

# TAMIL NADU CIVIL SUPPLIES CORPORATION,

No. 12, THAMBUSAMY ROAD, KILPAUK, CHENNAI - 600 010



**RFP REFERENCE NO. ME5/10781/2022**

## **REQUEST FOR PROPOSAL (RFP) FOR SELECTION OF CONCESSIONAIRE FOR OPERATION AND MAINTENANCE OF 50,000 MT CAPACITY SILO FACILITY AT ERUKKUR MRM CAMPUS, MAYILADUTHURAI DISTRICT FOR A PERIOD OF 10 YEARS**

Date of Release of RFP	10.03.2024
Pre bid Meeting	08.04.2024
Last Date for Submission of Bid	08.05.2024 @ 11.00 am
Date of Opening of Bid	09.05.2024 @ 11.30 am

## Glossary

Associate	As defined in Clause 2.2.5
Authority	Tamil Nadu Civil Supplies Corporation
Bid Due Date	As defined in Clause 1.1.8
Concession Agreement	As defined in Clause 1.1.4
Conflict of Interest	As defined in Clause 2.2.1 (b)
GoTN	Government of Tamil Nadu
LOA	Letter of Award
Net Worth	As defined in Clause 2.2.2
O&M	Operation & Maintenance
Re. or Rs. or INR or ₹	Indian Rupee
Selected Bidder	As defined in Clause 4.2.1
Turnover	As defined in Clause 2.2.2

# CONTENTS

## DISCLAIMER

<b>1</b>	<b>INTRODUCTION</b>	
	1.1 Background	1
	1.2 Brief description of Bidding Process	3
	1.3 Schedule of Bidding Process	5
<b>2</b>	<b>INSTRUCTIONS TO BIDDERS</b>	
	<b>(A) GENERAL</b>	
	2.1 Scope of Bid	6
	2.2 Eligibility of Bidders	6
	2.3 Number of Bids and Cost thereof	10
	2.4 Site Visit and Verification of Information	10
	2.5 Acknowledgement by Bidder	10
	2.6 Right to Accept any Bid and to Reject any or all Bids	10
	<b>(B) DOCUMENTS</b>	
	2.7 Contents of the RFP	12
	2.8 Clarifications	13
	2.9 Amendment of RFP	13
	<b>(C) PREPARATION AND SUBMISSION OF BIDS</b>	
	2.10 Language	14
	2.11 Submission of Bids	14
	2.12 Uploading of Bids	14
	2.13 Bid Due Date	15
	2.14 Late submission of Bids	15
	2.15 Modifications/ Substitution/ withdrawal of Bids	16
	<b>(D) EVALUATION OF TECHNICAL BID</b>	
	2.16 Opening and Evaluation	16
	2.17 Confidentiality	17
	2.18 Tests of responsiveness	17
	2.19 Clarifications	17
	<b>(E) QUALIFICATION OF TECHNICAL BIDS</b>	
	2.20 Qualification and notification	18
	<b>(F) BID SECURITY</b>	
	2.21 Bid Security	18
<b>3</b>	<b>CRITERIA FOR EVALUATION OF TECHNICAL BIDS</b>	
	3.1 Evaluation Parameters	20
	3.2 Qualification of Bidders	20

<b>4</b>	<b>OPENING AND EVALUATION OF FINANCIAL BIDS</b>	
	4.1 Opening of Financial Bid	21
	4.2 Selection of Bidder	21
	4.3 Contacts during bid evaluation	22
	4.4 Bid parameter	22
<b>5</b>	<b>FRAUD AND CORRUPT PRACTICES</b>	23
<b>6</b>	<b>PRE-BID MEETING</b>	25
<b>7</b>	<b>MISCELLANEOUS</b>	26

#### **LIST OF ANNEXURES**

Annexure-I	Letter comprising the Bid	27
Annexure-II	Details of the Bidder	31
Annexure-III	Annual Turnover Certificate	33
Annexure-IV	Networth Certificate	34
Annexure-V	Statement of Legal Capacity	35
Annexure-VI	Power of Attorney for signing of Bid	36
Annexure-VII	Declaration for not having blacklisted	38
Annexure-VIII	Declaration for not having tampered the RFP	39
Annexure-IX	Clarification of RFP document format	40
Annexure-X	Technical Specifications of Silo facility	41
Annexure-XI	Format for Financial Proposal	43

## **DISCLAIMER**

The information contained in this Request for Proposal document (the “RFP”) or subsequently provided to Bidder(s), whether verbally or in documentary or any other form, by or on behalf of TNCSC or any of its employees or advisors, is provided to Bidder(s) on the terms and conditions set out in this RFP such other terms and conditions subject to which such information is provided.

This RFP is not an agreement and is neither an offer nor invitation by TNCSC to the prospective Bidders or any other person. The purpose of this RFP is to provide interested parties with information that may be useful to them in the formulation of their Bids for qualification and in making their financial offers. This RFP includes statements, which reflect various assumptions and assessments arrived at by TNCSC in relation to the Project. Such assumptions, assessments and statements do not purport to contain all the information that each Bidder may require.

This RFP may not be appropriate for all persons, and it is not possible for TNCSC, its employees or advisors to consider the investment objectives, financial situation and particular needs of each party who reads or uses this RFP. The assumptions, assessments, statements and information contained in this RFP may not be complete, accurate, adequate or correct. Each Bidder should therefore, conduct its own investigations and analysis and should check the accuracy, adequacy, correctness, reliability and completeness of the assumptions, assessments, statements and information contained in this RFP and obtain independent advice from appropriate sources.

Information provided in this RFP to the Bidder(s) is on a wide range of matters, some of which may depend upon interpretation of law. The information given is not intended to be an exhaustive account of statutory requirements and should not be regarded as a complete or authoritative statement of law. TNCSC accepts no responsibility for the accuracy or otherwise for any interpretation or opinion on law expressed herein.

TNCSC, its employees and advisors make no representation or warranty and shall have no liability to any person, including any Bidder, under any law, statute, rules or regulations or tort, principles of restitution or unjust enrichment or otherwise for any loss, damages, cost or expense which may arise from or be incurred or suffered on account of anything contained in this RFP or otherwise, including the accuracy, adequacy, correctness, completeness or reliability of the RFP and any assessment, assumption, statement or information contained therein or deemed to form part of this RFP or arising in any way for participation in the Bidding process.

TNCSC also accepts no liability of any nature whether resulting from negligence or otherwise howsoever caused arising from reliance of any Bidder upon the statements contained in this

RFP. TNCSC may, in its absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions contained in this RFP.

The issue of this RFP does not imply that TNCSC is bound to select or to appoint the Selected Bidder or Concessionaire, as the case may be, for the Project and TNCSC reserves the right to reject all or any of the Bids without assigning any reasons whatsoever.

The Bidder shall bear all its costs associated with or relating to the preparation and submission of its Bid including but not limited to preparation, copying, postage, delivery fees, expenses associated with any demonstrations or presentations which may be required by TNCSC or any other costs incurred in connection with or relating to its Bid. All such costs and expenses will remain with the Bidder and TNCSC shall not be liable in any manner whatsoever for the same or for any other costs or other expenses incurred by a Bidder in preparation or submission of the Bid, regardless of the conduct or outcome of the Bidding Process.

## **IMPORTANT NOTICE**

This tender procedure is governed by the Tamil Nadu Transparency in Tenders Act, 1998 and the Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 as amended from time to time. In case of any conflict between the terms and conditions in the tender document and the Tamil Nadu Transparency in Tenders Act, 1998 and The Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012 and Rules shall prevail.

# 1 Introduction

## Background

Tamil Nadu Civil Supplies Corporation, popularly known as “TNCSC,” a State-owned Section 8 Company, is involved in procurement of paddy directly from the farmers through Direct Purchase Centres (DPCs) under decentralized procurement system and undertakes hulling and supply of rice to Public Distribution System (PDS).

TNCSC procures around 40,00,000 MT of paddy annually and hulls it through its own Rice Mills and hulling agents. Since harvesting season quite often encounters with cyclones accompanied by heavy rains, mainly in Kuruvai season, the moisture level of paddy is high requiring post-harvest drying facility. However, the Rice Mills of TNCSC are not equipped with proper drying and storage facilities. This results in large scale spoilage of paddy besides deterioration of quality of rice and bye products.

With a view of reducing the post-harvest losses of paddy and to increase the capacity utilization of its rice mills, TNCSC has established Silos of 50,000 MT (16 Nos x 3125 MT) capacity in the year 2018 at a cost of ₹61.94 Crores at Erukkur village, Mayiladuthurai District.

Now that, TNCSC proposes to select a Concessionaire for operation and maintenance of the Silos for a period of 10 years under PPP mode through e-tender.

The silo facility will be handed over to the Concessionaire on as-is where basis. The Concessionaire shall undertake the following works as part of the concession to ramp up the capacity and smooth operation. The estimated cost of the works is Rs.10.89 crores.

- Repairing of plant & machineries and buildings
- Fumigation of silos
- Revamping of unloading platform to handle 40MT/hr
- Installation of Debris conveyor and Pre-cleaning filter
- Redesigning of conveyor from hopper silo / storage bins to drier to handle 600MT/day
- Installation of additional raw paddy storage bin of capacity 100 MT
- Installation of conveyor system from silo facility to Phase - I MRM (40MT/hr) to move the paddy from the silos.
- Installation of sensors to monitor moisture level in pre-cleaning, drying and silos
- Installation of weighbridge

TNCSC shall pay the estimated cost of Rs.10.89 crores towards undertaking repair works and addition of balancing equipments to the Concessionaire on monthly basis along with



interest over a period of 10 years i.e. 120 months commencing from the date of commencement of operation of the silo facility. The Interest shall be due and payable on the reducing balance of Cost at an interest rate equal to the Bank Rate at the date of signing of concession agreement plus 3% (three per cent). The interest rate is fixed and shall not change at any time during the Concession period.

Note: The cost indicated above is based on TNCSC's own estimation. Bidders are advised to make their own estimates based on the terms & conditions of the Concession Agreement.

The activities to be undertaken by the Concessionaire during the operation phase shall include the following:

- Measurement of weight and moisture level of paddy at the Silos premises and get it acknowledged by TNCSC officials / representatives
- Drying of paddy in the post-harvest dryer to a moisture level of 13-14%.
- Storing and preserving the paddy in a scientific manner in the Silos
- Delivering the stored paddy to Modern Rice Mills (I&II) located in the campus through conveyors as and when required. Besides, the stored paddy also to be delivered as and when demanded by TNCSC at the silo premises for transportation to other Rice Mills.
- The paddy delivered by the Concessionaire should meet the quality standards prescribed by TNCSC / FCI for raw paddy.

The Concessionaire shall be responsible for operation & maintenance of the silo facility and in accordance with the provisions of the concession agreement (the "Concession Agreement") to be entered into between the Concessionaire and TNCSC in the form provided by the TNCSC as part of the Bidding Documents pursuant thereto. Payment towards service charges for undertaking the operation & maintenance of silo facility shall be paid by TNCSC on monthly basis based on the quantity of paddy dried and stored after adjusting deduction towards penalty and shortfall in quantity if any.

The scope of work will broadly include repairing of the silo facility, addition of balancing equipments and operation & maintenance of the silo facility as more particularly as set forth in the draft Concession Agreement. The timeline for undertaking repairs of the Silo facility and addition of balancing equipments shall be 6 months from the date of handing over physical possession of the Silo Facility. The Concessionaire shall be responsible for the operation and maintenance of the silo facility for the entire concession period of 10 (ten) years (the "Concession Period") in accordance with the Concession Agreement.

The Concession Agreement sets forth the detailed terms and conditions for grant of the concession to the Concessionaire, including the scope of the Concessionaire's services and obligations (the "Concession").

The statements and explanations contained in this RFP are intended to provide a better understanding to the Bidders about the subject matter of this RFP and should not be construed or interpreted as limiting in any way or manner the scope of services and obligations of the Concessionaire set forth in the Concession Agreement or TNCSC's rights to amend, alter, change, supplement or clarify the scope of work, the Concession to be awarded pursuant to this RFP or the terms thereof or herein contained. Consequently, any omissions, conflicts or contradictions in the Bidding Documents including this RFP are to be noted, interpreted and applied appropriately to give effect to this intent, and no claims on that account shall be entertained by TNCSC.

TNCSC shall receive Bids pursuant to this RFP in accordance with the terms set forth in this RFP and other documents to be provided by TNCSC pursuant to this RFP as modified, altered, amended and clarified from time to time by TNCSC, (collectively the "Bidding Documents") and all Bids shall be prepared and submitted in accordance with such terms on or before the date specified in Clause 1.3 for submission of Bids (the "Bid Due Date").

### **Brief description of Bidding Process**

The RFP comprises of (i) Technical bid and (ii) Financial bid. The bidders who are qualified in the technical bid will be shortlisted and the financial bids of those bidders alone will be opened.

The Bid shall be valid for a period of not less than 180 (one hundred and eighty) days from the Bid Due Date ("Bid Validity Period").

The Bidding Documents including the draft Concession Agreement along with Schedules, for the Project are enclosed for the Bidders. The aforesaid documents and any addenda issued subsequent to this RFP Document, will be deemed to form part of the Bidding Documents.

A Bidder will be required to deposit, along with its Bid, a Bid Security of Rs.20,00,000 (Rupees Twenty Lakhs Only) (the "Bid Security") refundable no later than 60 (sixty) days after the expiration of the bid validity period, including any extension thereof, or 60 (sixty) days after the issue of the letter of award, whichever is earlier, except in the case of the Selected Bidder whose Bid Security shall be retained till it has provided a

Performance Guarantee under the Concession Agreement. The Bid security shall be deposited through RTGS.

The Bid shall be summarily rejected if it is not accompanied by the Bid Security.

Bidders have to upload the UTR particulars of RTGS transaction against the NEFT / RTGS column given in the e-procurement portal.

The Bidders are advised to examine the Project in greater detail, and to carry out, at their cost, such studies as may be required for submitting their respective Bids for award of the concession including implementation of the Project.

Bids are invited for the Project on the basis of the lowest service charges per MT paddy offered by a Bidder for undertaking the work / services envisaged in the Concession Agreement. The Concession Period is pre-determined, as indicated in the Concession Agreement. The service charges per MT of paddy handled shall constitute the sole criteria for evaluation of the financial bids. Subject to Clause 4.2.1, the Project will be awarded to the Bidder quoting the lowest service charges per MT of paddy.

In this RFP, the term “Lowest Bidder” shall mean the Bidder who is offering the lowest service charges per MT of paddy.

The remaining Bidders shall be kept in reserve and may, in accordance with the process specified in Section 3 of this RFP, be invited to match the Bid submitted by the Lowest Bidder in case such Lowest Bidder withdraws or is not selected for any reasons. In the event that none of the other Bidders match the Bid of the Lowest Bidder, TNCSC may, in its discretion, invite fresh Bids from all remaining Bidders or annul the Bidding Process, as the case may be.

Details of the process to be followed and the terms thereof are spelt out in this RFP.

Any queries or request for additional information concerning this RFP shall be submitted in writing “Managing Director, Tamil Nadu Civil Supplies Corporation, No.12, Thambusamy Road, Kilpauk, Chennai - 600 010” or through e-mail to [tncscme@gmail.com](mailto:tncscme@gmail.com) with identification/ title:

"Queries/Request for Additional Information: RFP for selection of Concessionaire for Operation and Maintenance of Silo Facility at Erukkur MRM Campus, Mayiladuthurai District for a period of 10 years"

## Schedule of Bidding Process

TNCSC shall endeavour to adhere to the following schedule:

<b>S.No.</b>	<b>Milestones</b>	<b>Date</b>
1	Issue of RFP	10.03.2024
2	Last date for receiving queries	26.03.2024
3	Pre-Bid Meeting	08.04.2024
4	TNCSC response to pre-bid latest by	19.04.2024
5	Bid Due Date	08.05.2024 @ 11:00 am
6	Opening of Bids	09.05.2024 @ 11.30 am
7	Validity of Bids	180 days of Bid Due Date
8	Letter of Award (LoA)	Within 30 days of Bid Due Date
9	Signing of Concession Agreement	Within 30 days of award of LOA

In case of particular date happens to be a Public Holiday of GoTN, the next working day will be the applicable date for the proposed event.

## **2 Instructions to Bidders**

### **A General**

#### **Scope of Bid**

TNCSC wishes to receive Bids for the selection of a Concessionaire for Operation & Maintenance of 50,000 MT Capacity Silo Facility at Erukkur MRM Campus, Mayiladuthurai for a period of 10 years. In this regard, TNCSC shall constitute the committee as per the Tamil Nadu Transparency in Tender (Public Private Partnership), Rules 2012 for approving the bidding process.

#### **Eligibility of Bidders**

For determining the eligibility of Bidders for their pre-qualification prescribed hereunder, the following shall apply:

- a. The Bidder for pre-qualification shall only be a single entity.
- b. The Bidder shall not have a conflict of interest (the “Conflict of Interest”) that affects the Bidding Process. Any Bidder found to have a Conflict of Interest shall be disqualified. The Bidder shall be deemed to have a Conflict of Interest affecting the Bidding Process, if:
  - i. any other prospective Bidder or any associate or constituent thereof have common controlling shareholders or other ownership interest; or
  - ii. a constituent of such prospective Bidder is also a constituent of another prospective Bidder. Provided that ‘constituent’ in such cases will not include the provider of a proprietary technology to more than one Bidder; or
  - iii. such prospective Bidder, or any associate thereof receives or has received any direct or indirect subsidy, grant, concessional loan or subordinated debt from any other Bidder or Respondent, or any associate thereof has provided any such subsidy, grant, concessional loan or subordinated debt to any other Bidder or Respondent, its member or any associate thereof; or
  - iv. such prospective Bidder has the same legal representative for purposes of the Tender Proceedings as any other prospective Bidder; or

- v. such prospective Bidder, its member or any associate thereof, has a relationship with another prospective Bidder, or any associate thereof, directly or through common third party/ parties, that puts either or both of them in a position to have access to each other's information about, or to influence the Response of either or each other; or
- vi. such prospective Bidder, its member or any associate thereof, has participated as a consultant to the Tender Inviting Authority and Tender Accepting Authority in the preparation of any documents, design or technical specifications of the Project; or
- vii. if any legal, financial or technical advisor of the Tender Inviting Authority and Tender Accepting Authority in relation to the Project is engaged by the prospective Bidder, its member or any associate thereof, as the case may be, in any manner for matters related to or incidental to the Project.
- viii. Provided that this clause shall not apply where such advisor was engaged by the Bidder or Respondent, its member or associate in the past but such engagement expired or was terminated 6 (six) months prior to the date of issue of RFP or where such advisor is engaged after a period of 3 (three) years from the date of commencement of operation of silo facility.
- c. The Bidder shall be liable for disqualification if any legal, financial or technical advisor of TNCSC in relation to the Project is engaged by the Bidder, its Member or any Associate thereof, as the case may be, in any manner for matters related to or incidental to the Project. For the avoidance of doubt, this disqualification shall not apply where such adviser was engaged by the Bidder or Respondent, its Member or Associate in the past but its assignment expired or was terminated 6 (six) months prior to the date of issue of this RFP or where such adviser is engaged after a period of 3 (three) years from the date of commencement of operation of silo facility.

To be eligible for pre-qualification and short-listing, the Bidder shall fulfil the following conditions of eligibility:

Clause	Qualification Criteria	Supporting Documents/Remarks
a.	The bidder should be a registered legal entity in India and should be in existence for the past three years as on 31 <sup>st</sup> March 2023	(i) In case of Private / Public Limited Companies, <ul style="list-style-type: none"> <li>• Copy of Incorporation Certificate issued by the Registrar of Companies</li> <li>• Copy of Memorandum and Articles of Association</li> </ul> (ii) In case of Partnership Firm, <ul style="list-style-type: none"> <li>• Copy of Registered Partnership Deed</li> </ul> (iii) In case of Proprietorship Firm, <ul style="list-style-type: none"> <li>• Copy of GST Registration Certificate</li> </ul>

Clause	Qualification Criteria	Supporting Documents/Remarks
b.	The bidder should have minimum 3 years of experience (as on 31 <sup>st</sup> March 2023) in the business of handling food grains / Agro commodities.	(i) GST Registration Certificate (ii) Annual GST Returns for the last 3 years i.e. FY2019-20, FY2020-21, FY2021-22
c.	The bidder should have reported an Average Annual Turnover* of at least Rs.15 Crores in the last three consecutive financial years i.e., 2020-21, 2021-22 and 2022-23.	(i) The average annual turnover statement duly certified by Chartered Accountant as per Annexure III  (ii) The Annual Report/ certified copies of Balance Sheet, Profit & Loss statement for the last 3 consecutive financial years i.e. 2019-20, 2020-21 and 2021-22 (or) 2020-21, 2021-22 and 2022-23.
d.	The bidder should have reported a positive networth* of atleast Rs.5.00 crores as on 31 <sup>st</sup> March 2023	Net worth certificate duly certified by Chartered Accountant as per Annexure IV
e.	The bidder should have successfully handled an average of 10,000 MT food grains in the last 3 years as on 31 <sup>st</sup> March 2023.	Chartered Accountant certificate with UDIN indicating the quantity of food grains handled along with the name of clients and address for the last 3 years
f.	The bidder should not have been blacklisted by Central Government, any State Government, a Statutory Body, any Public Sector Undertaking, Banks or Financial Institutions and declared as NPA by Banks or Financial Institutions as on the date of publication of tender notice.	(i) The declaration form as per Annexure VII should be enclosed.  (ii) Further, if the bidder is found blacklisted in India before award of contract by any Government agency, the bid will be rejected

*\* For the purposes of this RFP, net worth (the “Net Worth”) shall mean the sum of subscribed and paid-up equity and reserves from which shall be deducted the sum of revaluation reserves, miscellaneous expenditure not written off and reserves not available for distribution to equity shareholders. For the purposes of this RFP, turnover (the “Turnover”) shall mean the gross sales of the company, and does not include other related income and non-operating income.*

The Bidder should submit a Power of Attorney as per the format at Annexure-VI, authorizing the signatory of the Bid to commit the Bidder.

The Bidder including any Associate should, in the last 3 (three) years, have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Bidder or

Associate, as the case may be, nor has been expelled from any project or contract by any public entity nor have had any contract terminated any public entity for breach by such Bidder or Associate. Provided, however that whereas Bidder claims that its disqualification arising on account of any cause or event specified in this Clause 2.2.4 is such that it does not reflect (a) any malfeasance on its part in relation to such cause or event; (b) any willful default or patent breach of the material terms of the relevant contract; (c) any fraud, deceit or misrepresentation in relation to such contract; or (d) any rescinding or abandoning of such contract, it may make a representation to this effect to TNCSC for seeking a waiver from the disqualification hereunder and TNCSC may, in its sole discretion and for reasons to be recorded in writing, grant such waiver if it is satisfied with the grounds of such representation and is further satisfied that such waiver is not in any manner likely to cause a material adverse impact on the Bidding Process or on the implementation of the Project.

In computing the Technical Capacity, Net Worth & Turnover and Experience of the Bidder under Clauses 2.2.2 (b), 2.2.2 (c), 2.2.2 (d) and 2.2.2 (e), the Technical Capacity, Net Worth & Turnover and Experience of their respective Associates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder, a person who controls, is controlled by, or is under the common control with such Bidder (the "Associate"). As used in this definition, the expression "control" means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of not less than 26% (Twenty six per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law. It is clarified that a certificate from the Statutory Auditor who audits the book of accounts or the Company Secretary of the Bidder shall be provided to demonstrate that a person is an Associate of the Bidder as the case may be.

The following conditions shall be adhered to while submitting the Bid:

- a. Bidders should attach clearly marked and referenced continuation sheets in the event that the space provided in the prescribed forms in the Annexures is insufficient. Alternatively, Bidders may format the prescribed forms making due provision for incorporation of the requested information;
- b. Information supplied by the Bidder must apply to the Bidder or Associate named in the Bid and not, unless specifically requested, to other associated companies or firms.**



- c. In responding to the pre-qualification submissions, Bidders should demonstrate their capabilities in accordance with Clause 3.1 below; and

### **Number of Bids and Cost thereof**

No Bidder shall submit more than one Bid for the Project.

The Bidders shall be responsible for all of the costs associated with the preparation of their Bids and their participation in the Bid Process. TNCSC will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Bidding Process.

### **Site Visit and Verification of Information**

Bidders are encouraged to submit their respective Bids after visiting the Project site and ascertaining for themselves the site conditions, location, surroundings, climate, handling and storage of materials, weather data, applicable laws and regulations, and any other matter considered relevant by them.

### **Acknowledgement by Bidder**

It would be deemed that by submitting the Bid, the Bidder has:

- a. Made a complete and careful examination of the RFP document;
- b. Received all relevant information requested from TNCSC;
- c. Accepted the risk of inadequacy, error or mistake in the information provided in the RFP or furnished by or on behalf of TNCSC relating to any of the matters referred to in Clause 2.4 above; and
- d. agreed to be bound by the undertakings provided by it under and in terms hereof; and
- e. Independently verified all information received from TNCSC

TNCSC shall not be liable for any omission, mistake or error in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to the RFP or the Bidding Process, including any error or mistake therein or in any information or data given by TNCSC.

### **Right to accept any Bid and to Reject any or all Bids**

Notwithstanding anything contained in this RFP, TNCSC reserves the right to accept or reject any Bid and to annul the Bidding Process and reject all Bids, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without

assigning any reasons therefore. In the event that TNCSC rejects or annuls all the Bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.

TNCSC reserves the right to reject any Bid and appropriate the Bid Security if:

- a. at any time, a material misrepresentation is made or uncovered, or
- b. the Bidder does not provide, within the time specified by TNCSC, the supplemental information sought by TNCSC for evaluation of the Bid.

If such disqualification/ rejection occur after the Financial Bids have been opened and the Lowest Bidder gets disqualified/ rejected, then TNCSC reserves the right to:

- i. invite the remaining Bidders to match the Lowest Bidder/ submit their Bids in accordance with the RFP; or
- ii. take any such measure as may be deemed fit in the sole discretion of TNCSC, including annulment of the Bidding Process.

In case it is found during the evaluation or at any time before signing of the Concession Agreement or after its execution and during the period of subsistence thereof, including the concession thereby granted by TNCSC, that one or more of the eligibility and / or qualification requirements have not been met by the Bidder, or the Bidder has made material misrepresentation or has given any materially incorrect or false information, the Bidder shall be disqualified forthwith if not yet appointed as the Concessionaire either by issue of the LOA or entering into of the Concession Agreement, and if the Selected Bidder has already been issued the LOA or has entered into the Concession Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this RFP, be liable to be terminated, by a communication in writing by TNCSC to the Selected Bidder or the Concessionaire, as the case may be, without TNCSC being liable in any manner whatsoever to the Selected Bidder or the Concessionaire. In such an event, TNCSC shall be entitled to forfeit and appropriate the Bid Security or Performance Guarantee, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to TNCSC under this RFP, the Bidding Documents, the Concession Agreement or under applicable law.

TNCSC reserves the right to verify all statements, information and documents submitted by the Bidder in response to the RFP. Any such verification or lack of such verification by TNCSC shall not relieve the Bidder of its obligations or liabilities hereunder nor will it affect any rights of TNCSC there under.

## **B Documents**

### **Contents of the RFP**

This RFP comprises the disclaimer set forth hereinabove, the contents as listed below, and will additionally include any Addenda issued in accordance with Clause 2.9.

### **Invitation for Bids**

Section 1. Introduction

Section 2. Instructions to Bidders

Section 3. Criteria for Evaluation of Technical Bids

Section 4. Opening and Evaluation of Financial Bids

Section 5. Fraud & Corrupt Practices

Section 6. Pre-bid meeting

Section 7. Miscellaneous

### **Annexures**

- I. Letter comprising the Bid
- II. Details of the Bidder
- III. Annual Turnover Certificate
- IV. Networth Certificate
- V. Statement of Legal Capacity
- VI. Power of Attorney for signing the bid
- VII. Declaration for not having blacklisted
- VIII. Declaration for not having tampered the RFP
- IX. Clarification of RFP document format
- X. Technical Specifications of Silo Facility
- XI. Format for Financial Proposal

TNCSC accepts no responsibility for the completeness of the RFP document and its addenda unless they were obtained directly from TNCSC.

The Bidder is expected to examine all instructions, forms, and terms in the RFP Document and to furnish all information or documentation required.

## **Clarifications**

Bidders requiring any clarification on the RFP may notify TNCSC in writing or by e-mail in accordance with Clause 1.2.9.

TNCSC shall endeavour to respond to the questions raised or clarifications sought by the Bidders. However, TNCSC reserves the right not to respond to any question or provide any clarification, in its sole discretion, and nothing in this Clause shall be taken or read as compelling or requiring TNCSC to respond to any question or to provide any clarification.

TNCSC may also on its own motion, if deemed necessary, issue interpretations and clarifications and publish the same in [www.tntenders.gov.in](http://www.tntenders.gov.in). All clarifications and interpretations issued by TNCSC shall be deemed to be part of the RFP. Verbal clarifications and information given by TNCSC or its employees or TNCSC representatives shall not in any way or manner be binding on TNCSC.

## **Amendment of RFP**

At any time prior to the Bid Due Date, TNCSC may, for any reason, whether at its own initiative or in response to clarifications requested by Bidder, modify the RFP by the issuance of Addendum / Corrigendum.

Any such addendum or corrigendum will be uploaded **on [www.tntenders.gov.in](http://www.tntenders.gov.in)** and the same will be binding on all Respondents or Bidders, as the case may be.

In order to afford the Bidders a reasonable time for taking an Addendum into account, or for any other reason, TNCSC may, in its sole discretion, extend the Bid Due Date.

## **C Preparation and Submission of the Bids**

### **Language**

The Bid and all related correspondence and documents in relation to the Bidding Process shall be in English language. If the supporting documents are in a language other than English/Tamil, the notarized translated English version of the documents should also be enclosed. Supporting materials, which are not translated into English, may not be considered.

### **Submission of bid**

The bidders should submit their bids only in online through the website [www.tntenders.gov.in](http://www.tntenders.gov.in).

Bidders are allowed to submit their bid in the portal until the closing time. The portal will not allow any bidder to submit their bid after the scheduled date and time. **The submission of bids physically is not permitted.**

The bidder shall provide all the information sought under this RFP. TNCSC will evaluate only those Bids that are received in the required formats and complete in all respects. Incomplete and /or conditional bids shall be liable for rejection.

Upon successful and timely submission of bids (i.e., after Clicking “Freeze Bid Submission” in the portal), the portal will give a successful submission message & a bid summary will be displayed with the bid no. and the date & time of submission of the bid with all other relevant details.

### **Uploading of bid**

#### **Technical bid:**

- a. Bid in the prescribed format (Annexure-I) along with Annexures and supporting documents;
- b. Documents in response to fulfilment of Technical and Financial Eligibility criteria
- c. Power of Attorney for signing the Bid as per the format at Annexure-VI;
- d. Copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and, if a partnership, then a copy of its partnership deed;
- e. GST Registration Certificate and Annual GST Returns for the last 3 consecutive financial years i.e., 2019-20, 2020-21 and 2021-22 or 2020-21, 2021-22 and 2022-23 for having minimum 3 years of experience in the business of handling food grains / Agro commodities in support of 2.2.2 (b)

- f. Annual turnover certificate duly certified by a Chartered Accountant (as per Annexure– III)
- g. The Annual Report / certified copies of Balance Sheet, Profit & Loss statement for the last 3 consecutive financial years i.e., 2019-20, 2020-21 and 2021-22 or 2020-21, 2021-22 and 2022-23.
- h. Net worth certificate duly certified by Chartered Accountant as per Annexure IV
- i. Chartered Accountant certificate with UDIN indicating the quantity of food grains handled along with the name of clients and address for the last 3 years as on 31st March 2023 in support of clause 2.2.2 (e)
- j. Declaration for not having black listed either by TNCSC or by any other Govt. agencies (as per Annexure-VII)
- k. Declaration for not having tampered the RFP documents downloaded from the website [www.tntenders.gov.in](http://www.tntenders.gov.in) (Annexure-VIII)
- l. Copy of GST Registration certificate
- m. Latest I.T return
- n. Notarized translated English version of the documents in a language other than English/Tamil, if any

#### **Financial Bid:**

The Financial bid shall be only in electronic form as per the prescribed format given.

#### **Bid Due Date**

Bids should be submitted on or before the Bid Due Date and time as specified in Clause 1.3 in the manner and form as detailed in this RFP.

TNCSC may, in its sole discretion, extend the Bid Due Date by issuing an Addendum in accordance with Clause 2.9 uniformly for all Bidders.

#### **Late submission of Bids**

The server time shall be treated as final and binding. Bids recorded in the server before the closing time will only be treated as valid. Bidders are, therefore, advised to submit their bids well before the closing time. If any bid reaches the server after the closing time as per server time, the same will not be recorded and no complaint in this regard shall be entertained. TNCSC shall not in any way be held responsible for any sort of delay or the difficulties faced during the submission of bids online by the Bidders.

## **Modifications/ substitution/ withdrawal of Bids**

The bidder may modify its bid till the closing time in the portal. No bid shall be permitted to be modified or substituted by the bidder after the closing time. No bidder shall be allowed to withdraw its Bid after the closing time.

Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by TNCSC, shall be disregarded.

### **D Evaluation of Technical bid**

#### **Opening and Evaluation**

TNCSC shall open the technical bids online as specified in Clause 1.3.

TNCSC will subsequently examine and evaluate the technical bids in accordance with the provisions set out in Section 3.

Bidders will be deemed to have understood and agreed that no explanation or justification on any aspect of the Bidding Process or selection will be given.

Any information contained in the Bid shall not in any way be construed as binding on TNCSC, its agents, successors or assigns, but shall be binding against the Bidder if the Project is subsequently awarded to it on the basis of such information.

TNCSC reserves the right not to proceed with the Bidding Process at any time without notice or liability and to reject any or all Bid(s) without assigning any reasons.

If any information furnished by the Bidder is found to be incomplete, or contained in formats other than those specified herein, TNCSC may, in its sole discretion, exclude the relevant project for qualifying as Eligible Project.

In the event that the bidder claims credit for an Eligible Project, and such claim is determined by TNCSC as incorrect or erroneous, TNCSC shall reject such claim and exclude the same from qualifying as Eligible Project. Where any information is found to be patently false or amounting to a material misrepresentation, TNCSC reserves the right to reject the Bid and/ or Bid in accordance with the provisions of Clauses 2.6.2 and 2.6.3.

Any adverse/not satisfactory remarks on the performance of previous works will entail disqualification of the RFP.

TNCSC may arrange for field inspection of the projects already executed by the Bidder to verify their eligibility conditions and in case if any failure to satisfy the requirements, their RFP will be rejected.

## **Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the Bidders shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional advisor advising TNCSC in relation to or matters arising out of, or concerning the Bidding Process. TNCSC will treat all information, submitted as part of the Bid, in confidence and will require all those who have access to such material to treat the same in confidence. TNCSC may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/ or TNCSC or as may be required by law or in connection with any legal process.

## **Tests of responsiveness**

Prior to evaluation of technical bids, TNCSC shall determine whether each Bidder is responsive to the requirements of the RFP. The bid shall be considered responsive only if:

- a. it is received as per format at Annexure-I.
- b. it is received within the Bid Due Date including any extension thereof pursuant to Clause 2.13.2;
- c. it is accompanied by the Power of Attorney as specified in Clause 2.2.3,
- d. it contains all the information and documents (complete in all respects) as requested in this RFP;
- e. it contains information in formats same as those specified in this RFP;
- f. it does not contain any condition or qualification; and
- g. it is not non-responsive in terms hereof.

TNCSC reserves the right to reject any Bid which is non-responsive and no request for alteration, modification or substitution shall be entertained by TNCSC in respect of such Bid.

## **Clarifications**

To facilitate evaluation of Bids, TNCSC may, at its sole discretion, seek clarifications from any Bidder regarding its Bid. Such clarification(s) shall be provided within the time specified by TNCSC for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.



If the Bidder does not provide clarifications sought under Clause 2.19.1 above within the prescribed time, its Bid shall be liable to be rejected. In case the Bid is not rejected, TNCSC may proceed to evaluate the Bid by construing the particulars requiring clarification to the best of its understanding, and the Bidder shall be barred from subsequently questioning such interpretation of TNCSC.

## **E Qualification of Technical Bids**

### **Qualification and notification**

After the evaluation of technical bids, TNCSC would announce a list of qualified bidders in the technical bid. At the same time, TNCSC would notify the other Bidders that they have not been qualified. TNCSC will not entertain any query or clarification from Bidders who fail to qualify.

## **F BID SECURITY**

### **Bid Security**

The Bidder shall furnish as part of its Bid, a Bid Security referred to in Clauses 1.2.4 hereinabove by way of RTGS.

Any Bid without the Bid Security shall be summarily rejected by TNCSC as non-responsive.

Save and except as provided in Clauses 1.2.4, the Bid Security of unsuccessful Bidders will be returned by TNCSC, without any interest, as per clause 1.2.4.

The Selected Bidder's Bid Security will be returned, without any interest, upon the Concessionaire signing the Concession Agreement and furnishing the Performance Guarantee in accordance with the provisions thereof.

TNCSC shall be entitled to forfeit and appropriate the Bid Security as Damages inter alia in any of the events specified in Clause 2.21.6 herein below. The Bidder, by submitting its Bid pursuant to this RFP, shall be deemed to have acknowledged and confirmed that TNCSC will suffer loss and damage on account of withdrawal of its Bid or for any other default by the Bidder during the period of Bid validity as specified in this RFP. No relaxation of any kind on Bid Security shall be given to any Bidder.

The Bid Security shall be forfeited as Damages without prejudice to any other right or remedy that may be available to TNCSC under the Bidding Documents and/or under the Concession Agreement, or otherwise, under the following conditions:

- a. If a Bidder submits a non-responsive Bid;
- b. If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Clause 5 of this RFP;
- c. If a Bidder withdraws its Bid after submission but before opening of the Bid or of a Bidder withdraws its Bid during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective Bidder(s) and TNCSC;
- d. In the case of Selected Bidder, if it fails within the specified time limit –
  - i. to sign and return the duplicate copy of LOA;
  - ii. to sign the Concession Agreement; or
  - iii. to furnish the Performance Guarantee within the period prescribed.

In case the Selected Bidder, having signed the Concession Agreement, commits any breach thereof prior to furnishing the Performance Guarantee.

### 3 Criteria for Evaluation of Technical bids

#### Evaluation Parameters

3.1.1 The criteria for evaluation shall be as below:

S.No.	Parameter	Score Details	Total Score	Minimum Score								
1.	Experience in the business of handling food grains / Agro commodities	<table border="1"> <thead> <tr> <th>Experience</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>3 to 5 years</td> <td>15</td> </tr> <tr> <td>&gt;5 to 8 years</td> <td>17</td> </tr> <tr> <td>&gt;8 years</td> <td>20</td> </tr> </tbody> </table>	Experience	Score	3 to 5 years	15	>5 to 8 years	17	>8 years	20	20	15
Experience	Score											
3 to 5 years	15											
>5 to 8 years	17											
>8 years	20											
2.	Average annual turnover of Bidder in the last three consecutive financial years i.e., 2020-21, 2021-22 and 2022-23	<table border="1"> <thead> <tr> <th>Avg. Annual Turnover</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>₹15 to ₹25 crores</td> <td>15</td> </tr> <tr> <td>&gt; ₹25 to ₹40 crores</td> <td>20</td> </tr> <tr> <td>&gt; ₹40 crores</td> <td>25</td> </tr> </tbody> </table>	Avg. Annual Turnover	Score	₹15 to ₹25 crores	15	> ₹25 to ₹40 crores	20	> ₹40 crores	25	25	15
Avg. Annual Turnover	Score											
₹15 to ₹25 crores	15											
> ₹25 to ₹40 crores	20											
> ₹40 crores	25											
3.	Net worth of Bidder as on 31 <sup>st</sup> March 2023	<table border="1"> <thead> <tr> <th>Networth</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>₹5 to ₹10 crores</td> <td>15</td> </tr> <tr> <td>&gt; ₹10 to ₹15 crores</td> <td>20</td> </tr> <tr> <td>&gt; ₹15 crores</td> <td>25</td> </tr> </tbody> </table>	Networth	Score	₹5 to ₹10 crores	15	> ₹10 to ₹15 crores	20	> ₹15 crores	25	25	15
Networth	Score											
₹5 to ₹10 crores	15											
> ₹10 to ₹15 crores	20											
> ₹15 crores	25											
4.	Average Food grains handled in the last 3 years as on 31 <sup>st</sup> March 2023	<table border="1"> <thead> <tr> <th>Throughput per annum</th> <th>Score</th> </tr> </thead> <tbody> <tr> <td>10,000 MT to 12,500 MT</td> <td>20</td> </tr> <tr> <td>&gt;12,500 MT to 15,000 MT</td> <td>25</td> </tr> <tr> <td>&gt;15,000 MT</td> <td>30</td> </tr> </tbody> </table>	Throughput per annum	Score	10,000 MT to 12,500 MT	20	>12,500 MT to 15,000 MT	25	>15,000 MT	30	30	20
Throughput per annum	Score											
10,000 MT to 12,500 MT	20											
>12,500 MT to 15,000 MT	25											
>15,000 MT	30											
<b>Total</b>			<b>100</b>	<b>65</b>								

#### Qualification of Bidders

All the Bidders who fulfil the condition of eligibility specified in Clause 2.2.2 and score a minimum of 65 marks as specified in Clause 3.1.1 will be declared as qualified and the financial bids of those qualified bidders will only be opened.

## 4 Opening and Evaluation of Financial bids

TNCSC shall open the financial bids of the qualified bidders online. The qualified bidder will be informed accordingly.

### Selection of bidder

The bidder who quoted lowest service charges per MT of paddy handled in the silo shall be declared as the successful bidder (the "Selected Bidder") for providing the services envisaged in the Concession Agreement.

In the event that, two or more Bidders quote the same amount of Service Charges per MT of paddy (the "Tie Bids"), TNCSC shall ask the tied Bidders to provide their best and final offer of the Financial Proposal in a sealed cover and the Bidder offering the Lowest Final Offer shall be adjudged the Selected Bidder. In case TNCSC again receives Tie Bids, then TNCSC shall declare as successful such tied Bidder whose aggregate Technical Experience Score is higher than the other tied Bidder(s) during the Qualification Stage.

In the event that the Lowest Bidder withdraws or is not selected for any reason in the first instance (the "first round of bidding"), TNCSC may invite all the remaining Bidders to revalidate or extend their respective Bid Security, as necessary, and match the Bid of the aforesaid Lowest Bidder (the "second round of bidding"). If in the second round of bidding, only one Bidder matches the Lowest Bidder, it shall be the Selected Bidder. If two or more Bidders match the said Lowest Bidder in the second round of bidding, then the Bidder whose Bid was Lowest as compared to other Bidder(s) in the first round of bidding shall be the Selected Bidder.

In the event that no Bidder offers to match the Lowest Bidder in the second round of bidding as specified in Clause 4.2.3, TNCSC may, in its discretion, invite fresh Bids (the "third round of bidding") from all Bidders except the Lowest Bidder of the first round of bidding, or annul the Bidding Process, as the case may be. In case the Bidders are invited in the third round of bidding to revalidate or extend their Bid Security, as necessary, and offer fresh Bids, they shall be eligible for submission of fresh Bids provided, however, that in such third round of bidding only such Bids shall be eligible for consideration which are lower than the Bid of the second Lowest Bidder in the first round of bidding.

TNCSC shall negotiate with the "Selected Bidder" for a further improvement of the Final Offer.

Upon finalization of negotiated rate, a Letter of Award (the “LOA”) shall be issued, in duplicate, by TNCSC to the Selected Bidder and the Selected Bidder shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder is not received by the stipulated date, TNCSC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Bidder as Damages on account of failure of the Selected Bidder to acknowledge the LOA, and the next eligible Bidder may be considered.

After acknowledgement of the LOA as aforesaid by the Successful Bidder shall execute the Agreement within the period prescribed in Clause 1.3. The Selected Bidder shall not be entitled to seek any deviation, modification or amendment in the Agreement.

On receipt of the LOA from TNCSC, the successful bidder should remit a Performance Guarantee of Rs.1,00,00,000 /- (Rupees One Crore Only) within 10 (Ten) working days, in the form of an Unconditional Irrevocable Bank Guarantee with an initial validity period of 3 years and renewable thereon until completion of concession period from any Indian Nationalized/Scheduled Commercial Bank.

### **Contacts during Bid Evaluation**

Bids shall be deemed to be under consideration immediately after they are opened and until such time TNCSC makes official intimation of award/ rejection to the Bidders. While the Bids are under consideration, Bidders and/ or their representatives or other interested parties are advised to refrain, save and except as required under the Bidding Documents, from contacting by any means, TNCSC and/ or their employees/ representatives on matters related to the Bids under consideration.

### **Bid Parameter**

The Bid shall comprise of Service Charges per MT of paddy to be quoted by the Bidder in accordance with the provisions of the Concession Agreement. The Bidder who offers the Lowest Service Charges per MT of paddy will be the Selected as Concessionaire.

## 5 Fraud and Corrupt Practices

The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, TNCSC may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to the Bidder or the Concessionaire, as the case may be, if it determines that the Bidder or the Concessionaire, as the case may be, has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the Bidding Process. In such an event, TNCSC shall be entitled to forfeit and appropriate the Bid Security or Performance Guarantee, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to TNCSC under the Bidding Documents and/ or the Concession Agreement, or otherwise.

Without prejudice to the rights of TNCSC under Clause 5.1 hereinabove and the rights and remedies which TNCSC may have under the LOA or the Concession Agreement, or otherwise if a Bidder or Concessionaire, as the case may be, is found by TNCSC 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 Bidding Process, or after the issue of the LOA or the execution of the Concession Agreement, such Bidder or Concessionaire, shall not be eligible to participate in any tender or RFP issued by TNCSC during a period of 2 (two) years from the date such Bidder, or Concessionaire, as the case may be, is found by TNCSC 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.

For the purposes of this Clause 5, the following terms shall have the meaning hereinafter respectively assigned to them:

- a. "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 Bidding Process (for avoidance of doubt, offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of TNCSC who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOA or has dealt with matters concerning the Concession 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 TNCSC, shall be deemed to constitute influencing the actions of a

person connected with the Bidding Process); or (ii) save and except as permitted under sub clause (c) of Clause 2.2.1, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of TNCSC in relation to any matter concerning the Project;

- b. “fraudulent practice” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;
- c. “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 Bidding Process;
- d. “undesirable practice” means (i) establishing contact with any person connected with or employed or engaged by TNCSC with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or (ii) having a Conflict of Interest; and
- e. “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 Bidding Process.

## 6 Pre-bid Meeting

There will be a Pre-bid meeting on 08.04.2024 at 3.30 P.M. in the Head Office of Tamil Nadu Civil Supplies Corporation, No.12, Thambusamy Road, Kilpauk, Chennai - 600 010 during which the prospective Bidders can get clarifications about the RFP. The Bidders shall send their queries in writing if any so as to reach the Head Office at least two days prior to the Pre-bid Conference meeting date. A maximum of two representatives of each Bidder shall be allowed to participate on production of authorization letter from the Bidder.

During the course of Pre-bid meeting, the Bidders will be free to seek clarifications and make suggestions for consideration of TNCSC. TNCSC shall endeavour to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Bidding Process as per Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012.

The Bidders are advised to check [www.tntenders.gov.in](http://www.tntenders.gov.in) for up-to-date information like change in date / venue etc., of pre-bid meeting as TNCSC may not be able to identify and communicate with the prospective bidders at this stage. Non attending of pre-bid meeting is not a disqualification.



## 7 Miscellaneous

The Bidding Process shall be governed by, and construed in accordance with, the Tamil Nadu Transparency in Tenders Rules, 2000 and Tamil Nadu Transparency in Tenders (Public Private Partnership Procurement) Rules, 2012, the laws of India and the Courts at Chennai and High Court of Chennai, Tamil Nadu shall have exclusive jurisdiction over all disputes arising under, pursuant to and/ or in connection with the Bidding Process. The language for communication for any arbitration in relation to the Bidding Process shall be in English.

TNCSC, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to;

- a. suspend and / or cancel the Bidding Process and / or amend and / or supplement the Bidding Process or modify the dates or other terms and conditions relating thereto;
- b. consult with any Bidder in order to receive clarification or further information;
- c. retain any information and / or evidence submitted to TNCSC by, on behalf of, and / or in relation to any Bidder; and / or
- d. independently verify, disqualify, reject and / or accept any and all submissions or other information and/ or evidence submitted by or on behalf of any Bidder.

It shall be deemed that by submitting the Bid, the Bidder agrees and releases TNCSC, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and / or performance of any obligations hereunder and the bidding documents, pursuant hereto, and / or in connection with the bidding process, to the fullest extent permitted by applicable law, and waives any and all rights and / or claims it may have in this respect, whether actual or contingent, whether present or in future.

**Letter Comprising the Bid  
(Refer Clause 2.12.1)**

From,

Name:

Address:

Ph:

Fax:

E-mail:

To,

The Managing Director,  
Tamil Nadu Civil Supplies Corporation,  
No.12, Thambusamy Road,  
Kilpauk, Chennai – 600 010.

Sub: Bid for Selection of Concessionaire for Operation & Maintenance of Silo Facility at Erukkur MRM Campus, Mayiladuthurai District for a Period of 10 Years.

Dear Sir,

1. With reference to your RFP document dated\_\_\_\_\_, I/we, having examined the RFP document and understood its contents, hereby submit my/our bid for the aforesaid project. The Bid is unconditional and unqualified.
2. I/ We acknowledge that TNCSC will be relying on the information provided in the Bid and the documents accompanying the Bid for selection of Concessionaire for the aforesaid project, and we certify that all information provided is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying such Bid are true copies of their respective originals.

3. This statement is made for the express purpose of selection as Concessionaire for Operation & Maintenance of silo facility at Erukkur MRM Campus, Mayiladuthurai District.
4. I/We shall make available to TNCSC any additional information it may find necessary or require to supplement or authenticate the Bid.
5. I/ We acknowledge the right of TNCSC to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
6. I/We certify that in the last three years, we or our /their Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract by any public authority nor have had any contract terminated by any public authority for breach on our part.
7. I/We declare that:
  - a. I/We have examined and have no reservations to the RFP document, including any Addendum issued by TNCSC;
  - b. I/We do not have any conflict of interest in accordance with Clauses 2.2.1(b) and 2.2.1(c) of the RFP document;
  - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause 5.3 of the RFP document, in respect of any bid or request for proposal issued by or any agreement entered into with TNCSC or any other public sector enterprise or any government, Central or State;
  - d. I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section 5 of the RFP document, no person acting for us or on our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
  - e. The undertakings given by us in response to the RFP for the Project were true and correct as on the date of making the bid and are also true and correct as on Bid Due Date and I/we shall continue to abide by them.
8. I/We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders, in accordance with Clause 2.16.5 of the RFP document.

9. I/We believe that we satisfy the Net Worth and Turnover criteria and meet(s) all the requirements as specified in the RFP document.
10. I/ We certify that in regard to matters other than security and integrity of the country, we or any of our/ their Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory authority which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community.
11. I/ We further certify that in regard to matters relating to security and integrity of the country, we or any of our/ their Associates have not been charge-sheeted by any agency of the Government or convicted by a Court of Law.
12. I/ We further certify that no investigation by a regulatory authority is pending either against us or against our/ their Associates or against our CEO or any of our directors/ managers/ employees.
13. I/We undertake that in case due to any change in facts or circumstances during the Bidding Process, we are attracted by the provisions of disqualification in terms of the provisions of this RFP, we shall intimate TNCSC of the same immediately.
14. I/we further certify that we or any of our/their Associates are not barred by the [central Government/ State Government] or any entity controlled by it, from participating in any project and no bar subsists as on the date of Bid.
15. The power of attorney for signing of Bid, as per format provided at Annexures VI respectively of the RFP, are enclosed.
16. I/ We hereby confirm that we are in compliance of / shall comply with the project requirements specified in Clause 2.2.2.
17. I/We, hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by TNCSC in connection with the selection of Bidder, or in connection with the selection/ Bidding Process itself, in respect of the abovementioned Project and the terms and implementation thereof.
18. In the event of my/ our being declared as the Selected Bidder, I/We agree to enter into a Concession Agreement in accordance with the draft that has been provided to me/us prior to the Bid Due Date. We agree not to seek any changes in the aforesaid draft and agree to abide by the same.

19. I/We have studied all the Bidding Documents carefully and also surveyed the project site and analyzed the details of the project. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by TNCSC or in respect of any matter arising out of or relating to the Bidding Process including the award of Concession.
20. I/ We offer a Bid Security of Rs.20,00,000/- to TNCSC in accordance with the RFP Document.
21. I/We agree and understand that the Bid is subject to the provisions of the Bidding Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Project / Concession is not awarded to me/us or our Bid is not opened or rejected.
22. The Service Charges per MT of paddy has been quoted by me/us after taking into consideration all the terms and conditions stated in the RFP, draft Concession Agreement, our own estimates of costs and after a careful assessment of the site and all the conditions that may affect the cost, implementation and operation of the Project.
23. I/ We agree and undertake to abide by all the terms and conditions of the RFP document.
24. I/We shall keep this offer valid during the Bid Validity Period specified in the RFP.
25. I/ We hereby submit the following bid for undertaking the aforesaid Project in accordance with the Bidding Documents and the Concession Agreement.
26. I/We certify that in terms of the RFP, my/our Net worth is Rs. .... (Rs.in words) and Average Annual Turnover is Rs.....(Rs. in words).
27. {We agree and undertake to be jointly and severally liable for all the obligations of the selected Bidder in accordance with the Concession Agreement.}#

In witness thereof, I/We submit this Bid under and in accordance with the terms of the RFP document.

Yours faithfully,

Date: (Signature of the Authorized Signatory)

Place: (Name and designation of the Authorized Signatory)

Name and seal of the Bidder

### Details of the Bidder

1.
  - (a) Name
  - (b) Country of incorporation
  - (c) Address of the corporate headquarters and its branch office(s), if any, in India
  - (d) Date of incorporation and / or commencement of business
  
2. Brief description of the Company including details of its main lines of business and proposed role and responsibilities in this Project
  
3. Details of individual(s) who will serve as the point of contact / communication of the Bidder:
  - (a) Name
  - (b) Designation
  - (c) Company
  - (d) Address
  - (e) Telephone Number
  - (f) e-mail Address
  - (g) Fax Number
  
4. Particulars of the Authorized Signatory of the Bidder:
  - (a) Name
  - (b) Designation
  - (c) Address
  - (d) Phone Number
  - (e) Fax Number

(d) The following information shall also be provided:

S.No.	Criteria	Yes	No
1.	Has the Bidder been barred by the Central / State / UT Government, or any entity controlled by them, from participating in any Project?		
2.	If the answer to 1 is yes, does the bar subsist as on the date of Bid?		
3.	Has the Bidder paid liquidated damages of more than 5% of the contract value in a contract due to delay or has been penalized due to any other reason in relation to execution of a contract, in the last three years?		

6. A statement by the Bidder (where applicable) or any of their Associates disclosing material non-performance or contractual non-compliance in past projects, contractual disputes and litigation/ arbitration in the recent past

(Attach extra sheets, if necessary)

**ANNUAL TURN OVER CERTIFICATE**

The Annual turnover of M/s .....for the past three years are given below and certified that the statement is true and correct.

<b>S.No.</b>	<b>Year</b>	<b>Turnover (Rs. in crores)</b>
1.	2020-2021	
2.	2021-2022	
3.	2022-2023	
	<b>Total</b>	
<b>Average annual turnover</b>		

Note: Average Turnover of three consecutive financial years will be considered i.e., FY 2020-21, FY 2021-22 and FY 2022-23.

**DATE :**

**SIGNATURE OF THE BIDDER**

**SIGNATURE OF CHARTERED ACCOUNTANT**  
**(with UDIN, seal and Address)**



**NETWORTH CERTIFICATE**

The Networth of M/s .....as on as on 31<sup>st</sup> March 2023 is \_\_\_\_\_crores and certified that the statement is true and correct.

**DATE :**

**SIGNATURE OF THE BIDDER**

**SIGNATURE OF CHARTERED ACCOUNTANT**  
**(with UDIN, seal and Address)**

**Statement of Legal Capacity**  
(To be forwarded on the letterhead of the Bidder)

Ref.

Date:

To,  
The Managing Director,  
Tamil Nadu Civil Supplies Corporation,  
No.12, Thambusamy Road,  
Kilpauk, Chennai – 600 010.

Dear Sir,

We hereby confirm that we (constitution of which has been described in the Bid) satisfy the terms and conditions laid out in the RFP document.

We have agreed that .....(insert individual's name) will act as our representative and has been duly authorized to submit the RFP. Further, the authorized signatory is vested with requisite powers to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signature, name and designation of the authorized signatory)

For and on behalf of.....

**Power of Attorney for Signing of Bid  
(Refer Clause 2.2.3)**

Know all men by these presents, We ..... (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr/ Ms (name), ..... son/daughter/wife of..... and presently residing at....., who is presently employed with us and holding the position of....., as our true and lawful attorney (hereinafter referred to as the “Attorney”) to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for Selection of Concessionaire for Operation & Maintenance of Silo Facility at Erukkur MRM Campus, Mayiladuthurai District for a period of 10 years by TNCSC including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-bids and other conferences and providing information/ responses to TNCSC, representing us in all matters before TNCSC, signing and execution of all contracts including the Concession Agreement and undertakings consequent to acceptance of our Bid, and generally dealing with TNCSC in all matters in connection with or relating to or arising out of our Bid for the said Project and/ or upon award thereof to us and/or till the entering into of the Concession Agreement with TNCSC.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ....., THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS .....DAY OF....., 20.....

For.....

(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

Notes:

- *The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.*
- *Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.*
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention, 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

**Certificate**

Date: \_\_\_\_\_

Certified that M/s...../ the firm /company or its partners / shareholders have not been blacklisted as on \_\_\_\_\_ by TNCSC or Central Government, any State Government, a Statutory Body, any Public Sector Undertaking, Banks or Financial Institutions and declared as NPA by Banks or Financial Institutions.

**SIGNATURE OF THE BIDDER  
(WITH SEAL AND ADDRESS)**

**Declaration Form**

Date: \_\_\_\_\_

a) I/We .....having our office at ..... do declare that I/We have carefully read all the conditions of RFP floated by TNCSC vide tender ref.no. \_\_\_\_\_ for the selection of Concessionaire for Operation & Maintenance of Silo Facility at Erukkur MRM Campus, Mayiladuthurai District for a period of 10 years.

b) I/We have downloaded the RFP document from the internet site [www.tntenders.gov.in](http://www.tntenders.gov.in) and I / We have not tampered / modified the RFP document in any manner. In case, if the same is found to be tampered / modified, I/ We understand that my/our RFP will be summarily rejected and full Bid Security will be forfeited and I/We am/are liable to be banned from doing business with TNCSC or prosecuted.

**SIGNATURE OF THE BIDDER  
(WITH SEAL AND ADDRESS)**

**Clarification on RFP Document Format**

<b>BIDDER'S REQUEST FOR CLARIFICATION</b>			
Name and Address of the Organization submitting request		Name and Position of Person submitting request	Contact Details of The Organization / Authorized Representative
			Tel:
			Fax:
			Email:
<b>S. No.</b>	<b>Reference(s) (Section, Page)</b>	<b>Content of RFP requiring Clarification</b>	<b>Points of clarification required</b>
1			
2			
3			

**SIGNATURE OF THE BIDDER  
(WITH SEAL AND ADDRESS)**

### Technical Specifications of Silo

The silos are Galvanized flat bottom silos. These silos are flat at the base made up of concrete. All components of silo are galvanized including supporting leg structure and circular ring beam. The type viz. S-350-GD galvanised steel silo of high elastic tolerance, high-grade steel sheet, dichromate high tensile bolts grade with neoprene washers have been used to ensure a total water-proof seal.

There are 16 silos each with a capacity of 3125 MT. The capacity of the silo is based on the bulk density of paddy @560kg/m<sup>3</sup> with 3 percent compaction. The silo has been designed considering various conditions at site like heavy rain-fall area, humidity, temperature & earthquake etc. Each silo has the following design parameters:

- Diameter: 22.92 meter
- Lower yield point: 350 N/mm<sup>2</sup>
- Minimum Tensile strength: 450 N/mm<sup>2</sup>

The silo system is equipped with accessories like aeration system, pre cleaners manual sliding gates etc. The details of other accessories are given below:

- **Level sensors:** Each silo is equipped with two numbers of vibratory type sensors. The sensors will be sensing high and low level of grain in the silo.
- **Aeration system:** Each silo has an aeration fan of 15,000 m<sup>3</sup>/hour that provides ventilation to the grain mass by blowing air. It will also help to maintain the temperature and humidity conditions of the grains stored in the silo. The ducting and perforated tiles ensures homogenous distribution of airflow through grain mass.
- **Manual slide gates:** Seven manual slide gates are provided at the bottom of each silo. The manual slide gates will control the flow of grain during discharge.
- **Sweep Auger:** Each silo is equipped with a sweep auger. It will help in unloading process because the valves cannot completely remove the grains.
- **Receiving hopper:** Two receiving hoppers are equipped on each silo, one near to the unloading point and another near to the loading point to bucket elevator through Chain Conveyor.



- **Manual sliding gates for receiving hopper:** Manually operated screw type discharge gates are provided at the bottom of receiving hopper for controlling the flow of grain.
- **Pre cleaner:** There is a pre-cleaner that facilitates the cleaning of grain before storage. The pre cleaner has two parallel running sieve system with built in fan for aspiration.
- **Cyclone:** A cyclone along with its accessories for collection of dust.
- **Conveyors:** Chain conveyors and bucket elevators for bulk movement of material.
- **Temporary storage bins:** There is one temporary storage bin of 100 MT capacity.
- **Dryers:** There are 4 Nos. of dryer each with capacity 50 MT/hr

**Format for Financial Proposal  
(Refer Clause 2.12.2)**

**ORIGINAL**

Dated:

To,  
The Managing Director,  
Tamil Nadu Civil Supplies Corporation,  
No.12, Thambusamy Road,  
Kilpauk, Chennai – 600 010.

Sub: Bid for Selection of Concessionaire for Operation & Maintenance of Silo Facility at Erukkur MRM Campus, Mayiladuthurai District for a Period of 10 Years

Ref: RFP No \_\_\_\_\_ dated \_\_\_\_\_

Dear Sir,

We have gone through the RFP and having fully understood the Scope of Work for the Project as set out in the RFP and we are pleased to submit the our Financial Proposal.

We have reviewed all the terms and conditions of the RFP and undertake to abide by all the terms and conditions contained therein. We hereby declare that there are, and shall be, no deviations from the stated terms in the RFP.

Yours faithfully,

(Signature of the Authorized signatory)

Date:

(Name and designation of the of the  
Authorized signatory)

Place:

Name and seal of Bidder

**CHECKLIST OF DOCUMENTS**

<b>S.No.</b>	<b>Checklist</b>	<b>Enclosed (Yes/No)</b>
1.	A covering letter on your letterhead addressed to The Managing Director (as per Annexure-I)	
2.	RFP conditions duly signed in each page and enclosed in token of accepting the RFP conditions.	
3.	UTR reference number towards Bid Security.	
4.	Details of the Bidder (as per Annexure-ii)	
5.	Copy of certificate of incorporation/ registration	
6.	Copy of Memorandum and Articles of Association	
7.	Copy of Registration for LLP/registered partnership deed in case of Partnership Firm	
8.	Copy of GST Registration certificate	
9.	Copy of annual GST Returns for the last 3 years i.e. FY2019-20, FY2020-21, FY2021-22 in support of clause 2.2.2(b)	
10.	Copy of CA certificate with UDIN indicating the quantity of food grains handled along with the name of clients and address for the last 3 years in support of clause 2.2.2(e)	
11.	Average annual turnover statement duly certified by a Chartered Accountant (as per Annexure-III)	
12.	The Annual Report / certified copies of Balance Sheet, Profit & Loss statement for the last 3 consecutive financial years i.e. FY 2019-20, 2020-21 and 2021-22 (or) 2020-21, 2021-22 and 2022-23.	
13.	Net worth certified by Chartered Accountant along with UDIN (Annexure IV)	
14.	Statement of legal capacity (as per Annexure- V)	
15.	Power of attorney for signing of bid documents (as per Annexure-VI)	
16.	Declaration for not having blacklisted either by TNCSC or by any other Govt. agencies (as per Annexure-VII)	
17.	Declaration for not having tampered the RFP documents downloaded from the website (as per Annexure- VIII)	
18.	Latest I.T return	

<b>S.No.</b>	<b>Checklist</b>	<b>Enclosed (Yes/No)</b>
19.	Notarized translated English version of the documents in a language other than English/Tamil, if any	
20.	A covering letter on the letterhead addressed to The Managing Director (as per Annexure-XI)	
21.	Price Bid as per the format in Electronic Form	

# **Project Information Memorandum**

## **Selection of a Concessionaire for Operation and Maintenance of 50,000 MT Capacity Silo Facility at Erukkur Mrm Campus, Mayiladuthurai District**

**Tamil Nadu Civil Supplies Corporation**

No. 12, Thambusamy Road, Kilpauk,

Chennai – 600 010

## DISCLAIMER

This Project Information Memorandum (the “PIM”) is issued by Tamil Nadu Civil Supplies Corporation (TNCSC) in pursuant to the Request for Proposal vide to provide interested parties hereof a brief overview of the silo and related information.

The PIM is being distributed for information purposes only and on condition that it is used for no purpose other than participation in the tender process. The PIM is not a prospectus or offer or invitation to the public in relation to the silo facility.

The PIM does not constitute a recommendation by TNCSC or any other person to form a basis for investment. Each bidder should make its own independent assessment and seek its own professional, financial and legal advice. Bidders should conduct their own investigation and analysis of the silo facility, the information contained in the PIM and any other information provided to, or obtained by the Bidders or any of them or any of their respective advisers.

While the information in the PIM has been prepared in good faith, it is not and does not purport to be comprehensive or to have been independently verified and neither TNCSC nor any of its officers, employees, advisers or consultants accept any liability or responsibility for the accuracy, reasonableness or completeness of, or for any errors, omissions or misstatements, negligent or otherwise, relating to, or makes any representation or warranty, express or implied, with respect to, the information contained in the PIM or on which the PIM is based or with respect to any written or oral information made or to be made available to any of the Bidder or its professional advisers and, so far as permitted by law and except in the case of fraudulent misrepresentation by the party concerned, any liability therefore is hereby expressly disclaimed.

The information contained in the PIM is selective and is subject to updating, expansion, revision and amendment. It does not, and does not purport to, contain all the information that a Bidder may require. Neither TNCSC nor any of its advisers undertakes to provide any Bidder with access to any additional information or to update the information in the PIM or to correct any inaccuracies therein, which may become apparent. Each Bidder must conduct its own analysis of the information contained in the PIM and is advised to carry out its own investigation into the prospects of operation and maintenance of the silo facility and to seek its own professional advice on the legal, financial, regulatory and taxation consequences of entering into any agreement or arrangement.

The PIM is for use only by the Bidders. The PIM may not be copied, or distributed by any Bidder to third parties (other than in confidence to that Bidder's professional advisers) or prospective consortium members. Under no circumstances should Bidders make contact with officers or employees of TNCSC unless invited by TNCSC or in accordance with the PIM.

## 1. Project Background

Tamil Nadu Civil Supplies Corporation, popularly known as “TNCSC,” a State-owned Section 8 Company, is involved in procurement of paddy directly from the farmers through Direct Purchase Centres (DPCs) under decentralized procurement system and undertakes hulling and supply of rice to Public Distribution System (PDS).

TNCSC procures around 40,00,000 MT of paddy annually and hulls it through its own Rice Mills and hulling agents. Since harvesting season quite often encounters with cyclones accompanied by heavy rains, mainly in Kuruvai season, the moisture level of paddy is high requiring post-harvest drying facility. However, the Rice Mills of TNCSC are not equipped with proper drying and storage facilities. This results in large scale spoilage of paddy besides deterioration of quality of rice and by products.

With a view of reducing the post-harvest losses of paddy and to increase the capacity utilization of its rice mills, TNCSC has established Silos of 50,000 MT (16 Nos x 3125 MT) capacity in the year 2018 at a cost of ₹61.94 crores at Erukkur village, Mayiladuthurai District.

TNCSC now intends to select a Concessionaire for operation and maintenance of the Silos for a period of 10 years under PPP mode.

## 2. Project Scoping

The silo facility will be handed over to the Concessionaire on as-is where basis. The Concessionaire shall undertake the following works as part of the concession to ramp up the capacity and smooth operation:

- Repairing of plant & machineries and buildings
- Fumigation of silos
- Revamping of unloading platform to handle 40MT/hr
- Installation of Debris conveyor and Pre-cleaning filter
- Redesigning of conveyor from hopper silo / storage bins to drier to handle 600MT/day
- Installation of additional raw paddy storage bin of capacity 100 MT
- Installation of conveyor system from silo facility to Phase - I MRM (40MT/hr) to move the paddy from the silos.
- Installation of sensors to monitor moisture level in pre-cleaning, drying and silos
- Installation of weighbridge



The estimated cost of the works is Rs.10.89 crores. TNCSC shall pay the estimated cost of Rs.10.89 crores towards undertaking repair works and addition of balancing equipments to the Concessionaire on monthly basis along with interest over a period of 10 years i.e. 120 months commencing from the date of commencement of operation of the silo facility. The Interest shall be due and payable on the reducing balance of Cost at an interest rate equal to the Bank Rate at the date of signing of concession agreement plus 3% (three per cent). The interest rate is fixed and shall not change at any time during the Concession period.

The activities to be undertaken by the Concessionaire during the operation phase shall include the following:

- Measurement of weight and moisture level of paddy at the Silos premises and get it acknowledged by TNCSC officials / representatives
- Drying of paddy in the post-harvest dryer to a moisture level of 13-14%
- Storing and preserving the paddy in a scientific manner in the Silos
- Delivering the stored paddy to Modern Rice Mills (I&II) located in the campus through conveyors as and when required. Besides, the stored paddy also to be delivered as and when demanded by TNCSC at the silo premises for transportation to other Rice Mills
- The paddy delivered by the Concessionaire should meet the quality standards prescribed by TNCSC / FCI for raw paddy

The activities that will be undertaken by TNCSC shall be as follows:

During the Implementation Period

- a. Review and approval of the proposal submitted by the selected Bidder for undertaking repairs works and installation of additional balancing equipments.
- b. Appointment of Project Management Consultant (PMC): TNCSC shall appoint a PMC to monitor the progress of the implementation and ensure timely completion of the project.

During the Operation Period

- a. Supply of paddy to the Silo facility.

- b. Acknowledgement of weight and moisture level measured at the silo facility.
- c. TNCSC shall supply 60,000 MT of paddy in a year on best effort basis. The period will be reckoned with effect from the date of commencement of operation of silo facility or as may be decided on mutual consent. If there is any shortfall in supply of paddy in a particular year due to poor rainfall, agro climatic conditions or such other reasons, TNCSC will try to compensate the shortfall in the subsequent years. Any backlog at the end of the Concession period shall be compensated by extending the Concession period till the shortfall is made good.
- d. Processing and remitting of applicable service charges and annuity payments on monthly basis to the bank account of the Concessionaire.
- e. Inspection of the stored paddy on monthly basis.
- f. Collection of stored paddy at the silo premises through transport vehicle / conveyors to Erukkur phase I & II MRMs.
- g. TNCSC may in its discretion appoint an Independent Engineer to monitor works carried out by the Concessionaire during the operation period.

The detailed scope of work to be carried out by the Concessionaire and TNCSC shall be as given in Concession Agreement.

### **3. Market assessment**

Around 3.35 lakh MT of paddy have been procured by TNCSC through 162 Direct Purchase Centres (DPCs) in the district during 2020-21. The paddy procured from the DPC is stored in the nearby paddy storage godowns and sent for hulling through TNCSC.

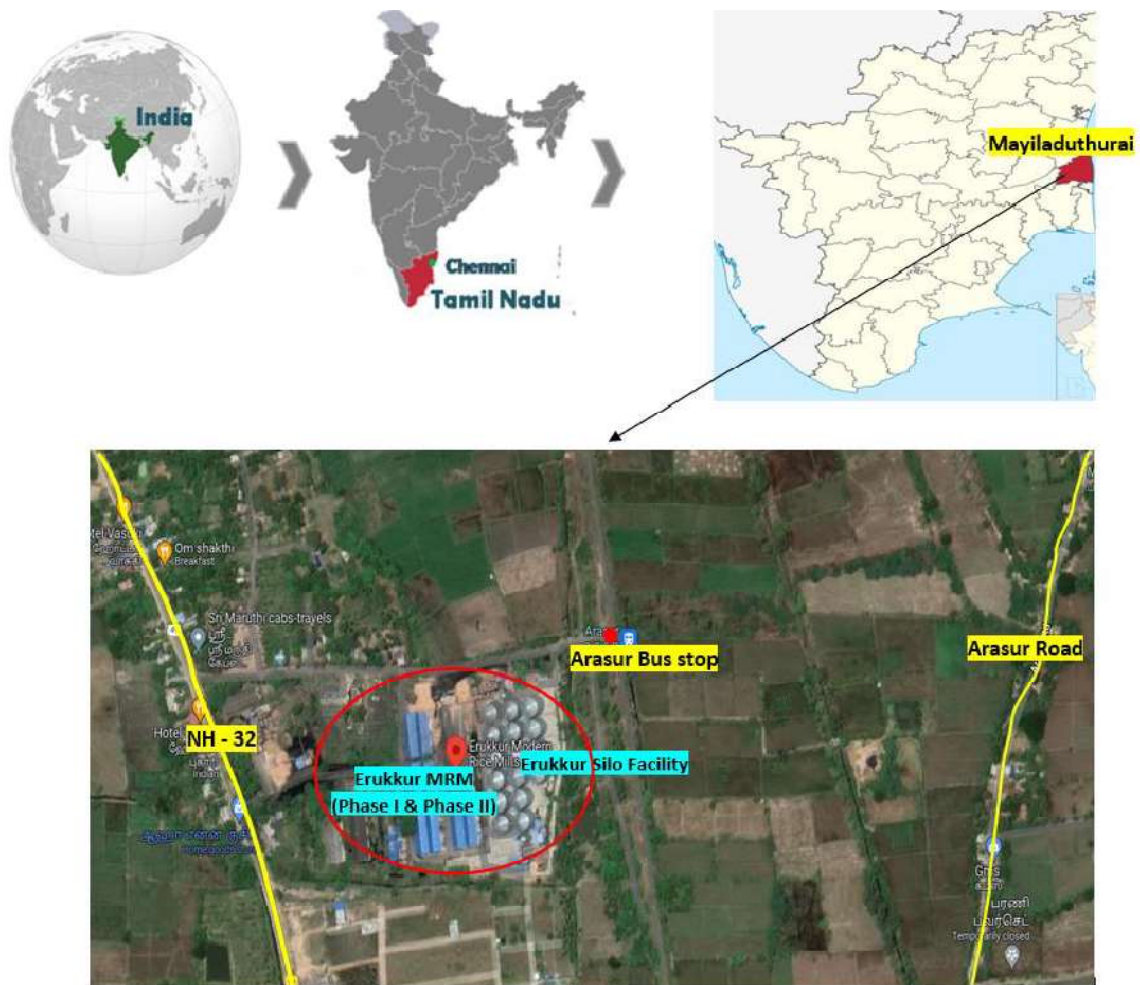
Since harvesting season quite often encounters with cyclones accompanied by heavy rains, mainly in Kuruvai season, the moisture level of paddy is high requiring post-harvest drying facility. However, the Rice Mills of TNCSC as well as hulling agents are not equipped with proper drying and storage facilities. This results in large scale spoilage of paddy besides deterioration of quality of rice and by products.

Over the past few years, there has been steady increase in quantity of paddy coming to DPCs due to attractive minimum support price. However, parallel increase in storage facilities and Milling capacity of paddy did not happen. This led to storage of the paddy in the open field and increase in quantity of unprocessed paddy.

With a view of reducing the post-harvest losses of paddy and to increase the capacity utilization of its rice mills, TNCSC has established Silos of 50,000 MT (16 Nos x 3125 MT) at Erukkur village, Sirkazhi taluk, Mayiladuthurai district.

#### 4. Project site

The Silo facility is located at Erukkur village, Sirkazhi taluk, Mayiladuthurai district and the same is shown in the map below:



#### 5. Land

The Silo facility is spread over an area of 6.53 acres at Erukkur village, Sirkazhi taluk, Mayiladuthurai district and is owned by TNCSC.

#### 6. Technical Specifications of Silo

The silos are Galvanized flat bottom silos. These silos are flat at the base made up of concrete. All components of silo are galvanized including supporting leg structure and circular ring beam. The type viz. S-350-GD galvanized steel silo of high elastic tolerance,

high-grade steel sheet, dichromate high tensile bolts grade with neoprene washers have been used to ensure a total water-proof seal.

There are 16 silos each with a capacity of 3125 MT. The capacity of the silo is based on the bulk density of paddy @560kg/m<sup>3</sup> with 3 percent compaction. The silo has been designed considering various conditions at site like heavy rain-fall area, humidity, temperature & earthquake etc. Each silo has the following design parameters:

- Diameter: 22.92 meter
- Lower yield point: 350 N/mm<sup>2</sup>
- Minimum Tensile strength: 450 N/mm<sup>2</sup>

The silo system is equipped with accessories like aeration system, pre cleaners manual sliding gates etc. The details of other accessories are given below:

- Level sensors: Each silo is equipped with two numbers of vibratory type sensors. The sensors will be sensing high and low level of grain in the silo.
- Aeration system: Each silo has an aeration fan of 15,000 m<sup>3</sup>/hour that provides ventilation to the grain mass by blowing air. It will also help to maintain the temperature and humidity conditions of the grains stored in the silo. The ducting and perforated tiles ensures homogenous distribution of airflow through grain mass.
- Manual slide gates: Seven manual slide gates are provided at the bottom of each silo. The manual slide gates will control the flow of grain during discharge.
- Sweep Auger: Each silo is equipped with a sweep auger. It will help in unloading process because the valves cannot completely remove the grains.
- Receiving hopper: Two receiving hoppers are equipped on each silo, one near to the unloading point and another near to the loading point to bucket elevator through Chain Conveyor.
- Manual sliding gates for receiving hopper: Manually operated screw type discharge gates are provided at the bottom of receiving hopper for controlling the flow of grain.
- Pre cleaner: There is a pre-cleaner that facilitates the cleaning of grain before storage. The pre cleaner has two parallel running sieve system with built in fan for aspiration.

- Cyclone: A cyclone along with its accessories for collection of dust.
- Conveyors: Chain conveyors and bucket elevators for bulk movement of material.
- Temporary storage bins: There is one temporary storage bin of 100 MT capacity.
- Dryers: There are 4 Nos. of dryer each with capacity 50 MT/hr

## 7. Cost of the Project

The cost of the project for the establishment of the Silo facility was ₹61.94 crores. In addition to the above, the selected concessionaire has to invest about ₹10.89 crores for creation of following facilities to ramp up the capacity and smooth operation:

- Repairing of plant & machineries and buildings
- Fumigation of silos
- Revamping of unloading platform
- Installation of Debris conveyor and Pre-cleaning filter
- Redesigning of conveyor from hopper silo / storage bins to drier
- Installation of additional raw paddy storage bin of capacity 100 MT
- Installation of conveyor system from silo facility to Phase - I MRM (40MT/hr) to move the paddy from the silos.
- Installation of sensors to monitor moisture level in pre-cleaning, drying and silos
- Installation of weighbridge

## 8. Concession period

The Concession is for a period of 10 years commencing from the date of commencement of operation of the silo facility. Provided that, in the event of an early termination/determination of the Concession by either Party, the Concession Period shall mean and be limited to the period commencing from the Date of signing of Concession Agreement and ending with the date of termination of the Concession.

## 9. Bid Variable

The bidder who quoted lowest service charges per MT of paddy handled in the silo shall be declared as the successful bidder for providing the services envisaged in the Concession Agreement.

## 10. Payment Terms

### Annuity payment

- a. The Project Cost of Rs.10.89 crores will be paid by TNCSC to the Concessionaire on monthly basis over a period of 10 years i.e. 120 months commencing from the date of commencement of operation of the silo facility, (the “Annuity Payments”). The 1st (first) installment of Annuity Payments shall be due and payable after 1 month from the date of commencement of operation of the silo facility.
- b. Interest shall be due and payable on the reducing balance of Project Cost at an interest rate equal to the Bank Rate at the date of signing of this concession agreement plus 3% (three percent). Such interest shall be due and payable monthly along with each installment. The interest rate is fixed and shall not change at any time during the Concession period.

### Service Charges

- c. No advance payment is permissible
- d. Payment towards Service charges will be made on monthly basis based on the quantity of paddy dried and stored after adjusting deduction towards penalty and shortfall in quantity if any.
- e. The service charge finalized and approved will hold good for a period of one year from the date of declaration of commencement of operation of the Silo facility.
- f. Increase in service charges: An increase of 5.00% 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 TNCSC for 1 <sup>st</sup> year	A
Service charge per ton of paddy for 2 <sup>nd</sup> year (B)	A * 1.05
Service charge per ton of paddy for 3 <sup>rd</sup> year (C)	B * 1.05
Service charge per ton of paddy for 4 <sup>th</sup> year (D)	C * 1.05
Service charge per ton of paddy for 5 <sup>th</sup> year (E)	D * 1.05
Service charge per ton of paddy for 6 <sup>th</sup> year (F)	E * 1.05

Service charge per ton of paddy for 7 <sup>th</sup> year (G)	F * 1.05
Service charge per ton of paddy for 8 <sup>th</sup> year (H)	G * 1.05
Service charge per ton of paddy for 9 <sup>th</sup> year (I)	H * 1.05
Service charge per ton of paddy for 10 <sup>th</sup> year (J)	I * 1.05

- g. 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 commencement of operation of the silo facility.

## 11. Permissible Weight Loss

- i. The weight loss due to moisture difference between paddy delivered by TNCSC at the Silo facility (input paddy) and stored paddy received by the Concessioning Authority at the Silo facility (output paddy) will be estimated as given below:

A = Weight of input paddy in Kgs X Moisture of input paddy in percentage

B = Weight of output paddy in Kgs X Moisture of output paddy in percentage

**Permissible weight loss = (A - B) \* 1.08 kgs**

- ii. The weight reduction due to the moisture difference shall be reconciled on 31<sup>st</sup> March of every year or any other cut-off date as may be fixed by TNCSC.
- iii. Any shortfall between the quantity estimated to factor the reduction in weight due to the difference in moisture level of input paddy and output paddy, and actual quantity delivered to TNCSC should be compensated by the Concessionaire on actual basis as given below:

(Shortfall Quantity x Procurement cost) + Transportation cost + other incidental costs

The amount estimated for the shortfall in quantity by TNCSC is final and binding and such amount shall be deducted from the service charges payable to the Concessionaire.

- iv. However, if there is any excess between the quantity estimated to factor weight difference and actual quantity delivered to TNCSC, the selected Bidder shall not have any right to claim compensation or adjust the same for the shortfalls of any other year.

CONCESSION AGREEMENT

BETWEEN

TAMIL NADU CIVIL SUPPLIES CORPORATION  
(THE CONCESSIONING AUTHORITY)

AND

---

(THE CONCESSIONAIRE)

FOR

OPERATION & MAINTENANCE  
OF  
SILO FACILITY AT ERUKKUR MRM CAMPUS, MAYILADUTHURAI  
DISTRICT FOR A PERIOD OF 10 YEARS

DATED \_\_\_\_\_



## Table of Contents

ARTICLE 1 .....	9
DEFINITIONS AND INTERPRETATION.....	9
Definitions.....	9
Interpretations .....	13
Measurements and Arithmetic Conventions.....	15
Ambiguities and Discrepancies.....	15
ARTICLE 2 .....	16
SCOPE OF THE PROJECT .....	16
2.1 Scope of the Project .....	16
ARTICLE 3 .....	21
GRANT OF CONCESSION .....	21
Concession .....	21
Concession Period.....	21
Acceptance of the Concession .....	21
Silo Facility.....	22
Use of Silo Facility .....	22
Information about the Silo Facility .....	22
Acceptance of the possession of the Silo Facility.....	22
Peaceful Occupation .....	23
ARTICLE 4 .....	24
CONDITIONS PRECEDENT.....	24
4.1 Conditions Precedent .....	24
ARTICLE 5 .....	27
PERFORMANCE GUARANTEE .....	27
5.1 Performance Guarantee.....	27
ARTICLE 6 .....	28
OBLIGATIONS OF THE CONCESSIONAIRE .....	28
Obligations of the Concessionaire .....	28
Obligations relating to Project Agreements.....	30
Change in Ownership.....	31
Engagement of Contractors.....	32
Obligations relating to employment of foreign nationals .....	33
Obligations relating to employment of trained personnel.....	33
Sole purpose of the Concessionaire .....	33
Liability for Personnel .....	34
Security and Safety at the Project Site.....	35
Branding of Project.....	35

ARTICLE 7 .....	36
OBLIGATIONS OF THE CONCESSIONING AUTHORITY .....	36
7.1 Obligations of the Concessioning Authority.....	36
ARTICLE 8 .....	39
PAYMENT TERMS AND PENALTY .....	39
Payment Terms .....	39
Maintenance of Dedicated Bank Account .....	41
Penalty.....	41
ARTICLE 9 .....	42
ASSET OWNERSHIP.....	42
Ownership of assets .....	42
Assets created or provided by the Concessionaire.....	42
ARTICLE 10 .....	43
REPAIRING OF SILO FACILITY AND ADDITION OF EQUIPMENTS .....	43
Obligations prior to undertaking repair works and addition of equipments ....	43
Repairing of Silo Facility and Addition of balancing equipments .....	43
ARTICLE 11 .....	45
MONITORING OF REPAIR WORKS AND ADDITION OF EQUIPMETS .....	45
Monthly progress reports .....	45
Inspection.....	45
Delay .....	45
Suspension of Unsafe Works .....	45
ARTICLE 12 .....	47
COMPLETION CERTIFICATE .....	47
Tests .....	47
Completion Certificate.....	47
Commencement of operation of silo facility .....	47
ARTICLE 13 .....	48
OPERATION AND MAINTENANCE.....	48
O&M obligations of the Concessionaire.....	48
Maintenance Requirements.....	49
Maintenance Manual.....	49
Maintenance Programme .....	50
Major Overhaul.....	51
Safety, breakdowns and accidents .....	51
De-commissioning due to Emergency .....	51
Section closure .....	52
Unscheduled Maintenance .....	53
Damages for breach of maintenance obligations .....	53
Concessioning Authority’s right to take remedial measures .....	53

Overriding powers of the Concessioneing Authority .....	54
Restoration of loss or damage to the Silo Facility .....	55
Excuse from performance of obligations .....	55
Safety Requirements .....	55
Barriers and Diversions.....	56
ARTICLE 14 .....	57
MONITORING OF OPERATION AND MAINTENANCE.....	57
Monthly status reports.....	57
Reports of unusual occurrence .....	57
Inspection.....	58
Remedial Measures .....	58
ARTICLE 15 .....	59
INDEPENDENT AGENCY .....	59
Appointment of Independent Agency .....	59
Duties and Functions.....	59
Remuneration.....	59
Termination of appointment .....	59
Authorised signatories .....	60
Dispute Resolution.....	60
Interim Arrangement.....	60
ARTICLE 16 .....	61
GENERAL CONDITIONS .....	61
16.1 General Conditions .....	61
ARTICLE 17 .....	63
GENERAL RIGHTS, DUTIES AND OBLIGATIONS .....	63
Of the Concessionaire .....	63
Of the Concessioneing Authority .....	66
Of the Concessioneing Authority and the Concessionaire .....	67
ARTICLE 18 .....	68
CHANGE IN LAW .....	68
Change in Law .....	68
Remedy .....	68
ARTICLE 19 .....	70
FORCE MAJEURE.....	70
Force Majeure Event.....	70
Non-Political Events .....	70
Political Events .....	71
Other Events.....	71
Notice of Force Majeure Event.....	72
Period of Force Majeure .....	73

Resumption of Performance .....	73
Performance Excused.....	73
Costs, Revised Timetable.....	74
Termination Due to Force Majeure Event .....	74
ARTICLE 20 .....	75
EVENTS OF DEFAULT.....	75
Events of Default .....	75
Parties Rights .....	77
Consultation Notice .....	77
Remedial Process .....	77
Obligations during Remedial Period.....	78
Revocation of Consultation Notice .....	78
Termination due to Events of Default.....	78
The Concessioneing Authority’s Rights of Step-in.....	78
ARTICLE 21 .....	80
TERMINATION OF THE AGREEMENT .....	80
Termination Procedure.....	80
Obligations during Termination Period .....	80
Requisition .....	80
Condition Survey .....	80
Consequences of Termination.....	81
ARTICLE 22 .....	83
COMPENSATION .....	83
Compensation .....	83
No Compensation on Expiry of Concession Period .....	83
Transfer Fee and Charges .....	84
Delayed Payment of Compensation.....	84
Delayed Transfer of Assets .....	84
Remedies Cumulative .....	85
ARTICLE 23 .....	86
ASSIGNMENT AND CHARGES .....	86
Restriction on assignment and charges .....	86
Permitted assignment and charges .....	86
Assignment by the Concessioneing Authority .....	86
ARTICLE 24 .....	87
TRANSFER ON EXPIRY OF THE AGREEMENT PERIOD.....	87
General Scope of Transfer/Payment .....	87
Concessionaire’s Obligations.....	87
The Concessioneing Authority’s Obligations.....	88
Risk .....	88

ARTICLE 25 .....	89
DISPUTE RESOLUTION.....	89
Dispute Resolution.....	89
Conciliation.....	89
Arbitration.....	89
Adjudication by a tribunal .....	90
ARTICLE 26 .....	91
REPRESENTATIONS AND WARRANTIES .....	91
Representations and Warranties of the Concessionaire .....	91
Representations and Warranties of the Concessioneing Authority .....	93
Disclosure .....	93
ARTICLE 27 .....	94
DISCLAIMER.....	94
27.1 Disclaimer.....	94
ARTICLE 28 .....	96
MISCELLANEOUS PROVISIONS .....	96
Survival of Obligations .....	96
Articles to survive Termination .....	96
Joint Responsibility.....	96
Several Obligations.....	96
Severability .....	96
Notices .....	97
Waiver.....	97
Amendments, Modifications or Alterations.....	98
Governing Law .....	98
Jurisdiction of the Court.....	98
Entire Agreement .....	98
APPENDIX 1 .....	99
TECHNICAL SPECIFICATIONS OF SILO.....	99
APPENDIX 2 .....	101
APPROVED SERVICE CHARGES.....	101
APPENDIX 3 .....	102
ANNUITY PAYMENTS .....	102

## CONCESSION AGREEMENT

**THIS CONCESSION AGREEMENT** is made at Chennai on this the \_\_\_\_\_ day of \_\_\_\_\_

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, hereinafter referred to as “**the Concessioneing Authority**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of One Part;

AND

2. ....<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 “**Concessionaire**” (which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part;

The Concessioneing Authority and the Concessionaire individually referred to as “Party” and jointly as “Parties”

WHEREAS:

- A. The Concessioneing Authority is desirous of selecting a Concessionaire for operation & maintenance of silo facility in Erukkur MRM campus, Mayiladuthurai district, Tamil Nadu for a period of 10 years;
- B. The Concessioneing Authority vide RFP No. \_\_\_\_\_ dated \_\_\_\_\_ invited bids from the interested parties for operation & maintenance of the silo facility;
- C. In response to the invitation referred to in recital ‘B’ above, the Concessioneing Authority received the bid dated \_\_\_\_\_ submitted by the Applicant in accordance with the RFP.
- D. The Concessioneing 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 Intent for Award of Concession dated\_\_\_\_\_;

- E. Following the issue of the Letter of Intent for Award of Concession, the Concessioneing Authority has agreed to grant the Concession to the Concessionaire to take over the assets created and carry out the operation & maintenance of the silo facility in Erukkur MRM campus, Mayiladuthurai district on the terms, conditions and covenants hereinafter set forth in this Agreement.

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

**ARTICLE 1**

**DEFINITIONS AND INTERPRETATION**

**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 26 (twenty six) % 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.

“**Annuity Payments**” shall have the meaning as set forth in Article 8.1.1.(b);

“**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 in response to the RFP.

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

“**Bid Security**” means a Bid Security amount of Rs.20,00,000 /- (Rupees Twenty Lakhs Only) submitted by the Applicant along with the Bid.

“**Book Value**” means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of the tangible assets forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in the Project Facilities and Services.

“**Change in Law**” shall have the meaning set out under Article 18.1 of this Agreement.

“**Concession**” means the Concession granted by the Concessions Authority to the Concessionaire in accordance with the provisions of Article 3.1 of this Agreement for implementing the Project and providing Project Facilities and Services.

“**Concessions Authority Event of Default**” shall have the meaning as set out under Article 20.1 (b).

“**Concessionaire Event of Default**” shall have the meaning as set out under Article 20.1 (a).

“**Concession Period**” means the period of the Concession specified in Article 3.2 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 20.3.

“**Contractor**” means a Person with whom the Concessionaire 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 Concession”** 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 Commencement of Operation”** means the date of commencement of storing of paddy in silos as certified by the Independent Agency appointed by the Concessions Authority.

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

**“Event of Default”** shall have the meaning assigned to it under Article 20.1.

**“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.

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

**“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 19.1 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 Concessionaire, the Project Facilities and Services or any portion thereof, but shall not include the Concessions Authority.

**“Implementation period”** means the time permitted for undertaking repairs of the Silo facility and addition of balancing equipments as specified in Article 2.1.1.a.(xi) of this Agreement.

“**Insurance Cover**” shall have the meaning ascribed to it in Article 17.1(c).

“**KMS**” means the Kharif Market Season

“**Management Control**” means the possession, directly or indirectly of the power to direct or cause the direction of the management and policies of the Concessionaire, 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 Concessionaire.

“**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 19.2.

“**Other Events**” means the Force Majeure Events set out in Article 19.4.

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

“**Performance Guarantee**” shall mean the bank guarantee(s) procured by the Concessionaire for the benefit of the Concessioneing Authority guaranteeing the performance of the obligations of the Concessionaire during the operation phase hereunder in the manner specified in Article 5.1.

“**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 19.3.

“**Project**” means the Silo facility in accordance with the provisions of this Agreement.

“**Project Contracts**” means collectively this Agreement and any other material contract entered into or may hereafter be entered into by the Concessionaire in connection with the Project and Project Facilities and Services.

**“Project Cost”** shall have the meaning as set forth in Article 8.1.1.(a).

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

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

**“Remedial Period”** has the meaning ascribed to it in Article 20.4.

**“Requisition”** has the meaning ascribed to it in Article 21.3.

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

**“Service Charges”** shall mean the charges payable by the Concessioneing Authority to the Concessionaire for undertaking operation and maintenance of the silo facility, pursuant to Article 8.1.2 hereof.

**“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 Concessionaire.

**“Termination Notice”** means the termination notice issued pursuant to Article 21.1 hereof.

**“Termination Period”** shall have the meaning as set out under Article 21.1 hereof.

**“Transfer”** means to transfer, sell, assign, pledge, hypothecate, create a security interest in or other encumbrance on, place in trust (voting or otherwise), transfer by operation of law or in any other way dispose of, whether or not voluntarily, the legal or beneficial interest in the equity shares of the Concessionaire.

## **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 RFP, issued by the Concessioneing Authority and also including addendums, clarifications given in writing and the submissions of the Concessionaire

and the Application submitted by the Concessionaire 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.

### **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.

### **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

#### Scope of the Project

The scope of the Project (the “Scope of the Project”) shall mean and include the following:

#### Implementation Phase

- a. **Repairing of the Silo facility and addition of balancing equipments:** The silo facility will be handed over to the Concessionaire on “As-is-where-is” basis and the Concessionaire shall undertake the following capital works at his cost to ramp up the capacity and smooth operation:
  - i. **Repairing of plant & machineries and building:** The silo facility was established in the year 2018. Since its establishment, the facility was barely utilized and is lying idle. Hence, the entire plant & machinery need to be repaired to make it operational to handle 40 MT of paddy per hour.
  - ii. **Fumigation:** Since, the silos are lying idle, it has to be completely fumigated and disinfected before commencement of operation of silo facility i.e. storing of paddy.
  - iii. **Revamping of unloading platform:** The existing paddy input feeder is designed in such a way that the paddy from gunny bags are fed into the feeder manually. The same should be revamped by installing conveyors to handle 40MT/hr, through which the paddy unloaded from the trucks has to automatically pass through the loading conveyors to pre-cleaning section.
  - iv. **Installation of Debris conveyor and Pre-cleaning filter:** In the present system the dust and debris are to be collected manually. Due to excess dust and debris, the pre-cleaner often breaks down. Hence, a debris conveyor and a pre-cleaning filter have to be installed.
  - v. **Redesigning of conveyor from hopper silo / storage bins to drier:** There exists a capacity mismatch of conveyors to pre-cleaner and drier section. Hence, the conveyor system has to be redesigned to balance the line so that the handling capacity of drier shall be 600MT/day.

- vi. Installation of additional raw paddy storage bin with a capacity of 100 MT: There is only one raw paddy storage bin of capacity 100 MT, which is not sufficient. Hence, additional storage bin of capacity 100 MT has to be installed for storing the raw paddy.
- vii. Installation of conveyor system from silo facility to Phase – I MRM: The Erukkur MRM Phase – I (100MT/day capacity) owned and operated by the Concessioneing Authority is about 750 m from the silo facility (Conveyor facility for Phase-II MRM, 100MT/day capacity, has already been implemented). The Concessionaire has to install conveyor system with a capacity of 40MT/hr from silo facility to Phase – I MRM for movement of paddy directly from the silos.
- viii. Installation of sensors to monitor moisture level in pre-cleaning, drying and silos: The existing pre-cleaner, dryer and silo system does not have sensor to monitor the moisture level of paddy. Increase of moisture content of paddy beyond the prescribed limits will lead to spoilage and deterioration of quality and hence the sensors have to be installed.
- ix. The indicative list of repair works and addition of balancing equipments to be carried out by the Concessionaire are as under:

<b>a. Pre-cleaning section</b>	
i.	Revamp Unloading Platform
ii.	Redesign Unloading Chute
iii.	Pre-Cleaner, Spare filters & Redesigning
iv.	Dust Cyclone & Collector
v.	Elevators Repair, Support structure & Line Balancing
<b>b. Drying Section (Conveyor, Line Balancing)</b>	
i.	Redesign Dryers & Line Balancing
ii.	Loading Elevators to Dryer
iii.	Unloading chutes from Dryers
iv.	Silos connection with Conveyors
v.	Revamp & Optimize Existing Conveyor, Motors
vi.	Additional Conveyor for grain movement (Line balancing)
vii.	Conveyor to Phase-I MRM
<b>c. Storage Section (Silos leakage, Fumigation)</b>	
i.	Civil works to arrest the seepage
ii.	Repair and plugging of leakage in silos



iii.	Fumigation & Aeration Systems Repair & Calibration
iv.	Redesign, Testing of Sweep Augur
<b>d. IT Systems &amp; Automation</b>	
i.	Pre-cleaning Digital Measurement ( Moisture)
ii.	Drying Digital Measurement (Moisture)
iii.	Storage (Moisture) – Silos
iv.	Parboiling (Weight & Moisture)

- x. Installation of all other equipments / machineries which are necessary for achieving the various parameters stipulated in the agreement shall deem to be part of the scope of work.
  - xi. The timeline for completing the above works i.e. undertaking repairs of the Silo facility and addition of balancing equipments shall be 6 months from the date of handing over physical possession of the Silo Facility (the “Implementation Period”). No extension shall be given beyond this period. However, the Concessioneing Authority in its own discretion shall extend the timeline beyond 6 months on valid grounds.
- b. Installation of weighbridge and equipments for testing moisture content of paddy delivered by the Concessioneing Authority at the Silo facility.

### **Operation Phase**

- a. Operation & maintenance of the silo facilities.
- b. Measurement of weight and moisture of paddy delivered and received by the Concessioneing Authority at the Silo facility and get it acknowledged by officials / representatives of Concessioneing Authority.
- c. Drying of paddy in the post-harvest dryers to a moisture level of 13-14%.
- d. Storing of dried paddy in the silos.
- e. Delivering the stored paddy to the Concessioneing Authority as and when required (24 x 7 x 365 days) at the silo premises.
- f. Delivery of paddy to the Erukkur phase – I and phase II mills through conveyors whenever required.

- g. The paddy delivered by the Concessionaire should meet the quality standards prescribed by the Concessions Authority / FCI from time to time.
- h. Payment of current consumption charges to TANGEDCO and all statutory fees connected with the operation of the facility except taxes payable to local body.
- i. The Concessionaire should submit to the Concessions Authority on daily basis the following:
- Quantity of paddy received in the silo facility and moisture level
  - Quantity of paddy dried and stored in silos
  - Quantity of paddy available in silos
  - Month wise cumulative data (starting from 1st of every month)
  - Quantity of paddy supplied to the Concessions Authority and moisture level
- j. Repairs and Maintenance**
- i. The Concessionaire at its own cost promptly and diligently maintain, replace or restore any of the project facilities or part thereof which may be lost, damaged, destroyed or worn out during the operation period.
- ii. Repair as necessary and maintain the Project Facilities and Services or any part thereof and for this purpose carry out routine preventive measures and maintenance of the Project Facilities and Services; and
- iii. Maintain the Project Facilities and Services as per Good Industry Practice with the objective of providing adequate service standards and ensuring that the Project Facilities and Services to be transferred to the Concessions Authority upon expiry of the Concession Period are in good condition, normal wear and tear excepted.
- iv. While carrying out the repairing, maintaining and replacing the equipments / machineries in silo facility, the Concessionaire acknowledges and accepts that it is holding and maintaining the concession or assets, silo facilities in trust for eventual transfer to the Concessions Authority on termination of the agreement and therefore, will not do any act as a result of which the value of Silo Facilities and Services is diminished.

- v. The Concessionaire shall, at all times during the Concession Period, at its own risk, cost, charges and expenses, performance and pay for maintenance repairs, renewals and replacement of various type of assets and equipment in the project or any parts thereof, whether due to use and operations or due to deterioration of materials and /or parts, so that on the expiry or termination of Concession, the same shall except normal wear and tear be in good working condition as it were at the time of commencement of the Concession.
  
- vi. While carrying out the repair, maintenance and replacement of the silo facilities, the Concessionaire shall carry out the work in accordance with the manufacturer's recommendations and the relevant latest Indian Standards.

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

## **ARTICLE 3**

### **GRANT OF CONCESSION**

#### **Concession**

In consideration of the Concessionaire agreeing to perform its obligations as set out in this Agreement, the Concessions Authority hereby grants to the Concessionaire, subject to the provisions of this Agreement, an exclusive license for operation and maintenance of the 50,000 MT capacity silo facility.

#### **Concession Period**

The Concession hereby granted is for a period of 10 years commencing from the date of commencement of operation of the silo facility during which the Concessionaire is authorized and obliged to provide the Services in accordance with the provisions hereof.

Provided that: -

- a. in the event of the Concession being extended by the Concessions Authority beyond the said period of 10 years in accordance with the provisions of this Agreement, the Concession Period shall include the period by which the Concession is so extended, and
- b. in the event of an early termination/determination of the Concession/ this Agreement by either Party in accordance with the provisions hereof, the Concession Period shall mean and be limited to the period commencing from the date of commencement of operation of the silo facility and ending with the date of termination/determination of the Concession/this Agreement.

#### **Acceptance of the Concession**

The Concessionaire hereby accepts the Concession 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, the Concessionaire shall at its costs, charges, expenses and risk including but not limited to foreign exchange variation risk if any, equip, operate, maintain and replace the Project/ Project Facilities and Services.

## **Silo Facility**

- a. In consideration of the Concessionaire agreeing to perform and discharge its obligations as set forth in this Agreement, the Concessions Authority hereby grants to the Concessionaire, the exclusive right to enter upon, occupy and use the Silo facility for the purpose of implementing the Project and provision of Project Facilities and Services pursuant thereto in accordance with this Agreement.
- b. The Concessionaire shall at its costs, charges and expenses shall undertake repair works and installation of additional balancing equipments in the silo facility as per Article 2.1 or appropriate for implementing the Project and providing Project Facilities and Services, in accordance with the Agreement, Applicable Laws and Applicable Permits.

## **Use of Silo Facility**

- a. The Concessionaire is permitted to use the facility only for handling the paddy of the Concessions Authority.
- b. The Concessionaire shall not without the prior written consent or approval of the Concessions Authority use the Project Site and Silo Facility for any purpose other than for the purposes of the Project/the Project Facilities and Services and purposes incidental thereto as permitted under this Agreement or as may otherwise be approved by the Concessions Authority.

## **Information about the Silo Facility**

The information about the silo facility as set out in Appendix 1 is provided by the Concessions Authority in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Concessions Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the silo facility, which the Concessions Authority may now possess or may hereafter come to possess, as may be relevant to the Project. Subject to this, the Concessions Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the silo facility.

## **Acceptance of the possession of the silo facility**

The Concessionaire accepts possession of the Silo Facility on 'as is where is' basis and confirms having:

- a. inspected the silo facility and all structures there at and its surroundings;
- b. satisfied itself as to the physical conditions of the silo facility for the performance of its obligations under this Agreement; and
- c. obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

### **Peaceful Occupation**

The Concessions Authority warrants that the Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in occupation of the Silo Facility during the Concession Period. In the event the Concessionaire is obstructed by any Person claiming any right, title or interest in or over the Silo Facility or any part thereof or in the event of any enforcement action including any attachment, distraint, appointment of receiver or liquidator being initiated by any Person claiming to have charge on the Silo facility or any part thereof, the Concessions Authority shall, if called upon by the Concessionaire, defend such claims and proceedings.

## ARTICLE 4

### CONDITIONS PRECEDENT

#### Conditions Precedent

The award of the Concession 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 Concessionaire:
  - i. Furnishing of copies (certified as true copies by a director of the Concessionaire) of the constituent documents of the Concessionaire;
  - ii. Furnishing of all resolutions adopted by the Board of Directors of the Concessionaire (certified as true copies by a director of the Concessionaire) authorizing the execution, delivery and performance by the Concessionaire of each of the Transaction Documents;
  - iii. Opening of a separate bank account in the name of the Concessionaire exclusively for the transactions connected with the project ;
  - iv. Furnishing a certificate from its principal officer/director on the shareholding pattern of the Concessionaire;
  - v. Procuring and furnishing the following confirmations, in original, from the Applicant:
    - a. it/they has/have the financial standing and resources to fund /raise finances for undertaking and implementing the Project in accordance with this Agreement;
    - b. the Applicant is duly organized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessions Authority to enter into this Agreement with the Concessionaire and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
    - c. Furnishing to the Concessions Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability hereof;

- b. The following Conditions Precedent shall be satisfied by the Concessing Authority:
- i. Handing over physical possession of the Silo Facility for the purposes of the Project with valid approvals if any;
  - ii. Appointment of Independent Agency to monitor the progress during the implementation and operation period;

The aforesaid Conditions Precedent shall be complied with within 90 (ninety) 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.

Any of the Conditions Precedent set forth in Articles 4.1(a) may be waived fully or partially by the Concessing Authority at any time in its sole discretion or the Concessing Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Concessing Authority. Any of the Conditions Precedent set forth in Articles 4.1 (b) may be waived fully or partially by the Concessionaire at any time in its sole discretion.

If the Concessionaire has fulfilled all the Conditions Precedent under Article 4.1(a) including the furnishing of the Bank Guarantee and has not waived or extended the time under Article 4.3 above, and if the Concessing 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 Concessing Authority), the Concessing Authority shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee 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 Performance Guarantee furnished by the Concessionaire. 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 Concessing 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;

If the Concessing 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 Concessionaire 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 Concessionaire), the Concessionaire shall be liable to pay liquidated damages in a sum calculated at the rate of 0.1% (zero point one percent) of the Performance Guarantee 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 Performance Guarantee furnished

by the Concessionaire. 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 Concessionaire 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;

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 Concessionaire to comply with the Conditions Precedent, the Performance Guarantee / Bid Security shall stand forfeited. If such termination is on account of failure of the Concessioneing Authority, the Concessioneing Authority shall be obliged to return the Performance Guarantee. 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**

### **PERFORMANCE GUARANTEE**

#### **Performance Guarantee**

The Concessionaire shall for due performance of its obligations during the Operation and Maintenance Phase provide to Concessions Authority an unconditional and irrevocable bank guarantee, in favour of the Concessions Authority encashable and enforceable at Chennai (the "Performance Guarantee"). The Performance Guarantee shall be for a sum of ₹1,00,00,000/ (Rupees One Crore only). Till such time the Concessionaire provides to Concessions Authority the Performance Guarantee pursuant hereto, the bid security 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 concession period. It is clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by the Concessions Authority. This shall be done within 30 (thirty) Days of any such part encashment. Failure of the Concessionaire to restore and maintain the Performance Guarantee in accordance with this Article shall entitle the Concessions Authority to forthwith terminate this Agreement and also if relevant, to forfeit the Performance Guarantee.

Upon completion of the concession period, Performance Guarantee will be released, after certifying by the concerned authority that there are no dues to be paid to the Concessions Authority after completion of concession period and smooth transfer of the work to the next incumbent.

## ARTICLE 6

### OBLIGATIONS OF THE CONCESSIONAIRE

#### Obligations of the Concessionaire

- a. Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense undertake the repairs works and installation of additional balancing equipments, operation and maintenance of the Silo facility and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- b. The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- c. Subject to the provisions of Article 6.1(a) to 6.1(b), the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- d. The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
  - i. make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
  - ii. be solely liable for compliance of all requirements related to the Project as per the Standards and Specifications;
  - iii. perform and fulfil its obligations under the Financing Agreements; make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - iv. ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

- v. follow the Standard Operating Procedures prescribed by FCI / Concessioneing Authority from time to time related to handling and storage of paddy;
  - vi. not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - vii. Maintain proper records of stock and movements and paddy received, stored and released, receipts from the Concessioneing Authority and other receipts and provide to the Concessioneing Authority information as stipulated herein;
  - viii. carry out its obligations and duties with regard to the operation and maintenance of the Project in accordance with the provision of this Agreement. The obligations shall include all works arising from any obligation of the Concessioneire, and all duties not mentioned in this Concession Agreement, but which may be inferred to be necessary for the safe, reliable and efficient operation of the Project;
  - ix. Employ such qualified and experienced personnel at the Project as is required to carry out the Services and take care of Operation and Maintenance of Silo Facility;
  - x. Purchase and maintain insurance cover as stipulated in Article 17.1(c) at its own cost and expense, including towards the premium and all incidental costs;
  - xi. Pay all statutory dues except taxes payable to local body. Renewal fees should be paid by the Concessioneire during the concession period.
  - xii. transfer the Project to the Concessioneing Authority upon expiry of the Concession period or termination of this Agreement, in accordance with the provisions of this Agreement;
  - xiii. ensure that all equipment and facilities comprising the Project are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
  - xiv. The Concessioneire shall not use the facility for branding/positioning/promoting of any private labels.
- e. General Condition for undertaking repair works and addition of balancing equipments:
- i. Any equipment / machinery to be installed shall be brand new, whether it is imported or indigenous. Second hand machinery will not be permitted.

- ii. All the plant & machinery and equipments shall be acquired from reputed manufacturers with proven track record.
- iii. The Concessionaire shall submit the complete details of additional plant & machinery proposed for installation along with capacity and make / manufacturer.
- iv. All the machineries should have food grade certification.
- v. Prior approval from the Concessioneing Authority: The Concessionaire shall obtain the following approvals from the Concessioneing Authority:
  - i. Proposal for undertaking repairs works and installation of additional balancing equipments.
  - ii. Complete list of plant & machinery/equipments proposed along with capacity, make / manufacturer and cost.
  - iii. The Concessioneing Authority may seek additional information for arriving at the decision.
  - iv. The Concessioneing Authority on best effort basis will try to give approval within 15 days from the date of submission of complete details.
  - v. The Concessionaire shall comply with the approved plan.

### **Obligations relating to Project Agreements**

- a. It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- b. The Concessionaire shall submit to the Concessioneing Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Concessioneing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Concessioneing Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder

shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Concessioneing Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Concessioneing Authority. No review and/ or observation of the Concessioneing Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Concessioneing Authority be liable for the same in any manner whatsoever.

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

### **Change in Ownership**

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

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

- i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or
- ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him:

shall constitute a Change in Ownership requiring prior approval of the Concessioneing Authority from national security and public interest perspective, the decision of the Concessioneing Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior

approval of the Concessing Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessing Authority hereunder shall be limited to national security and public interest perspective, and the Concessing Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Concessing Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause:

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 Concessionaire;
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 Concessionaire; 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 Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

## **Engagement of Contractors**

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

Provided:

- i. the Concessionaire shall at all times be solely responsible for all its obligations under this 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 Concessionaire from its obligations or liability hereunder



and the Concessionaire 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 this Agreement;

- ii. the Concessionaire should have obtained requisite security clearance if required for the Contractor the Concessionaire intends to engage;
- iii. the Concessionaire shall ensure that the Project Contracts contain provisions that entitle the Concessioneing Authority to step into such contract in its sole discretion in substitution of the Concessionaire in the event of termination or suspension of this Agreement; and
- iv. any contract that it enters with an Affiliate in respect of the Project shall be on an arm's length basis.

#### **Obligations relating to employment of foreign nationals**

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

#### **Obligations relating to employment of trained personnel**

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

#### **Sole purpose of the Concessionaire**

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

## **Liability for Personnel**

- a. The Concessionaire shall be solely responsible for complying with all statutory responsibilities and liabilities in respect of the personnel engaged by him and liable for obtaining all mandatory registrations and deposit of contributions under various enactments. If, on account of default of the Concessionaire Authority is compelled to make any payments/contributions or discharge any responsibility/liability of the Concessionaire, Concessioning Authority shall be entitled to recover and/or set off such amounts/expenses incurred from the amounts due to the Concessionaire without prejudice to the right of Concessioning Authority to initiate appropriate legal proceedings for recovery of such amounts. The Concessionaire shall indemnify the Concessioning Authority against all claims whatsoever arising out of his default in respect of the personnel engaged by him under any Statute/Law in force.
- b. The Concessionaire shall maintain and submit all records & returns prescribed under all the Applicable Law to the designated Authorities within the prescribed time limit and also to the Concessioning Authority's Representative or any officer acting on its behalf whenever demanded.
- c. The Agreement as entered into between the Concessioning Authority and the Concessionaire shall in no way nullify, reduce, mitigate or absolve the parties of any responsibility, obligation or liability that may devolve upon them under any statutory/mandatory provisions prevailing in India. Liabilities of the Concessionaire in respect of obligatory laws remain unaffected and Concessionaire shall remain responsible for settlement of claims, if any, of third parties who may suffer damages either due to the fault of the Concessionaire or its employees and Associates.
- d. All persons employed by the Concessionaire shall be engaged by him as his own employees/workers in all respects and all rights and liabilities under the Indian Factories Act, the Employees Compensation Act, Employees Provident Fund & Miscellaneous Provisions Act (EPF & MP Act), Industrial Disputes Act, Employees State Insurance Act, Contract Labour (R&A) Act and under all other applicable enactments in India in respect of all such personnel shall exclusively be that of the Concessionaire. The Concessionaire shall be bound to indemnify Concessioning Authority against all the claims whatsoever in respect of his personnel under the Employees Compensation Act, 1923 or any statutory modification thereof or otherwise for or in respect of any damage or compensation payable in consequence of any accident or injury sustained by any workmen or other person whether in employment of the Concessionaire or not.

- e. The Concessionaire shall be liable for making contributions in accordance with the provisions of the EPF & MP Act and the scheme framed there-under as also in compliance with the Employees State Insurance Act in respect of the labour employed by him.
- f. The Concessionaire shall pay not less than minimum wages to the workers engaged by them as notified by the appropriate Authority from time to time during the currency of concession agreement.
- g. The provisions indicated above are not comprehensive; the Concessionaire shall ensure compliance of all statutory/mandatory provisions under all the Applicable Laws, rules & regulations made by the State Govt./Central Govt. from time to time pertaining to the contract, including all labour laws and the laws as applicable.
- h. If as a result of the Concessionaire's failure to provide any of the statutory benefits under any labour welfare enactments, the liability falls on the Concessioneing Authority, such amounts incurred by the Concessioneing Authority will be recovered from the amount payable to the Concessionaire by the Concessioneing Authority under this Agreement without prejudice to the right of the Concessioneing Authority such other legal recourse against the Concessionaire including termination of the contract.

### **Security and Safety at the Project Site**

For security and safety at the Project Site, the Concessionaire shall:

- a. engage and depute trained personnel for maintaining the security and safety inside the silo facility in accordance with Good Industry Practice.
- b. abide by and implement any instructions of the Concessioneing Authority and the Independent Agency for enhancing the security within and around the Project Facilities.

### **Branding of Project**

The Project or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. It is further agreed that the Project shall be known, promoted, displayed and advertised by the name of the Concessioneing Authority.

## ARTICLE 7

### OBLIGATIONS OF THE CONCESSIONING AUTHORITY

#### Obligations of the Concessing Authority

- a. The Concessing Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- b. The Concessing Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
  - i. Upon request from the Concessionaire, provide reasonable support to the Concessionaire in procuring/renewing Applicable Permits. However, non-rendering of any support by the Concessing Authority shall not absolve the Concessionaire of its obligation to obtain all Applicable Permits;
  - ii. Support and cooperate with the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- c. During the Implementation period,
  - i. Review and approval of the proposal submitted by the Concessionaire for undertaking repairs works and installation of additional balancing equipments.
  - ii. Appointment of Independent Agency: The Concessing Authority shall appoint an Independent Agency to monitor the progress of the implementation and ensure timely completion of the project. The Concessionaire shall provide all the details connected with the project as required by the Independent Agency within 7 days' time from the date of request. The scope of work of the Independent Agency during the implementation period shall be as follows:
    - (i) Review of proposal submitted by the Concessionaire and ensuring compliance with the agreement.
    - (ii) Periodical ascertainment of the progress and ensuring works are undertaken as per the approved proposal and within stipulated timeline.
    - (iii) Submission of monthly progress report to the Concessing Authority.

- (iv) Identify any specific issues or problems, if any during implementation period and provide assistance for corrective action.
- (v) Seamless co-ordination with Concessioneing Authority and the Concessionaire to facilitate timely execution of the project.
- (vi) Attending project review meetings conducted by Concessioneing Authority and presenting the progress.

d. During the Operation Period,

- i. Supply of paddy to the Silo facility.
- ii. Acknowledgement of weight and moisture level measured at the silo facility.
- iii. The Concessioneing Authority shall supply 60,000 MT of paddy in a year on best effort basis. The period will be reckoned with effect from the date of commencement of operation of silo facility or as may be decided on mutual consent. If there is any shortfall in supply of paddy in a particular year due to poor rainfall, agro climatic conditions or such other reasons, the Concessioneing Authority will try to compensate the shortfall in the subsequent years. Any backlog at the end of the Concession period shall be compensated by extending the Concession period till the shortfall is made good.
- iv. Processing and remitting of applicable service charges and annuity payments on monthly basis to the bank account of the Concessionaire.
- v. Inspection of the stored paddy on monthly basis.
- vi. Collection of stored paddy at the silo premises through transport vehicle / conveyors to Erukkur phase I & II MRMs.
- vii. The weight loss due to moisture difference between paddy delivered by the Concessioneing Authority at the Silo facility (input paddy) and stored paddy received by the Concessioneing Authority at the Silo facility (output paddy) will be estimated as given below:

A = Weight of input paddy in Kgs X Moisture of input paddy in percentage

B = Weight of output paddy in Kgs X Moisture of output paddy in percentage

Permissible weight loss = (A – B) \* 1.08 kgs

viii. The weight reduction due to the moisture difference shall be reconciled on 31st March of every year or any other cut-off date as may be fixed by the Concessioning Authority.

ix. Any shortfall between the quantity estimated to factor the reduction in weight due to the difference in moisture level of input paddy and output paddy, and actual quantity delivered to the Concessioning Authority should be compensated by the Concessionaire on actual basis as given below:

(Shortfall Quantity x Procurement cost) + Transportation cost + other incidental costs

The amount estimated for the shortfall in quantity by the Concessioning Authority is final and binding and such amount shall be deducted from the service charges payable to the Concessionaire.

x. However, if there is any excess between the quantity estimated to factor weight difference and actual quantity delivered to the Concessioning Authority, the Concessionaire shall not have any right to claim compensation or adjust the same for the shortfalls of any other year.

xi. Appointment of Independent Agency: The Concessioning Authority may in its discretion appoint an Independent Agency to monitor works carried out by the Concessionaire during the operation period. The scope of work of the Independent Agency shall be as follows:

(i) Carry out audits at the Silo Complex to establish quantity and quality parameters in accordance with the Standards and Specifications and if required, assess the magnitude of damages to be paid by the Concessionaire to the Concessioning Authority;

(ii) Ensure calibration of weighment equipments at periodic intervals as per requirements;

(iii) Carry out quarterly and annual audits at the Silo Complex in respect of operational performance parameters as stipulated in the Concession Agreement;

(iv) If required mediate and assist in resolving disputes between both the Parties to the Concession Agreement;

## ARTICLE 8

### PAYMENT TERMS AND PENALTY

#### Payment Terms

##### Annuity payment

- a. The Parties expressly agree that the cost of undertaking repairs of the Silo facility and addition of balancing equipments payable by the Concessioneing Authority to the Concessionaire, shall be Rs.10,89,00,000 /- (Rupees Ten Crore Eighty Nine Lakhs only) (The “Project Cost”). The Parties further agree that the Project Cost specified hereinabove for payment to the Concessionaire shall include the cost of undertaking repair works, addition of balancing equipments, interest during construction, physical contingencies and all other costs, expenses and charges for operationalization of the silo facility, save and except any additional costs arising on account of Change in Law, Force Majeure or breach of this Agreement, which costs shall be due and payable to the Concessionaire in accordance with the provisions of the Agreement. For the avoidance of doubt, the Project Cost specified herein represents the amount due and payable by the Concessioneing Authority to the Concessionaire and may be less than, equal to, or more than the actual Project Cost. The Concessionaire will not have any right to claim additional cost under any circumstances.
- b. The Project Cost to be paid to the Concessionaire in pursuance of the provisions of Article 8.1.1.(a) shall be due and payable monthly over a period of 10 years i.e. 120 months commencing from the date of commencement of operation of the silo facility, (the “Annuity Payments”). The 1<sup>st</sup> (first) installment of Annuity Payments shall be due and payable after 1 month from the date of commencement of operation of the silo facility.
- c. Interest shall be due and payable on the reducing balance of Project Cost at an interest rate equal to the Bank Rate at the date of signing of this concession agreement plus 3% (three percent). Such interest shall be due and payable monthly along with each installment specified in Article 8.1.1.(b). The interest rate is fixed and shall not change at any time during the Concession period.
- d. Each of the Annuity Payment due payable by the Concessioneing Authority to the Concessionaire shall be as given in Appendix - 3.

## Service Charges

- a. Payment towards Service charges will be made on monthly basis based on the quantity of paddy dried and stored after adjusting deduction towards penalty and shortfall in quantity if any.
- b. The payments for service charges shall ordinarily be made within 30 days from the date of submission of claim and required information. If the payment is delayed beyond 30 days, the Concessioneing Authority shall pay interest at 10% per annum for the delayed period i.e. beyond 30 days.
- c. The Concessionaire should remit the GST collected from the Concessioneing 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.
- d. The service charge finalized and approved will hold good for a period of one year from the date of declaration of commencement of operation of the Silo facility.
- e. Increase in service charges: An increase of 5.00% 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 Concessioneing Authority for 1 <sup>st</sup> year	A
Service charge per ton of paddy for 2 <sup>nd</sup> year (B)	A * 1.05
Service charge per ton of paddy for 3 <sup>rd</sup> year (C)	B * 1.05
Service charge per ton of paddy for 4 <sup>th</sup> year (D)	C * 1.05
Service charge per ton of paddy for 5 <sup>th</sup> year (E)	D * 1.05
Service charge per ton of paddy for 6 <sup>th</sup> year (F)	E * 1.05
Service charge per ton of paddy for 7 <sup>th</sup> year (G)	F * 1.05
Service charge per ton of paddy for 8 <sup>th</sup> year (H)	G * 1.05
Service charge per ton of paddy for 9 <sup>th</sup> year (I)	H * 1.05
Service charge per ton of paddy for 10 <sup>th</sup> year (J)	I * 1.05

- f. 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 commencement of operation of the silo facility.



- g. The Concessioneing Authority also reserves the right to recover any dues from the Concessionaire, which is found on later date, during audit/excess payment, after final settlement is made. The Concessionaire is liable to pay such dues to the Concessioneing Authority immediately on demand, without raising any dispute/protest.

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

- a. The Concessionaire shall open a bank account exclusively for the transactions connected with the project.
- b. All the financial transactions shall be routed through the said bank account. The Concessionaire should intimate the details of the bank account to the Concessioneing 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 Concessioneing Authority within 5 days.

#### **Penalty**

- a. Implementation Period

Failure to comply with the schedule / commence the commercial operation within the period specified in Article 2.1.1(a).xi or extended period will attract a penalty of ₹10,000 per day.

- b. Operational Period

- i. The delivery of paddy should be made available 24 x 7. Failure to do so will attract a penalty of ₹10,000 per incidence.
- ii. The quality of the paddy delivered at the silo premises shall comply with the FCI norms in force. Deviation beyond the prescribed limit will entail rejection of the paddy and the Concessionaire has to pay a penalty of 25% over and above the Cost of Procurement, Transportation cost and other incidental costs. The estimate done by the Concessioneing Authority / Independent Agency is final and binding.

## **ARTICLE 9**

### **ASSET OWNERSHIP**

#### **Ownership of Assets**

The ownership of the Project Site and Silo Facility shall always remain vested with the Concessioning Authority. The rights of the Concessionaire in the Project Site and Silo Facility shall only be that of a bare licensee of such assets and the Concessionaire shall neither assign, transfer, sublet, create any charge, mortgage or encumbrance, nor shall the Concessionaire create or permit creation of any third party rights whatsoever, on whole or any part of the Silo facility or Project Site. Further, any such rights of the Concessionaire shall always be subject to existing rights of way. It is expressly agreed that the Concessionaire's rights in the Project Site and/or the Silo Facility shall cease without the need for any action to be taken by the Concessioning Authority upon the termination of this Agreement for any reason whatsoever.

#### **Assets created or provided by the Concessionaire**

The ownership of the equipments, facilities etc. installed or provided by the Concessionaire at the Project Site and/or in the Silo facility pursuant to this Agreement shall, until expiry of the concession period or transfer to the Concessioning Authority on Termination in accordance with this Agreement, be with the Concessionaire.

## **ARTICLE 10**

### **REPAIRING OF SILO FACILITY AND ADDITION OF BALANCING EQUIPMENTS**

#### **Obligations prior to undertaking repair works and addition of balancing equipments**

Prior to undertaking repair works and addition of balancing equipments, the Concessionaire shall:

- a. submit to the Concessioning Authority and Independent Agency its proposal for undertaking repairs works and installation of additional balancing equipments along with time schedule for completion of the works in accordance with the Project Completion Schedule as set forth in Article 2.1.1.a.(xi);
- b. submit to the Concessioning Authority and Independent Agency, the complete list of plant & machinery / equipments proposed along with capacity, make / manufacturer and cost;
- c. Obtain approval from the Concessioning Authority as set forth in Article 6.1.e.(v);
- d. appoint its representative duly authorised to deal with the Concessioning Authority in respect of all matters under or arising out of or relating to this Agreement; and
- e. undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of repair works and addition of balancing equipments under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

#### **Repairing of Silo Facility and Addition of Balancing Equipments**

- a. The repairing and addition of balancing equipments shall be completed within 6 months from the date of handing over physical possession of the Silo Facility and the same shall be the scheduled date for completion of the repair works and addition of balancing equipments (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that the repair works and addition of balancing equipments shall be completed on or before the Scheduled Completion Date.

- b. The Concessionaire shall undertake the repair works and addition of balancing equipments in accordance with the approved plan. In the event that the Concessionaire fails to complete the works within a period of 6 months from the date of handing over physical possession of the Silo Facility, unless such failure has occurred due to Force Majeure or for reasons attributable to the Concessioneing Authority, it shall pay Damages to the Concessioneing Authority in a sum calculated at the rate of ₹15.00 per ton of paddy per day for the Silo capacities which are not completed for delay of each day until the commencement of operation of the silo facility; provided that the Scheduled Completion Date is extended in accordance with the provisions of this Agreement, the date for commencement of operation of the silo facility shall be deemed to be modified accordingly. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause shall be without prejudice to the rights of the Concessioneing Authority under this Agreement, including the right of Termination thereof.
- c. In the event that the repair works and addition of balancing equipments are not completed and the commencement of operation of the silo facility does not occur within 120 (one hundred and twenty) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Concessioneing Authority or due to Force Majeure, the Concessioneing Authority shall be entitled to terminate this Agreement.

## **ARTICLE 11**

### **MONITORING OF REPAIR WORKS AND ADDITION OF BALANCING EQUIPMENTS**

#### **Monthly progress reports**

The Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Concessioneing Authority and Independent Agency a monthly report on the progress of the repair works and addition of balancing equipments and shall promptly give such other relevant information as may be required by the Independent Agency.

#### **Inspection**

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

#### **Delay**

Without prejudice to the provisions of Article 10.2.(a), if the Concessionaire does not achieve the commencement of operation of the silo facility within the Scheduled Completion Date or the Independent Agency shall have reasonably determined that the rate of progress of Repair Works is such that the commencement of operation of the silo facility is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Agency in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the commencement of operation of the silo facility within the Scheduled Completion Date.

#### **Suspension of unsafe works**

- a. Upon recommendation of the Independent Agency to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole

or any part of the Repair Works if, in the reasonable opinion of the Concessioneing Authority, such work threatens the safety of any person or property. Provided, however, that in case of an emergency, the Concessioneing Authority may suo moto issue the notice referred to hereinabove.

- b. The Concessionaire shall, pursuant to the notice under Article 11.4.(a), suspend the Repair Works or any part thereof for such time and in such manner as may be specified by the Concessioneing Authority and thereupon carry out remedial measures to secure the safety of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Agency to inspect such remedial measures forthwith and make a report to the Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Agency, the Concessioneing Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Concessioneing Authority, and the procedure set forth in this Clause shall be repeated until the suspension hereunder is revoked.
- c. Subject to the provisions of Article 19.9, all reasonable costs incurred for maintaining and protecting the Repair Works or part thereof during the period of suspension (the "Preservation Costs") shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessioneing Authority, the Preservation Costs shall be borne by the Concessioneing Authority.
- d. If suspension of Repair Works is for reasons not attributable to the Concessionaire, the Independent Agency shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessioneing Authority accordingly whereupon the Concessioneing Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Agency.

## **ARTICLE 12**

### **COMPLETION CERTIFICATE**

#### **Tests**

- a. No later than 30 (Thirty) days prior to the likely completion of the repair works and addition of balancing equipments, the Concessionaire shall notify the Independent Agency of its intent to subject the repair works and addition of balancing equipments to Tests. The date and time of each of the Tests shall be determined by the Independent Agency in consultation with the Concessionaire, and notified to the Concessions Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Agency may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Agency failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Agency, and in the event the Independent Agency delays the Tests hereunder, the Concessions Authority shall impose penalties on the Independent Agency and shall ensure that Tests are completed in time either by the Independent Agency or any substitute thereof.
- b. All Tests shall be conducted in accordance with Good Industry Practice at the cost and expense of the Concessionaire. The Independent Agency shall observe, monitor and review the results of the Tests to determine compliance of the repair works and addition of balancing equipments installed by the Concessionaire with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Agency during the course of any Test that the performance of the equipments or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of Test, the Independent Agency shall provide to the Concessionaire and the Concessions Authority the copies of Test data including detailed Test results.

#### **Completion Certificate**

Upon completion of Repair Works and addition of balancing equipments and the Independent Agency determining the Tests to be successful, the Concessions Authority shall forthwith issue to the Concessionaire a Completion Certificate.

#### **Commencement of Operation of the Silo Facility**

- a. The repair works and addition of balancing equipments shall be deemed to be completed when the Completion Certificate, is issued under the provisions of Article 12.
- b. Upon issue of completion certificate, the Concessions Authority shall commence the supply of paddy to the Silo facility.

## **ARTICLE 13**

### **OPERATION AND MAINTENANCE**

#### **O&M obligations of the Concessionaire**

- a. During the Operation Period, the Concessionaire shall operate and maintain the Silo Facility in accordance with this Agreement. The obligations of the Concessionaire hereunder shall include:
  - i. ensuring safe, hygienic and efficient storage of paddy in the Silo Facility, including prevention of loss or damage thereto, during normal operating conditions;
  - ii. undertaking operation and maintenance of the Silo Facility in an efficient, coordinated and economical manner, in compliance with the Specifications and Standards;
  - iii. minimising disruption to storage and movement of paddy in the event of accidents or other incidents affecting the safety and use of the Silo Facility by providing a rapid and effective response and maintaining liaison with emergency services of the State;
  - iv. carrying out periodic preventive maintenance of the Silo Facility;
  - v. undertaking routine maintenance including prompt repairs of all elements and components of the Silo Facility so as to ensure compliance with the Maintenance Requirements and the Specifications and Standards;
  - vi. undertaking major maintenance including Major Overhaul, replacement of components and parts, repairs to structures, and repairs and refurbishment of associated facilities including equipment;
  - vii. preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Silo Facility;
  - viii. protection of the environment and provision of equipment and materials therefor;
  - ix. operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Silo Facility and for providing Storage Services;



- x. complying with Safety Requirements in accordance with Article 13.16;
  - xi. operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice; and
  - xii. maintaining reliability in operating the Silo Facility.
- b. The Concessionaire shall remove promptly from the Silo Facility all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Silo Facility in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.
- c. If the Concessionaire fails to comply with any directions issued by the Concessions Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Concessions Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.

### **Maintenance Requirements**

- a. The Concessionaire shall, at all times, operate and maintain the Silo Facility in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits.
- b. The Concessionaire shall repair or rectify any defect or deficiency and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Concessions Authority shall be entitled to recover Damages as set forth in Article 13.10 of the Agreement, without prejudice to the rights of the Concessions Authority under the Agreement, including Termination thereof.

### **Maintenance Manual**

- a. No later than 30 (Thirty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with the Independent Agency, evolve a repair, operation and maintenance manual (the "Maintenance Manual") for the regular and preventive maintenance of the Silo Facility in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice,

and shall provide 3 (three) copies thereof to the Concessioneing Authority. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Article 13.3 shall apply, mutatis mutandis, to such revision.

- b. Without prejudice to the provision of Article 13.3.(a), the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

### **Maintenance Programme**

- a. On or before the date of commencement of operation of silo facility and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Concessioneing Authority and the Independent Agency, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
  - i. preventive maintenance schedule;
  - ii. arrangements and procedures for carrying out urgent repairs;
  - iii. criteria to be adopted for deciding maintenance needs;
  - iv. intervals and procedures for carrying out inspection of all elements of the Silo Facility;
  - v. intervals at which the Concessionaire shall carry out periodic maintenance;
  - vi. arrangements and procedures for carrying out safety related measures;
  - vii. intervals for major maintenance works and the scope thereof; and
  - viii. frequency of carrying out intermediate and periodic overhaul of the equipment.
  - ix. Provided that the Maintenance Programme shall not schedule any closure or overhaul at any time during the Harvest Season.
- b. Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Agency shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.
- c. The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Articles 13.4.(a) and 13.4.(b) shall apply mutatis mutandis to such modifications.

- d. Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Article 13.4 or as notified to the Concessions Authority shall be deemed to be scheduled maintenance (the “Scheduled Maintenance”).

### **Major Overhaul**

- a. The Concessionaire may, as and when necessary, undertake Major Overhaul of a Silo, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Concessions Authority, at least 1 (one) year in advance, and requiring the Concessions Authority to evacuate the paddy from such Silo prior to the scheduled date of commencement of Major Overhaul. Provided that a Major Overhaul shall not be scheduled during the Harvest Season or during a period of 3 (three) months following the Harvest Season. For the avoidance of doubt, unless the Parties mutually agree, not more than 4 (Four) Silos shall be subjected to a Major Overhaul during the course of an Accounting Year.
- b. For the avoidance of doubt, the Parties agree that the evacuation of a Silo shall cause disruption in the operations of the Concessions Authority and consequently, the Concessionaire shall be liable to pay Damages to the Concessions Authority at ₹15.00 per ton of paddy for each day for the unavailable silo capacities until the recommissioning of such Silo Facility.

### **Safety, breakdowns and accidents**

- a. The Concessionaire shall ensure safe conditions for the Concessions Authority and Users, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.
- b. The Concessionaire’s responsibility for rescue operations on the Silo Facility shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the safe operations of the Silo Facility.

### **De-commissioning due to Emergency**

- a. If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants closure of the whole or any part of the Silo Facility, the Concessionaire shall be entitled to close the whole or any part of the Silo Facility for so long as such Emergency

and the consequences thereof warrant; provided that such particulars thereof shall be notified by the Concessionaire to the Concessions Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Concessions Authority may give for dealing with such Emergency. For the avoidance of doubt, the Parties agree that in the event the Concessions Authority does not approve the de-commissioning of the Silo Facility by the Concessionaire under this Clause, it may refer the matter to the Independent Agency for determination of the facts and if any Dispute remains thereafter, the Dispute Resolution Procedure shall apply.

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

### **Section closure**

- a. Upon notice given by the Concessions Authority to this effect prior to commencement of an Accounting Year, the Concessionaire shall, save and except as provided in Article 13.7, not schedule a closure of any part of the Silo Facility at any time during the Operation Period.
- b. Save and except as provided in Article 13.7, the Concessionaire shall not shut down or close any part of the Silo Facility for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Concessions Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Concessions Authority at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Concessions Authority shall grant permission with such modifications as it may deem necessary.
- c. Upon receiving the permission pursuant to Article 13.8.(b), the Concessionaire shall be entitled to shut down the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Concessions Authority at ₹15.00 per ton of paddy for each day of delay for the unavailable Silo capacity until the section has been re-opened for operations.

## **Unscheduled Maintenance**

Any maintenance, repair or rectification of the Silo Facility not forming part of Scheduled Maintenance shall be deemed to be unscheduled maintenance (the “Unscheduled Maintenance”). For the avoidance of doubt, the Parties agree that any Forced Closure or de-commissioning of the whole or any part of the Silo Facility under the provisions of Article 13.7 shall not be deemed to be Unscheduled Maintenance. It is further agreed that any closure, suspension or reduction of Storage Capacity arising out of Unscheduled Maintenance shall be deemed as Non-Availability of Storage Capacity and the Concessionaire shall pay Damages to the Concessions Authority at ₹15.00 per ton of paddy for each day for the unavailable Silo capacity.

## **Damages for breach of maintenance obligations**

- a. In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the and the Concessions Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.5% (zero point five per cent) of the cost of such repair or rectification as estimated by the Independent Agency. Recovery of such Damages shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.
- b. The Damages set forth in Article 13.10.(a) may be assessed and specified forthwith by the Independent Agency; provided that the Concessions Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

## **Concessions Authority’s right to take remedial measures**

- a. In the event the Concessionaire does not maintain and/or repair the Silo Facility or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Concessions Authority or the Independent Agency, as the case may be, the Concessions Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial

measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Concessioneing Authority as Damages. For the avoidance of doubt, the right of the Concessioneing Authority under this Article 13.11.(a) shall be without prejudice to its rights and remedies provided under Article 13.10.

- b. The Concessioneing Authority shall have the right, and the Concessionaire hereby expressly grants to the Concessioneing Authority the right, to recover the costs and Damages specified in Article 13.11.(a).

### **Overriding powers of the Concessioneing Authority**

- a. If in the reasonable opinion of the Concessioneing Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to any person or property, the Concessioneing Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- b. In the event that the Concessionaire, upon notice under Article 13.12.(a), fails to rectify or remove any hardship or danger within a reasonable period, the Concessioneing Authority may exercise overriding powers under this Article 13.12.(b) and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Concessioneing Authority in discharge of its obligations hereunder shall be entitled to recover them from the Concessionaire in accordance with the provisions of Article 13.11 along with the Damages specified therein.
- c. In the event of a national emergency, civil commotion or any other act specified in Article 19.4, the Concessioneing Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Silo Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Concessioneing Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding

power by the Concessioneing Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 19. It is also agreed that the Concessionaire shall comply with such instructions as the Concessioneing Authority may issue in pursuance of the provisions of this Article 13.12.(c), and shall provide assistance and cooperation to the Concessioneing Authority, on a best effort basis, for performance of its obligations hereunder.

### **Restoration of loss or damage to the Silo Facility**

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

### **Excuse from performance of obligations**

The Concessionaire shall not be considered in breach of its obligations under this Agreement if Non-Availability of the whole or any part of the Silo Facility is on account of any of the following for the duration thereof:

- a. an event of Force Majeure;
- b. measures taken to ensure the safe use of the Silo Facility except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- c. compliance with a request from the Concessioneing Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Silo Facility:

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

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

### **Safety Requirements**

- a. The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Silo Facility, Users and other persons present in the premises. In particular,

the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Silo Facility.

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

### **Barriers and diversions**

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



## **ARTICLE 14**

### **MONITORING OF OPERATION AND MAINTENANCE**

#### **Monthly status reports**

- a. The Concessionaire shall, no later than 7 (seven) days after the close of each month during the Operation Period, furnish a monthly report to the Concessioneing Authority and the Independent Agency stating in reasonable detail the condition of the Silo Facility including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Agency or the Concessioneing Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.
- b. During Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish to the Concessioneing Authority and the Independent Agency a monthly management report which shall be a summary of:
  - (Quantity of paddy received in the silo facility and moisture level
  - Quantity of paddy dried and stored in silos
  - Quantity of paddy available in silos
  - Month wise cumulative data (starting from 1st of every month)
  - Quantity of paddy supplied to the Concessioneing Authority and moisture level

#### **Reports of unusual occurrence**

- a. Prior to the close of each day, the Concessionaire shall furnish to the Concessioneing Authority and the Independent Agency, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, on the Silo Facility relating to the safety and security of the Silo Facility and Foodgrains or the persons affected by it. A weekly and monthly summary of such reports shall also be sent within 7 (seven) days of the closing of each week and month, as the case may be. For the purposes of this Article 14.2.(a), accidents and unusual occurrences at the Silo Facility shall include:
  - death or injury to any person;
  - any damage or obstruction on the Silo Facility;
  - disablement of any element or system of the Silo Facility during operation thereof;
  - communication failure affecting the operation of the Silo Facility;
  - smoke, fire, theft, trespass or other breach of security on the Silo Facility;

- flooding of the Silo Facility; and
- such other relevant information as may be reasonably required by the Concessioneing Authority or the Independent Agency.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Article 14.2.(a), has occurred on that day.

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

### **Inspection**

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

### **Remedial measures**

- The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Article 14.3 and furnish a report in respect thereof to the Independent Agency and the Concessioneing Authority within 15 (fifteen) days of receiving the O&M Inspection Report; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- The Independent Agency shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Silo Facility into compliance with the Maintenance Requirements and the procedure set forth in this Article 14.4 shall be repeated until the Silo Facility conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessioneing Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Article 13.10.

## **ARTICLE 15**

### **INDEPENDENT AGENCY**

#### **Appointment of Independent Agency**

The Concessioneing Authority shall appoint a consulting firm, to be the independent consultant under this Agreement (the “Independent Agency”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Concessioneing Authority shall appoint an Independent Agency for a further term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

#### **Duties and functions**

- a. The Independent Agency shall discharge its duties and functions substantially during the implementation period in accordance with Article 7.1.(c).(ii).
- b. The Independent Agency shall discharge its duties and functions substantially during the operation period in accordance with Article 7.1.(d).(xi).
- c. A true copy of all communications sent by the Concessioneing Authority to the Independent Agency and by the Independent Agency to the Concessioneing Authority shall be sent forthwith by the Independent Agency to the Concessionaire.
- d. A true copy of all communications sent by the Independent Agency to the Concessionaire and by the Concessionaire to the Independent Agency shall be sent forthwith by the Independent Agency to the Concessioneing Authority.

#### **Remuneration**

The remuneration, cost and expenses of the Independent Agency shall be paid by the Concessioneing Authority.

#### **Termination of appointment**

The Concessioneing Authority may, in its discretion, terminate the appointment of the Independent Agency at any time.

### **Authorised signatories**

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

### **Dispute resolution**

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

### **Interim arrangement**

In the event that the Concessions Authority does not appoint an Independent Agency, or the Independent Agency so appointed has relinquished its functions or defaulted in discharge thereof, the Concessions Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Agency in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Article 15.7 shall in any manner restrict the rights of the Concessions Authority to enforce compliance of the provisions of this Agreement.

## ARTICLE 16

### GENERAL CONDITIONS

#### General Conditions

- a. Concessioneing Authority reserves the right to relax or waive or amend any of the conditions.
- b. Sub-assign, pledging, mortgaging of the project site and facilities is not permitted.
- c. Concessioneing Authority or its authorized representative is at their liberty to visit the site for monitoring and inspection at any time during the concession period. Any mid-course correction advised by Concessioneing Authority shall be duly incorporated.
- d. If on account of non-compliance with the provisions of any laws, Concessioneing Authority is called upon to make any payment to or in respect of his employees, the Concessionaire shall be liable and pay Concessioneing Authority all such amounts. No liability whatsoever shall attach to Concessioneing Authority on account of or any failure on the part of the Concessionaire to observe these regulations.
- e. 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 Concessionaire including all compensation/damage/expenses/fines, the concerned Concessionaire personnel shall attend the court as and when required.
- f. Concessioneing 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 Concessionaire is required to take appropriate safety and insurance measures to safeguard against any loss to human life.
- g. Concessioneing Authority will have no liability on account of any omission or commission of regulatory/statutory requirement by the Concessionaire.
- h. Concessioneing Authority shall not be accountable either directly or indirectly to the lenders of the Concessionaire at any point of time.
- i. Concessioneing Authority shall not be made a party to any litigation by or on behalf of the Concessionaire.
- j. The Concessionaire will indemnify, defend and hold harmless the Concessioneing 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 Concessionaire may incur as a result of any negligent or wilful acts or omissions of the Concessionaire.

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

## **ARTICLE 17**

### **GENERAL RIGHTS, DUTIES AND OBLIGATIONS**

#### **Of the Concessionaire**

##### **a. Applicable Permits**

The Concessionaire shall at all times during the Concession Period maintain and comply with the Applicable Permits / Approvals for the operation and maintenance of the silo facility and associated infrastructure.

##### **b. Taxes & duties**

The Concessionaire shall during the Concession 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**

###### **i. Insurance Requirement**

- a. The Concessionaire shall effect and maintain at its own cost, during the Concession Period, such insurance as may be required under the Financing Documents, and the Applicable Laws, and such other insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks and liabilities that may devolve on the Concessions Authority as a consequence of any event, happening, any act or omission of the Concessionaire during the Concession Period.
- b. Notwithstanding the requirements as per Article 17.1(c).i.a, the Concessionaire shall at all times during the Operation Period at its own cost maintain insurance cover for its employees and agents engaged in or connected to the Project and the Project Site and Assets against loss, damage or destruction at replacement value including for all Force Majeure events for which insurance covers are available, for the stock of paddy in custody of the Concessionaire to cover for loss and damage of paddy. The Concessionaire shall ensure that in such insurance policy

covering the stock of paddy, the Concessioneing Authority shall be the primary and sole beneficiary.

- c. Notwithstanding the requirements as per Article 17.1(c).i.a, the Concessionaire shall at its own cost maintain fidelity insurance to indemnify the Concessioneing Authority against all losses and damages the Concessioneing Authority may suffer due to the conduct of the Concessionaire. The Concessionaire shall ensure that in such insurance policy the Concessioneing Authority shall be the beneficiary.

## **ii. Evidence of Insurance Cover**

The Concessionaire shall furnish to the Concessioneing Authority notarized copy of certificates of insurance policies procured by the Concessionaire along with evidence of premium paid on such policies for the Silo facility and Food Grains. In case of insurance of paddy stocks as stipulated in the Article 17.1(c).i.b the Concessionaire shall furnish to the Concessioneing Authority the Original Insurance Policy after retaining notarized copies with him.

## **iii. Remedy for failure to insure**

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

## **iv. Waiver of subrogation**

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



**v. Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Concessions Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

**vi. Application of insurance proceeds**

All money received under insurance policies shall be promptly applied by the Concessionaire towards repair or renovation or restoration or substitution of the Assets and 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. The Concessionaire shall carry out such repair or renovation or restoration or substitution to the extent possible in such manner that the Project Facilities and Services or any part thereof, shall, after such repair or renovation or restoration or substitution be as far as possible in the same condition as they were before such damage or destruction, normal wear and tear excepted.

In the event of damage to the Paddy stock in the custody of the Concessionaire, the Concessions Authority shall have the first right of compensation from the proceeds from all insurance claims of the stock damaged due to the occurrence of the event in regard to which the insurance claims are received by the Concessionaire.

**d. Indemnification**

The Concessionaire shall during the pendency of this Agreement and thereafter until all claims and demands in respect to the acts and omissions during the period of the Agreement as described hereunder are duly settled, indemnify and keep indemnified and otherwise save harmless, the Concessions 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 Concessions 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 Concessionaire or as a result of failure on the part of the Concessionaire to perform any

of its obligations under this Agreement or on the Concessionaire committing breach of any of the terms and conditions of this Agreement or on the failure of the Concessionaire 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 consignee or owner of goods or vessel owner/agent or its employees or any third party or Government Authority or as a result of any failure or negligence or default of the Concessionaire 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 this Agreement and/or arising out of or, in connection with the Concessionaire's use and occupation of the Project Site or Assets and/or operation and maintenance of the Project Facilities and Services.

**e. Condition Survey**

The Concessionaire agrees that at least once in a month during the Agreement Period, the Concessions Authority shall conduct inventory of the paddy available at the silo facility.

**Of the Concessions Authority**

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

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

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

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

## **Of the Concessing Authority and the Concessionaire**

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

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

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

#### **i. The Concessing Authority's Documents**

Documents and computer programs or copies thereof, if any, provided by the Concessing Authority to the Concessionaire, shall always remain the property of the Concessing Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Concessing Authority, be returned by the Concessionaire to the Concessing Authority on the Transfer Date.

#### **ii. Concessionaire's Documents**

Documents and computer programs provided by the Concessionaire, or which are developed (and owned by the Concessionaire) for operation and/or maintenance of the Project /the Project Facilities and Services shall be handed over by the Concessionaire to the Concessing Authority free of cost on the Transfer Date.

#### **iii. 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 Concession Period.

#### **iv. Obligation to Cooperate**

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

## ARTICLE 18

### CHANGE IN LAW

#### Change in Law

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

- a. adoption, promulgation, modification, reinterpretation or repeal after the date of this 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 Concessionaire of any Applicable Permit) in connection with the issuance, renewal or modification of any Applicable Permits after the date of this Agreement which renders the performance by the Concessionaire of any of the terms of this 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 Concessionaire 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 Concessions Authority or other regulatory authority having jurisdiction over the Project in respect of the standards of service shall not constitute a Change in Law.

#### The Remedy

- a. In the event of Change in Law the parties may propose modifications to the relevant terms of this 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 this Agreement including extension of the Concession 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 this 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 Concessioning Authority and the Concessionaire 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 Concessionaire shall not be entitled to any remedy under Article 18.2;

## ARTICLE 19

### FORCE MAJEURE

#### 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 19.2, 19.3 and 19.4 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.

#### 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 Concessionaire or the Contractor or any of the employees or agents of the Concessionaire or the Contractor);
- b. strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them), and not being an Other Event set forth in Article 19.4, labour disruptions or any other industrial disturbances not arising on account of the acts or omissions of the Concessionaire 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 Concessionaire or on behalf of the Contractor;

- d. the discovery of geological conditions, toxic contamination or archaeological 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.

### **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 18, 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 Concessionaire'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 Concessionaire'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 Concessionaire or the Contractor as the case may be is bound;
- c. early determination of this Agreement by Concessioning 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 Concessionaire by or on behalf of the Contractor; or
- e. any event or circumstance of a nature analogous to any of the foregoing.

### **Other Events**

Any of the following events which prevents the Affected Party from performing any of its obligations under this 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 Fee by the Concessionaire;
- d. any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire; and any judgment or order of a court of competent jurisdiction or statutory authority in India made against the Concessionaire or the Contractor in any proceedings which is non-collusive and duly prosecuted by the Concessionaire other than relating to proceedings (i) pursuant to failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement or (iv) with respect to exercise of any of its rights under this Agreement by Concessioneing Authority; or
- e. any event or circumstance of a nature analogous to any of the foregoing.

#### **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:
  - (i) the nature, time of occurrence and extent of the Force Majeure Event with evidence in respect thereof;
  - (ii) 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 this Agreement;



- (iii) 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
  - (iv) 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 19.5.(b) and such other information as the other Party may reasonably request.

### **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 19.7 or
- b. termination of this Agreement pursuant to Article 19.10 hereof.

### **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 this 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.

### **Performance Excused**

The Affected Party, to the extent rendered unable to perform its obligations or part thereof under this 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.

## **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 this 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 Concession Period by Concessioning Authority in appropriate cases if permissible under Applicable Law.

## **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 this Agreement or continue this Agreement on mutually agreed revised terms. If the Parties are unable to reach an agreement in this regard, the Affected Party shall after the expiry of the said period of 120 (one hundred and twenty ) Days be entitled to terminate the Agreement in which event, the provisions of Article 21 and Article 22 shall, to the extent expressly made applicable, apply.

## ARTICLE 20

### EVENTS OF DEFAULT

#### Events of Default

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

#### **a. The Concessionaire Event of Default**

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

- i. the Concessionaire's failure to perform or discharge any of its obligations in accordance with the provisions of this Agreement;
- ii. the Concessionaire'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;
- iii. any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- iv. the Performance Guarantee is not maintained in terms of the provisions hereof;
- v. material Breach with regard to Operation and Maintenance of the Silo facility as per Standards and Specifications;
- vi. material quality and quantity loss of paddy in custody of the Concessionaire;
- vii. material failure to provide Services as per the terms of this Agreement;
- viii. any act by Concessionaire which has the effect of impacting the property rights of the Concessioneing Authority under this Agreement;
- ix. the Concessionaire passing a resolution for voluntary winding up;

- x. appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of the Concessionaire by a court of competent jurisdiction in proceedings for winding up or any other legal proceedings;
- xi. the Concessionaire abandons or expresses its intention to revoke / terminate this Agreement without being entitled to do so as is expressly provided in the Agreement;
- xii. the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Concessions Authority, a Material Adverse Effect;
- xiii. levy of an execution or distraint on the Concessionaire'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; and
- xiv. the Concessionaire engaging or knowingly allowing any of its employees, agents, Contractor or representative to engage in any activity prohibited under this Agreement and/or by law or which constitutes a breach of this Agreement or breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- xv. other such events as specified in the Agreement.

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

- i. The Concessions Authority's failure to perform or discharge its obligations in accordance with the provisions of this Agreement unless such failure has occurred as a consequence of any Concessionaire Event of Default or a Force Majeure Event.
- ii. failure to make payments to the Concessionaire as per the terms of this Agreement;
- iii. any representation made or warranties given by the Concessions Authority under this Agreement is found to be false or misleading.
- iv. appointment of a provisional liquidator, administrator or receiver of the whole or part of the Silo Facility in any legal proceedings initiated against the

Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default).

- v. levy of an execution or destraint on the Assets in any proceedings against the Concessioneing Authority (unless such proceedings are initiated as a consequence of any Concessionaire Event of Default) which has or is likely to have Material Adverse Effect and such execution or destraint remaining in force for a period exceeding 90 (ninety) Days.

## **Parties Rights**

- i. Upon the occurrence of the Concessionaire Event of Default, the Concessioneing Authority shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.
- ii. Upon the occurrence of the Concessioneing Authority Event of Default, the Concessionaire shall without prejudice to any other rights and remedies available to it under this Agreement be entitled to terminate this Agreement.

Provided that before proceeding to terminate this 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 this Agreement and the circumstances in which the same has occurred.

## **Consultation Notice**

Either Party exercising its right under Article 20.2, 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”).

## **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 Concessionaire Event of Default, the Concessioneing Authority shall endeavour

to arrive at an agreement as to one or more of the following measures and/or such other measures as may be considered appropriate by them in the attendant circumstances:

- i. the change of management or control/ownership of the Concessionaire;
- ii. the replacement of the Concessionaire by a new operator;

### **Obligations during Remedial Period**

During the Remedial Period, the Parties shall continue to perform their respective obligations under this 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.

### **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 20.4, the Consultation Notice shall be withdrawn in writing by the Party who has issued the same.

### **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 20.4, the Party who has issued the Consultation Notice shall have the right to terminate this Agreement, in which event, the provisions of Article 21 and Article 22 shall, to the extent expressly made applicable, apply.

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

Upon a Termination Notice being issued due to Concessionaire Event of Default, the Concessions Authority may, at its discretion

- i. re-enter upon and take possession and control of Project Site/Project Facilities and Services forthwith;
- ii. prohibit the Concessionaire and any Person claiming through or under the Concessionaire from entering upon/dealing with the Project Facilities and Services;

- iii. step in and succeed upon selection by the Concessioneing Authority without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Concessioneing Authority may in its discretion deem appropriate with effect from the date of communication of such selection to the counter party to the relative Project Contracts.

## **ARTICLE 21**

### **TERMINATION OF THE CONCESSION/AGREEMENT**

#### **Termination Procedure**

The Party entitled to terminate this 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.

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

During Termination Period, the Parties shall subject where applicable to the provisions of this Article 21, continue to perform such of their respective obligations under this Agreement which are capable of being performed with the object, as far as possible, of ensuring continued availability of the Project Facilities and Services to the users, 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.

#### **Requisition**

The Concessionaire has no right and no compensation is payable by the Concessions 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 a Concessionaire Event of Default, or otherwise 6 (six) months prior to the expiry of the Concession Period, the Concessions Authority shall by a notice in writing (“Requisition”) call upon the Concessionaire to furnish the following information to enable the Concessions Authority to estimate the likely compensation payable by the Concessions Authority to the Concessionaire and/or to finalise the items of Concessionaire’s assets comprised in the Project Facilities and Services to be handed over to by the Concessions Authority.

#### **Condition Survey**

- a. The Concessionaire agrees that on the service of a Termination Notice or at least 6 (six) months prior to the expiry of the Concession Period, as the case may be, it shall conduct or cause to be conducted under the Concessions Authority’s



supervision, a condition survey of the Project Facilities and Services including the Project Site and/or the Silo facility to ascertain the condition thereof, verifying compliance with the Concessionaire's obligations under this Agreement and to prepare an inventory of the assets comprised in the Project Facilities and Services. During this period, the designated key personnel of the Concessions Authority shall be associated with the operations of the Project Facilities and Services (except when the same is impossible due to a Force Majeure Event) in order to facilitate smooth takeover of the same by the Concessions Authority on the Transfer Date.

- b. If, as a result of the condition survey, the Concessions Authority shall observe/notice that the Project Site and/or the Assets and/or the Project Facilities and Services or any part thereof have/has not been operated and maintained in accordance with the requirements thereof under this Agreement (normal wear and tear excepted) the Concessionaire shall, at its cost and expenses, take all necessary steps to put the same in good working conditions well before the Transfer Date.
- c. In the event the Concessionaire fails to comply with the provisions of this Agreement, the Concessions Authority may itself cause the condition survey and inventory of Silo facility and the Project Facilities and Services to be conducted. The Concessions Authority shall be compensated by the Concessionaire for any costs incurred in putting the Project Facilities and Services in good working condition.

### **Consequences of Termination**

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

- a. the Concessionaire shall transfer all the assets and rights, including paddy in its possession upon expiry of the Concession Period by efflux of time or termination of this Agreement due to a Force Majeure Event or on account of an Event of Default in accordance with Article 24; If any shortfall in the quantity of paddy handed over and quantity of paddy available in the silo facility, the Concessions Authority shall be compensated at the rate of 25% over and above the cost of paddy, transportation charges and other incidental charges. In such a scenario, the estimation done by the Concessions Authority is final and binding.
- b. the Concessions Authority shall be entitled to encash any subsisting bank guarantee(s) provided by the Concessionaire against any amounts owing to Concessions Authority by the Concessionaire.

Notwithstanding anything contained in this Agreement, except for ensuring the deposit of the compensation payable to the Concessionaire in accordance with Article 22, the Concessioning 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 Concessionaire in connection with the Project, and the handback of the Project Site/Silo facility/Project Facilities & Services by the Concessionaire to the Concessioning Authority shall be free from any such obligation.

## **ARTICLE 22**

### **COMPENSATION**

#### **Compensation**

i. Termination due to Force Majeure Event

If the termination is due to a Force Majeure Event, the book value of the assets created by the Concessionaire after adjusting the annuity payments made towards project cost will be paid by the Concessioneing Authority to the Concessionaire. No other compensation shall be payable.

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 17.1.(c) of this Agreement.

ii. Termination due to Concessionaire Event of Default

If the termination is due to a Concessionaire Event of Default, the Performance Guarantee remitted by the Concessionaire will be forfeited.

iii. Termination due to Concessioneing Authority Event of Default

If the termination is due to Concessioneing Authority Event of Default, the book value of the assets created by the Concessionaire after adjusting the annuity payments made towards project cost will be paid by the Concessioneing Authority to the Concessionaire. No other compensation shall be payable.

#### **No Compensation on Expiry of Concession Period**

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, Silo facility including additional balancing equipments, paddy and the Project Facilities and Services free of cost and free from Encumbrance. If any shortfall in the quantity of paddy handed over and quantity of paddy available in silo facility, the Concessioneing Authority shall be compensated at the rate of 25% over and above the cost of paddy, transportation charges and other incidental charges. In such a scenario, the estimation done by the Concessioneing Authority is final and binding.

## **Transfer Fee and Charges**

Transfer costs, stamp duties, notary fees and taxes, if applicable, for the transfer of the Project Facilities and Services consequent to the expiry or termination of this Agreement shall be borne by:

- i. the Concessionaire in the event of expiry of Concession Period or termination due to a Concessionaire Event of Default;
- ii. Concessions Authority in the event of termination due to Concessions Authority Event of Default or Political Event; and
- iii. by both parties equally in case of termination due to Change in Law or Non Political Event or Other Event.

## **Delayed Payment of Compensation**

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

## **Delayed Transfer of Assets**

If for any reasons other than those attributable to Concessions Authority, the Concessionaire fails to transfer assets, rights and contracts on the Transfer Date in accordance with Article 21.5 read with Article 24, there shall be no suspension of the operation and maintenance of the Project Facilities and Services and the Concessionaire shall, as a trustee of Concessions Authority, (a) continue to operate and maintain the Project Facilities and Services or such of them, as directed by Concessions Authority until completion of the relative transfer formalities and (b) the applicable service charges will be payable by the Concessions Authority in accordance with Article 8. The Concessionaire shall be liable to pay to Concessions Authority, for every Day of delay, liquidated damages at the rate of ₹25,000 per day. Provided nothing contained in this clause shall be deemed or construed to authorise delay in completion of formalities of transfer of assets, rights and contracts by the Concessionaire to Concessions Authority in accordance with the requirements thereof under this Agreement.

In case the transfer of assets by the Concessionaire to Concessions Authority is delayed for reasons attributable to Concessions Authority, the Concessionaire shall nonetheless

continue to operate the Project Facilities and Services but as agent of Concessions Authority. Provided however, the Concessionaire shall be paid the applicable service charges in accordance with Article 8.

### **Remedies Cumulative**

The exercise of right by either Party to terminate this 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 23**

### **ASSIGNMENT AND CHARGES**

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

- i. Subject to Article 23.2, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.
- ii. Subject to the provisions of Article 23.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.

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

The restraints set forth in Article 23.1 shall not apply to:

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

#### **Assignment by the Concessioneing Authority**

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

## ARTICLE 24

### TRANSFER ON EXPIRY OF THE CONCESSION PERIOD

#### General Scope of Transfer/Payment

The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the Transfer Date in entirety. Without prejudice to the generality of this provision and the provisions of Article 21, 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 24.2 and 24.3.

#### Concessionaire's Obligations

The Concessionaire shall;

- i. hand over peaceful possession of the Project Site, Silo facility, the Project and the Project Facilities and Services free of Encumbrance;
- ii. transfer all its rights, titles and interests in the assets comprised in the Project Facilities and Services which are required to be transferred to the Concessions Authority in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard;
- iii. hand over to the Concessions Authority all documents including built drawings if any, manuals and records relating to operation and maintenance of the Project Facilities and Services;
- iv. transfer technology and up-to-date know-how relating to operation and maintenance of the Assets and/or the Project Facilities and Services;
- v. transfer or cause to be transferred to the Concessions Authority any Project Contracts which are (i) valid and subsisting; (ii) capable of being transferred to the Concessions Authority; and (iii) those the Concessions Authority has chosen to take over, and cancel or cause to be cancelled such Project Contracts not transferred to the Concessions Authority. For this purpose, the Concessionaire shall ensure that all Project Contracts are assignable in favour of the Concessions Authority without any further action on part of the respective counterparties. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which

are not transferred/assigned and/or are not required to be transferred/assigned to the Concessions Authority;

- vi. at its cost, transfer to the Concessions Authority all such Applicable Permits which the Concessions Authority may require and which can be legally transferred. Provided if the termination is on account of the Concessions Authority Event of Default the cost of such transfer shall be borne/ reimbursed by the Concessions Authority;
- vii. at its cost, remove within 90 (ninety) days from expiry of the Concession Period, from the Project Site, any assets that are not to be transferred to the Concessions Authority in terms of the provisions of this Agreement.

### **Concessions Authority's Obligations**

Except in the event of expiry of the Concession by efflux of time, the Concessions Authority shall pay compensation payable to the Concessionaire in accordance with Article 22 to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Concessions Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement.

The Concessionaire further confirms that payment of compensation by the Concessions Authority in accordance with this Article 22 shall be a valid discharge to the Concessions Authority in respect of the Concessions Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

### **Risk**

Until transfer in accordance with this Article 24, the Project Facilities and Services shall remain at the sole risk of the Concessionaire except for any loss or damage caused to or suffered by the Concessionaire due to any act or omission or negligence on the part of the Concessions Authority under this Agreement.



## **ARTICLE 25**

### **DISPUTE RESOLUTION**

#### **Dispute Resolution**

- a. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Article 25.2.
- b. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

#### **Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the Independent Agency to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Agency or without the intervention of the Independent Agency, either Party may require such Dispute to be referred to the Managing Director of the Authority and the Chairman/Director of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) days period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 25.1(a) or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 25.3.

#### **Arbitration**

- a. Any Dispute which is not resolved amicably by conciliation, as provided in Article 25.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Article 25.3(b). Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be

mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The place of such arbitration shall be the Chennai and the language of arbitration proceedings shall be English.

- b. There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- c. The arbitral tribunal shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 25 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Concessioneing Authority agree and undertake to carry out such Award without delay.
- d. The Concessionaire and the Concessioneing Authority agree that an Award may be enforced against the Concessionaire and/or the Concessioneing Authority, as the case may be, and their respective assets wherever situated.
- e. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

### **Adjudication by a tribunal**

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Concessioneing Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 25.3, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

## ARTICLE 26

### REPRESENTATIONS AND WARRANTIES

#### Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessions Authority that:

- a. it is duly organised, 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 this 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 this Agreement;
- c. it has taken all necessary action to authorize the execution, delivery and performance of this Agreement;
- d. this Agreement constitutes the legal, valid and binding obligation of the Concessionaire, 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 this Agreement;
- f. it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- g. the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its memorandum 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 this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- 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 this Agreement;
- j. all its rights and interests in the Project/Project Facilities and Services shall vest in the Concessioneing Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Concessioneing Authority, and that none of the Project Assets shall be acquired by it,

subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- k. no representation or warranty by it contained herein or in any other document furnished by it to the Concessioneing 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;
- l. no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Concessioneing Authority in connection therewith;
- m. agrees that the execution, delivery and performance by it of this Agreement and all other agreements, contracts, documents and writings relating to this Agreement constitute private and commercial acts and not public or governmental acts; and
- n. 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.

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

The Concessing Authority represents and warrants to the Concessionaire that:

- a. it is duly organised, 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 this Agreement;
- c. it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- d. this Agreement constitutes the legal, valid and binding obligation of the Concessing 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 this Agreement.

## **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 this Agreement.

## **ARTICLE 27**

### **DISCLAIMER**

#### **Disclaimer**

- a. The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, accessibility of site and all information provided by the Concessioneing Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Concessioneing Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Concessioneing Authority in this regard.
- b. The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 27.1(a) above and hereby acknowledges and agrees that the Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Selected Bidder/ Consortium Members and its/ their} Associates or any person claiming through or under any of them.
- c. The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 27.1(a) above shall not vitiate this Agreement or render it voidable.
- d. In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 27.1(a) above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Concessioneing Authority to give any notice pursuant to this Article 27.1(d) shall not prejudice the disclaimer of the Concessioneing Authority contained in Article 27.1(a) and shall not in any manner shift to the Concessioneing Authority any risks assumed by the Concessionaire pursuant to this Agreement.

- e. Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessioneing Authority shall not be liable in any manner for such risks or the consequences thereof.

## **ARTICLE 28**

### **MISCELLANEOUS PROVISIONS**

#### **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 Concession 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 Concession Period by efflux of time or otherwise in accordance with the provisions of this Agreement shall survive the expiry of the Concession Period/ termination of this Agreement.

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

The provisions of Articles 21 to 28 shall, to the fullest extent necessary to give effect thereto, survive the Concession 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.

#### **Joint Responsibility**

In the event that any damage is caused partly due to the negligence or default or omission on the part of the Concessions Authority and partly due to the negligence or default or omission on the part of the Concessionaire, 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.

#### **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.

#### **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 Concession Period, by any competent arbitral tribunal or court, and if such provisions shall be fully separable and this Concession 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.

## **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 Concessions Authority:

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

The Concessionaire:

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.

## **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 28.6 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.

### **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.

### **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.

### **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.

### **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:

**Technical Specifications of Silo**

The silos are Galvanized flat bottom silos. These silos are flat at the base made up of concrete. All components of silo are galvanized including supporting leg structure and circular ring beam. The type viz. S-350-GD galvanised steel silo of high elastic tolerance, high-grade steel sheet, dichromate high tensile bolts grade with neoprene washers have been used to ensure a total water-proof seal.

There are 16 silos each with a capacity of 3125 MT. The capacity of the silo is based on the bulk density of paddy @560kg/m<sup>3</sup> with 3 percent compaction. The silo has been designed considering various conditions at site like heavy rain-fall area, humidity, temperature & earthquake etc. Each silo has the following design parameters:

- Diameter: 22.92 meter
- Lower yield point: 350 N/mm<sup>2</sup>
- Tensile strength: 450 N/mm<sup>2</sup>

The silo system is equipped with accessories like aeration system, pre cleaners manual sliding gates etc. The details of other accessories are given below:

- **Level sensors:** Each silo is equipped with two numbers of vibratory type sensors. The sensors will be sensing high and low level of grain in the silo.
- **Aeration system:** Each silo has an aeration fan of 15,000 m<sup>3</sup>/hour that provides ventilation to the grain mass by blowing air. It will also help to maintain the temperature and humidity conditions of the grains stored in the silo. The ducting and perforated tiles ensures homogenous distribution of airflow through grain mass.
- **Manual slide gates:** Seven manual slide gates are provided at the bottom of each silo. The manual slide gates will control the flow of grain during discharge.
- **Sweep Auger:** Each silo is equipped with a sweep auger. It will help in unloading process because the valves cannot completely remove the grains.
- **Receiving hopper:** Two receiving hoppers are equipped on each silo, one near to the unloading point and another near to the loading point to bucket elevator through Chain Conveyor.

- **Manual sliding gates for receiving hopper:** Manually operated screw type discharge gates are provided at the bottom of receiving hopper for controlling the flow of grain.
- **Pre cleaner:** There is a pre-cleaner that facilitates the cleaning of grain before storage. The pre cleaner has two parallel running sieve system with built in fan for aspiration.
- **Cyclone:** A cyclone along with its accessories for collection of dust.
- **Conveyors:** Chain conveyors and bucket elevators for bulk movement of material.
- **Temporary storage bins:** There is one temporary storage bin of 100 MT capacity.
- **Dryers:** There are 4 Nos. of dryer each with capacity 50 MT/hr

## APPENDIX 2

### APPROVED SERVICE CHARGES

Service Charges approved by the Concessions Authority

Service charges per ton of paddy finalized & approved by the Concessions Authority 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	

### APPENDIX 3

#### ANNUITY PAYMENTS

Annuity following the date of commencement of operation of the silo facility	Annuity payment towards Project Cost (₹)	Interest (_%) (₹)	Total Annuity payment (₹)
1st Annuity			
2nd Annuity			
3rd Annuity			
4th Annuity			
5th Annuity			
6th Annuity			
7th Annuity			
8th Annuity			
9th Annuity			
10th Annuity			
11th Annuity			
12th Annuity			
13th Annuity			
14th Annuity			
15th Annuity			
16th Annuity			
17th Annuity			
18th Annuity			
19th Annuity			
20th Annuity			
21st Annuity			
22nd Annuity			
23rd Annuity			
24th Annuity			
25th Annuity			
26th Annuity			
27th Annuity			
28th Annuity			
29th Annuity			
30th Annuity			

31st Annuity			
32nd Annuity			
33rd Annuity			
34th Annuity			
35th Annuity			
36th Annuity			
37th Annuity			
38th Annuity			
39th Annuity			
40th Annuity			
41st Annuity			
42nd Annuity			
43rd Annuity			
44th Annuity			
45th Annuity			
46th Annuity			
47th Annuity			
48th Annuity			
49th Annuity			
50th Annuity			
51st Annuity			
52nd Annuity			
53rd Annuity			
54th Annuity			
55th Annuity			
56th Annuity			
57th Annuity			
58th Annuity			
59th Annuity			
60th Annuity			
61st Annuity			
62nd Annuity			
63rd Annuity			
64th Annuity			
65th Annuity			
66th Annuity			
67th Annuity			
68th Annuity			
69th Annuity			

70th Annuity			
71st Annuity			
72nd Annuity			
73rd Annuity			
74th Annuity			
75th Annuity			
76th Annuity			
77th Annuity			
78th Annuity			
79th Annuity			
80th Annuity			
81st Annuity			
82nd Annuity			
83rd Annuity			
84th Annuity			
85th Annuity			
86th Annuity			
87th Annuity			
88th Annuity			
89th Annuity			
90th Annuity			
91st Annuity			
92nd Annuity			
93rd Annuity			
94th Annuity			
95th Annuity			
96th Annuity			
97th Annuity			
98th Annuity			
99th Annuity			
100th Annuity			
101st Annuity			
102nd Annuity			
103rd Annuity			
104th Annuity			
105th Annuity			
106th Annuity			
107th Annuity			
108th Annuity			



109th Annuity			
110th Annuity			
111th Annuity			
112th Annuity			
113th Annuity			
114th Annuity			
115th Annuity			
116th Annuity			
117th Annuity			
118th Annuity			
119th Annuity			
120th Annuity			