

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[‡]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE DEFAULT ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.

[‡] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

Annex- I
(Schedule-R)

Authority's Lenders

Serial. No.	Particulars of Lenders	Amount for which charge created	Brief description of assets financed against first charge

SCHEDULE – S
(See Clause 29.1.2)

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the day of 20.....

BETWEEN

1. Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The Food Corporation of India represented by and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and permitted assigns).

WHEREAS:

- (A) The Authority has entered into a concession agreement dated with the Concessionaire (the “**Concession Agreement**”) for a Storage Facility with a design storage capacity of [50,000 metric tonnes], at in district in the State of on design, build, finance, operate and transfer (the “**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) To secure the Authority’s payment obligations to the Concessionaire under and in accordance with the Concession Agreement, the Authority is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated entered into between the Parties and the Default Escrow Bank, a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement.
- (C) To further secure the Secured Obligations, the Authority has agreed to grant a charge and security interest in favour of the Concessionaire on the Authority’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Deed**” means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

“**Default Escrow Agreement**” shall have the meaning set forth in Recital B of this Deed;

“**Hypothecated Interest**” shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

“**Concession Agreement**” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Concession Agreement or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Deed.

2 SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Concessionaire having entered into the Concession Agreement and agreeing to make available to the Authority the Storage Capacity, subject to the terms and conditions set out in the Concession Agreement, the Authority hereby covenants with the Concessionaire that it shall pay to the Concessionaire all the Secured Obligations in the manner set out in the Concession Agreement.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Concession Agreement, the Authority, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Concessionaire, all right, title, interest, benefit, claims and demands whatsoever of the Authority in respect of the Revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the “**Hypothecated Interest**”).

2.2.2 The charge created pursuant to this Clause 2.2 by the Authority over the Hypothecated Interest in favour of the Concessionaire is a floating charge and it shall not hinder the

Authority from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Authority Escrow Default.

- 2.2.3 At any time after an Authority Escrow Default occurs and is continuing, the Concessionaire shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Concession Agreement.
- 2.2.4 Following the occurrence of an Authority Escrow Default, the Concessionaire shall not, save and except as may be required under the Concession Agreement, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:
- (a) take action or obtain judgement or any arbitration award against the Authority in any court or before any arbitrator;
 - (b) make or file any claim or proof in a winding up or dissolution of the Authority; and
 - (c) exercise any legal remedies, which may be available to it under or in respect of the Concession Agreement.

2.3 Release of Charge

- 2.3.1 Upon termination of the Concession Agreement in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.
- 2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Concessionaire shall, at its own costs and expense, forthwith:
- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
 - (b) re-assign, retransfer or re-convey to the Authority, or as it may direct, the Hypothecated Interest; and
 - (c) execute all such documents and do all such other acts as may be required by the Authority in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3 FURTHER ENCUMBRANCES

- 3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Authority shall not, without the prior written consent of the Concessionaire, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Authority, create or suffer any mortgage, charge, lien

or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

- 3.2 The Authority shall be entitled to create a subordinate/second charge in favour of the Authority's Lenders or any other entity over the Hypothecated Interest, provided however that the Authority shall procure and ensure that the rights of the Concessionaire under this Deed are not prejudiced in any manner.

4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Authority

The Authority hereby represents and warrants to the Concessionaire as of the date of this Deed and at all times that:

- (a) the Authority is a duly constituted entity and is validly existing under the laws of India and has all requisite legal power and authority to execute this Deed and to carry out the terms, conditions and provisions contained in this Agreement;
- (b) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (c) the charge and security interest created hereunder constitute a first priority security interest in favour of the Concessionaire;
- (d) based on available records, the Revenues are believed by the Authority to be true and bonafide and fully collectible Revenues generated in the ordinary course of business of the Authority and the Authority has full right and interest in the Revenues;
- (e) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the ability of the Authority to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;
- (f) the execution, delivery and performance of this Deed by the Authority have been duly authorised by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - (ii) the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;

- (g) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Revenues of the Authority routed through the Default Escrow Account after the date hereof, except as permitted under this Deed;
- (h) as of the date hereof and until the expiry of this Deed, the Authority Lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Revenues of the Authority routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2; and
- (i) the schedules, annexes and other attachments attached hereto do not and will not contain any material misstatement of fact which is untrue or omit to state any fact, the omission of which makes or will make any of the statements therein, in the light of the circumstances under which they were or will be made, misleading in any respect.

4.2 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Authority that:

- (a) it has been duly constituted under the Companies Act, 2013, including any re-enactment or amendment thereof, and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;
- (b) this Deed constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Deed; and
- (c) the execution, delivery and performance of this Deed by the Concessionaire has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. AUTHORITY'S COVENANTS

5.1 The Authority covenants that during the term of this Deed:

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Concessionaire on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;
- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Concessionaire to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Authority's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Revenues of the Authority routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Concessionaire, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:
 - (i) the execution, delivery, performance and observance by the Authority of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Revenues routed through the Default Escrow Account, pursuant to this Deed;
- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed ;
- (h) it shall inform the Concessionaire of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;

- (i) deposit or cause to be deposited in the Authority Account the Revenues immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of a Authority Escrow Default, deliver to the Concessionaire (not later than the second business day of each month) copies of summary statements of the Revenues received during the immediately preceding month.

6. FURTHER ACTIONS

The Authority shall, from time to time, upon the request of the Concessionaire, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Concessionaire) as the Concessionaire may reasonably require in order that the Concessionaire may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Authority of any of its obligations under this Deed or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Concessionaire will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Authority's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessionaire, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Concessionaire for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Concessionaire by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Concessionaire to the Authority or to any other party providing Security for the Secured Obligations;
- (b) any amendment to the Concession Agreement or the Default Escrow Agreement not agreed to by the Concessionaire;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Concession Agreement or the Default Escrow Agreement or any documents connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Authority's liability hereunder; and
- (e) any change in the structure or organisation of the Authority as a result of a Change in Law, insolvency of the Authority or otherwise.

9 DISPUTE RESOLUTION

9.1 Dispute resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate 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.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

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

10.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

10.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in this Deed shall prevail over the Concession Agreement.

10.4 Alteration of terms

All additions, amendments, modifications and variations to this Deed shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Deed;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Deed in any manner.

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

10.6 No third party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Deed 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.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid,

illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 9.1 of this Deed or otherwise.

10.9 Successors and assigns

This Deed shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

10.10 Continuation of Deed

Any corporation or association into which the Authority may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Authority hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Authority and the Concessionaire shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Authority and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
THE AUTHORITY by:

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed
pursuant to the resolution passed by the
Board of Directors of the Concessionaire
at its meeting held on the day of
20..... hereunto affixed in the presence of
....., Director, who has
signed these presents in token thereof and
....., company Secretary /
Authorised Officer who has countersigned
the same in token thereof[‡]:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

[‡] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULE – T
(See Clause 29.2.1)
LETTER OF CREDIT

DATE:

To:

..... Limited (the “**Concessionaire**”)

From: (Specify the name and address of the bank issuing the Letter of Credit)^{\$} (the “**Bank**”)

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the “**Letter of Credit**”) No. in favour of the Concessionaire named above, subject to the following terms and conditions:

1. On the instructions of the Authority, we hereby establish this Letter of Credit in favour of the Concessionaire in the maximum aggregate amount of Rs. (Rupees)^{\$\$} (the “**Monthly Payment**”), payable not more than once in a month, upon notice received from the Concessionaire to this effect.
2. The Letter of Credit shall come into force with effect from, 20.... and shall be valid and effective upto the 31st (thirty first) day of March, 20.... (indicate the year falling after the year in which the Letter of Credit is issued) (the “**Expiry Date**”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Concession Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Concessionaire for the payment obligations of the Authority under the Concession Agreement dated entered into between the Authority and the Concessionaire (the “**Concession Agreement**”) for a Storage Facility at in district in the State of on design, build, finance, operate and transfer basis.

^{\$} As provided in Article 29 of the Concession Agreement, the bank issuing the Letter of Credit should be the bank where at least 30% (thirty per cent) of the Authority’s total monthly revenues are deposited.

^{\$\$} As provided in Clause 29.1.1 of the Concession Agreement, this amount shall be equal to about 10% (ten per cent) of the annual Fixed Charge payable by the Authority to the Concessionaire. The Letter of Credit shall be modified and renewed once every year to reflect the revision in Fixed Charge in accordance with the provisions of the Agreement.

4. Any reference to the Concession Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Concession Agreement or agreement into the terms and conditions of this Letter of Credit.
5. The Concessionaire may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:
 - (i) a copy of the Monthly Invoice (as defined in the Concession Agreement) issued by the Concessionaire to the Authority, any amounts whereof have remained unpaid; and
 - (ii) a certificate from the Concessionaire, under the hand of an Officer not below the rank of a Director of the Concessionaire, to the effect that the Monthly Invoice (as defined in the Concession Agreement) is in accordance with the Concession Agreement and that the amount due has remained unpaid and has not been disputed by the Authority.
6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Concessionaire has a right as between itself and the Authority to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Concessionaire that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Concessionaire is required to do for making effective its demand for payment in accordance with the Letter of Credit.
8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Concessionaire and the Authority that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated, entered into between the Bank, the Authority and the Concessionaire..
9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
10. The Authority shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.
12. All costs and expenses in connection with this Letter of Credit are to be on account of the Authority.
13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: (Name of Authority representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: (Name of the Bank representative)
..... (Designation)
..... (Address, telephone and fax numbers)

To: (Name of the Concessionaire representative)
..... (Designation)
..... (Address, telephone and fax numbers)

Signed and sealed this day of, 20.... at

SIGNED, SEALED AND DELIVERED
For and on behalf of
the BANK by:

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

- (i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

SCHEDULE-U

(See Clause 30.2.1)

REVENUE STATEMENT FOR UNUTILISED CAPACITY

Storage Facility:

Month:

Date	For corresponding month of previous year		For preceding month		For the month reported upon		
	Capacity utilised	Storage Charges realised (in '000 Rs.)	Capacity utilised	Storage Charges realised (in '000 Rs.)	Storage Charges per MT (in Rs.)	Capacity utilised	Storage Charges Due (in '000 Rs.)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
Total							

Other revenues from additional capacity are stated below:

Total Revenue Share:

Remarks, if any:

SCHEDULE –V
(See Clause 32.1.2)

ESCROW AGREEMENT

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

AMONGST

- 1 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at(hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (insert name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (insert name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Food Corporation of India represented by and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for a Storage Facility with a design storage capacity of [50,000 metric tonnes], at in district in the State of on design, build, finance, operate and transfer (“**DBFOT**”) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

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:

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

- 3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:
- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
 - (b) all funds received by the Concessionaire from its share-holders, in any manner or form;

- (c) all Fee levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Storage Facility; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) all Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;
- (b) all payments relating to construction of the Storage Facility, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- {(g) Premium due and payable to the Authority;}
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
- (i) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Storage Facility;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including {Premium,} and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 40 of the Concession Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Storage Facility, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 37 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions

were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust

property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

- 9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

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

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[£]:

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED For and on behalf of ESCROW BANK by:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1.

2.

[£] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULE –W

(See Clause 34.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 34.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-W.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-W.

SCHEDULE –X

(See Clause 39.4)

VESTING CERTIFICATE

- 1 The The Food Corporation of India represented by (the “**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Authority and (the “**Concessionaire**”) for a Storage Facility with a design storage capacity of [50,000 metric tonnes], at in district in the State of on design, build, finance, operate and transfer (“**DBFOT**”) basis.
- 2 The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 39.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Storage Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20.... at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

Concessionaire by:

Authority by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.

SCHEDULE–Y
(See Clause 41.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

- 1 The Food Corporation of India represented by and having its principal offices at (hereinafter referred to as the “**Authority**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (insert name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for a Storage Facility with a design storage capacity of [50,000 metric tonnes] at in district in the State of on design, build, finance, operate and transfer basis (“**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Storage Facility as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Storage Facility in accordance with the provisions of Article 37 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the

Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Storage Facility including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Storage Facility in accordance with the provisions of the Concession Agreement;
- (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
- (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 38 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the

Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

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

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 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 to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof[‡]:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

- 1.
- 2.

[‡] To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

Appendices

APPENDIX-I
LIST OF BID-SPECIFIC PROVISIONS[£]

A. Provisions with currency-based footnotes

Footnotes with “£” or “££” signs

1. Clause 16.5.1: Power of the Authority to undertake works.
2. Clause 26.3: O&M Support.
3. Clause 26.4: Premium.
4. Concession Agreement: Signature page.
5. Schedule-R: Default Escrow Agreement: Signature page.
6. Schedule-S: Deed of Hypothecation: Signature page.
7. Schedule-V: Escrow Agreement: Signature page.
8. Schedule-Y: Substitution Agreement: Signature page.
9. Appendix-I: List of Bid-specific provisions.

Note: The above footnotes marked “£” or “££” shall be removed prior to execution of the Concession Agreement.

Footnotes with “\$” or “\$\$” signs

1. Heading of the Concession Agreement
2. Clause 26.1.1: Grant.
3. Schedule-J: Completion Certificate: Provisional Certificate.
4. Schedule-M: Foodgrains Specifications: Paragraph 2.1.
5. Schedule-T: Letter of Credit: From; and Paragraph 1.

Note: Non-numerical footnotes marked “\$” or “\$\$” shall not be deleted. They shall remain in the Concession Agreement to be executed between the Parties.

B. Provisions where curly brackets are used

1. Recitals: Recitals B, D, E, F and G.
2. Clause 4.1.3 (g): Conditions Precedent.
3. Clause 7.1(g), (k), (l), (m) and (q): Representations and warranties of the Concessionaire.
4. Clause 8.1.2: Disclaimer.
5. Clause 26.1: Grant.
6. Clause 26.2: Equity Support.
7. Clause 26.3: O&M Support.
8. Clause 26.4: Premium.
9. Clause 34.2.4: Appointment of auditors.
10. Clause 48.15 (a) and (b): Notices.

[£] This Appendix-I contains a list of provisions that would need to be suitably modified for reflecting bid-specific provisions after the Concessionaire has been selected. This Appendix-I may be included in the draft Concession Agreement forming part of the bid documents. It may however, be deleted when the Concession Agreement is to be executed.

11. Clause 49.1: Definitions of Associate, Change in Ownership, Consortium, Consortium Member and Total Project Cost.
12. Schedule-V: Escrow Agreement: Clauses 4.1.1 (g) and 4.2 (d).

C. Provisions with blank spaces

1. Recitals: First line, Recitals 2, B, D and F.
2. Clause 26.1.1: Grant.
3. Clause 26.4: Premium.
4. Concession Agreement: Signature page.

Note: All blank spaces in Schedules shall be retained in the Concession Agreement to be executed between the Parties. These shall be filled up as and when the format of the respective Schedule is used.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Bid-specific provisions.

APPENDIX-II
LIST OF PROJECT-SPECIFIC PROVISIONS²³

A. Provisions with serially numbered Footnotes (Fn)

1. First line of the Concession Agreement (Fn. 1).
2. Clause 9.1.1: Performance Security (Fn. 2)*.
3. Clause 12.3.1: Construction of Storage Facility (Fn. 3)*: Also address Schedule-G.
4. Clause 12.4: Construction of Railway Siding (Fn. 4)*.
5. Clause 23.1.3: Storage of Foodgrains (Fn. 5)*.
6. Clause 24.1: Key Performance Indicators (Fn. 6).
7. Clause 25.1.1: Financial Close (Fn. 7).
8. Clause 27.2.1: Base Fixed Charge (Fn. 8 and 9)*.
9. Clause 29.1.1: Default Escrow Account (Fn. 10): Also address all provisions mentioned in the footnote.
10. Clause 38.3.5: Termination Payment (Fn. 11): Also address Clauses 38.3.6, 38.5.3 and the definition of Specified Assets.
11. Clause 42.1: Increase in costs (Fn. 12): Also address Clause 42.2.
12. Clause 49.1: Definitions of Adjusted Equity (Fn. 13), Project Agreements (Fn. 14) and Total Project Cost (Fn. 15)*.
13. Appendix-II: List of Project-specific provisions (Fn. 23).

***Note:** The provisions to which these Footnotes relate also include square parenthesis or asterisks, which may be addressed simultaneously. Such square parenthesis or asterisks have not been listed in (B) or (C) below.

B. Provisions with square parenthesis

1. Recitals: Recitals 1 and A.
2. Clause 2.1 (a): Scope of the Project.
3. Clause 4.1.2 (b): Conditions Precedent.
4. Clause 10.2.1: Transfer of Site and Licensed Premises.
5. Clauses 15.1.1 and 15.1.3: Commercial Operation Date.
6. Clause 23.3: Handling Losses.
7. Clause 27.3: Fixed Charge.
8. Clause 27.4.2: Variable Charge.
9. Clauses 28.2.3 and 28.2.4: Unloading and Debagging of Foodgrains.
10. Clauses 28.5.2 and 28.5.3: Bagging of Foodgrains.
11. Clause 28.6.2: Loading of Foodgrains.
12. Clause 28.8: Revision of Charges.
13. Clause 38.4.3 : Certain limitations on Termination Payment.
14. Clause 49.1: Definitions of Railway Siding and Storage Capacity.

²³ This Appendix-II contains a list of provisions that would need to be suitably modified prior to issue of bid documents for reflecting project-specific provisions. This Appendix-II should be omitted before issuing the draft Concession Agreement, forming part of the bid documents.

C. Provisions with asterisks

1. Recitals: Recitals 1, A and B.
2. Clause 1.2.1 (b): Interpretation.
3. Clause 5.10: Branding of Storage Facility.
4. Clause 28.2.4: Unloading and Debagging of Foodgrains.

D. Schedules with Footnotes and square parenthesis

1. Schedules A, B, C and D relate to the physical and technical aspects of the Project and contain several Notes, Footnotes and square parenthesis. These Schedules require a comprehensive and integrated scrutiny for Project-specific customisation.
2. Schedule E: Applicable Permits: Paragraph 1.2.
3. Schedule F: Performance Security: Recitals B.
4. Schedule G: Project Completion Schedule: Paragraphs 2, 3, 4 and 5.
5. Schedule-K (Annex-I): Maintenance Requirements: Fn. 22.
6. Schedule-R: Default Escrow Agreement: Recitals A.
7. Schedule-S: Deed of Hypothecation: Recitals A.
8. Schedule V: Escrow Agreement: Recitals A.
9. Schedule-W: Vesting Certificate: Paragraph 1.
10. Schedule Y: Substitution Agreement: Recitals A.

Note: The Table of Contents may also be suitably modified to reflect omission(s) and/or re-numbering of Project-specific provisions.