

PADDY PROCESSING AGREEMENT

BETWEEN

TAMIL NADU CIVIL SUPPLIES CORPORATION

AND

---

FOR

SETTING UP OF 800 MT/DAY MODERN RICE MILL AT \_\_\_\_\_  
\_\_\_\_\_ DISTRICT AND OPERATE FOR A PERIOD OF 20 YEARS

DATED \_\_\_\_\_

## Table of Contents

ARTICLE 1 .....	8
DEFINITIONS AND INTERPRETATION.....	8
1.1    Definitions.....	9
1.2    Interpretations .....	12
1.3    Measurements and Arithmetic Conventions.....	14
1.4    Ambiguities and Discrepancies.....	14
ARTICLE 2 .....	15
SCOPE OF THE PROJECT .....	15
2.1    Scope of the Project .....	15
ARTICLE 3 .....	17
3.1    Effective Date .....	17
3.2    Agreement Period .....	17
3.3    Acceptance of Terms and Conditions.....	17
ARTICLE 4 .....	18
CONDITIONS PRECEDENT.....	18
4.1    Conditions Precedent .....	18
ARTICLE 5 .....	21
SECURITY DEPOSIT AND PERFORMANCE GUARANTEE.....	21
5.1    Security Deposit.....	21
5.2    Performance Guarantee.....	21
ARTICLE 6 .....	23
GENERAL CONDITIONS FOR SETTING UP OF RICE MILL AND OTHER INFRASTRUCTURE.....	23
6.1    General Conditions .....	23
ARTICLE 7 .....	25
ROLES AND RESPONSIBILITIES .....	25
7.1    Of the SPV .....	25
7.2    Of the Authority.....	27
ARTICLE 8 .....	29
SCHEDULE .....	29
8.1    Implementation Period.....	29
8.2    Operational Period .....	29
ARTICLE 9 .....	30
PAYMENT TERMS AND PENALTY .....	30
9.1    Payment Terms .....	30
9.2    Maintenance of Dedicated Bank Account .....	31
9.3    Penalty.....	32
ARTICLE 10 .....	33

SHAREHOLDING .....	33
10.1 Ownership Structure .....	33
10.2 Shareholding .....	33
10.3 Constituent Documents .....	34
ARTICLE 11 .....	35
GENERAL CONDITIONS .....	35
11.1 General Conditions .....	35
ARTICLE 12 .....	37
GENERAL RIGHTS, DUTIES AND OBLIGATIONS .....	37
12.1 Of the SPV .....	37
12.2 Of the Authority .....	41
12.3 Of the Authority and the SPV .....	42
ARTICLE 13 .....	43
CHANGE IN LAW .....	43
13.1 Change in Law .....	43
13.2 Remedy .....	43
ARTICLE 14 .....	45
FORCE MAJEURE.....	45
14.1 Force Majeure Event.....	45
14.2 Non-Political Events .....	45
14.3 Political Events .....	46
14.4 Other Events.....	46
14.5 Notice of Force Majeure Event.....	47
14.6 Period of Force Majeure .....	48
14.7 Resumption of Performance .....	48
14.8 Performance Excused.....	48
14.9 Costs, Revised Timetable.....	49
14.10 Termination Due to Force Majeure Event .....	49
ARTICLE 15 .....	50
EVENTS OF DEFAULT.....	50
15.1 Events of Default .....	50
15.2 Parties Rights .....	52
15.3 Consultation Notice .....	52
15.4 Remedial Process .....	52
15.5 Obligations during Remedial Period.....	53
15.6 Revocation of Consultation Notice.....	53
15.7 Termination due to Events of Default.....	53
15.8 The Authority’s Rights of Step-in.....	53
ARTICLE 16 .....	54
TERMINATION OF THE AGREEMENT .....	54

16.1	Termination Procedure.....	54
16.2	Obligations during Termination Period .....	54
16.3	Requisition .....	54
16.4	Inventory Survey.....	54
16.5	Consequences of Termination.....	55
ARTICLE 17 .....		56
COMPENSATION .....		56
17.1	Compensation .....	56
17.2	No Compensation on Expiry of Agreement Period .....	56
17.3	Delayed Payment of Compensation.....	56
17.4	Remedies Cumulative .....	57
ARTICLE 18 .....		58
ASSIGNMENT AND CHARGES .....		58
18.1	Restriction on assignment and charges .....	58
18.2	Permitted assignment and charges .....	58
18.3	Assignment by the Authority .....	58
ARTICLE 19 .....		59
TRANSFER ON EXPIRY OF THE AGREEMENT PERIOD.....		59
19.1	General Scope of Transfer/Payment .....	59
19.2	SPV's Obligations.....	59
19.3	The Authority's Obligations .....	59
19.4	Risk .....	60
ARTICLE 20 .....		61
DISPUTE RESOLUTION.....		61
20.1	Dispute Resolution Board .....	61
20.2	Arbitration.....	61
ARTICLE 21 .....		62
REPRESENTATIONS AND WARRANTIES .....		62
21.1	Representations and Warranties of the SPV .....	62
21.2	Representations and Warranties of the Authority .....	63
21.3	Disclosure .....	64
ARTICLE 22 .....		65
MISCELLANEOUS PROVISIONS .....		65
22.1	Survival of Obligations .....	65
22.2	Articles to survive Termination .....	65
22.3	Joint Responsibility.....	65
22.4	Several Obligations .....	65
22.5	Severability .....	65
22.6	Notices .....	66
22.7	Waiver.....	66

22.8	Amendments, Modifications or Alterations.....	67
22.9	Fraudulent and Corrupt Practices.....	67
22.9	Governing Law .....	68
22.10	Jurisdiction of the Court.....	69
22.11	Entire Agreement .....	69
APPENDIX 1	.....	70
APPROVED SERVICE CHARGES	.....	70

## PADDY PROCESSING AGREEMENT

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

BETWEEN:

1. **Tamil Nadu Civil Supplies Corporation**, Government of Tamil Nadu, represented by its Managing Director and having its principal office at No. 12, Thambusamy Road, Kilpauk, Chennai – 600 010, Tamil Nadu, India (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 special purpose company registered under the Companies Act, 2013, with Corporate Identity Number (CIN) \_\_\_\_\_ and having its registered office at \_\_\_\_\_, represented by its..... authorized vide Board Resolution dated \_\_\_\_\_ (hereinafter referred to as the “**SPV**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

AND

3. . .....<name of Selected Bidder> having its registered office at ..... represented by its ..... authorized vide <Board Resolution/ Power of Attorney dated .....> (hereinafter referred to as the “**Selected Bidder**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Third Part;

or

{The consortium of (i) M/s .....[...] having its registered office at ....., (ii) M/s ..... [...] having its registered office at ....., and (iii) M/s ..... [...] having its registered office at ....., in their capacity as the confirming party to this Agreement duly represented through M/s ....., the Lead Member of the consortium, through its Authorized signatory Mr./Ms. ....., authorized vide <Board Resolution/ Power of Attorney dated .....> (hereinafter referred to as the “**Selected Bidder**” which

expression shall, unless the context otherwise requires, include its successors) of the Third Part}

The Authority, SPV and Successful Bidder individually referred to as “Party” and jointly as “Parties”

WHEREAS:

- A. The Authority is desirous of selecting a private player for setting up pf 800 MT/day Modern Rice Mill at Thiruvarur / Thanjavur Districts and operate for a period of 20 years on paddy processing agreement basis;
- B. The Authority vide Tender No. \_\_\_\_\_ dated \_\_\_\_\_ invited tender under two cover system from the interested parties for setting up pf 800 MT/day Modern Rice Mills referred to in recital ‘A’ above;
- C. In response to the tender referred to in recital ‘B’ above, the Authority received the application dated \_\_\_\_\_ submitted by the Applicant in accordance with the tender conditions.
- D. The Authority, after evaluating the Proposal received by it from the Applicant, accepted the Proposal referred to in recital “C” above submitted by the Applicant and communicated its acceptance to the Applicant vide Letter of Acceptance dated \_\_\_\_\_;
- E. The Applicant has incorporated a special purpose company in India, under the Companies Act, 2013 to implement the Project;
- F. Following the issue of the Letter of Acceptance, the Authority has agreed to enter into Paddy Processing Agreement with the SPV for setting up and operating a 800 MT/day Modern Rice Mill at \_\_\_\_\_ district for a period of 20 years on the terms, conditions and covenants hereinafter set forth in this Agreement.

**NOW, THIS AGREEMENT WITNESSETH AS FOLLOWS:**

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this Agreement, unless the context otherwise requires the following terms shall have the following meanings assigned/ascribed thereto: -

“**Affiliate**” means, with respect to any Party and/or with respect to the Applicant and/or with respect to any member of Consortium, any other Person directly or indirectly controlling, controlled by or under common control with such Party, Applicant and/or member of Consortium. For the purposes of this definition, the term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as applied to any Party or Applicant or a member of Consortium, means the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Party or Applicant or a member of Consortium whether through ownership of 50 (fifty) % or more of the voting securities, by contract, or otherwise.

“**Agreement**” means this agreement as of date hereof, including Appendices as may be amended, supplemented or modified in accordance with the provisions hereof.

“**Agreement Period**” means the period of the specified in Article 3.2 of this Agreement.

“**Appendix**” means the schedules, supplements or documents, appended to this Agreement.

“**Applicable Laws**” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including statutes, rules, regulations, directions, bye-laws, notifications, ordinances and judgments having force of law, or any final interpretation by a Court of Law having jurisdiction over the matter in question as may be in force and effect during the subsistence of this Agreement.

“**Applicable Permits**” means any and all permissions, clearances, licenses, authorizations, consents, no-objections, approvals and exemptions under or pursuant to any of the Applicable Laws or from any Government Authority required in connection with the Project and for undertaking, performing or discharging the obligations contemplated by this Agreement or any other Transaction Document.

“**Applicant**” means M/s \_\_\_\_\_.

“**Application**” means the Proposal and the entire set of documents submitted by the Applicant and in response to the Tender.

“**Authority Event of Default**” shall have the meaning as set out under Article 15.1 (b).

“**Change in Law**” shall have the meaning set out under Article 13.1 of this Agreement.

“**Conditions Precedent**” shall mean the conditions prescribed in Article 4 of this Agreement.

“**Consultation Notice**” has the meaning ascribed to it in Article 15.3.

“**Contractor**” means a Person with whom the SPV has entered into/ may enter into a contract relating to the execution of any works and /or operation and maintenance of the Project Facilities and Services.

“**Date of Award of Agreement**” means the date when the Conditions Precedent have either been satisfied or waived by the Party other than the Party responsible for satisfying the same.

“**Date of Commercial Operation of mill**” means the date of commencement of hulling as certified by the Project Management Consultant appointed by the Authority.

“**Day**” means the 24 (twenty four) hour period beginning and ending at 12:00 (midnight) Indian Standard Time.

“**EMD**” means earnest money deposit of Rs.1,25,00,000 /- (Rupees One Crore Twenty Five Lakhs Only) submitted by Applicant along with Application.

“**Event of Default**” shall have the meaning assigned to it under Article 15.1.

“**Expert**” means any person, body or organization of repute with recognized technical/ professional expertise in respect of any field, matter or subject relevant for the purpose of this Agreement.

“**Financial Closure**” means the execution of the Financing Agreements required for the project.

“**Financial Year**” means any twelve month period commencing from 1st April and ending on 31st March.

**“Force Majeure Event”** shall have the meaning ascribed to it in Article 14.1 of this Agreement.

**“GoI”** means the Government of India.

**“Good Industry Practice”** means the exercise of that degree of skill, diligence and prudence and those practices, methods, specifications and standards of equipment, safety and performance, as may change from time to time and which would reasonably and ordinarily be expected to be used by a skilled and experienced operator engaged in construction, operation and maintenance of facilities, equipment or systems of the type and size similar to the Project Facilities and Services.

**“Government Authority”** means GoI, any state government or any governmental department, commission, board, body, bureau, agency, authority, instrumentality, administrative body, at central, state, or local level, having jurisdiction over the SPV, the Project Facilities and Services or any portion thereof, but shall not include the Authority.

**“Indian Accounting Standards”** means the Indian accounting standards issued by the Institute of Chartered Accountants of India.

**“Insurance Cover”** shall have the meaning ascribed to it in Article 12.1(c) (ii).

**“Management Control”** means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the SPV, whether through the ownership of voting securities, by contract or otherwise or the power to elect or appoint more than 50% (fifty percent) of the directors, managers, partners or other individuals exercising similar authority with respect to the SPV.

**“Material Adverse Effect”** means material adverse effect on (a) the ability of either Party to exercise any of their rights or perform/discharge any of their duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

**“Month”** means the calendar month as per the Gregorian calendar.

**“Non Political Event”** means the Force Majeure Events set out in Article 14.2.

**“Other Events”** means the Force Majeure Events set out in Article 14.4.

“**Party**” means either the Authority or the SPV as the context may require or admit and “**Parties**” means both Authority and SPV.

“**Performance Guarantee**” shall mean the bank guarantee(s) procured by the SPV for the benefit of the Authority guaranteeing the performance of the obligations of the SPV during the operation phase hereunder in the manner specified in Article 5.2.

“**Person**” means any individual, company, corporation, partnership, joint venture, trust, unincorporated organization, government or governmental authority or agency or any other legal entity.

“**Political Event**” means the Force Majeure Events set out in Article 14.3.

“**Project**” means the Setting up, Operation, Management, & Maintenance of Mill, Storage and DPC Infrastructures including collection, transportation in accordance with the provisions of this Agreement.

“**Project Contracts**” means collectively this Agreement and any other material contract (other than any commercial agreement with the users) entered into or may hereafter be entered into by the SPV in connection with the Project and Project Facilities and Services.

“**Proposal**” means the application and the entire set of documents submitted by the Applicant in response to the tender.

“**Quarter**” means a period of 3 (three) Months.

“**Remedial Period**” has the meaning ascribed to it in Article 15.4.

“**Requisition**” has the meaning ascribed to it in Article 16.3.

“**Security Deposit**” shall mean the bank guarantee(s) procured by the SPV for the benefit of the Authority guaranteeing the performance of the obligations of the SPV during the implementing phase hereunder in the manner specified in Article 5.1.

“**Service Charges**” shall mean the charges payable by the Authority to the SPV, pursuant to Article 9.1 hereof.

“**SPV Event of Default**” shall have the meaning as set out under Article 15.1 (a).

“**Statutory Auditors**” means a firm of chartered accountants appointed in terms of Section 138 of the Companies Act, 2013 and acting as the statutory auditors of the SPV.

“**Tender**” means the Tender dated \_\_\_\_\_ vide ref no. \_\_\_\_\_, issued by the Authority inviting Applications/Proposals in accordance therewith for selection of Applicant, and includes any addendum / clarifications issued in respect thereof by the Authority.

“**Termination Notice**” means the termination notice issued pursuant to Article 16.1 hereof.

“**Termination Period**” shall have the meaning as set out under Article 16.1 hereof.

“**Transportation Charges**” shall mean the charges payable by the Authority to the SPV, pursuant to Article 9.1 hereof.

## **1.2. Interpretations**

This Agreement constitutes the entire understanding between the Parties regarding the Project and supersedes all previous written and/or oral representations and/or arrangements regarding the Project. If there is any aspect of the Project not covered by any of the provisions of this Agreement, then and only in that event, reference may be made by the Parties to the Application documents, inter alia including the Tender, issued by the Authority and also including addendums, clarifications given in writing and the submissions of the SPV and the Application submitted by the SPV but not otherwise. In case of any contradictions in the terms of this Agreement and any such other Application documents as referred to above, the terms of this Agreement shall prevail.

In this Agreement unless the context otherwise requires:

- a. any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- b. the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations or other entities (whether or not having a separate legal entity);
- c. the table of contents and any headings in this Agreement are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- d. the words “include” and “including” are to be construed without limitation;

- e. any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- f. any reference to day shall mean a reference to a calendar day;
- g. any reference to month shall mean a reference to a calendar month;
- h. “Recital”, “Article” and “Appendix” shall refer, except where the context otherwise requires, to Articles of and any Appendix to this Agreement. The Appendices to this Agreement shall form an integral part and parcel of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- i. “Rupee”, “Rupees”, “Rs.” and “₹” shall denote Indian Rupees, the lawful currency of India.
- j. any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or novated at the time of such reference;
- k. any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party and/or a Statutory Auditor shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party and/or Statutory Auditor, as the case may be, in this behalf and not otherwise;
- l. unless otherwise stated, 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;
- m. unless otherwise specified, any interest to be calculated and payable under this Agreement shall accrue on a Monthly basis and from the respective due dates as provided for in this Agreement; and
- n. any word or expression used in this Agreement , unless defined or construed in this Agreement, shall be construed as per the definition given in General Clauses Act, 1897 failing which it shall bear the ordinary English meaning.

### **1.3. Measurements and Arithmetic Conventions**

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

### **1.4. Ambiguities and Discrepancies**

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

- a. between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- b. between any value written in numerals and that in words, the latter shall prevail; and
- c. between the provisions of this Agreement and any other documents forming part of this Agreement, the former shall prevail.

## 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, the following during the Agreement Period:

##### a. Implementation Phase

- i. Setting up of integrated rice mill in the taluks specified by the Authority with the following facilities:

##### 1. Mandatory Facilities

- ✓ Post-harvest dryer - 960 MT/Day
- ✓ Parboiling unit - 40 MT/hour
- ✓ Milling unit - 800 MT/Day of paddy
- ✓ Modern storage facilities for paddy viz. silos / warehouse of capacity of 96,000 MTs.
- ✓ Automatic rice packing system
- ✓ Warehouse / silo to store 5,600 MT of rice
- ✓ Conveyors to move the rice bags to lorries

##### 2. Optional facilities

- ✓ Husk-based co-generation power plant / solar power plant
- ✓ Providing dormitory facilities for workers

- ii. **Creation of infrastructure at Direct Purchase Centres (DPCs)** - 40 DPCs will be allotted by the Authority on exclusive basis within 60 km radius of the mill. The capacity of DPCs will typically be 100 MT/day. The SPV shall create the following infrastructures at each DPC to handle 100MT/day:

- ✓ Conveyor system
- ✓ Destoner & Pre-cleaner
- ✓ Mobile paddy testing lab
- ✓ Weighing scale
- ✓ Pneumatic pump
- ✓ Bulk carriers to move the paddy from DPCs to the Rice Mill

## **b. Operational Phase**

- i. Operation and maintenance of DPC comprising of destoning & pre-cleaning, moisture testing, weighing and loading to truck by deploying adequate manpower. All required support infrastructures, utilities, consumables etc. are to be arranged by the SPV.
- ii. Operation & maintenance of the mill and storage facilities.
- iii. Collection of paddy from Authority at DPCs.
- iv. Transportation of paddy from DPCs to mill.
- v. Drying of paddy using post-harvest dryers.
- vi. Storing of dried paddy in the silos / modern warehouses.
- vii. Hulling of paddy and production of rice as per the quality specifications fixed by Authority.
- viii. Packing of rice in 5 kg, 10 kg, 15 kg, 25 kg, 35 kg and 50 kg bags as stipulated by Authority.
- ix. Loading and transportation of rice bags to the godowns specified by Authority within 50 km radius of the mill location.
- x. The Authority shall pay the applicable transportation charges for movement of paddy from DPCs to mill and movement of rice from mill to godowns as per the schedule of rates approved by the State Level Committee (SLC) based on the guidelines of Government of India.

## **ARTICLE 3**

### **TERM OF AGREEMENT**

#### **3.1 Effective Date**

This Agreement shall come into effect from the date it is executed and delivered by the last of all the Parties and such date shall be referred to as the Effective Date.

#### **3.2 Agreement Period**

The Agreement is for a period of 20 years commencing from the date of Commercial Operation of the Mill and the Authority at its discretion shall extend the same for further periods on mutually agreed terms. During the agreement period, the SPV is obliged to provide the Services in accordance with the scope of work.

Provided that: -

- a. In the event of the agreement period being extended by the Authority beyond the said period of 20 years, the agreement period shall also include the period until it has been so extended, and
- b. In the event of an early termination/determination of the agreement by either Party in accordance with the provisions specified in this agreement, the agreement period shall mean and be limited to the period commencing from the date of Commercial Operation of the Mill and ending with the date of termination/determination of the agreement.

#### **3.3 Acceptance of Terms and Conditions**

The SPV hereby accepts and agrees and undertakes to provide Services in accordance with the provisions of this Agreement. Subject to and in accordance with the provisions of this Agreement and Applicable Laws and Applicable Permits.

## ARTICLE 4

### CONDITIONS PRECEDENT

#### 4.1 Conditions Precedent

The award of the Contract shall be subject to the satisfaction or waiver of the following conditions precedent (the “**Conditions Precedent**”):

- a. The following Conditions Precedent shall be satisfied by the SPV:
  - i. Furnishing of the Security Deposit as stipulated in Article 5.1 hereof;
  - ii. Furnishing of copies (certified as true copies by a director of the SPV) of the constituent documents of the SPV;
  - iii. Furnishing of all resolutions adopted by the Board of Directors of the SPV (certified as true copies by a director of the SPV) authorizing the execution, delivery and performance by the SPV of each of the Transaction Documents;
  - iv. Opening of bank account in the name of SPV;
  - v. Furnishing a certificate from its principal officer/director on the shareholding pattern of the SPV;
  - vi. Procuring and furnishing the following confirmations, in original from the applicant:
    - a. it/they shall at all times comply with the provisions of Article 10.2 in respect of their shareholding in the SPV;
    - b. it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
    - c. the Applicant is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the SPV and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

- vii. Furnishing to the Authority a legal opinion from the legal counsel of the SPV with respect to the authority of the SPV to enter into this Agreement and the enforceability hereof;
  - b. The following Conditions Precedent shall be satisfied by the Authority:
    - i. Allotment of 40 DPCs within 60 km radius of the mill location;
    - ii. Appointment of Project Management Consultant (PMC) to monitor the progress of the implementation and ensure timely completion of the project;
- 4.2 The aforesaid Conditions Precedent shall be complied with within 30 (thirty) Days of the date of the Agreement. Each Party shall promptly inform the other Party in writing when the Conditions Precedent for which it is responsible have been satisfied.
- 4.3 Any of the Conditions Precedent set forth in Article 4.1(a) may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions and the SPV shall be bound to ensure compliance within such additional time as may be specified by the Authority.
- 4.4 If the SPV has fulfilled all the Conditions Precedent under Article 4.1(a) including the furnishing of the security deposit and has not waived or extended the time under Article 4.3 above, and if the Authority has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 4.1(b) (and which are within the power of the Authority), the Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the security deposit for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the security deposit furnished by the SPV. In such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the Authority is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 4.6 below;
- 4.5 If the Authority has fulfilled all the Conditions Precedent under Article 4.1(b) and has not waived or extended the time under Article 4.3 above, and if the SPV has failed to fulfil the Conditions Precedent to be fulfilled by it under Article 4.1(a) (and which are within the power of the SPV), the SPV shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the security deposit for each day's delay until fulfilment of the Conditions Precedent subject to a maximum of 5% (five percent) of the figure mentioned in the security deposit furnished by the SPV. In

such event, having regard to the quantum of damages, the time for the performance shall be deemed to have been extended by the number of days for which the liquidated damages is paid and if, after the extended period the SPV is still not in a position to comply with the Conditions Precedent, then the agreement shall be liable to be terminated as provided for in Article 4.6 below;

- 4.6 In the event that the Conditions Precedents are not complied with within the time (including the extended time, if any) in terms of the aforesaid Articles 4.2 to 4.5, this Agreement shall be liable to be terminated. If such termination is on account of failure of the SPV to comply with the Conditions Precedent, the EMD/Security Deposit shall stand forfeited. If such termination is on account of failure of the Authority, the Authority shall be obliged to return the EMD/Security Deposit. It is clarified that except for the payment as stipulated in the foregoing Article 4.4 and 4.5 and forfeiture in this Article 4.6, each party hereto shall have no claims against the other for costs, damages, compensation or otherwise.

## **ARTICLE 5**

### **SECURITY DEPOSIT AND PERFORMANCE GUARANTEE**

#### **5.1 Security Deposit**

- a. The SPV shall for due performance of its obligations during the implementation phase provide to Authority an unconditional and irrevocable bank guarantee, in favour of the Authority encashable and enforceable at Chennai (the “Security Deposit”). The Security Deposit shall be for a sum of Rs.10,00,00,000/ (Rupees Ten Crore only). Till such time the SPV provides to Authority the Security Deposit pursuant hereto, the EMD shall remain in full force and effect. The Security Deposit, if in the form of a bank guarantee shall be valid for an initial period of 2 (Two) years and shall be renewed until commencement of commercial operation. It is clarified that the SPV shall be liable to restore the Security Deposit to the full amount in case of part encashment of the same by the Authority. This shall be done within 30 (thirty) Days of any such part encashment. Failure of the SPV to restore and maintain the Security Deposit in accordance with this Article shall entitle the Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Security Deposit.
- b. Upon declaration of commencement of commercial production and submission of performance guarantee as stipulated in Article 5.2 below, Security Deposit will be released, after certifying by the concerned authority that there are no dues to be paid to the Authority.

#### **5.2 Performance Guarantee**

- a. The SPV shall for due performance of its obligations during the operation phase provide to Authority an unconditional and irrevocable bank guarantee, in favour of the Authority encashable and enforceable at Chennai (the “Performance Guarantee”). The Performance Guarantee shall be for a sum of Rs.7,50,00,000/ (Rupees Seven Crore Fifty Lakhs only). Till such time the SPV provides to Authority the Performance Guarantee pursuant hereto, the Security Deposit shall remain in full force and effect. The Performance Guarantee, if in the form of a bank guarantee shall be valid for an initial period of 3 (Three) years and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 3 (Three) years until completion of the agreement period. It is clarified that the SPV shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Authority. This shall be done within 30 (thirty) Days of any such part

encashment. Failure of the SPV to restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Performance Guarantee.

- b. Upon successful completion of the agreement period including extended period if any, the performance guarantee will be released after certifying by the concerned authority that there are no dues to be paid to the Authority.

## ARTICLE 6

### GENERAL CONDITIONS FOR SETTING UP OF RICE MILL AND OTHER INFRASTRUCTURE

#### 6.1 General Conditions

- a. The rice mill machinery shall be brand new, whether it is imported or indigenous. Second hand machinery will not be permitted.
- b. All the plant & machinery and equipments shall be acquired from reputed manufacturers and the manufacturer should have proven track record in supplying machineries for 500 TPD rice mills in India.
- c. The manufacturer should have supplied plant & machinery for at least three 500 TPD rice mills in India and the same should be in operation.
- d. In case of imported machinery, the manufacturer shall have his own marketing office/ authorized dealers and after sales service support in India and the same should be in existence for one year as on the date of opening of tender.
- e. All the machineries should have food grade certification.
- f. The SPV should strictly comply with all the above conditions specified in Article 6.1.(a) to 6.1.(e).
- g. **Prior approval from the Authority:** The SPV shall obtain the following approvals from the Authority in compliance with the timeline stipulated in Article 8.1:
  - i. Master plan for the mill including mandatory and optional infrastructure
  - ii. Detailed building plan of factory building, warehouse, admin office, etc.
  - iii. Complete list of plant & machinery along with capacity, make / manufacturer involved in post-harvest drying, silos, rice mill machineries, DPC infrastructure etc.
  - iv. Capacity balancing of various sections for 800 TPD of paddy processing

- h. The Authority will give approval within 15 days from the date of submission of complete details. Any delay shall be treated as “Deemed Approved”.
- i. The SPV shall comply with the approved plan.

## **ARTICLE 7**

### **ROLES AND RESPONSIBILITIES**

#### **7.1 Of the SPV**

The SPV's obligations under this Article 7 shall include but shall not be limited to the following:

- a. Purchase / enter into long term irrevocable lease for at least 25 years of minimum 25 acres of land for establishing the integrated Modern Rice Mill with storage and other supporting infrastructures. The location has to be within the taluks specified by Authority. The location shall have access to railway line for easy movement of paddy and rice.
- b. Submission of master plan along with detailed drawings, list of plant & machineries and stage wise implementation schedule.
- c. Obtaining of all statutory approvals from competent authorities required for establishment and operation of the mill.
- d. Creation of infrastructure as per the scope of work described in Article 2.
- e. Trial Run - Demonstrate the capacity of machineries installed prior to commencement of commercial operation to Authority or its authorized representatives.
- f. Operation and maintenance of DPC infrastructure, mill and storage facilities.
- g. The SPV shall keep adequate quantity of paddy in silos / warehouse to operate the mill round the year subject to supply of paddy by TNCSC.
- h. The paddy taken up for storage should be dried within 24 hours of collection at the DPC.
- i. Shall hand over 68% of head rice to the Authority on weight by weight basis for the quantity of paddy supplied as per the norms of Food Corporation of India (FCI). Any change in FCI norms pertaining to Head Rice yield will be automatically made applicable. The Head Rice yield is based on 17% moisture level of paddy at the DPCs. If Government of Tamil Nadu permits purchase of paddy beyond 17% moisture level, the Head Rice yield shall be computed as below:

Moisture Level	Head Rice Yield
17%	68.00%
18%	67.25%
19%	66.50%
20%	65.75%
21%	65.00%

- j. The quality specifications of the head rice to be handed over by the SPV to Authority shall be as follows:

S. No	Refraction	Maximum limit (%)	
		Grade A	Common
1.	Brokens*	16.0	16.0
2.	Foreign matter** (organic + in organic)	0.5	0.5
3.	Damaged#/ Slightly damaged grains	4.0	4.0
4.	Broken discoloured grains	5.0	5.0
5.	Red grains	3.0	3.0
6.	Admixture of lower class	6.0	-
7.	Dehusked grains	13.0	13.0
8.	Moisture content***	14.0	14.0

Note:

\* Including 1% small broken

\*\* Not more than 0.25% by weight shall be mineral matter and not more than 0.10% by weight shall be impurities of animal origin

# including pin point damaged grains

- k. The above quality specifications in Article 7.1.(j) are subject to change from time to time as per the guidelines of FCI / Government of India. The Authority in its own discretion may prescribe incentive for the rice delivered at higher quality specifications.
- l. The head rice not complying with the quality standards will be rejected and penalty as specified in Article 9.3 will be levied.
- m. The by-products viz. husk, rice bran and broken rice shall be available to the SPV for sale in the open market.

- n. The hulled rice shall be packed in 5 kg, 10 kg, 15 kg, 25 kg, 35kg and 50kg bags as specified by Authority from time to time.
- o. The packed rice has to be delivered once in every 10 days at the godowns specified by Authority within 50km radius of the mill location.
- p. Purchase and maintain insurance for the paddy stored in silos / warehouse & rice including the project facilities.
- q. The SPV is not permitted to avail any credit facility on paddy and rice. To this effect, the SPV shall create charges on the paddy and rice at the DPC and Rice mill premises in favour of the Authority.
- r. Submit to Authority on daily basis the following:
  - Quantity of paddy collected at DPCs
  - Quantity of paddy dried and stored in silos / warehouse
  - Quantity of paddy directly used for hulling
  - Quantity of head rice produced
  - Quantity of head rice deposited at godowns
  - Month wise cumulative data (starting from 1st of every month)

## **7.2 Of the Authority**

### **a. Implementation Period**

- i. Allotment of 40 DPCs within 60 km radius of the mill location.
- ii. Review and approval of master plan and infrastructures proposed in the Rice mill and DPCs.
- iii. Facilitation for obtaining statutory approvals.
- iv. Appointment of Project Management Consultant (PMC) to monitor the progress of the implementation and ensure timely completion of the project. The SPV shall provide all the details connected with the project as required by the PMC within 7 days' time from the date of request.

## **b. Operational Period**

- i. Arranging of land for locating infrastructures at DPCs. The Authority shall have the right to change the location of DPC within 60 Km radius from season to season based on the availability of paddy.
- ii. Supply of paddy at the DPCs.
- iii. Intimating the date of commencement of procurement at DPCs atleast 15 days in advance. The Kharif Market Season (KMS) will usually commence on the 1st of October every year.
- iv. The Authority shall take every effort to supply 1,92,000 MT of paddy in a year. However, on mutually agreed terms the quantity shall be increased subject to availability of paddy and production capacity of the mill.
- v. If there is any shortfall in supply of paddy in a particular year due to poor rainfall, agro climatic conditions or such other reasons, Authority will try to compensate the shortfall in the subsequent years. Any backlog at the end of the Agreement period shall be compensated by extending the Agreement period. Further, the Authority at its discretion shall permit the SPV to make up the unsupplied quantity through Private Procurement for which no service charges shall be paid by the Authority.
- vi. Earmarking of rice storage godowns within 50 km radius of the mill location for depositing the rice.
- vii. Ensuring that the notified rice godowns has the capacity to store the rice. If the Authority is not in a position to provide the godown space for storage of rice, the SPV will be paid a storage rental of ₹10.00 per ton of rice per day.
- viii. Processing and remitting of applicable service charges to the SPV.
- ix. Payment of transportation charges for movement of paddy from DPCs to mill and movement of rice from mill to godowns as per the schedule of rates approved by the State Level Committee (SLC) based on the guidelines of Government of India.
- x. If the distance to any DPC or rice storage godown is beyond 50kms from the mill, the Authority will pay the charges for additional distance as per the schedule of rates.

## ARTICLE 8

### SCHEDULE

The SPV shall adhere to the following timelines:

#### 8.1 Implementation Period

Date of Signing of this Agreement	S
Formation of SPV	S+1 month
Land acquisition	S+1.5 months
Submission of master plan along with detailed drawings, list of plant & machineries and stage wise implementation schedule	S+2 months
Financial Closure	S + 2.5 months
Approval of layout and design drawings by the Authority	T
Trial run	T + 15.5 months
Commercial Operation	T + 16 months

Delay beyond this period will attract penalty as per Article 9.3. The Authority in its own discretion may extend the period of implementation without penalty if it deem it fit.

#### 8.2 Operational Period

Depositing of packed rice at the designated godowns from the date of hulling	10 days
--	---------

## ARTICLE 9

### PAYMENT TERMS AND PENALTY

#### 9.1 Payment Terms

- a. No advance payment is permissible
- b. Payment (Service charges) will be made on monthly basis based on the quantity of paddy hulled and equivalent head rice meeting the quality norms specified in Article 7.1.(j) is delivered at the designated rice godowns of the Authority.
- c. Transportation charges will be made on monthly basis based on the distance covered and the quantity of paddy / rice transported as per the schedule of rates approved by the State Level Committee (SLC) based on the guidelines of Government of India.
- d. Payment will be made for the previous month within 30 days from the date of receipt of bill after adjusting penalties, if any. If the payment is delayed beyond 30 days, the Authority shall pay interest at 10% per annum for the delayed period i.e. beyond 30 days.
- e. The SPV should remit the GST collected from the Authority every month within the due date and submit the proof for verification. Payments will be processed only after verifying the remittance of GST for the previous month.
- f. The service charge finalized and approved by the Authority will hold good for a period of one year from the date of declaration of commercial operation.
- g. **Increase in service charges:** An increase of 2.50% per annum on the Service charges per ton of paddy approved for the first year will be considered for every subsequent year till the end of agreement period including extensions, if any and the same is as shown in the table below:

Service charges per ton of paddy finalized & approved by the Authority for 1 <sup>st</sup> year	A
Service charge per ton of paddy for 2 <sup>nd</sup> year (B)	A * 1.025
Service charge per ton of paddy for 3 <sup>rd</sup> year (C)	B * 1.025
Service charge per ton of paddy for 4 <sup>th</sup> year (D)	C * 1.025
Service charge per ton of paddy for 5 <sup>th</sup> year (E)	D * 1.025
Service charge per ton of paddy for 6 <sup>th</sup> year (F)	E * 1.025

Service charge per ton of paddy for 7 <sup>th</sup> year (G)	F * 1.025
Service charge per ton of paddy for 8 <sup>th</sup> year (H)	G * 1.025
Service charge per ton of paddy for 9 <sup>th</sup> year (I)	H * 1.025
Service charge per ton of paddy for 10 <sup>th</sup> year (J)	I * 1.025
Service charge per ton of paddy for 11 <sup>th</sup> year (K)	J * 1.025
Service charge per ton of paddy for 12 <sup>th</sup> year (L)	K * 1.025
Service charge per ton of paddy for 13 <sup>th</sup> year (M)	L * 1.025
Service charge per ton of paddy for 14 <sup>th</sup> year (N)	M * 1.025
Service charge per ton of paddy for 15 <sup>th</sup> year (O)	N * 1.025
Service charge per ton of paddy for 16 <sup>th</sup> year (P)	O * 1.025
Service charge per ton of paddy for 17 <sup>th</sup> year (Q)	P * 1.025
Service charge per ton of paddy for 18 <sup>th</sup> year (R)	Q * 1.025
Service charge per ton of paddy for 19 <sup>th</sup> year (S)	R * 1.025
Service charge per ton of paddy for 20 <sup>th</sup> year (T)	S * 1.025
If extended	
Service charge per ton of paddy for 21 <sup>st</sup> year (U)	T * 1.025

- h. The increase in service charges per ton of paddy will be computed, only after successful completion of 12 months from the date of commencement of commercial operation of the mill along with storage infrastructure.
- i. The Authority also reserves the right to recover any dues from the SPV, which is found on later date, during audit/excess payment, after final settlement is made. The SPV is liable to pay such dues to the Authority immediately on demand, without raising any dispute/protest.

## **9.2 Maintenance of Dedicated Bank Account**

- a. The SPV shall open a bank account within 15 days from the date of registration of the Company.
- b. All the financial transactions shall be routed through the said bank account. The SPV should intimate the details of the bank account to the Authority within 5 days from the date of opening.
- c. If there is any change of bank / branch, the same shall be intimated to the Authority within 5 days.

### 9.3 Penalty

#### a. Implementation Period

Failure to comply with the schedule / commence the commercial operation within the period specified in Article 8.1 or extended period will attract a penalty of ₹10,000 per day.

#### b. Operational Period

- i. The equivalent head rice for the quantity of paddy hulled in a day shall be deposited at the designated godowns within 10 days from the date of hulling. A penalty of ₹25 per ton of rice per day will be levied for each day of delay.
- ii. The head rice not complying with the quality standards will be rejected and the cost of paddy along with 20% penalty thereon will be recovered from the SPV.
- iii. The SPV shall not process the paddy other than the paddy supplied by the Authority. If, at any time during the currency of the agreement the SPV is involved in such activity a penalty of ₹5.00 lakhs will be levied for each occurrence. However, if the Authority is not in a position to supply the required quantity of paddy it may permit to handle / process paddy from other sources.
- iv. The paddy collected from the Authority shall be stored, dried and processed only in the mill premises and the SPV shall not sub-contract to any other mills / facility. If, at any time during the currency of the agreement the SPV is involved in such activity a penalty of ₹5.00 lakhs will be levied for each occurrence.

## ARTICLE 10

### SHAREHOLDING

#### 10.1 Ownership Structure

The Applicant has caused the SPV to be incorporated as a special purpose company in accordance with this Agreement. The shareholding pattern of the SPV is as below:

S.No.	Shareholder's Name	No. of Shares	Percentage
1			
2			
3			
<b>Total Shareholding of the SPV</b>			<b>100</b>

#### 10.2 Shareholding

Any change in ownership / shareholding pattern shall be permitted only after the 2<sup>nd</sup> (second) anniversary of the date of commercial operation of the mill. Further, the SPV shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 12.1.(f).

In case of consortium, the prime bidder of consortium must hold 51% (fifty one percent) or more of the paid up and subscribed equity of the SPV for at least 2 years from the date of commencement of commercial operation of the mill and the member of consortium whose experience was considered for qualification must hold 10% (ten percent) or more of the paid up and subscribed equity of the SPV for at least 2 years from the date of commencement of commercial operation of the mill.

Any Transfer of shareholding in the SPV and/or direct or indirect change in the Management Control of the SPV, including by way of a restructuring or amalgamation, shall only be with the prior written approval of the Authority which consent shall not be withheld except (i) for reasons of national security; or (ii) if the Person proposed for assuming such Management Control would by virtue of the restrictions imposed under the Applicable Law or the conditions of bidding (including restrictions to avoid anti-competitive and monopolistic practice) and/or public policy be disqualified from undertaking the Project.

### **10.3 Constituent Documents**

The SPV shall ensure that its articles of association adequately reflect the aforesaid and the relevant commitments, obligations and responsibilities of the Applicant/Consortium.

In particular, the articles of association and the memorandum of association of the SPV shall be amended within 3 (three) months of the Date of Award of contract to include the terms and conditions regarding the composition of share-holding and management stipulated in this Agreement; and terms and conditions related to changes in the share-holding pattern stipulated in this Agreement. The SPV shall submit the amended articles of association and the memorandum of association to the Authority as soon as may be reasonably possible.

Any subsequent change in the articles of association or the memorandum of association which alter the provisions required by this Article shall require the prior approval of the Authority and the articles of association and memorandum of association of the SPV shall include a specific provision to this effect.

## **ARTICLE 11**

### **GENERAL CONDITIONS**

#### **11.1 General Conditions**

- a. The Authority reserves the right to relax or waive or amend any of the conditions.
- b. The Authority or its authorized representative is at their liberty to visit the mill premises for monitoring and inspection at any time during the agreement period. Any mid-course correction advised by the Authority shall be duly incorporated.
- c. If on account of non-compliance with the provisions of any laws, the Authority is called upon to make any payment to or in respect of his employees, the SPV shall be liable and pay the Authority all such amounts. No liability whatsoever shall attach to the Authority on account of or any failure on the part of the SPV to observe these regulations.
- d. Any liability arising out of any litigation (including those in consumer courts) due to any act of agencies/personnel shall be directly borne by the SPV including all compensation/damage/expenses/fines, the concerned SPV personnel shall attend the court as and when required.
- e. The Authority will have no responsibility in case of any loss is caused to any life or property due to accident, fire or any other reasons. The SPV is required to take appropriate safety and insurance measures to safeguard against any loss to human life.
- f. The Authority will have no liability on account of any omission or commission of regulatory/statutory requirement by the SPV.
- g. The Authority shall not be accountable either directly or indirectly to the lenders of the SPV at any point of time.
- h. The Authority shall not be made a party to any litigation by or on behalf of the SPV.
- i. The SPV will indemnify, defend and hold harmless the Authority from and against, and in respect to, any and all losses, expenses, costs, obligations, liabilities and damages, including interest, penalties and attorney's fees and expenses, that the SPV may incur as a result of any negligent or willful acts or omissions of the SPV.

- j. Any notice regarding any problems, to the SPV shall deemed to be sufficiently served, if given in writing at his usual or last known place of business.
- k. In the course of discussion and instruction the Authority may disclose information of confidential and proprietary nature, knowhow, to the SPV. Such information shall be considered as confidential.

## ARTICLE 12

### GENERAL RIGHTS, DUTIES AND OBLIGATIONS

#### 12.1 Of the SPV

##### a. Applicable Permits / Approvals

The SPV shall at all times during the Agreement Period maintain and comply with the Applicable Permits / Approvals for the establishment and operation of the mill and associated infrastructure.

##### b. Taxes & duties

The SPV shall during the Agreement Period pay in a timely manner all taxes, duties, levies, cess and charges including but not limited to income tax, GST, customs duty, etc. that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project/ the Project Facilities and Services.

##### c. Insurance

###### 1. Insurance Requirement

The SPV should, at his cost and expense, purchase and maintain insurances as are prudent, including but not limited to the following:

- i. Loss, damage or destruction of the Project Facilities and Services, paddy stored in silos / warehouse, rice stored in silos / warehouse;
- ii. Comprehensive third party liability insurance including injury or death to personnel who may enter the Project Site;
- iii. Workmen's compensation insurance; and
- iv. Any other insurance that may be necessary to protect the SPV, its employees and its assets and agents engaged in or connected to the project including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

## 2. Insurance Cover & Insurance Companies

The SPV shall insure all insurable assets comprised in the Project Facilities and Services and all insurable risks associated with the Project to the extent advisable in accordance with Good Industry Practice (“Insurance Cover”).

## 3. Evidence of Insurance Cover

The SPV shall, from time to time, provide to the Authority copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance) obtained by the SPV in accordance with this Agreement.

## 4. Application of Insurance Proceeds

All money received under insurance policies shall be promptly applied by the SPV towards repair or renovation or restoration or substitution of the Project Facilities and Services or any part thereof which may have been damaged or destroyed and in respect of which the claim is lodged.

## 5. Validity of the Insurance Cover

The SPV shall pay the premium payable on such insurance policy(ies) so as to keep the policy(ies) in force and valid throughout the Agreement Period and furnish copies of the same to the Authority. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days’ clear notice of cancellation is provided to the Authority in writing. If at any time the SPV fails to purchase and maintain in full force and effect the comprehensive insurances required for paddy and rice in its possession, the Authority may at its option purchase and maintain such insurance and all sums incurred by the Authority shall be reimbursed with interest @ 10% per annum by the SPV forthwith on demand, failing which the same shall be recovered by the Authority by exercising right of set off or otherwise.

## 6. Waiver of Subrogation

All insurance policies procured in terms of the provisions hereof shall include a waiver of any right of subrogation of the insurers there under against, inter alia, the Authority and its assigns and successors and their respective subsidiaries, affiliates, employees and of any right of the insurers of 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.

**d. Indemnification**

The SPV shall during the pendency of the Agreement and thereafter until all claims and demands in respect to the acts and omissions during the agreement period as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Authority, its agents and employees, from and against all claims, demands made against and/or loss caused and/or damages suffered and/or cost, charges/expenses incurred to and/or penalty levied and/or any claim due to injury to or death of any person and/or loss or damage caused or suffered to property owned or belonging to the Authority, its agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by the SPV or as a result of failure on the part of the SPV to perform any of its obligations under the Agreement or on the SPV committing breach of any of the terms and conditions of the Agreement or on the failure of the SPV to perform any of its duties and/or obligations including statutory duties or as a consequence of any notice, action, suit or proceedings, given, initiated, filed or commenced by any third party or Government Authority or as a result of any failure or negligence or default of the SPV or its Contractor(s), sub-contractor(s), or employees, servants, agents of such Contractor(s) and/or sub-contractor(s) and/or invitees as the case may be, in connection with or arising out of the Agreement and/or arising out of or, in connection with the SPV's use and operation and maintenance of the Project Facilities and Services.

**e. Engagement of Contractors**

The SPV may engage any Person possessing the requisite skill, expertise and capability for operation and maintenance of the Project Facilities and Services.

Provided: the SPV shall at all times be solely responsible for all its obligations under the Agreement notwithstanding any such engagement and anything contained in any Project Contracts or any other agreement, and no default under any Project Contract or agreement shall excuse the SPV from its obligations or liability hereunder and the SPV shall at all times be solely responsible for non-performance or for any defect, deficiency or delay in installation of the structures/equipment or any part thereof and

for the operation and maintenance of the Project/the Project Facilities and Services in accordance with the provisions of the Agreement;

**f. Change in Ownership**

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

Notwithstanding anything to the contrary contained in this Agreement, the SPV agrees and acknowledges that:

- i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the SPV; or
- ii. acquisition of any control directly or indirectly of the Board of Directors of the SPV 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. The decision of the Authority in this behalf being final, conclusive and binding on the SPV, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the SPV 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 endeavor 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 SPV from any liability or obligation under this Agreement.

For the purposes of this Article:

1. 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 SPV;

2. 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 SPV; and
3. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the SPV, not less than half of the directors on the Board of Directors of the SPV or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the SPV shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the SPV.

**g. Inventory Survey**

The SPV agrees that at least once in a month during the Agreement Period, the Authority shall conduct inventory survey of the paddy and rice available with the SPV.

**12.2 Of the Authority**

**a. Assistance in obtaining Approvals, Permits and Licenses**

The Authority shall, at the written request of the SPV, but without guarantees and/or without assuming any responsibility in that behalf, issue recommendatory letters and make best efforts to assist the SPV in obtaining all the Applicable Statutory Approvals. Provided that, nothing contained in this Article shall relieve the SPV of its obligations under the Agreement to obtain the Applicable Approvals and to keep them in force and effect throughout the Agreement Period.

**b. General rights of inspection and verification**

1. The Authority or its authorized representatives / Project Management Consultants shall have the right to inspect, survey and verify the facility, stocks, and accounts at its own discretion without any prior notice. The SPV should co-operate and provide the details called for.

2. The Authority may during the pendency of the Agreement itself or by appointment of Experts verify the performance obligations of the SPV as set out in the Agreement.

### **12.3 Of the Authority and the SPV**

#### **a. Compliance with Laws and Regulations**

The Parties shall perform their respective obligations under the Agreement in accordance with the Applicable Laws and Applicable Permits.

#### **b. Rights to Documents**

##### **1. The Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by The Authority to the SPV, shall always remain the property of the Authority. Such documents, computer programs and/or copies shall not be used by the SPV for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by the SPV to the Authority at the end of Agreement period.

##### **2. SPV's Documents**

Documents and computer programs provided by the SPV, or which are developed (and owned by the SPV) for operation and/or maintenance of the Project /the Project Facilities and Services shall be taken back by the SPV at the end of Agreement period.

##### **3. Confidentiality**

All confidential information and documents (whether financial, technical or otherwise) provided by either Party to the other shall not, unless compelled by law or the process of a Government Authority, be disclosed to any Person without the consent of the other Party with the exception of providing such information to legal advisors/auditors of the concerned party on a need-to-know basis. This covenant shall survive the Agreement Period.

##### **4. Obligation to Cooperate**

The Parties shall mutually cooperate with each other in order to achieve the objectives of the Agreement.

## ARTICLE 13

### CHANGE IN LAW

#### 13.1 Change in Law

“Change in Law” means any of the following events which has a Material Adverse Effect:

- a. Adoption, promulgation, modification, reinterpretedation or repeal after the date of the Agreement by any Government Authority of any statute, rule, ordinance, regulation or order, treaty, convention, directive, guideline, policy having force of law; or
- b. The imposition by any Government Authority of any material condition (other than a condition which has been imposed as a consequence of a violation by the SPV of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of the Agreement which renders the performance by the SPV of any of the terms of the Agreement impossible or unviable; or
- c. Any Applicable Permit previously granted, ceasing to remain in full force and effect for reasons other than breach/violation by or the negligence of the SPV or if granted for a limited period, being renewed on terms different from those previously stipulated.

Provided any (i) imposition of new taxes, duties, cess and the like and/or the increase in taxes, duties, cess and the like effected from time to time by any Government Authority, and/or (ii) imposition of standards and condition of operations, maintenance and safety arising out of a new or revised Environmental Law; and/or (iii) imposition of standards and terms of employment and working conditions of labourers and workmen; and/or (iii) any rules or regulations stipulated by the Authority or other regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

#### 13.2 Remedy

- a. In the event of Change in Law the parties may propose modifications to the relevant terms of the Agreement which are reasonable and intended to mitigate the effect of the Change in Law. Thereupon, the Parties shall, in good faith, negotiate and agree upon suitable changes in the terms of the Agreement including extension of the

Agreement Period, so as to place the parties in substantially the same legal and financial position as it were prior to such Change in Law. Provided however, that if the resultant Material Adverse Effect is such that the Agreement is frustrated or is rendered illegal or impossible of performance, the Change in Law shall be deemed to be a Political Event, whereupon the provisions with respect thereto shall apply.

- b. Upon occurrence of a Change in Law, either party shall notify other party, of the following:
  1. The particulars, nature and the impact of Change in Law on the Project;
  2. In sufficient detail, the estimate of the Additional Cost likely to be incurred by on account of the Change in Law; and
  3. The measures, which has been taken or proposes to take to mitigate the impact of Change in Law, including in particular, minimizing the Additional Cost.
- c. Upon receipt of the notice of Change in Law issued by either parties pursuant to the preceding sub-article (b), the Authority and the SPV shall hold discussions and take all such steps as may be necessary including determination/certification by an Expert, appointed by the Parties by mutual consent, of the Additional Cost and to determine the quantum of the Additional Cost to be incurred.
- d. Notwithstanding the aforesaid, if in terms of Good Industry Practice, the event constituting a Change in Law could be insured, the SPV shall not be entitled to any remedy under Article 13.2;

## **ARTICLE 14**

### **FORCE MAJEURE**

#### **14.1 Force Majeure Event**

Force Majeure Event means the occurrence of any of the Non-Political Events, the Political Events or the Other Events in India, set out in Article 14.2, 14.3 and 14.4 respectively including the impact/consequence thereof which :

- a. Is beyond the control of the Party claiming to be affected thereby (the “Affected Party”);
- b. Prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- c. The Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

#### **14.2 Non-Political Events**

Any of the following events which prevent the Affected Party from performing any of its obligations for a continuous period of not less than 7 (seven) Days from the date of its occurrence, shall constitute a Non-Political Event:

- a. Act of God, epidemic, earthquake, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Project Site and by reasons not attributable to the SPV or the Contractor or any of the employees or agents of the SPV or the Contractor);
- b. Strikes or boycotts (other than those involving the SPV, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 14.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the SPV or the Contractor;
- c. Any failure or delay of a Contractor caused by any of the Non-Political Events, for which no offsetting compensation is payable to the SPV or on behalf of the Contractor;

- d. The discovery of geological conditions, toxic contamination or archeological remains on the Project Site that could not reasonably have been expected to be discovered through a site inspection; or
- e. Any event or circumstance of a nature analogous to any of the foregoing.

### **14.3 Political Events**

Any of the following events shall constitute Political Event:

- a. Change in Law for which no relief is provided under the provisions of Article 13, resulting in Material Adverse Effect;
- b. Action of a Government Authority having Material Adverse Effect including but not limited to (i) acts of expropriation, compulsory acquisition or takeover by any Government Authority of the Project/Project Facilities and Services or any part thereof or of the SPV's or the Contractor's rights under any of the Project Contracts, and (ii) any unlawful, unauthorized or without jurisdiction refusal to issue or to renew or the revocation of any Applicable Permits, in each case, for reasons other than the SPV's or the Contractor's breach or failure in complying with the Project Requirements, Applicable Laws, Applicable Permits, any judgment or order of a Governmental Agency or of any contract by which the SPV or the Contractor as the case may be is bound;
- c. Early determination of the contract by the Authority for reasons of national emergency, national security or the public interest;
- d. Any failure or delay of a Contractor caused by any of the aforementioned Political Events, for which no offsetting compensation is payable to the SPV by or on behalf of the Contractor; or
- e. Any event or circumstance of a nature analogous to any of the foregoing.

### **14.4 Other Events**

Any of the following events which prevents the Affected Party from performing any of its obligations under the Agreement for a continuous period of not less than 7(seven) days from the date of its occurrence, shall constitute the Other Event:

- a. An act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b. Industry wide or State wide strikes or industrial action;
- c. Any civil commotion, boycott or political agitation which prevents collection of paddy from the Authority by the SPV;
- d. Change in policy of the State Government / Central Government / Food Corporation of India (FCI) in supply of paddy;
- e. Any judgment or order of a court of competent jurisdiction or statutory authority in India made against the SPV or the Contractor in any proceedings which is non-collusive and duly prosecuted by the SPV; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the SPV or the Contractor in any proceedings which is non-collusive and duly prosecuted by the SPV other than relating to proceedings (i) pursuant to failure of the SPV 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 the contract or (iv) with respect to exercise of any of its rights under the Agreement by the Authority; or
- i. Any event or circumstance of a nature analogous to any of the foregoing.

#### **14.5 Notice of Force Majeure Event**

- a. The Affected Party shall give written notice to the other Party in writing of the occurrence of any of the Force Majeure Event (the “Notice”) as soon as the same arises or as soon as reasonably practicable and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the adverse effect it has or is likely to have on the performance of its obligations under this Agreement.
- b. The Notice shall inter-alia include full particulars of:
  - 1. The nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;

2. The duration or estimated duration and the effect or probable effect which such Force Majeure Event has or will have on the Affected Party's ability to perform its obligations or any of them under the Agreement;
  3. The measures which the Affected Party has taken or proposes to take, to alleviate the impact of the Force Majeure Event or to mitigate the damage; and
  4. Any other relevant information.
- c. So long as the Affected Party continues to claim to be affected by a Force Majeure Event, it shall provide the other Party with periodic (fortnightly/monthly) written reports containing the information called for by Article 14.5.(b) and such other information as the other Party may reasonably request.

#### **14.6 Period of Force Majeure**

Period of Force Majeure shall mean the period from the time of occurrence specified in the Notice given by the Affected Party in respect of the Force Majeure Event until the earlier of:

- a. Expiry of the period during which the Affected Party is excused from performance of its obligations in accordance with Article 14.7; or
- b. Termination of this Agreement pursuant to Article 14.10 hereof.

#### **14.7 Resumption of Performance**

During the period of Force Majeure, the Affected Party shall in consultation with the other Party, make all reasonable efforts to limit or mitigate the effects of the Force Majeure Event on the performance of its obligations. The Affected Party shall also make efforts to resume performance of its obligations under the Agreement as soon as possible and upon resumption shall notify the other Party of the same in writing. The other Party shall afford all reasonable assistance to the Affected Party in this regard.

#### **14.8 Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under the Agreement as a consequence of the Force Majeure Event shall be excused from performance of the obligations. Provided that, the excuse from performance shall be of no greater scope and of no longer duration than is reasonably

warranted by the Force Majeure Event. Provided further, nothing contained herein shall absolve the Affected Party from any payment obligations accrued prior to the occurrence of the underlying Force Majeure Event.

#### **14.9 Costs, Revised Timetable**

a. Costs

Each Party shall bear its costs, if any, incurred as a consequence of the Force Majeure Event.

b. Extension of time/period

The Affected Party shall be granted by the other Party, extension of time specified in the Agreement for the performance of any obligation by such period not exceeding the period during which the relative performance was affected by the Force Majeure Event. Such extension may include extension of the Agreement Period by the Authority in appropriate cases if permissible under Applicable Law.

#### **14.10 Termination Due to Force Majeure Event**

If the period of Force Majeure continues or is in the reasonable judgment of the Parties likely to continue beyond a period of 120 (one hundred and twenty) Days, the Parties may mutually decide to terminate the contract or continue the contract on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty) Days be entitled to terminate the contract in which event, the provisions of Article 16 and Article 17 shall, to the extent expressly made applicable, apply.

## ARTICLE 15

### EVENTS OF DEFAULT

#### 15.1 Events of Default

Event of Default means the SPV Event of Default or the Authority Event of Default or both as the context may admit or require.

##### a. The SPV Event of Default

The SPV Event of Default means any of the following events unless such an event has occurred as a consequence of the Authority Event of Default or a Force Majeure Event:

1. The SPV's failure to perform or discharge any of its obligations in accordance with the provisions of the Agreement;
2. The SPV's failure to adhere to the following:

##### **Implementation period**

	Delay beyond the due date / extended date by
Purchase of land	3 months
Formation of SPV	3 months
Financial closure	3 months
Commencement of commercial production	9 months

##### **Operational Period**

- Non lifting of paddy from any DPC continuously for a period of 15 days without the approval of the Authority
  - Non-operational of the mill facilities continuously for a period of 15 days without the approval of the Authority
3. The SPV's failure to perform or discharge any of its obligations under any other Project Contract, which has or is likely to affect the Project/the Project Facilities and Services, materially;

4. Any representation made or warranties given by the SPV under this Agreement is found to be false or misleading;
5. The SPV passing a resolution for voluntary winding up;
6. Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the SPV by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
7. Levy of an execution or distraint on the SPV's assets which has or is likely to have Material Adverse Effect and/or affect the Project/Project Facilities and Services, materially and such execution or distraint remaining in force for a period exceeding 90 ( ninety) Days;
8. The Security Deposit / Performance Guarantee is not maintained in terms of the provisions hereof;
9. The SPV abandons or expresses its intention to revoke/terminate the Agreement without being entitled to do so as is expressly provided in the Agreement;
10. A change in shareholding such that the beneficial interest of the SPV reduces below the limits set in Article 10.2 and/or Management Control of the SPV has occurred in contravention of the provisions of Article 10 hereof;
11. Amalgamation of the SPV with any other company or reconstruction or transfer of the whole or part of the SPV's undertaking other than transfer of assets in the ordinary course of business in contravention with the provisions of Article 10 hereof; and
12. The SPV engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under the Agreement and/or by law or which constitutes a breach of the Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to the Agreement.

## **b. The Authority Event of Default**

1. The Authority's failure to perform or discharge its obligations in accordance with the provisions of the Agreement unless such failure has occurred as a consequence of any SPV Event of Default or a Force Majeure Event.
2. Any representation made or warranties given by the Authority under the Agreement is found to be false or misleading.

## **15.2 Parties Rights**

- a. Upon the occurrence of the SPV Event of Default, the Authority shall without prejudice to any other rights and remedies available to it under the Agreement be entitled to terminate the Agreement.
- b. Upon the occurrence of the Authority Event of Default, the SPV shall without prejudice to any other rights and remedies available to it under the Agreement be entitled to terminate the Agreement.
- c. Provided that before proceeding to terminate the Agreement, the Party entitled to do so shall give due consideration and shall have due regard to the nature of the underlying Event of Default, its implication on the performance of the respective obligations of Parties under the Agreement and the circumstances in which the same has occurred.

## **15.3 Consultation Notice**

Either Party exercising its right under Article 15.2, shall issue to the other Party a notice in writing specifying in reasonable detail the underlying Event of Default(s) and proposing consultation amongst the Parties to consider possible measures of curing or otherwise dealing with the underlying Event of Default ("Consultation Notice").

## **15.4 Remedial Process**

Following the issue of Consultation Notice by either Party, within a period not exceeding 90 (ninety) Days or such extended period as the Parties may agree ("Remedial Period") the Parties shall, endeavour to arrive at an agreement as to the manner of rectifying or remedying the underlying Event of Default. Without prejudice to this, if the underlying event is a SPV Event of Default, the Authority shall endeavour

to arrive at an agreement as to and/or any measures as may be considered appropriate by them in the attendant circumstances.

### **15.5 Obligations during Remedial Period**

During the Remedial Period, the Parties shall continue to perform their respective obligations under the Agreement which can be performed, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

### **15.6 Revocation of Consultation Notice**

If during the Remedial Period the underlying Event of Default is cured or waived or the Parties agree upon any of the measures set out in Article 15.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

### **15.7 Termination due to Events of Default**

If before the expiry of the Remedial Period, the underlying Event of Default is neither cured nor waived nor the Parties have agreed upon any of the measures in accordance with Article 15.4, the Party who has issued the Consultation Notice shall have the right to terminate the Agreement, in which event, the provisions of Article 16 and Article 17 shall, to the extent expressly made applicable, apply.

### **15.8 The Authority's Rights of Step-in**

Upon a Termination Notice being issued by either parties due an Event of Default, the Authority shall, at its discretion

- a. Take possession of the paddy stored in the storage facilities
- b. Take possession of hulled rice in the mill premises
- c. Invoke Bank Guarantee provided towards security deposit / performance guarantee

## **ARTICLE 16**

### **TERMINATION OF THE AGREEMENT**

#### **16.1 Termination Procedure**

The Party entitled to terminate the Agreement either on account of a Force Majeure Event or on account of an Event of Default shall do so by issue of a notice in writing (“Termination Notice”) to the other Party. The Termination Notice shall be of not less than 90 (ninety) Days and not ordinarily be more than 180 (one hundred and eighty) Days, (“Termination Period”) and at the expiry of the Termination Period, this Agreement shall stand terminated without any further notice.

#### **16.2 Obligations during Termination Period**

During Termination Period, the Parties shall subject where applicable to the provisions of this Article 16, continue to perform such of their respective obligations under the Agreement which are capable of being performed with the object, as far as possible, failing which the Party in breach shall compensate the other Party for any loss or damage occasioned or suffered on account of the underlying failure/breach.

#### **16.3 Requisition**

The SPV has no right to claim compensation from the Authority, upon issue or receipt as the case may be of Termination Notice, either as a consequence of a Force Majeure Event or as a consequence of an Event of Default.

#### **16.4 Inventory Survey**

- i. The SPV agrees that on the service of a Termination Notice or at least 3 (three) months prior to the expiry of the Agreement Period, as the case may be, it shall conduct or cause to be conducted under the Authority’s supervision, an inventory survey on the quantity of paddy and rice available with the SPV and verifying compliance with the SPV’s obligations under the Agreement.
- ii. If, as a result of the survey, the Authority shall observe/notice that there has been any shortfall in the inventory, the SPV shall, at its cost and expenses, take all necessary steps to hand over the shortfall well before the end of agreement period.

- iii. In the event the SPV fails to comply with the provisions of the Agreement, the Authority may itself cause the inventory survey to be conducted. The Authority shall be compensated by the SPV for any costs incurred in conducting such survey.

## **16.5 Consequences of Termination**

Without prejudice to any other consequences or requirements under the agreement or under any law:

- i. The SPV shall hull all the paddy supplied by the Authority and handover the rice to the Authority upon expiry of the Agreement Period by efflux of time or termination of the Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 19; If any shortfall in the quantity of rice handed over with respect to the stipulated norms shall also be compensated at the rate of 120% of the cost of paddy and other incidental charges.
- ii. The Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the SPV against any amounts owing to the Authority by the SPV.
- iii. Notwithstanding anything contained in the Agreement, except for ensuring the deposit of the compensation payable to the SPV in accordance with Article 17, the Authority shall not, as a consequence of termination or otherwise, have any obligation whatsoever to any third party including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the SPV in connection with the Project, Assets/Project Facilities & Services by the SPV to the Authority shall be free from any such obligation.

## **ARTICLE 17**

### **COMPENSATION**

#### **17.1 Compensation**

a. Termination due to Force Majeure Event

If the termination is due to a Force Majeure Event, no compensation shall be payable by either parties.

b. Termination due to SPV Event of Default

If the termination is due to a SPV Event of Default, the security deposit / performance guarantee amount remitted by the SPV will be forfeited.

c. Termination due to the Authority Event of Default

If the termination is due to Authority Event of Default, no compensation shall be payable by the Authority and the SPV will be at liberty to operate the mill and independently and process paddy from other sources.

#### **17.2 No Compensation on Expiry of Agreement Period**

In the event of expiry of Agreement by efflux of time, the SPV shall hull all the paddy supplied by the Authority and handover the equivalent head rice to the Authority. If any shortfall in the quantity of rice handed over with respect to the stipulated norms the Authority shall be compensated at the rate of 120% of the cost of paddy and other incidental charges. In such a scenario, the estimation done by the Authority is final and binding.

#### **17.3 Delayed Payment of Compensation**

If for any reasons, other than those attributable to the SPV, the Authority fails to pay the compensation on the end of agreement date, the Authority shall be liable to pay interest @10% per annum thereon from the date of end of agreement till payment thereof. Provided, nothing contained in this Article shall be deemed to authorise any delay in payment of compensation in accordance with the Agreement.

#### **17.4 Remedies Cumulative**

The exercise of right by either Party to terminate the Agreement, as provided herein, shall not preclude, such Party from availing any other rights or remedies that may be available to it under law. All remedies available to the Parties shall be cumulative and the exercise or failure thereof of one or more remedies by any Party shall not limit or preclude the exercise of or constitute a waiver of any other remedies by such Party.

## **ARTICLE 18**

### **ASSIGNMENT AND CHARGES**

#### **18.1 Restrictions on assignment and charges**

- a. Subject to Article 18.2, this Agreement shall not be assigned by the SPV 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.
- b. Subject to the provisions of Article 18.2, the SPV 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 SPV 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.

#### **18.2 Permitted assignment and charges**

The restraints set forth in Article 18.1 shall not apply to:

- a. liens arising by operation of law in the ordinary course of business of the Project;
- b. Liens or encumbrances required by any Applicable Law.

#### **18.3 Assignment by the Authority**

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

## **ARTICLE 19**

### **TRANSFER ON EXPIRY OF THE AGREEMENT PERIOD**

#### **19.1 General Scope of Transfer/Payment**

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of the Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 16, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be as set out in Article 19.2 and Article 19.3.

#### **19.2 SPV's Obligations**

The SPV shall;

- i. hull all the paddy supplied by the Authority and handover the rice to the Authority; If any shortfall in the quantity of rice handed over with respect to the stipulated norms shall also be compensated at the rate of 120% of the cost of paddy and other incidental charges
- ii. at its cost, remove within 30 (ninety) days from expiry of the Agreement Period, from the DPCs any moveable assets that are not taken over by or not to be transferred to the Authority in terms of the provisions of the Agreement.

#### **19.3 The Authority's Obligations**

- i. Except in the event of expiry of the agreement period by efflux of time, the Authority shall pay compensation payable to the SPV in accordance with Article 17 to the SPV. The SPV confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of compensation under the Agreement.
- ii. The SPV further confirms that payment of compensation by the Authority in accordance with this Article 17 shall be a valid discharge to the Authority in respect of the Authority's obligation regarding payment of compensation to the SPV under the Agreement.

#### **19.4 Risk**

Until transfer in accordance with this Article 19, the goods (paddy, rice) shall remain at the sole risk of the SPV except for any loss or damage caused to or suffered by the SPV due to any act or omission or negligence on the part of the Authority under the Agreement.

## **ARTICLE 20**

### **DISPUTE RESOLUTION**

#### **20.1 Dispute Resolution Board**

A Dispute Resolution Board (DRB) shall be formed in order to resolve the disputes that may arise during the currency of this Agreement. The members of the DRB shall be nominated by the Authority and the SPV. If any party is not satisfied with the decision of DRB, the issue shall be referred for Arbitration.

#### **20.2 Arbitration**

- a. The issues not resolved by DRB shall be referred for arbitration under the Indian Arbitration and Conciliation Act, 1996 and the Rules of the Indian Council of Arbitration, in accordance with the process specified in this Article.
- b. The Arbitration Tribunal shall consist of three (3) arbitrators to be appointed in accordance with the Indian Council of Arbitration Rules.
- c. The arbitrator shall be selected by the SPV from the panel of arbitrators approved by the Authority within 15 days from the date of receipt of the letter from the Authority along with the panel. If there is no reply from the SPV within 15 days, the Authority shall choose any of the arbitrators from the panel of arbitrators referred to above. The remuneration for the arbitrator and other expenses shall be shared equally by the Authority and the SPV.
- d. The venue of the Arbitration shall be at the Head office of the Authority at Chennai. The decision of the Arbitrator shall be final and binding on both the parties to the Arbitration.
- e. The Arbitrator may with the mutual consent of the parties, extend the time for making the award. The award to be passed by the Arbitrator is enforceable in the Court at Chennai city only.
- f. The fees for arbitrator shall be paid as per schedule 4 of Arbitration and Conciliation Act, 1996.

## **ARTICLE 21**

### **REPRESENTATIONS AND WARRANTIES**

#### **21.1 Representations and Warranties of the SPV**

The SPV represents, warrants and confirms to the Authority that:

- a. it is duly organized, validly existing and in good standing under the laws of India and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of the Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- b. it has full power and authority to execute, deliver and perform its obligations under the Agreement;
- c. it has taken all necessary action to authorize the execution, delivery and performance of the Agreement;
- d. the Agreement constitutes the legal, valid and binding obligation of the SPV, enforceable against it in accordance with the terms hereof;
- e. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under the Agreement;
- f. it has the financial standing and capacity to undertake the Project in accordance with the terms of the Agreement;
- g. the execution, delivery and performance of the 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 of association and articles of association 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. it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Authority which may result in any Material Adverse Effect on its ability to perform

its obligations under the Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under the Agreement;

- i. 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 the Agreement;
- j. no representation or warranty by it contained herein or in any other document furnished by it to the Authority including the Bid or to any Government Authority 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;
- k. 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 agreement or entering into the Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- l. agrees that the execution, delivery and performance by it of the Agreement and all other agreements, contracts, documents and writings relating to the Agreement constitute private and commercial acts and not public or governmental acts; and
- m. consents generally in respect of the enforcement of any judgement against it in any proceedings in any jurisdiction to the giving of any relief or the issue of any process in connection with such proceedings.

## **21.2 Representations and Warranties of the Authority**

The Authority represents and warrants to the SPV that:

- a. it is duly organized, validly existing and in good standing under the laws of India;
- b. it has full power and authority to execute, deliver and perform its obligations under the Agreement;
- c. it has taken all necessary action to authorize the execution, delivery and performance of the Agreement;

- d. the Agreement constitutes the legal, valid and binding obligation of the Authority, enforceable against it in accordance with the terms hereof; and
- e. there are no actions, suits or proceedings pending or to its best knowledge, threatened against or affecting it before any court, administrative body or arbitral tribunal which might materially and adversely affect its ability to meet or perform any of its obligations under the Agreement.

### **21.3 Disclosure**

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

## **ARTICLE 22**

### **MISCELLANEOUS PROVISIONS**

#### **22.1 Survival of Obligations**

Any cause of action which may have occurred in favour of either Party or any right which is vested in either Party under any of the provisions of this Agreement during the Agreement Period as the case may be as a result of any act, omission, deed, matter or thing done or omitted to be done by either Party before the expiry of the Agreement Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Agreement Period/ termination of this Agreement.

#### **22.2 Articles to survive Termination**

The provisions of Articles 16 to 22 shall, to the fullest extent necessary to give effect thereto, survive the Agreement Period/the termination of this Agreement and the obligations of Parties to be performed / discharged following the termination / early determination of this Agreement shall accordingly be performed / discharged by the Parties.

#### **22.3 Joint Responsibility**

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Authority and partly due to the negligence or default or omission on the part of the SPV, each Party shall be liable to the other Party only in the proportion to its respective degree of negligence or default or omission, as the case may be.

#### **22.4 Several Obligations**

Nothing contained in this Agreement shall be construed to create an association, trust, partnership, agency or joint venture among the Parties and Parties shall be liable to perform their respective duties and discharge their respective liabilities or obligations in accordance with the provisions of this Agreement.

#### **22.5 Severability**

If for any reason whatsoever any provision or any part(s) of this Agreement is held or shall be declared to be void or illegal or invalid under present or future laws or regulations effective and applicable during the Agreement Period, by any competent arbitral tribunal

or court, and if such provisions shall be fully separable and this Agreement shall be constructed as if such provision or such part(s) of this Agreement never comprised part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by such void or illegal or invalid provision or by its severance from this Agreement.

## **22.6 Notices**

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term or related or breach of any term of this Agreement shall be in writing and shall be given by hand delivery, recognized international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

The Authority:

The Managing Director,  
Tamil Nadu Civil Supplies Corporation (TNCSC),  
No.12, Thambusamy Road, Kilpauk  
Chennai - 600 010

The SPV:

or such other address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

## **22.7 Waiver**

No waiver of any term or condition or of the breach thereof by any Party shall be valid unless expressed in writing and signed by such Party and communicated by such Party to the other Party in accordance with the provisions of Article 22.6 of this Agreement. A waiver by any Party of any term or condition or breach thereof in a given case shall not

be deemed or construed as a general waiver of such term or condition or the breach in the future or waiver of any other terms or conditions or breach of this Agreement.

## **22.8 Amendments, Modifications or Alterations.**

No amendments, modifications or alterations of or any additions to the terms and conditions of this Agreement shall be valid unless the same be in writing and agreed to by the Parties.

## **22.9 Fraudulent and Corrupt Practices**

- a. The SPV and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the subsistence of this Agreement. Notwithstanding anything to the contrary contained in the Agreement, the Authority may terminate the Agreement without being liable in any manner whatsoever to the SPV, if it determines that the SPV has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice. In such an event, the Authority shall forfeit the Security Deposit / Performance Guarantee as the case may be, without prejudice to any other right or remedy that may be available to the Authority hereunder or subsistence otherwise.
- b. Without prejudice to the rights of the Authority under Article 22.9.(a) hereinabove and the rights and remedies which the Authority may have under this Agreement, if the SPV is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bid process, or after the issue of LoA or after the execution of this Agreement, the Authority may terminate the Agreement without being liable in any manner whatsoever to the SPV. Further, in such an event, the Authority shall forfeit the Security Deposit / Performance Guarantee.
- c. Further, the SPV shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years from the date such SPV is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practices, as the case may be.
- d. For the purposes of this Article 22.9, the following terms shall have the meaning hereinafter respectively assigned to them:

- i. “corrupt practice” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bid process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated or dealt in any manner, directly or indirectly with the Bid process or the LoA or has dealt with matters concerning this Agreement or arising there from, before or after the execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bid Process); or (ii) engaging in any manner whatsoever, whether during the Bid Process or after the issue of the LoA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Mill or the LoA or the Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Project;
- ii. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bid process;
- iii. “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Bid process;
- iv. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bid process; or (ii) having a conflict of interest; and
- v. “restrictive practice” means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restricting or manipulating a full and fair competition in the Bid process

## **22.10 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of India and courts having territorial jurisdiction over the Project shall have jurisdiction over all matters relating to or arising out of this Agreement.

### **22.11 Jurisdiction of the Court**

Any dispute arising out of non-fulfilment of any of the terms and conditions of this Agreement or any other dispute arising out of the arbitration award will be subject to the jurisdiction of the Courts in the City of Chennai only.

### **22.12 Entire Agreement**

This Agreement and the Appendices together constitute a complete and exclusive statement of the terms of the agreement between the Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement unless specifically retained in this Agreement and the Appendices, by reference or otherwise, are abrogated and withdrawn.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this

Agreement on the dates indicated next to their signatures below:

## APPENDIX 1

### APPROVED SERVICE CHARGES

Service Charges approved by the Authority

Service charges per ton of paddy for handling / processing for 1 <sup>st</sup> year	
Service charge per ton of paddy for 2 <sup>nd</sup> year	
Service charge per ton of paddy for 3 <sup>rd</sup> year	
Service charge per ton of paddy for 4 <sup>th</sup> year	
Service charge per ton of paddy for 5 <sup>th</sup> year	
Service charge per ton of paddy for 6 <sup>th</sup> year	
Service charge per ton of paddy for 7 <sup>th</sup> year	
Service charge per ton of paddy for 8 <sup>th</sup> year	
Service charge per ton of paddy for 9 <sup>th</sup> year	
Service charge per ton of paddy for 10 <sup>th</sup> year	
Service charge per ton of paddy for 11 <sup>th</sup> year	
Service charge per ton of paddy for 12 <sup>th</sup> year	
Service charge per ton of paddy for 13 <sup>th</sup> year	
Service charge per ton of paddy for 14 <sup>th</sup> year	
Service charge per ton of paddy for 15 <sup>th</sup> year	
Service charge per ton of paddy for 16 <sup>th</sup> year	
Service charge per ton of paddy for 17 <sup>th</sup> year	
Service charge per ton of paddy for 18 <sup>th</sup> year	
Service charge per ton of paddy for 19 <sup>th</sup> year	
Service charge per ton of paddy for 20 <sup>th</sup> year	
If extended	
Service charge per ton of paddy for 21 <sup>st</sup> year	