SERVICE AGREEMENT

BETWEEN

Food Corporation of India

(THE AUTHORITY)

AND

…….. LTD.

(THE SERVICE PROVIDER)

FOR

Procurement of Specialized Wagons and Bulk Movement of Food grains for 30 years from Procuring Silos to Distribution Silos

DATED.....

PART I: PRELIMINARY 6

SERVICE AGREEMENT 7

1 DEFINITIONS AND INTERPRETATION 10

1.1. DEFINITIONS 10
1.2. INTERPRETATION 23
1.3. MEASUREMENTS AND ARITHMETIC CONVENTIONS 26
1.4. PRIORITY OF AGREEMENTS, ARTICLES AND SCHEDULES 26

PART II: THE CONCESSION 27

2 SCOPE OF THE AGREEMENT 28

2.1. SCOPE OF THE AGREEMENT 28
2.2. ADDITIONAL SCOPE OF THE AGREEMENT 29

3 GRANT OF CONCESSION 30

3.1. THE CONCESSION 30
3.2. CHANGE IN CIRCUIT PLAN 31
3.3. CONCESSION PERIOD 31
3.4. SUBSTITUTION OF THE AUTHORITY 31

4 CONDITIONS PRECEDENT 33

4.1 CONDITIONS PRECEDENT 33
4.2 DAMAGES FOR DELAY BY THE AUTHORITY 34
4.3 DAMAGES FOR DELAY BY THE SERVICE PROVIDER 34
4.4 DEEMED TERMINATION UPON DELAY 35

5 OBLIGATIONS OF THE SERVICE PROVIDER 36

5.1 OBLIGATIONS OF THE SERVICE PROVIDER 36
5.2 OBLIGATIONS RELATING TO PROJECT AGREEMENTS 38
5.3 OBLIGATIONS RELATING TO CHANGE IN OWNERSHIP 39
5.4 OBLIGATIONS RELATING TO EMPLOYMENT OF FOREIGN NATIONALS 41
5.5 OBLIGATIONS RELATING TO EMPLOYMENT OF TRAINED PERSONNEL 41
5.6 BRANDING OF RAKES 41
5.7 OBLIGATIONS REGARDING RISK OF LOSS OR DAMAGE 42
5.8 OBLIGATIONS RELATING TO TAXES 42
5.9 OBLIGATIONS RELATING TO INFORMATION 42
5.10 OBLIGATIONS RELATING TO MOVEMENT OPERATIONS 42
5.11 SOLE PURPOSE OF THE SERVICE PROVIDER 43
5.12 LIABILITY FOR PERSONNEL 43
5.13 PROPERTY WITH RESPECT TO FOOD GRAINS 44
5.14 OTHERS 45

6 OBLIGATIONS OF THE AUTHORITY 46

6.1. OBLIGATIONS OF THE AUTHORITY 46

7 REPRESENTATION AND WARRANTIES 48

7.1. REPRESENTATION AND WARRANTIES OF THE SERVICE PROVIDER 48
7.2. REPRESENTATIONS AND WARRANTIES OF THE AUTHORITY 50

7.3. DISCLOSURE 50

8 DISCLAIMER 51

8.1. DISCLAIMER 51

PART III: PROJECT IMPLEMENTATION AND OPERATIONS 52

9 PERFORMANCE SECURITY 53

9.1. PERFORMANCE SECURITY 53
9.2. APPROPRIATION OF PERFORMANCE SECURITY 53
9.3. RELEASE OF PERFORMANCE SECURITY 54
9.4. REFERENCES TO PERFORMANCE SECURITY 54

10 PROCUREMENT AND SUPPLY OF RAKES 55

10.1. OBLIGATIONS PRIOR TO COMMENCEMENT OF PROCUREMENT 55
10.2. PROCUREMENT AND SUPPLY OF SPECIALIZED WAGONS/ RAKES 55
10.3. QUARTERLY PROGRESS REPORTS 55
10.4. INSPECTION BY THE AUTHORITY 56
10.5. COMPLETION CERTIFICATE 56
10.6. ENTRY INTO COMMERCIAL OPERATIONS 57

11 CHANGE OF SCOPE 58

11.1. CHANGE OF SCOPE 58
11.2. PROCEDURE FOR CHANGE OF SCOPE 58
11.3. PAYMENT FOR CHANGE OF SCOPE 59
11.4. RESTRICTIONS ON CERTAIN SERVICES 59
11.5. POWER OF THE AUTHORITY TO UNDERTAKE SERVICES 59

12 [NOT USED] 61

13 KEY PERFORMANCE INDICATORS 62

13.1 KEY PERFORMANCE INDICATORS 62
13.2 AVAILABILITY AND GUARANTEED AVAILABILITY 62
13.3 TRANSIT LOSSES 63
13.4 MONTHLY / QUARTERLY STATUS REPORT 63
13.5 DAMAGES 63

PART IV: FINANCIAL COVENANTS 64

14 FINANCIAL CLOSE 65

14.1. FINANCIAL CLOSE 65
14.2. TERMINATION DUE TO FAILURE TO ACHIEVE FINANCIAL CLOSE 65

15 LOGISTICS CHARGES AND OTHER CHARGES 66

15.1. LOGISTICS CHARGES 66
15.2. ESCALATION OF LOGISTICS CHARGE 66
15.3. INVOICES 66
15.4. DISPUTED AMOUNTS 67
15.5. DISCOUNT FOR EARLY PAYMENT 68
15.6. ADDITIONAL PAYMENT FOR HIGHER USAGE 68

15.7. RIGHT TO SET-OFF 68
15.8. STABLING/PARKING OF SPECIALISED WAGONS 68
15.9. OTHER COSTS AND CHARGES 68
15.10. TAXES AND DUTIES 69

16 ADDITIONAL COMMERCIAL ACTIVITY 70

16.1. ADDITIONAL COMMERCIAL ACTIVITY 70

17 INSURANCE 72

17.1. INSURANCE DURING CONCESSION PERIOD 72
17.2. INSURANCE COVER 72
17.3. NOTICE TO THE AUTHORITY 72
17.4. EVIDENCE OF INSURANCE COVER 73
17.5. REMEDY FOR FAILURE TO INSURE 73
17.6. WAIVER OF SUBROGATION 73
17.7. SERVICE PROVIDER'S WAIVER 73
17.8. APPLICATION OF INSURANCE PROCEEDS 73
17.9. COMPLIANCE WITH CONDITIONS OF INSURANCE POLICIES 74

18 ACCOUNTS AND AUDIT 75

18.1. AUDITED ACCOUNTS 75
18.2. APPOINTMENT OF AUDITORS 75
18.3. CERTIFICATION OF CLAIMS BY STATUTORY AUDITORS 76
18.4. DISPUTE RESOLUTION 76

PART V: FORCE MAJEURE AND TERMINATION 77

19 FORCE MAJEURE 78

19.1. FORCE MAJEURE 78
19.2. NON-POLITICAL EVENT 78
19.3. INDIRECT POLITICAL EVENT 79
19.4. POLITICAL EVENT 79
19.5. DUTY TO REPORT FORCE MAJEURE EVENT 80
19.6. EFFECT OF FORCE MAJEURE EVENT ON THE CONCESSION 80
19.7. ALLOCATION OF COSTS ARISING OUT OF FORCE MAJEURE 81
19.8. COMPENSATION FOR LOSS OF FOOD GRAINS DUE TO FORCE MAJEURE EVENT 81
19.9. TERMINATION NOTICE FOR FORCE MAJEURE EVENT 82
19.10. TERMINATION PAYMENT FOR FORCE MAJEURE EVENT 82
19.11. DISPUTE RESOLUTION 82
19.12. EXCUSE FROM PERFORMANCE OF OBLIGATIONS 82
19.13. RELIEF FOR UNFORESEEN EVENTS 83

20 COMPENSATION FOR BREACH OF AGREEMENT 85

20.1. COMPENSATION FOR DEFAULT BY THE SERVICE PROVIDER 85
20.2. COMPENSATION FOR DEFAULT BY THE AUTHORITY 85
20.3. COMPENSATION TO BE IN ADDITION 85
20.4. MITIGATION OF COSTS AND DAMAGE 85

21 TERMINATION 86

21.1. TERMINATION FOR SERVICE PROVIDER DEFAULT 86
21.2. TERMINATION FOR AUTHORITY DEFAULT 89
21.3. TERMINATION PAYMENT 90
21.4. CERTAIN LIMITATIONS ON TERMINATION PAYMENT 91
21.5. OTHER RIGHTS AND OBLIGATIONS OF THE AUTHORITY 91
21.6. SURVIVAL OF RIGHTS 91
21.7. STEP-IN RIGHTS OF SENIOR LENDERS 91

22 DIVESTMENT OF RIGHTS AND INTEREST 93

22.1. DIVESTMENT REQUIREMENTS 93
22.2. INSPECTION AND CURE 94
22.3. VESTING CERTIFICATE 94
22.4. DIVESTMENT COSTS ETC 94

23 DEFECTS LIABILITY AFTER TERMINATION 95

23.1. LIABILITY FOR DEFECTS AFTER TERMINATION 95
23.2. RETENTION OF LOGISTICAL CHARGES 95

PART VI: OTHER PROVISIONS 96

24 ASSIGNMENT AND CHARGES 97

24.1. RESTRICTIONS ON ASSIGNMENT AND CHARGES 97
24.2. PERMITTED ASSIGNMENT AND CHARGES 97
24.3. SUBSTITUTION AGREEMENT 97
24.4. ASSIGNMENT BY THE AUTHORITY 98

25 CHANGE IN LAW 99

25.1. INCREASE IN COSTS 99
25.2. REDUCTION IN COSTS 99
25.3. RESTRICTION ON CASH COMPENSATION 100

26 LIABILITY AND INDEMNITY 101

26.1. GENERAL INDEMNITY 101
26.2. INDEMNITY BY THE SERVICE PROVIDER 101
26.3. NOTICE AND CONTEST OF CLAIMS 102
26.4. DEFENCE OF CLAIMS 102
26.5. NO CONSEQUENTIAL CLAIMS 103
26.6. LIMITATION OF LIABILITY 103
26.7. SURVIVAL ON TERMINATION 103

27 DISPUTE RESOLUTION 104

27.1. DISPUTE RESOLUTION 104
27.2. MEDIATION 104
27.3. ARBITRATION 104
27.4. ADJUDICATION BY A TRIBUNAL 105

28 MISCELLANEOUS 106

28.1. GOVERNING LAW AND JURISDICTION 106
28.2. WAIVER OF IMMUNITY 106

28.3. DEPRECIATION 106
28.4. DELAYED PAYMENTS 106
28.5. WAIVER 107
28.6. LIABILITY FOR REVIEW OF DOCUMENTS AND DRAWINGS 107
28.7. EXCLUSION OF IMPLIED WARRANTIES ETC. 107
28.8. SURVIVAL 107
28.9. ENTIRE AGREEMENT 108
28.10. SEVERABILITY 108
28.11. NO PARTNERSHIP 108
28.12. THIRD PARTIES 108
28.13. SUCCESSORS AND ASSIGNS 108
28.14. NOTICES 108
28.15. LANGUAGE 109
28.16. COUNTERPARTS 109

SCHEDULES 110

SCHEDULE- A: SPECIALIZED WAGONS 111
SCHEDULE- B: LWIS MASTER CIRCULAR 112
SCHEDULE- C: DETAILS OF THE PROCURING SILOS, DISTRIBUTION SILOS AND IN-PRINCIPLE APPROVAL123
SCHEDULE- D: PERFORMANCE GUARANTEE 126
SCHEDULE- E: KEY DATES 129
SCHEDULE- F: SUBSTITUTION AGREEMENT 130
SCHEDULE- G: PENALTIES 141
SCHEDULE- H: LOGISTICS CHARGES 142
SCHEDULE- I: PANEL OF CHARTERED ACCOUNTANTS 143
SCHEDULE- J: VESTING CERTIFICATE 145

Part I: Preliminary

SERVICE AGREEMENT

THIS AGREEMENT is entered into on this { ……. day of……., 20……..}[1]

BY AND BETWEEN:

FOOD CORPORATION OF INDIA, a body corporate having perpetual succession formed under Section 3 of the Food Corporations Act, 1964 having its headquarters at 16 – 20, Barakhamba Lane, New Delhi – 110 001 acting through _____ (hereinafter "**Authority**", which expression shall, unless the context otherwise requires include its administrators, successors – in – interest and assigns) of **ONE PART**;

AND

{**……. LIMITED**}, a company within the meaning of the Companies Act, 2013 and having its registered office at …….., (hereinafter referred to as the "**Service Provider**" or "**Company**" which expression shall, unless repugnant to the context or meaning thereof, include its successors – in – interest and permitted assigns) of the **OTHER PART**.

The Authority and the Service Provider shall hereinafter collectively be referred to as "**Parties**" and each individually as a "**Party**".

WHEREAS:

A) The Authority has been established under Section 3 of the Food Corporations Act, 1964 ("**Food Corporations Act**"). Under Section 13 of the Food Corporations Act, the Authority has the primary duty to undertake the purchase, storage, movement, transport, distribution and sale of food grains and other foodstuffs and to promote the production of food grains and other foodstuffs.

B) The National Food Security Act, 2013 ("**National Food Security Act**") provides for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity. The National Food Security Act *inter – alia* provides for: (a) the right to receive food grains at subsidized prices by persons belonging to eligible households under the 'Targeted Public Distribution System'; (b) nutritional support to pregnant women and lactating mothers; (c) nutritional support to children; (d) prevention and management of child malnutrition; (e) implementation of schemes for realization of entitlements; and (f) right to receive food security allowance in

[1] The provisions in curly parenthesis and blank spaces shall be retained in the draft Agreement and shall be suitably modified / filled after completion of the bid process to reflect the particulars relating to the selected bidder and other post – bid particulars.

certain cases. The Authority is a major stakeholder in the implementation of the aforementioned objectives of the National Food Security Act through conduct of its operations of purchase, storage, movement, transport, distribution and sale of food grains and other foodstuff.

C) The Authority has drawn up a long – term action plan to implement steel silo storages with bulk handling facilities for storing of food grains in bulk. In light of the aforesaid, the Authority has decided to construct steel silos for creation of modern storage capacity for food grains through public private partnership ("**PPP**") model, with or without funding support by way of viability gap funding, at various locations across the country.

D) The Authority plans to construct steel silos with aggregate capacity of approximately 6,75,000 (six lakhs seventy-five thousand) MT (*as hereinafter defined*) in procuring region(s) ("**Procuring Silos**"), the details of which are set out in **Schedule – C** hereto, as well as steel silos with aggregate capacity of approximately 12,50,000 (twelve lakhs fifty thousand only) MT in consuming region(s) ("**Distribution Silos**"), the details of which are **Schedule – C** hereto.

E) The Authority resolved to engage the services of a private party to *inter alia* procure Specialized Wagons (*as hereinafter defined*) and to transport food grains from the Procuring Silos to the Distribution Silos in bulk using the Specialized Wagons, in accordance with the terms and conditions as set forth in this Agreement.

F) The Authority has accordingly invited proposals by its {Request for Proposal No. _____ (the "**Request for Proposals**" or "**RFP**")} and had prescribed the technical and commercial terms and conditions therein for undertaking the Project (*as hereinafter defined*).

G) After evaluation of the bids received, the Authority had accepted the bid of the {*insert name of the selected bidder* (the "**Selected Bidder**")} / {consortium comprising of _____ and _____ (collectively, the "**Consortium**" or the "**Selected Bidder**") with _____ as the Lead Member (*as hereinafter defined*)} and issued its {Letter of Award No. _____ dated _____} (hereinafter referred to as the "**LOA**" or "**Letter of Award**") to the Selected Bidder requiring *inter alia* the execution of this Agreement within a period of 30 (thirty) days of the date of issuance thereof.

H) The Selected Bidder has since incorporated the Service Provider as a limited liability company within the meaning of the Companies Act, 2013, and has requested the Authority to

accept the Service Provider as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for undertaking the Project.

I) By its {letter dated _____}, the Service Provider has also joined in the said request of the Selected Bidder to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder including the obligation to enter into this Agreement pursuant to the LOA. The Service Provider has further represented to the effect that it has been incorporated / promoted by the Selected Bidder for the purposes hereof.

J) The Authority has agreed to the said request of the Selected Bidder and the Service Provider, and has accordingly agreed to enter into this Agreement with the Service Provider for the procurement, supply, operation and maintenance of the Specialized Wagons and to transport food grains from the Procuring Silos to the Distribution Silos in bulk using the Specialized Wagons, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the subject, matter or context otherwise requires, have the meanings as ascribed thereto herein:

1.1.1. "**Acceptable Transit Losses**" shall have the meaning ascribed to it in Article 13.3.2 of this Agreement;

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

1.1.3. **"Additional Logistics Charges"** shall have the meaning as ascribed to it in Article 15.6 of this Agreement;

1.1.4. "**Additional Specialized Wagons**" shall have the meaning ascribed to it in Article 2.2.1. of this Agreement;

1.1.5. "**Adjusted Equity**" means the Reference Equity funded in Indian Rupees and adjusted on the first day of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Price Index, and for any Reference Date occurring:

(a) on or before COD of the last Rake, the Adjusted Equity shall be a sum equal to the Reference Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in Price Index occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD of the last Rake and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "**Base Adjusted Equity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in Price Index occurring between COD and the Reference Date; and

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.27% (zero point two seven per cent) thereof at the commencement of each month following the 10th (tenth) anniversary of COD of the last Rake and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD of the last Rake and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date.

1.1.6. "**Affected Party**" shall have the meaning as set forth in Article 19.1;

1.1.7. "**Agreement**" or "**Service Agreement**" means this Agreement, its recitals, the schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

1.1.8. **"Annual Capacity"** means aggregate sum of Monthly Capacity during a Year;

1.1.9. "**Annual Transported Quantity**" means the aggregate quantity of food grains transported by the Specialized Wagons of the Service Provider during any Accounting Year, measured in MT, in accordance with the terms and conditions of this Agreement;

1.1.10. "**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations, notifications, directives, policies, and executive orders and memorandums made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement and includes any regulations, bye – laws, circulars, guidelines and notifications issued by the Railways from time to time;

1.1.11. "**Applicable Permits**" means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the procurement, operation and maintenance of the Specialized Wagons and for the performance of the duties, obligations and responsibilities of the Service Provider in accordance with the terms and conditions of this Agreement, during the subsistence of this Agreement;

1.1.12. "**Appointed Date**" means the date on which all the Conditions Precedents are satisfied or an earlier date that the Parties may by mutual consent determine. For the avoidance of any doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived in writing by the Authority, as the case may be, the Appointed Date shall be deemed to occur only when each and every Conditions Precedent is either satisfied or waived in writing by the Authority, as the case may be;

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

1.1.14. "**Authority**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

1.1.15. "**Authority Default**" shall have the meaning as set forth in Article 21.2;

1.1.16. "**Authority Representative**" means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

1.1.17. **"Available Rakes"** means the number of Rakes which have achieved COD on or before the first day of the respective month;

1.1.18. "**Availability**" shall have the meaning as set forth in Article 13.2;

1.1.19. "**Bank**" means a nationalised bank or a scheduled bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) or any other bank acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest. For the avoidance of any doubt, it is hereby clarified that "**scheduled bank**" shall mean a bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934;

1.1.20. "**Bank Rate**" means the rate of interest specified as 'Bank Rate' 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;

1.1.21. "**Base Year**" means the period of commercial operations commencing from the COD of the first Rake till the expiry of the relevant Accounting Year during which the COD of the first Rake has been achieved by the Service Provider, in accordance with the terms and conditions of this Agreement;

1.1.22. "**Base Year Logistics Charges**" means the logistics charges per Rake per year as quoted by the Selected Bidder / Consortium, in response to the invitation for submission of proposals issued by the Authority under the Request for Proposals and which has been accepted by the Authority *vide* the Letter of Award, which shall be payable by the Authority to the Service Provider in consideration of the due performance of the duties, obligations and responsibilities of the Service Provider under the provisions of this Agreement, for the Base Year;

1.1.23. "**Bid**" means the documents in their entirety comprised in the bid submitted by the {Selected Bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

1.1.24. "**Bid Date**" means the last date on which the Bid was required to be submitted in accordance with the provisions of the Request for Proposals;

1.1.25. "**Bid Security**" means the security provided by the Service Provider to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

1.1.26. "**Change in Law**" means the occurrence of any of the following after the Bid Date:

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Applicable law;

(c) the commencement of any Indian law which has not entered into effect until the Bid Date;

(d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) any change in the rate of any of the Taxes and / or the imposition of any new Taxes that have a direct effect on the Agreement and / or the Service Provider. However, the said provision shall exclude changes in the Taxes which are required to be reimbursed by the Authority to the Service Provider at actuals over and above the Logistics Charges as per the terms of this Agreement.

1.1.27. "**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares or a fresh issue of any of the foregoing, that causes the aggregate holding of the {Selected Bidder / Consortium}, in the total Equity to decline below 100% (one hundred per cent) at any time prior to the expiry of the third (3rd) anniversary of COD of the last Rake and in case of Consortium, the equity holding of the Lead Member in the total Equity to decline below 26% (twenty six per cent) at any time prior to the expiry of the Concession Period; provided that any material variation (as compared to the representations made by or on behalf of the Selected Bidder / Consortium during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ Lead Member / Consortium Members} to the total Equity shall constitute Change in Ownership. Any direct and/or indirect transfer of legal or beneficial ownership of any shares, or securities convertible into shares by any Consortium Member whose technical and/or financial capacity was evaluated in response to the Request for Proposals, that results, or may result, in such member holding Equity less than; (a) 26% (twenty six per cent) of the total Equity of the Service Provider; and (b) 5% (five per cent) of the Total Project Cost, till the expiry of a period of 2 (two) years from the COD of the last Rake, shall also constitute a Change in Ownership;

1.1.28. "**Change of Scope**" shall have the meaning ascribed thereto in Article 11;

1.1.29. "**Change of Scope Notice**" shall have the meaning ascribed thereto in Article 10.2.1;

1.1.30. "**Circuits**" or "**Circuit Plan**" means set of facilities forming a chain, comprising Procuring Silos and Distribution Silos or such other revised silos or chain/circuits plans as may be decided by the Authority from time to time.

1.1.31. "**COD**" or "**Commercial Operation Date**" shall have the meaning as set forth in Article 10.6.1;

1.1.32. "**Commercial Notification**" as issued by CCM/other authorised person of Railways in consultation with COM under after receipt of documents on commissioning of Rakes under the LWIS Scheme;

1.1.33. "**Company**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

1.1.34. "**Completion Certificate**" means the Certificate issued by the Authority pursuant to Article 10.5;

1.1.35. "**Conditions Precedent**" shall have the meaning as set forth in Article 4.1.1;

1.1.36. "**Concession**" shall have the meaning as set forth in Article 3.1.1;

1.1.37. "**Concession Period**" means the period starting on and from the Appointed Date and ending on the Transfer Date;

1.1.38. {"**Consortium**" shall have the meaning as set forth in Recital (G);}

1.1.39. {"**Consortium Member**" means a company specified in Recital (G) as a member of the Consortium;}

1.1.40. "**Contractor**" means the person or persons, as the case may be, with whom the Service Provider has entered / shall enter into any of the procurement contracts, the O&M Contract, any other material contract for procurement, operation and / or maintenance of the Specialized Wagons, as the case may be, or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Service Provider;

1.1.41. "**CPI(IW)**" means the Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India and shall include any index which substitutes the CPI(IW), and any reference to CPI(IW) shall, unless the context otherwise requires, be construed as a reference to the CPI(IW) published for the period ending with the preceding month;

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

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

(b) not relieve any Party from any liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of suspension under this Agreement;

provided that the cure of any breach by the Service Provider requires any reasonable action by the Service Provider that must be approved by the Authority hereunder, the applicable Cure Period shall be extended by the period taken by the Authority to accord its approval;

1.1.43. "**Damages**" shall have the meaning as set forth in Sub-article (r) of Article 1.2.1;

1.1.44. "**Debt Due**" means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

(a) the principal amount of the debt which is included in the Financial Package and provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost under this Agreement, as the case may be, (the "**Principal**") but excluding any part of the principal that had fallen due for repayment 2 (two) years prior to the Transfer Date;

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in sub – article (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due 1 (one) year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre – payment charges in relation to the accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost under this Agreement, as the case may be.

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

1.1.45. "**Divestment Requirement**" shall have the meaning as set forth in Article 22.1.1.

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

1.1.47. "**Equity**" shall mean the paid – up equity share capital of the Service Provider for meeting the equity component of its financial obligations under this Agreement, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Service Provider, and any interest – free funds advanced by any shareholder of the Service Provider for meeting such equity component;

1.1.48. "**Execution Date**" means the date of execution of this Agreement by the Parties hereto;

1.1.49. "**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

1.1.50. "**Financial Package**" means the financial package indicating the total capital cost for the performance of the duties, obligations and responsibilities of the Service Provider under this Agreement, and the means of financing thereof, as approved by the Senior Lenders, on or prior to the Commencement Date, and includes Equity, all financial assistance specified under the Financing Agreements and Subordinated Debt, if any;

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

1.1.52. **"Force Majeure" or "Force Majeure Event"** shall have the meaning ascribed to it in Article 19.1;

1.1.53. "**Forwarding Note**" shall have the meaning as set forth in Article 5.10 (a);

1.1.54. "**GOI**" or "**Government**" means Government of India;

1.1.55. **"Good Industry Practice"** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Service Provider in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

1.1.56. "**Government Instrumentality**" means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Silos and / or the Specialized Wagons/ Rakes, as the case may be, or the performance of all or any of the services or obligations of the Service Provider under or pursuant to this Agreement;

1.1.57. "**GST**" means the goods and services tax as applicable under the Applicable Laws;

1.1.58. "**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 26.3;

1.1.59. "**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuant to Article 26.3;

1.1.60. "**Indirect Political Event**" shall have the meaning set forth in Article 19.3;

1.1.61. "**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Service Provider pursuant to Article 17.1, and includes all insurances required to be taken out by the Service Provider under Article 17.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

1.1.63. **"ITC"** shall have the meaning as set forth in Article 15.3.7;

1.1.64. "**Key Performance Indicators**" shall have the meaning as set forth in Article 13.1;

1.1.65. "**LOA**" or "**Letter of Award**" means the letter of award referred to in Recital (G);

1.1.66. "**Lead Member**" means the lead member of the Consortium, and in the event there is no Consortium, the Selected Bidder;

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

1.1.68. "**Logistics Charges**" means the charges payable by the Authority to the Service Provider for the performance of its obligations under this Agreement as per Article 15.1;

1.1.69. "**LWIS Scheme**" means the rules, regulations, guidelines, circulars and / or notifications of the Railways on the 'Liberalized Wagon Investment (LWIS) Scheme' *vide* the Notification No. 2016/TC(FM)/4/12(LWIS) dated July 02, 2018, as amended and in force from time to time and shall include any other rules, regulations, bye – laws, guidelines, circulars and / or notifications of the Railways which substitutes the LWIS Scheme from time to time;

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

1.1.71. "**Monthly Capacity**" means the capacity in tonnes calculated as 8000 tonnes multiplied with the number of Available Rakes in that month;

1.1.72. "**MT**" means a unit of weight in the metric system equal to 1,000 kilograms;

1.1.73. "**Nominated Company**" means a company selected by the Lenders' Representative and proposed to the Authority for substituting the Service Provider in accordance with the provisions of the Substitution Agreement;

1.1.74. "**Non-Political Event**" shall have the meaning as set forth in Article 19.2;

1.1.75. "**O&M**" means the operation and maintenance of the Specialized Wagons/ Rakes and includes all matters connected with or incidental to such operation and maintenance, and provision of services and facilities in accordance with the provisions of this Agreement;

1.1.76. "**O&M Contract**" means the operation and maintenance contract that may be entered into between the Service Provider and the Railways for conduct of O&M for and on behalf of the Service Provider;

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

1.1.78. "**Operation Period**" means the period commencing from the COD and ending on the Transfer Date;

1.1.79. "**Parties**" means the parties to this Agreement collectively and "**Party**" shall mean any of the parties to this Agreement individually;

1.1.80. "**Performance Security**" shall have the meaning as set forth in Article 9.1.1;

1.1.81. "**PFT Notification**" means the notification issued by the Railways notifying a 'terminal' as 'private freight terminals', in accordance with the terms and conditions of the rules, regulations, guidelines, circulars and / or notifications of the Railways on the 'Private Freight Terminals (PFT) Scheme' *vide* the Notification No. 2011/TC(FM)/14/14 dated January 02, 2015, as amended and in force from time to time and shall include any other rules, regulations, bye – laws, guidelines, circulars and / or notifications of the Railways which substitutes the same from time to time;

1.1.82. "**Political Event**" shall have the meaning as set forth in Article 19.4;

1.1.83. "**Price Index**" means the sum of:

(a) 10% (ten per cent) of WPI;

(b) 10% (ten per cent) of CPI (IW); and

(c) 80% (eighty percent) remaining constant as compared to preceding revision, if any, of the Price Index

which constituents may be substituted by such alternative index or indices as the Parties may by mutual agreement decide from time to time;

1.1.84. **"Procurement Period"** means the period beginning from the Appointed Date and ending on the COD of last Rake;

1.1.85. "**Project**" means the procurement, supply, operation and maintenance of Specialized Wagons and the transport of food grains in bulk by using the Specialized Wagons in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Agreement;

1.1.86. "**Project Agreements**" means this Agreement, the Financing Agreements, construction contracts, O&M Contract and any other material agreements or contracts that may be entered into by the Service Provider with any person in connection with matters relating to, arising out of or incidental to this Agreement, but does not include any agreement for procurement of components, sub-systems for the Specialized Wagons and goods and services in relation to the performance of the duties, obligations and responsibilities of the Service Provider under the provisions of this Agreement, as the case may be;

1.1.87. "**Project Assets**" means the Specialized Wagons, including:

(a) all rights of the Service Provider under the Project Agreements;

(b) financial assets, such as Receivables, security deposits etc.;

(c) insurance proceeds; and

(d) Applicable Permits and authorisations relating to or in respect of the Project;

1.1.88. "**Private Freight Terminal Operators**" or "**PFT Operators**" means the operators of the Silos as declared by PFT Notifications;

1.1.89. "**Railway Agreement**" means the agreement entered into / to be entered into between the Service Provider and the Railways, in accordance with the terms and conditions of the LWIS Scheme;

1.1.90. "**Railway Receipt**" or "**RR**" means the receipt issued by Railways on acceptance of goods and which entitles the consignee to take delivery of the goods at the terminal at which the train terminates;

1.1.91. "**Railway Freight Charges**" means the tariff/freight rate charged by the Railways, from time to time, for transportation of the food grains by the Specialized Wagons as per the provisions of the LWIS Scheme.

1.1.92. "**Railway Freight Charges Account**" shall have the meaning as set forth in Article 5.1.7;

1.1.93. "**Railways**" means the Indian Railways and / or any zonal railways forming part of the Indian Railways, as the context may require;

1.1.94. "**Rake**" means a group of around [50] Specialised Wagons that typically move together including [1] brake van.

1.1.95. **Rake Capacity** means 3,042 MT (three thousand and forty-two) for a Rake comprising of 50 (fifty) number of Specialized Wagons.

1.1.96. "**RDSO**" means the Research Designs and Standards Organisation of the Railways;

1.1.97. "**Receivables**" means any and all monies / amounts received and / or to be received directly or indirectly by the Service Provider in any form, including cash, cheques, demand drafts, pay order, electronic transfer or in any other form and any revenues, receivables, rentals, deposits or capital receipts, as the case may be, of whatsoever nature and wherever arising therefrom, present and future, including, all insurance proceeds, refund of taxes and all proceeds of any of the foregoing;

1.1.98. "**Reference Equity**" means as of any relevant date, the maximum of the Equity of the Service Provider or 30% (thirty percent) of the Total Project Cost, whichever is lower;

1.1.99. "**Reference Index Date**" means, in respect of the specified date or month, as the case may be, that last day of the preceding month with reference to which the Price Index or any constituent thereof is revised and in the event such revision has not been notified, the last such Price Index or any constituent thereof shall be adopted provisionally and used until the Price Index or such constituent thereof is revised and notified;

1.1.100. "**Right of Way**" means the constructive access, ingress and egress to the Silos, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for the performance of the duties, obligations and responsibilities of the Service Provider in accordance with this Agreement;

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

1.1.102. "**Request for Proposals**" or "**RFP**" shall have the meaning as set forth in Recital (F);

1.1.103. "**Scheduled Commercial Operation Date**" or "**SCOD**" shall mean scheduled commercial operation date of each Rake as defined in Schedule-E "**Scope of the Agreement**" shall have the meaning as set forth in Article 2.1;

1.1.104. "**Selected Bidder**" shall have the meaning as set forth in Recital (G);

1.1.105. "**Senior Lenders**" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Service Provider under any of the Financing Agreements for meeting all or any part of the performance of the duties, obligations and responsibilities of the Service Provider under the provisions of this Agreement, as the case may be;

1.1.106. "**Service Provider**" shall have the meaning attributed thereto in the array of Parties as set forth in the Recitals;

1.1.107. "**Service Provider Default**" shall have the meaning as set forth in Article 21.1;

1.1.108. "**Silo(s)**" shall mean each and all steel silos being constructed/being constructed at the locations set out in the Schedule – C hereto and shall include any other silo as may be intimated by the Authority from time to time as per any revised Circuit plan;

1.1.109. "**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Specialized Wagons, as set forth in Schedule – **A**, and any modifications thereof, or additions thereto, as included in the design and engineering for the Specifications and Standards submitted by the Service Provider to, and expressly approved by, the Authority. Provided further the Service Provider shall ensure that the Specialized Wagons are also in compliance with the specifications prescribed by the RDSO for such wagons;

1.1.110. "**Specialized Wagons**" means specialized bogie hopper wagon type 'BCBFG' for bulk transportation of food grains, as approved by the RDSO, in compliance of the Standards and Specifications, in accordance with the terms and conditions of this Agreement;

1.1.111. "**State**" means the States of India where each of the Silos, is located and / or through which the food grains are being transported / to be transported in bulk by the Service Provider using the Specialized Wagon in accordance with the terms and conditions of this Agreement and the term "**State Government**" means the governments of those States;

1.1.112. "**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Service Provider under the provisions of the Companies Act, 2013 including any statutory modification or re – enactment thereof, for the time being in force, and appointed in accordance with Article 18.2.1;

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

(a) the principal amount of debt provided by lenders and / or the shareholders of the Service Provider for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

(b) all accrued interest on the debt referred to in sub-article (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter – Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

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

provided further that '**Subordinated Debt**' shall not include and shall exclude any amount of debt which forms part of the Equity;

1.1.114."**Substitution Agreement**" shall have the meaning ascribed to it in Article 24.3.1;

1.1.115. "**Substituted Entity**" shall have the meaning ascribed to it in Article 3.4;

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

1.1.117."**Termination**" means the expiry or early termination of this Agreement;

1.1.118."**Termination Date**" means the date on which this Agreement and the Concession hereunder is terminated by a Termination Notice;

1.1.119."**Termination Notice**" means the communication issued in accordance with this Agreement by any one Party to the other Party for terminating this Agreement;

1.1.120."**Termination Payment**" means the amounts payable by the Authority to the Service Provider under this Agreement upon the Termination of this Agreement. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Article 21.3;

1.1.121."**Total Project Cost**" means the lowest of the following:

(i) the capital cost of the Project, as set forth in the Financial Package;

(ii) a sum of Rs. 156 crores (Rupees one hundred and fifty six crores only); or

(iii) the actual capital cost incurred/spent in relation to the Project upon the completion of the Project, as certified by the Statutory Auditors;

Provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of the Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement;

1.1.122.“**Transfer Date**” means the date of completion of the Operation Period of all Specialized Wagons under this Agreement or termination of this Agreement by a Termination Notice;

1.1.123.“**Transportation Request**” shall have the meaning as set forth in Article 5.10; and

1.1.124. “**Vesting Certificate**” shall have the meaning as set forth in Article 22.3

1.1.125.“**WPI**” means means the Wholesale Price Index for all commodities as published by the Office of the Economic Advisor, Ministry of Commerce and Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

1.1.126.**“Detention Charges”** means the charges liable to be levied in the event of detention of locomotive as per the extant policy of Railways;

1.1.127.**“Distribution Silos”** shall have the meaning as set forth in the Recitals;

1.1.128.**“POH”** shall have the meaning as set forth in Article 13.2.2;

1.1.129.**“Procuring Silos”** shall have the meaning as set forth in the Recitals;

1.1.130.**“ROH”** shall have the meaning as set forth in Article 13.2.2;

1.1.131.**”Silo operator”** or **“PFT Operator”** shall mean the operator of the Silo as appointed by the Authority;

1.2. Interpretation

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

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

b) references to laws of the State, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications

which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

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

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

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

f) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;

g) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental and auxiliary to the construction and "**construct**" or "**build**" shall be construed accordingly;

h) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;

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

j) any reference to "**hour**" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

k) any reference to day shall mean a reference to a calendar day;

l) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday or a public holiday within the meaning of such term under Section 25 of the Negotiable Instruments Act, 1881) on which banks in Delhi are generally open for business;

m) any reference to month shall mean a reference to a calendar month as per Gregorian calendar;

n) any reference to "**quarter**" shall mean a reference to the period of 3 (three) months commencing from April 1, July 1, October 1, and January 1, as the case may be;

o) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

p) the Schedules to this agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;

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

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

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

t) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

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

v) the damages payable by either Party to the other as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**");

w) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

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

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

z) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and

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

1.2.2. Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Service Provider to the Authority and / or any agent /

representative thereof, shall be provided free of cost and in 3 (three) copies, and if the Authority and / or the agent / representative is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain 2 (two) copies thereof.

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

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

1.3. Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down; provided that the drawings, engineering dimensions and tolerances may exceed 2 (two) decimal places as required.

1.4. Priority of agreements, articles and schedules

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

(a) this Agreement; and

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

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

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

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

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

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

d) between any value written in numerals and that in words, the latter shall prevail.

Part II: The Concession

ARTICLE 2

SCOPE OF THE AGREEMENT

2.1. Scope of the Agreement

The scope of the Agreement (the "**Scope of the Agreement**") shall mean and include, during the Concession Period:

a) Procurement and supply, as may be applicable, by the Service Provider of 6 (six) Rakes i.e. 300 (three hundred) Specialized Wagons (this does not include 4% of additional spare wagons required for maintenance) confirming to the Standards and Specifications set forth in **Schedule – A**, as approved by the RDSO, in accordance with the terms and conditions of this Agreement;

b) Procurement and supply, as may be applicable, by the Service Provider of such number of Brake Vans as may be prescribed by the Railways or as may otherwise be required by the Service Provider to meet the obligations under this Agreement;

c) Operation and maintenance of the Rakes/ Specialized Wagons, by the Service Provider, either by itself or through the Railways in accordance with the requirements of the LWIS Scheme, in accordance with Good Industry Practice and in accordance with the terms and conditions of this Agreement. For the purposes of reference, the copy of the LWIS Scheme in force as of the Execution Date, is attached hereto as **Schedule – B** of this Agreement and shall be subject to all amendments/changes/replacements to the LWIS Scheme as may be issued/notified by the Railways from time to time in future;

d) Arrangement of the loading of the Specialized Wagons with food grains at the Procuring Silos and unloading of the Specialized Wagons with food grains at the Distribution Silos as well as transportation of the food grains in bulk using the Specialized Wagons from the Procuring Silos to the Distribution Silos, by the Service Provider, as per the details provided in **Schedule – C** and in accordance with the terms and conditions of this Agreement. In this regard, the Service Provider shall enter into the Railway Agreement for deployment and procurement of the Specialized Wagons/ Rakes from the COD, in accordance with the requirements of the LWIS Scheme and shall negotiate and finalize the Railway Freight Charges that shall be chargeable by the Railways, in accordance with the requirements of the LWIS Scheme, for transportation of the food grains from the Procuring Silos to the Distribution Silos and the Service Provider shall ensure that the Railways Freight Charges are duly paid by the Service Provider from time to time, in accordance with the terms and conditions of the Railway Agreement, the LWIS Scheme and / or the rules, regulations, bye – laws, circulars, guidelines and notifications issued by the Railways from time to time in this regard;

e) revision/change of the Circuit Plans as per the Authority's requirement from time to time; and

f) Performance of all other duties, obligations and responsibilities and performance of all other acts, deeds, matters and things incidental thereto and / or as may be necessary in

connection with the duties, obligations and responsibilities of the Service Provider as per the terms and conditions of this Agreement.

2.2. Additional Scope of the Agreement

2.2.1 Notwithstanding anything contained to the contrary in the Agreement, the Authority shall have the right to increase the number of the Specialised Wagon to be procured and supplied by the Service Provider under the Agreement ("**Additional Specialized Wagons**"), of such number of Specialised Wagons which are not in excess of [50%] of the quantity set out in Article 2.1(a) above (i.e. [upto additional Specialized Wagons)], at any time prior to the expiry of a period of 6 (six) months of the Procurement Period. The SCOD of the Additional Specialized Wagons shall be mutually discussed and agreed to between the Parties.

2.2.2. The Additional Specialized Wagons shall be procured, supplied, operated and maintained as per the terms and conditions of this Agreement.

2.2.3. The Authority shall pay the Logistics Charges for the Additional Specialized Wagons at the same rate as applicable for the relevant Accounting Year in which the Specialised Wagons are supplied.

2.2.4. From the COD of the Additional Specialized Wagons, the Annual Capacity stand proportionately increased. Also all other financial terms of this Agreement shall also stand proportionately changed. The Service Provider shall provide additional Performance Security proportionately, to the Authority.

2.2.5 It is clarified that the requirement pursuant to this Article shall not constitute 'Change of Scope' under Article 11 of this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1. The Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Service Provider (the "**Concession**"): (i) the right to procure and supply the Specialized Wagons/ Rakes, in conformity with the Specifications and Standards and as approved by the RDSO for the purposes as provided for under this Agreement; (ii) the right to operate and maintain the Specialized Wagons/ Rakes, either by itself or through the Railways as per the requirements of the LWIS Scheme, in accordance with Good Industry Practice and in accordance with the terms and conditions of this Agreement; (iii) the right to arrange for the loading of the food grains at Procuring Silos, the unloading of food grains at the Distribution Silos as well as the transportation of food grains in bulk using the Specialized Wagons from the Procuring Silos to the Distribution Silos, in accordance with the terms and conditions of this Agreement; and (iv) to perform other duties, obligations and responsibilities and other acts, deeds, matters and things incidental thereto and / or as may be necessary in connection with the duties, obligations and responsibilities of the Service Provider as per the terms and conditions of this Agreement, for a period of 30 (thirty) years commencing from the Appointed Date and the Service Provider hereby accepts the Concession and agrees to implement the same subject to and in accordance with the terms and conditions set forth herein.

3.1.2 Subject to and in accordance with the terms and conditions set forth in this Agreement, the Concession hereby granted shall entitle or oblige (as the case may be) the Service Provider to undertake each of the following in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits:

a) Finance, procure and supply, as may be applicable, the Specialized Wagons/ Rakes to the Authority, in conformity to the Standards and Specifications set forth in **Schedule – A**, as approved by the RDSO, in accordance with the terms and conditions of this Agreement;

b) Operate and maintain the Specialized Wagons/ Rakes in accordance with Good Industry Practices and in accordance with the terms and conditions of this Agreement including without limitation make due payment of the Railway Freight Charges along with all applicable Taxes from time to time, to the Railways, in accordance with the terms and conditions of the Railway Agreement, the LWIS Scheme and / or the rules, regulations, bye – laws, circulars, guidelines and notifications issued by the Railways from time to time in this regard;

c) Arrange for the loading of the Specialized Wagons with food grains at the Procuring Silos and for the unloading of the Specialized Wagons with food grains at the Distribution Silos as well as transportation of the food grains in bulk using the Specialized Wagons from the Procuring Silos to the Distribution Silos, as per the Circuit Plans and in accordance with the terms and conditions of this Agreement;

d) Co-ordinate with the Private Freight Terminal Operators and / or the Railways, upon receiving instructions from the Authority with regards to booking of freight, operation/carriage of the Specialized Wagons and / or making claims, for the purposes enumerated under this Agreement;

e) Right of Way, access and license in respect of the Silos and real estate related thereto for performing its various duties, obligations and responsibilities under this Agreement;

f) Perform and fulfil all of the Service Provider's obligations under and in accordance with this Agreement and perform all other acts, deeds, matters and things incidental thereto and as may be necessary in connection with the duties, obligations and responsibilities of the Service Provider as per the terms and conditions of this Agreement;

g) Save as otherwise provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Service Provider under this Agreement; and

h) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement nor transfer, sub-lease, sub-license or part possession of the Right of Way to the Silos and the real estate related thereto, as the case may be, save and except as expressly permitted by this Agreement.

3.2. Change in Circuit Plan

3.2.1 The Authority shall have the right to revise/change the Circuit Plans as per its requirement from time to time including changes in associated loading and unloading point or points as per its requirement.

3.2.2 In the event, the Circuit Plan is sought to be revised by the Authority, the Service Provider shall seek necessary consent/permission from the Railways as may be required under the LWIS Scheme. All costs and expenses with respect to change in the approval of the new Circuit Plan shall be reimbursed by the Authority to the Service Provider at actuals against submission of requisite documents.

3.3. Concession Period

Subject to the provisions of Article 4.1, this Agreement shall come into effect on the date hereof, and shall expire upon the completion of the Concession Period and / or the Operation Period, whichever occurs later, unless terminated earlier in accordance with the provisions of this Agreement.

3.4. Substitution of the Authority

The Parties hereby expressly agree and acknowledge that the Authority may, in pursuance of any re-organisation and / or restructuring undertaken in pursuance of Applicable Laws, substitute itself by any other public entity, Government Instrumentality and / or statutory authority (the "**Substituted Entity**") having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon

such substitution, all the functions, rights, benefits, duties, responsibilities and obligations of the Authority under this Agreement shall be deemed to be transferred to the Substituted Entity in accordance with and subject to Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavour basis, make such arrangements and enter into such further agreements and / or arrangements as may be necessary for performance of their respective duties, responsibilities and / or obligations hereunder, including the rights and obligations arising out of the provisions of Article 15.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 14, 19, 26 and 27, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.1 (the "**Conditions Precedent**"). Provided, however, that a Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of Articles 4.1.2 or 4.1.3, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Article 4.1.1.

4.1.2 The Service Provider may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Article 4.1.2 within a period of 30 (thirty) days of the notice, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) Procured the Right of Way in respect of the Silos by necessary acknowledgement from the respective PFT Operators.

(b) Provided acceptance from respective PFT operators for loading/ unloading through Specialized Wagons by the Service Provider.

Provided that upon request in writing by the Authority, the Service Provider may, in its discretion, waive the Conditions Precedent set forth in this Article 4.1.2.

4.1.3 The Conditions Precedent required to be satisfied by the Service Provider within a period of 150 (one hundred and fifty) days from the date of this Agreement shall be deemed to have been fulfilled when the Service Provider shall have:

(a) provided Performance Security to the Authority as per Article 9.1;

(b) executed and procured execution of the Substitution Agreement and has delivered the duly stamped and executed counterpart of the Substitution Agreement to the Authority;

(c) achieved Financial Close as per Article 14.1 and has delivered the certified true copies of the executed Financing Agreements to the Authority;

(d) Procured the Applicable Permits from the Railways for operating the Specialized Wagons/ Rakes along the identified Circuits, for the transportation of the food grains in bulk from the Procuring Silos to the Distribution Silos;

(e) entered and procured execution of the Railway Agreement and has delivered the certified true copy of the executed Railway Agreement to the Authority;

(f) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in sub – articles k, l and m of Article 7.1; and

(g) delivered to the Authority a legal opinion from the legal counsel of the Service Provider with respect to the authority of the Service Provider to enter into this Agreement and the enforceability of the provisions thereof vis-à-vis the Service Provider.

Provided that upon request in writing by the Service Provider, the Authority may, in its discretion and subject to such conditions as it may deem fit, extend the timeline for satisfying any of the Conditions Precedent, set forth in this Article 4.1.3 provided that such extension is subject to a maximum of 30 (thirty) days, to be reckoned from the date of issue of letter/email from the Authority. Also, the Authority may, in its sole discretion, waive any of the Conditions Precedent set forth in this Article 4.1.3, with such conditions as it may deem fit.

On satisfaction of all the Conditions Precedent as stipulated under Article 4.1.3, the Service Provider shall inform in writing to the Authority of due satisfaction of the Conditions Precedent. The Authority shall, within a period of 15 (fifteen) days of receipt of such notice from the Service Provider, undertake the review and satisfy itself on the compliance of all the Conditions Precedent as stipulated under Article 4.1.3. The Authority may at its discretion take such steps as required to verify the compliance of the Conditions Precedent by the Service Provider. The Authority shall ensure that such steps for verification are completed within 15 (fifteen) Business Days from the receipt of such intimation from the Service Provider.

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

4.1.5 The Parties shall notify each other in writing at least once a week on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied. For the avoidance of any doubt, the Service Provider shall, upon satisfaction or waiver, as the case may be, of all the Conditions Precedent, notify the Authority of the occurrence of the Appointed Date.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.2 within the period specified in that respect thereof, and (i) the delay has not occurred as a result of breach of this Agreement by the Service Provider or due to Force Majeure, the Authority shall pay to the Service Provider, Damages in an amount calculated at the rate of 0.05% (zero point zero five percent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 5% (five percent) of Performance Security.

4.3 Damages for delay by the Service Provider

In the event that (i) the Service Provider does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Article 4.1.3 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Service Provider shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two percent) of Performance Security

for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of Performance Security.

Provided that, in case the Service Provider fails to fulfil the obligation within the period as stipulated in Article 4.1.3 and the maximum cap of Damages for delay by Service Provider is reached then the Authority may in its sole discretion, upon receiving a request from the Service Provider, provide a further extension upto a maximum period of 180 (one hundred and eighty) days. Such extension may be granted by Authority subject to: (a) the Damages for the delay as stipulated in Article 4.3. have been deposited by the Service Provider; and (b) for any further extension granted by the Authority under this provision the Service Provider shall be liable to pay Damages calculated at the rate of 0.2% (zero point two percent) of Performance Security for each day's delay until the fulfilment of such Conditions Precedent.

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Articles 4.2 and 4.3, and subject to the provisions of Article 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, prior to the expiry of a period of 210 (two hundred and ten) days from the Execution Date or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and the Service Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Service Provider, the Performance Security of the Service Provider shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5

OBLIGATIONS OF THE SERVICE PROVIDER

5.1 Obligations of the Service Provider

5.1.1 The Service Provider shall procure and supply, as may be applicable, the Rakes to the Authority, in accordance with the terms and conditions of this Agreement.

5.1.2 The Service Provider shall procure, operate and / or maintain the Specialized Wagons/ Rakes supplied to the Authority, in accordance with the terms and conditions of this Agreement.

5.1.3 Subject to and on the terms and conditions of this Agreement, the Service Provider shall, at its own cost and expense, procure finance for and undertake the procurement and supply of the Specialized Wagons/ Rakes, in conformity with the Specifications and Standards and as approved by the RDSO for the purposes as provided under this Agreement; the operation and maintenance of the Specialized Wagons/ Rakes, either by itself or through the Railways as per the requirements of the LWIS Scheme, in accordance with Good Industry Practice and in accordance with the terms and conditions of this Agreement; the arrangement of loading of the food grains at Procuring Silos, the unloading of food grains at Distribution Silos as well as the transportation of food grains in bulk using the Specialized Wagons from the Procuring Silos to the Distribution Silos, in accordance with the terms and conditions of this Agreement; and the performance of the other duties, obligations and responsibilities and other acts, deeds, matters and things incidental thereto and / or as may be necessary in connection with the duties, obligations and responsibilities of the Service Provider as per the terms and conditions of this Agreement, and shall observe, fulfil, comply with and perform all its obligations set out under this Agreement or arising thereunder.

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

5.1.5 Save and except as otherwise provided in this Agreement or Applicable Laws, as the case may be, the Service Provider shall, in discharge of all its obligations under this Agreement, conform with and adhere to Good Industry Practice at all times.

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

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know – how and systems used or incorporated into the Specialized Wagons;

(c) 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;

(d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the duties, obligations and responsibilities of the Service Provider under this Agreement;

(e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed, matter or thing, whether intentionally or otherwise, which may in any manner be in violation of any of the provisions of this Agreement;

(f) take all reasonable precautions for the prevention of accidents on or around the Silos, and provide all reasonable assistance and emergency medical aid to accident victims;

(g) transfer the Right to Way to the Silos to the Authority, upon Termination of this Agreement, in accordance with the provisions of this Agreement;

(h) perform, fulfil, satisfy and / or comply with all terms and conditions of the Financing Agreements;

(i) support, facilitate and co-operate with the Authority in the implementation of the Project in accordance with the terms and conditions of this Agreement;

(j) comply with the Standards and Specifications and the specifications and / or stipulations of the RDSO in relation to the Specialized Wagons;

(k) maintain true and accurate records of movement and / or transportation of food grains and the books of accounts pertaining to the costs, expenses and / or expenditure towards the operation and maintenance of Specialized Wagons, transportation of food grains in bulk, Railway Freight Charges payable, receipts / invoices raised on the Authority and furnish such other information as the Authority may require from time to time, in accordance with the terms and conditions of this Agreement;

(l) purchase and maintain valid and adequate insurance cover in accordance with the requirements of Good Industry Practice and the requirements of Article 17.2 of this Agreement, at its own costs and / or expenses including towards premium and other ancillary / incidental costs and / or expenses in this regard;

(m) pay all Taxes, levies, charges, fees, impositions and / or duties (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Specialized Wagons and / or the Project charged, levied or imposed by any Government Instrumentality, as may be applicable, from time to time;

(n) reimburse to the Authority, promptly and no event later than 15 (fifteen) days from the date of notice in this regard, such costs and / or expenses incurred in relation to the appointment and professional services rendered by the Authority, as per the requirements of this Agreement;

(o) employ sufficiently and adequately trained, skilled and experienced personnel in order to carry out each of its duties, obligations and responsibilities under this Agreement; and

(p) permit and / or allow reasonable access to the representatives and / or agents of the Authority for monitoring, inspection and supervision and for performance of their duties, obligations and responsibilities under the provisions of this Agreement.

5.1.7. The Service Provider shall open a bank account ("**Railway Freight Charges Account**") with any Bank, in order to make due payment of the Railway Freight Charges to the Railways and to receive payment towards reimbursement of the Railway Freight Charges from the Authority, as per the terms and conditions of the Railway Agreement and this Agreement. The Service Provider shall timely pay to the Railways the Railway Freight Charges along with all applicable Taxes from time to time, in accordance with the terms and conditions of the Railway Agreement, the LWIS Scheme and Applicable Laws, and shall provide a fortnightly statement of Railway Freight Charges paid by the Service Provider to the Railways as per the terms and conditions of the Railway Agreement, to the Authority's Representative, along with copies of relevant invoices, bank statements and other requisite books of accounts and records in this regard.

5.1.8. The Service Provider shall bear all demurrage charges/engine (hire) detention charges and all other charges in this regard. In case of any dispute between the Service Provider and the Silo operators regarding the charges as aforesaid, the dispute shall be referred for resolution through mediation by GM(Region), of the Authority. If the parties to the dispute are not able to resolve their disputes through mediation by GM(Region), then the dispute shall be referred to ED (Zone), of the Authority for resolution. The decision of the ED (Zone), in this regard shall be final and binding on the Service Provider.

5.1.9. The Service Provider shall provide security for the Specialised Wagon to prevent any loss or damage of the Specialised Wagon.

5.2 Obligations relating to Project Agreements

5.2.1. It is expressly agreed that the Service Provider 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 Service Provider from its obligations or liability hereunder.

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

5.2.3. The Service Provider shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or

amendment is made without such consent, the Service Provider shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Service Provider.

5.2.4. Notwithstanding anything to the contrary contained in this Agreement, the Service Provider shall not sub-lease, sub-license, assign or in any manner create an Encumbrance on the Right of Way to the Silos, as the case may be, without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-lease, sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws.

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

5.3 Obligations relating to Change in Ownership

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

5.3.2. The Service Provider shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Article 5.3 and that the {Selected Bidder / Consortium Members}, shall:

A. continue to hold such shareholding, in the total Equity of the Service Provider, which shall not be below 100% (one hundred per cent) at any time prior to the expiry of the third (3rd) anniversary of COD of the last Rake and in case of Consortium, the equity holding of the Lead Member in the total Equity shall be at least 26% (twenty six per cent) at all times prior to the expiry of the Concession Period; provided that any material variation (as compared to the representations made by or on behalf of the Selected Bidder / Consortium during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the Selected Bidder/ Lead Member / Consortium Members} to the total Equity shall also constitute Change in Ownership. Each Consortium Member whose technical and/or financial capacity was evaluated in response to the Request for Proposals, shall not undertake any direct and/or indirect transfer of legal or beneficial ownership of any shares, or securities

convertible into shares of the Service Provider, that results, or may result, in such member holding Equity less than; (a) 26% (twenty six per cent) of the total Equity of the Service Provider; and (b) 5% (five per cent) of the Total Project Cost, till the expiry of a period of 2 (two) years from the COD of the last Rake; and

B. that the {Selected Bidder / Consortium Members}, together with {its/their} Associates shall continue to hold not less than 26% (twenty six percent) of the Equity of the Service Provider, at all times, during the Concession Period;

5.3.3. Without prejudice to the provisions of Article 5.3.2 above, the Service Provider agrees and acknowledges that:

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

b) acquisition of any control directly or indirectly of the Board of Directors of the Service Provider by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Service Provider, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Service Provider without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Service Provider from any liability or obligation under this Agreement. It is further agreed that in the event of any acquisition of shares or control in the Lead Member or its holding company by another overseas entity, which results in a Change in Ownership as set forth above, the Service Provider shall inform the Authority of such occurrence within 15 (fifteen) days thereof and seek consent of the Authority under and in accordance with the provisions of this Article 5.3. In the event the Authority denies its consent to such Change in Ownership, a Change in Ownership in breach of this Article 5.3 shall be deemed to have occurred.

For the purposes of this Article 5.3.2:

i) the expression "**acquirer**", "**control**" and "**person acting in concert**" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Service Provider;

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

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

5.3.4. Without prejudice to the provisions of this Agreement, the Parties expressly agree that the Lead Member may, in its discretion, subscribe to the Equity of the Service Provider either directly or through a wholly owned subsidiary of the Lead Member, incorporated in India. For the avoidance of doubt, the Service Provider expressly agrees that such subsidiary shall act on behalf of the Lead Member who shall, at all times after the Appointed Date, hold not less than 75% (seventy five per cent) of the total paid up and subscribed share capital of such subsidiary.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Obligations relating to employment of trained personnel

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

5.6 Branding of Rakes

The Rakes or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Service Provider or its shareholders, except for as required under the relevant guidelines issued by Railways.

5.7 Obligations regarding risk of loss or damage

The Service Provider shall bear the risk of loss in relation to each Specialized Wagon so long as it is in the possession of the Service Provider for the performance of its duties, obligations and responsibilities under this Agreement.

5.8 Obligations relating to Taxes

The Service Provider shall pay, at all times during the subsistence of this Agreement, all Taxes, levies, charges, fees, impositions and / or duties (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Specialized Wagons and / or the Project charged, levied or imposed by any Government Instrumentality, as may be applicable, from time to time.

5.9 Obligations relating to information

5.9.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Service Provider shall provide such information to the Authority forthwith and in the manner and form required by the Authority.

5.9.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Service Provider's activities under or pursuant to this Agreement which the Authority proposes to publish, the Service Provider shall provide such comments to the Authority in the manner and form required by the Authority.

5.10 Obligations relating to Movement Operations

The Service Provider, upon receiving a written request ("**Transportation Request**") from the Authority's Representative regarding the movement and / or transportation of food grains in bulk from any of the Procuring Silos to any of the Distribution Silos, along any of the Circuits:

(a) shall prepare a forwarding note ("**Forwarding Note**") *inter alia* setting out the description of goods, the names and address of the consignor and consignee and the address of the destination of the goods being transported, promptly and in no event later than 2 (two) days from the date of the issuance of such Transportation Request by the Authority to Railways as per Applicable Laws;

(b) shall obtain the Railway Receipt from the Railways, in accordance with the requirements of the Forwarding Note and the Transportation Request, promptly on the same day of completion of loading;

(c) procure the delivery and submission of the Railway Receipt, in order to ensure its onward transmission and delivery to the relevant Distribution Silos, by way of communication through registered post, courier service, speed post, email and / or facsimile, promptly and in no event later than 1 (one) day from the date of the issuance of such Railway Receipt by Railways along with a copy to the manager (depot) /area manager of the Procuring Silos/Distribution Silos;

(d) inform all requisite details regarding obtaining of the Railway Receipt to manager (depot) /area manager of the Procuring Silos, for matters pertaining to demurrage /engine (hire) detention charges as well other matters as may be necessary including details relating to labour and quality control, promptly and in no event later than 2 (two) days from the date of the issuance of such Railway Receipt;

(e) inform all requisite details regarding loading / unloading of the goods to the concerned Silos, by way of communication through registered post, courier service, speed post, email and / or facsimile, promptly and in no event later than 2 (two) days from completion of loading/unloading of the Specialised Wagons;

(f) procure the timely delivery of all claims for missing Specialized Wagons, compensation claims and / or claims for payment of excess Railway Freight Charges, as may be applicable, promptly and in no event later than 2 (two) days from completion of loading/unloading of the Specialised Wagons; and

(g) ensure the due payment of the Railway Freight Charges along with all applicable Taxes from time to time, to Railways, in accordance with the terms and conditions of the Railway Agreement, the LWIS Scheme and Applicable Laws, as may be incurred in relation to the movement and / or transportation of food grains in bulk from the concerned Silos, as per the terms and conditions of this Agreement.

5.11 Sole purpose of the Service Provider

The Service Provider having been set up for the sole purpose of exercising the rights and benefits and for complying with and performing its duties, obligations, responsibilities and liabilities under this Agreement, the Service Provider and / or any of its subsidiaries shall not, except with the prior written consent of the Authority, become directly or indirectly engaged, concerned or interested in any business, other than as may be expressly envisaged herein.

5.12 Liability for Personnel

5.12.1 The Service Provider shall be solely responsible for complying with all Applicable Laws in respect of the personnel engaged by the Service Provider including without limitation obtaining all Applicable Permits, registrations and / or for the deposit of payments / contributions under all Applicable Laws. In the event, that the Service Provider does not make timely payments / contributions as may be required in relation to the personnel employed by the Service Provider in accordance with the requirements of all Applicable Permits and / or Applicable Laws, the Authority may, at its sole discretion, make such contribution / payment to the relevant Governmental Instrumentalities. In the event, that the Authority has made any contribution / payment in relation to personnel employed by the Service Provider in accordance with the requirements of all Applicable Permits and / or Applicable Laws, the Service Provider shall reimburse all such contributions / payments to the Authority, immediately and in no event later than 15 (fifteen) days from the date of the demand notice as issued by the Authority to the Service Provider in this regard. The Service Provider will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents and / or representatives against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and

nature, whether arising out of any breach and / or default by the Service Provider of any of its obligations, under this Agreement and / or under Applicable Laws, in relation to any personnel engaged by the Service Provider.

5.12.2 The Service Provider shall maintain and submit all accounts, records, returns and other information / documents as may be prescribed under any Applicable Laws to the concerned Governmental Instrumentalities as per the requirements of all Applicable laws and shall deliver a copy of each such document to the Authority's Representative or any officer acting on behalf of the Authority, immediately and in no event later than 15 (fifteen) days from the date of such demand being raised by the Authority to the Service Provider.

5.12.3 The Parties hereby agree and acknowledge that, notwithstanding anything contained in this Agreement, the Service Provider shall be ensure and procure due compliance with the requirements of all Applicable Permits and Applicable Laws, in the course of its performance of its duties, obligations and responsibilities under this Agreement and nothing in this Agreement shall be construed to mean the nullification, reduction, mitigation and / or absolution of the Service Provider with regards to ensuring due compliance with the requirements of all Applicable Permits and Applicable Laws, in the course of its performance of its duties, obligations and responsibilities under this Agreement.

5.13 Property with respect to Food Grains

5.13.1 The sole and absolute ownership, title and property with respect to the food grains handled and transported by the Service Provider and any work in progress in relation thereto shall always remain with the Authority and the Service Provider shall have no right or lien of whatsoever nature on the same.

5.13.2 The Service Provider shall hold the food grains and other goods as may be provided, delivered, handed over and / or entrusted to it by the Authority and / or which has otherwise come into the custody and / or possession of the Service Provider, in trust and in fiduciary capacity, acting for and on behalf of the Authority and shall be a '*bailee*' within the meaning of such term under the Indian Contract Act, 1872, for ensuring the movement and / or transportation of such food grains and other goods in accordance with the terms and conditions of this Agreement. Save and except as otherwise expressly provided in this Agreement, in the event that the food grains or any part thereof suffers from any loss and / or damage caused due to pilferage, theft, robbery, damage and / or destruction, during their movement and / or transportation by the Service Provider from any cause whatsoever, the Service Provider shall, at its cost and expense, rectify and remedy such loss and / or damage forthwith.

5.13.3 It is expressly agreed by the Parties hereto that the ownership, title and property to the food grains shall always remain with the Authority. The Service Provider shall ensure that its business and the performance of its duties, obligations and responsibilities under this Agreement is conducted in such a manner so as to give a clear indication to all third parties that the ownership, title and property in such food grains belongs to the Authority at all times.

5.13.4 The Service Provider shall maintain and submit all accounts, records, returns and other information / documents as may be required in relation to the food grains to the Authority's Representative or any officer acting on behalf of the Authority, immediately and in no event later than 15 (fifteen) days from the date of such demand being raised by the Authority to the Service Provider.

5.13.5 Notwithstanding anything to the contrary contained in this Agreement, the Service Provider shall not sell, transfer, assign, lease, alienate, mortgage, charge, hypothecate, pledge and / or create any Encumbrance on the food grains and shall ensure that the food grains are not subject to any attachment, lien, distrain and / or being subject to any transfer, possession or custody by any court, tribunal and / or receiver, Government Instrumentality and / or liquidator appointed by any court, Government Instrumentality and / or tribunal in any actions, claims, investigations and / or proceedings to which the Service Provider may be a party or which might otherwise be brought against it by any third party.

5.14 Others

Save and except as may be expressly provided in this Agreement, any Documentation required to be provided, delivered and / or furnished by the Service Provider to the Authority's Representative or any officer acting on behalf of the Authority shall be provided free of cost and in three (3) copies and in the event, that the Authority is required to return any such Documentation with their comments, observations and / or approval thereof, the Authority shall be entitled to retain at least two (2) copies thereof.

ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

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

6.1.2. The Authority agrees to provide support to the Service Provider and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

a) procurement of the Right of Way, access and license in respect of the Silos and real estate related thereto and notification / declaration of the Silos, as may be mutually agreed between the Parties hereto, as 'private freight terminals' *vide* the PFT Notifications of the Railways;

b) upon written request from the Service Provider, assist the Service Provider in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Service Provider than those generally available to commercial customers receiving substantially equivalent services;

c) upon written request from the Service Provider, and subject to the Service Provider complying with the Applicable Laws, provide all reasonable support and assistance to the Service Provider in procuring Applicable Permits (including environmental clearance) for performance of its duties, obligations and responsibilities under this Agreement, required from any Government Instrumentality for implementation and operation of the objectives set forth in this Agreement. For the avoidance of any doubt, it is hereby clarified that nothing stated herein shall be construed to absolve the duties, obligations and responsibilities of the Service Provider to procure, obtain and maintain all Applicable Permits as may be required for due performance of its duties, obligations and responsibilities under this Agreement;

d) make the payment of the Logistics Charges to the Service Provider, in consideration of the due performance of the duties, obligations and responsibilities of the Service Provider under this Agreement, in accordance with the requirements of Article 15 of this Agreement;

e) reimburse the Railway Freight Charges after deducting the rebate provided by the Railways under the LWIS Scheme, to the Service Provider, within 7 (seven) days of the Service Provider submitting the Railway Receipt to the Authority and reimburse the Detention Charges levied, if any for the first 5 (five) hours including free time during each loading/ unloading operation, within 7 (seven) days of the Service Provider submitting the receipt from the Railway to the Authority. For illustration purposes, if first 3 (three) hours for loading operation are provided as free by Railways then the Authority shall reimburse the Detention charges as charged by the Railways for additional 2 (two) hours only;

f) provide space for stabling of Rakes at the siding of Silos at no additional cost to the Service Provider in accordance with Article 15.8;

g) the Service Provider may be permitted to use the Specialized Wagons for additional commercial activity for third parties, in accordance with the terms and conditions of Article 16 of this Agreement;

h) not do or omit to do any act, deed or thing which may in any manner be in violation of any of the provisions of this Agreement;

i) support, cooperate with and facilitate the Service Provider in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

j) upon written request from the Service Provider and subject to the provisions of Article 5.4, provide reasonable assistance to the Service Provider and any expatriate personnel of the Service Provider or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Service Provider or its Contractors their obligations under this Agreement.

k) reimburse the Detention Charges levied for time above first 5 (five) hours including free time, if any during each loading/ unloading operation, only if it is charged for reasons solely and directly attributable to Silo operator, within 7 (seven) days of the Service Provider submitting the receipt from Railway to the Authority and concurrence by GM (Region)/ ED (Zone) as provided in Article 5.1.8.

l) Availability of weighing scales at both Procuring Silos and Distribution Silos.

ARTICLE 7

REPRESENTATION AND WARRANTIES

7.1. Representation and warranties of the Service Provider

The Service Provider represents and warrants to the Authority that:

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

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

c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

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

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

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

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

h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the

aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

k) it shall at no time undertake or permit any Change in Ownership except in accordance with provisions of Article 5.3;

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

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

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

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

p) all information provided by the {Selected Bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

q) all undertakings and obligations of the Service Provider arising from the Request for Proposals or otherwise shall be binding on the Service Provider as if they form part of this Agreement;

r) it has and will have the necessary Intellectual Property, proprietary rights, licenses, agreements, approvals, consents of third parties free from any Encumbrances and permissions for materials, technology, methods, processes, know – how and systems to be used or incorporated into the Specialized Wagons for or in connection with the performance of its duties, obligations and responsibilities under this Agreement;

s) it owns or possesses / will own or possess all Intellectual Property or proprietary rights to perform its obligations regarding the Project and to carry on its business as presently conducted and presently planned to be conducted without conflict with the rights of any third party. The Service Provider further represents and warrants that it has all rights and licenses necessary to grant the Service Provider adequate licenses and will not infringe the rights or Intellectual Property of any third party;

t) it has not and shall not incorporate any materials, technology or any item or thing that involves the use of Intellectual Property or proprietary rights that the Service Provider shall not have right to use or license to the Authority or that may result in claims or suits

against the Service Provider or the Authority arising out of claims of infringement of any Intellectual Property or other proprietary rights; and

u) no infringement of any Intellectual Property of any kind, whether in India or elsewhere, shall result from the performance of the Agreement or the Project Agreements, or the operation, use or ownership of the Project, Specialized Wagons or the exercise of the rights and license granted pursuant to Agreement by the Authority.

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Service Provider that:

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

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

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

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

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

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

g) upon the Service Provider submitting the Performance Security and complying with the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Service Provider, subject to and in accordance with the provisions of this Agreement.

7.3. Disclosure

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

ARTICLE 8

DISCLAIMER

8.1. Disclaimer

8.1.1 The Service Provider acknowledges that prior to the execution of this Agreement, the Service Provider has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Agreement, Specifications and Standards, Silos, existing structures, local conditions, rail siding to the Silos, physical qualities of ground, subsoil, geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Article 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Service Provider confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Service Provider acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Service Provider, {the Selected Bidder / Members of the Consortium and their} Associates or any person claiming through or under any of them.

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

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Article 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 8.1.4 shall not prejudice the disclaimer of the Authority contained in Article 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Service Provider pursuant to this Agreement.

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

Part III: Project Implementation and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1. Performance Security

9.1.1. The Service Provider shall, for the performance of its obligations hereunder, provide to the Authority within a period of thirty (30) days from the Execution Date, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 7,80,00,000 (Rupees seven crores eighty lakhs only) in the form set forth in **Schedule - D** (the "**Performance Security**"). Until such time the Performance Security is provided by the Service Provider pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Service Provider. Provided, however, that the Service Provider may provide a Performance Security hereunder for a period of 3 (three) years and shall, no later than 60 (sixty) days prior to the expiry thereof, substitute it by a like Performance Security.

9.1.2. Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Service Provider within a period of thirty (30) days from the Execution Date, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2. Appropriation of Performance Security

Upon occurrence of a Service Provider Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Service Provider Default or for failure to meet any Condition Precedent. In the event any Performance Guarantee is not renewed/extended at least 60 (sixty) days prior to the expiry thereof, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the entire amount of the Performance Security as Damages. Upon such encashment and appropriation from the Performance Security, the Service Provider shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Service Provider shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 21. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Service Provider shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Service Provider Default or for satisfying any Condition Precedent, and in the event of the Service Provider not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 21.

9.3. Release of Performance Security

The Performance Security shall remain in force and effect till the expiry of a period of 180 (one hundred and eighty) days from the Transfer Date. In the event of Termination of the Agreement due to Service Provider Default, the Authority shall forfeit the Performance Security. In the event of Termination upon Authority Default or Termination due to the occurrence of an event of Force Majeure, as per the terms and conditions of this Agreement, subject to deduction of dues and / or Damages payable to the Authority, the Performance Security shall be returned within a period of 30 (thirty) days from the Termination Date.

9.4. References to Performance Security

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

ARTICLE 10

PROCUREMENT AND SUPPLY OF RAKES

10.1. Obligations prior to commencement of procurement

Prior to commencement of the Procurement Period, the Service Provider shall appoint its representative who shall be duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement and shall perform all such acts, deeds and things as may be necessary or required before commencement of procurement and supply under and in accordance with this Agreement, Applicable Laws and Applicable Permits.

10.2. Procurement and Supply of Specialized Wagons/ Rakes

10.2.1. The Service Provider shall procure and supply the Specialized Wagons/ Rakes in accordance with the Standards and Specifications, Applicable Laws, Applicable Permits, specifications of the RDSO, Good Industry Practices, terms and conditions of this Agreement and the terms and conditions of the Railway Agreement prior to the SCOD.

10.2.2. The Service Provider shall ensure that the Rakes are procured and supplied in a phased wise manner in accordance with the requirements of Article 10.2.1 and the timelines specified in **Schedule - E** to meet the obligations of this Agreement commencing from the Appointed Date and ending on the COD of the last Rake ("**Procurement Period**"). In the event that the Service Provider fails to complete the procurement and supply of the Rakes in accordance with the requirements of Article 10.2.1, prior to the SCOD as per **Schedule - E**, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.01% per Rake (zero point zero one per cent for each Rake) of the Performance Security for delay of each day until such procurement and supply of the Rake(s) is completed, subject to a maximum of 100% (one hundred percent) of the Performance Security. In the event that procurement and supply of the any Rake in accordance with the requirements of Article 10.2.1 is not completed within a period of 180 (one hundred and eighty) days from the SCOD for such Rake as specified in **Schedule - E**, unless the delay is on account of reasons solely attributable to the Authority or due to the occurrence of an event of Force Majeure, the Authority may, without prejudice to its other rights and remedies, terminate this Agreement.

10.2.3. The Service Provider shall do all acts, deeds, matters and things, as may be necessary, to ensure the implementation of the Project including appointment of personnel, Contractors, procurement of all Applicable Permits and arranging for financing, in order to carry out the procurement and supply of the Rakes, as per the terms and conditions of this Agreement.

10.3. Quarterly progress reports

During the Procurement Period, the Service Provider shall, no later than 7 (seven) days from the end of each quarter, furnish to the Authority, a quarterly report on the progress of the procurement and supply of the Specialized Wagons/ Rakes and shall promptly give such other relevant information as may be required by the Authority in this regard.

10.4. Inspection by the Authority

10.4.1 The Authority, may inspect each Specialized Wagon/ Rake, in accordance with the provisions of this Article 10.4, prior to completion of procurement and supply of the Rakes by the Service Provider.

10.4.2 The Service Provider shall notify the Authority, no later than 45 (forty five) days prior to the completion of procurement and supply of the Rakes by the Service Provider. The Authority may, in its discretion, nominate its representative to carry out an inspection on the scheduled date and time.

10.4.3 The Service Provider shall provide the assistance necessary for the Authority Representative to perform the inspection in accordance with the provisions of this Article 10.4.3. For the avoidance of doubt, the Parties expressly agree that such inspection shall be completed within a period of 72 (seventy-two) hours and upon expiry thereof, the Rake shall be deemed to have been procured and supplied to the Authority.

10.4.4 The Authority Representative may submit an inspection report for each Specialized Wagon specifying the defects and deficiencies that shall be rectified by the Service Provider in conformity with the Specifications and Standards, Applicable Permits, specifications of the RDSO, Good Industry Practices, terms and conditions of this Agreement and the terms and conditions of the Railway Agreement (the "**Punch List**"). The Service Provider shall, no later than the expiry of a period of 45 (forty five) days from the date of issuance of the Punch List, rectify each item in the Punch List and notify the Authority of the same. The Authority may, in its discretion, inspect the Specialized Wagons/ Rakes within **30** (**thirty**) days thereof and in the event that any defect or deficiency specified in the Punch List shall have remained without rectification thereof, the Service Provider shall pay to the Authority as Damages, **0.01**% per Rake (zero point zero one per cent for each Rake) of the Performance Security for each day of delay until all items of the Punch List are duly rectified.

10.5. Completion Certificate

10.5.1. At least 30 (thirty) days prior to the completion of procurement and supply of each Rake, the Service Provider shall notify the Authority, of its intent to induct the Rake on the railway network of the Railways.

10.5.2. At least 30 (thirty) days prior to the SCOD of each Rake, the Service Provider shall submit to the Authority the following ("**Inspection Documents**"): (i) tests, reports and certificates of Specialized Wagons/ Rakes relating to inspection and approval by the RDSO; (ii) copies of all insurance covers obtained and other relevant documents as may be required by the Authority, in relation to the Specialized Wagons/ Rakes. The Authority may review the same and provide its comments in writing to the Service Provider as per its opinion. The Service Provider shall incorporate the comments of the Authority (if any) and provide the revised copies of the Inspection Documents, for review and confirmation of the Authority. For the avoidance of any doubt, it is hereby clarified that the provisions of this Article 10.5.2 shall apply, *mutatis mutandis*, to such review and confirmation by the Authority. Notwithstanding anything contained under this Agreement, it is further agreed that no review, comment or approval by the Authority of any Inspection Document submitted by the Service Provider nor

any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Service Provider from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits and the Authority shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection.

10.5.3. Upon the completion of the review and confirmation of the Inspection Documents and upon the Service Provider providing adequate evidence of completion of each item of the Punch List to the satisfaction of the Authority, upon carrying out its independent review and / or inspection of the Specialized Wagons, at its discretion, and may issue a completion certificate to the Service Provider ("**Completion Certificate**"). In the event, that the procurement and completion of the Rakes in accordance with the requirements of this Agreement is achieved before the SCOD, the Authority may in its sole discretion issue the Completion Certificate in accordance with the requirements of Article 10.5.3 of this Agreement.

10.6. Entry into Commercial Operations

The procurement and supply of the Rake(s) shall be complete upon the issuance of the Completion Certificate, as per the requirements of Article 10.5 of this Agreement and the commercial operation date for each Rake (the "**Commercial Operation Date**" or "**COD**") shall be the date of issuance of the Completion Certificate or the date of issuance of the Commercial Notification, whichever occurs later, as per the terms and conditions of this Agreement.

ARTICLE 11

CHANGE OF SCOPE

11.1. Change of Scope

11.1.1. The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of updated technology, additional works and / or additional services which are not included in the Scope of the Agreement as contemplated by this Agreement (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 11 and the costs thereof shall be expended by the Service Provider and reimbursed to it by the Authority in accordance with Article 11.3.

11.1.2. If the Service Provider determines at any time that a Change of Scope is necessary for providing safer and improved Project, including upgradation of any technology thereof, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 11 or inform the Service Provider in writing of its reasons for not accepting such Change of Scope without incurring any payment obligations hereunder, as the case may be.

11.2. Procedure for Change of Scope

11.2.1. In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Service Provider a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

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

(a) the impact, if any, which the Change of Scope is likely to have on the SCOD, if such proposed Change of Scope is required to be carried out during the Procurement Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown of work classifications specifying the material, labour and other costs calculated in accordance with Good Industry Practices and in accordance with the rates applicable to the services by the Authority to its contractors, along with the proposed premium/discount on such rates.

11.2.3. Upon receipt of information set forth in Article 11.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Service Provider, and the Parties shall thereupon make good faith efforts to agree upon the time and costs for implementation thereof and the revision of the Logistics Charges arising thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Service Provider to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Service Provider to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Article 11.5 of this Agreement.

11.1.3. The provisions of this Agreement, insofar as they relate to the duties, obligations and responsibilities of the Service Provider, shall apply *mutatis mutandis* to the Change of Scope to be undertaken by the Service Provider under this Article 11. Any duties, obligations and responsibilities of the Service Provider which are provided under and in accordance with this Article 11 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such Change of Scope.

11.3. Payment for Change of Scope

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

11.4. Restrictions on certain services

11.4.1 Notwithstanding anything to the contrary contained in this Article 11, but subject to the provisions of Article 11.4.2, the Authority shall not require the Service Provider to undertake any services if such services are likely to delay completion of the procurement by the SCOD; provided that in the event that the Authority considers such services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Change of Scope Order shall not be reckoned for purposes of determining completion of the procurement of the Specialized Wagons/ Rakes and issuing the Completion Certificate.

11.4.2 Notwithstanding anything to the contrary contained in this Article 11, the Service Provider shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

11.5. Power of the Authority to undertake services

Notwithstanding anything to the contrary contained in Article 11.1.1 and Article 11.3 of this Agreement, the Authority may, after giving notice to the Service Provider and considering its reply thereto, award any services, contemplated under Article 11.1.1, to any third party on the basis of open competitive bidding ("**Bidding Process**"). The Service Provider shall have the right of first refusal ("**Right of First Refusal**") for matching the financial bid ("**Lowest Bid**") of the highest ranked bidder ("**Lowest Bidder**") in the Bidding Process, subject to compliance with each of the following terms and conditions ("**ROFR Conditions**"):

A. The Service Provider shall be required to make an upfront payment ("**Upfront Payment**") of 1% (one percent) of the Lowest Bid to the Authority;

B. The Service Provider has duly satisfied and / or complied with all qualification and eligibility criteria as stipulated by the Authority under the Bidding Process;

C. The Service Provider has submitted its financial bid ("**Service Provider Bid**") for its selection under the Bidding Process; and

D. The Service Provider Bid does not exceed the Lowest Bid by more than 10% (ten percent) of the Lowest Bid as quoted by the Lowest Bidder.

In the event that the Service Provider does not exercise its Right of First Refusal under this Agreement, for any reason whatsoever and / or does not comply with any of the ROFR Conditions under this Agreement, the Lowest Bidder shall be selected by the Authority upon completion of the Bidding Process and the Service Provider shall provide access, assistance and co – operation to the Lowest Bidder for undertaking its duties, obligations and responsibilities pursuant to its selection by virtue of the Bidding Process. The Lowest Bidder shall perform its duties, obligations and responsibilities in accordance with the Specifications and Standards and in manner that minimizes disruption in the performance of the duties, obligations and responsibilities of the Service Provider under this Agreement.

ARTICLE 12

[Not used]

ARTICLE 13

KEY PERFORMANCE INDICATORS

13.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Service Provider shall maintain every Specialized Wagon such that it achieves the performance indicators ("**Key Performance Indicators**") comprising Availability and Transit Losses, as specified in Article 13 of this Agreement.

13.2 Availability and Guaranteed Availability

13.2.1. During the Operation Period, a Specialized Wagon shall be deemed to be available for operation at all times, upon the expiry of a period of 2 (two) days ("**Response Period**") from the date of receiving a written request in this regard from the Authority, from time to time, for the movement and / or transportation of the food grains in bulk from the relevant Procuring Silos to the relevant Distribution Silos, in accordance with the terms and conditions of this Agreement, save and except the Non – Available Hours (excluding the Permitted Non – Available Hours and / or the Response Period as may be applicable) as specified in Article 13.2.2, and the sum of the hours in an Accounting Year when such Specialized Wagon is deemed to be available shall be reckoned as the available hours ("**Available Hours**").

13.2.2. The Parties agree that the period for which any of the Specialized Wagons is deemed to be not available for operation ("**Non – Available Hours**") shall be the period between entry of any of the Specialized Wagons for maintenance by the Railways as per the terms and conditions of the O&M Contract and the time when it is declared by the Service Provider as available for operation, which shall not be in excess of the Permitted Non – Available Hours, as defined below, for the purposes of this Agreement. The Service Provider shall intimate the Authority of the maintenance schedule of the Specialised Wagons/ Rakes and notify the Authority of a scheduled ROH or POH, at least 30 days before such ROH or POH is to take place.

For the purpose of this Article, **"Permitted Non-Available Hours"** means a maximum time of:

(i) 8 (eight) hours for general maintenance for each Rake, in any month, calculated from the time of entry for maintenance/ examination by the Railways;

(ii) 48 (forty eight) hours for each routine overhaul (**"ROH"**) in case of a Specialised Wagon or 720 (seven hundred and twenty) hours for each ROH in case of a Rake, as the case may be, calculated from the time of entry for ROH by the Railways; and

(iii) 120 (one hundred and twenty) hours for each periodic overhaul (**"POH"**) in case of a Specialised Wagon or 2160 (two thousand one hundred and sixty) hours for each POH in case of a Rake, as the case may be, calculated from the time of entry for POH by the Railways.

13.2.3. The Parties agree that the sum of Available Hours of all the Specialized Wagons as a proportion of the total hours of the Operation Period of all the Specialized Wagons in any Accounting Year, shall be deemed to be the availability of the Specialized Wagons in that Accounting Year (the "**Availability**"). The Service Provider shall procure and ensure that the Availability of the Specialized Wagons in every Accounting Year shall be at least **90**% ninety

percent) (the "**Guaranteed Availability**"). In this regard, the Authority shall on and after the COD of the first Rake, conduct periodic inspections and audits in order to determine whether Availability of the Specialized Wagons are in compliance with the requirements of Article 13 of this Agreement.

13.2.4. The Service Provider agrees that for 0.01% or part thereof reduction in the Availability of the Specialized Wagons as compared to the Guaranteed Availability, it shall pay to the Authority Damages as assessed and determined at the rates / on the basis of the calculations set forth in **Schedule - G** of this Agreement.

13.3 Transit Losses

13.3.1. The Parties agree that the aggregate difference between the quantity of the food grains which have been loaded on to the Specialized Wagons, as measured in MT at each Procuring Silo, and the quantity of the food grains that have been unloaded by the Specialized Wagons, as measured in MT at each Distribution Silo, for each Rake, shall be deemed to be the transit losses ("**Transit Losses**") for that Rake.

13.3.2. The Parties hereby agree and acknowledge that the Service Provider shall endeavour to minimize Transit Losses during the Concession Period. However, the Parties agree that during any movement from the relevant Procuring Silos to the relevant Distribution Silos, Transit Losses of up to 0.07% (zero point zero seven) percent of the Rake Capacity of that Rake ("**Acceptable Transit Losses**") shall be permissible, for the purposes of this Agreement. In this regard, the Authority shall on and after the COD of the first Rake, conduct periodic inspections and audits in order to determine whether the Transit Losses during any movement from Procuring Silos to Distribution Silos, are in compliance with the requirements of Article 13 of this Agreement.

13.3.3. The Service Provider agrees that for every 0.01% (zero point zero one percent) increase in the Transit Losses as compared to the Acceptable Transit Losses, it shall pay to the Authority Damages as assessed and determined at the rates / on the basis of the calculations set forth in **Schedule - G** of this Agreement.

13.4 Monthly / Quarterly Status Report

The Service Provider shall, no later than 7 (seven) days from the end of each month, furnishing a monthly report stating in reasonable detail, the compliance with the Key Performance Indicators as specified under Article 13 along with the analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving its operational performance.

13.5 Damages

In the event that the Service Provider fails to comply with the Key Performance Indicators as set out in Article 13, the Service Provider shall be liable to pay Damages to the Authority as assessed and determined at the rates / on the basis of calculations set forth in **Schedule - G** of this Agreement.

Part IV: Financial Covenants

ARTICLE 14

FINANCIAL CLOSE

14.1. Financial Close

14.1.1. The Service Provider hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days from the Execution Date. In the event of delay in achieving the Financial Close, the Service Provider shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (one hundred and twenty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Service Provider shall be in addition to the Damages, if any, due and payable under the provisions of Article 4.3.

14.1.2. The Service Provider shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package, duly attested by a director the Service Provider, which is acceptable to the Senior Lenders.

14.2. Termination due to failure to achieve Financial Close

14.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to Article 19, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Article 15.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Service Provider under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Service Provider, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

14.2.2. Upon Termination under Article 14.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure, it shall, upon Termination release the Bid Security or Performance Security, as the case may be. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

ARTICLE 15

LOGISTICS CHARGES AND OTHER CHARGES

15.1. Logistics Charges

The Parties hereby agree and acknowledge that, upon the issuance of the Completion Certificate and on and from the COD of the first Rake, in consideration of the Service Provider performing and discharging its duties, obligations and responsibilities in accordance with the terms and conditions of this Agreement, the Authority Representative shall make payment of the Logistics Charges, as may be applicable, calculated / to be calculated as per the requirements of **Schedule – H** of this Agreement, subject to the Availability of the Specialized Wagons, as per terms and conditions of this Agreement.

15.2. Escalation of Logistics Charge

15.2.1. The Logistics Charges that shall be payable by the Authority to the Service Provider for the Base Year, shall be equal to the Base Year Logistics Charges, as per the terms and conditions of this Agreement.

15.2.2. The Logistics Charges specified in Article 15.2.1 shall be revised from time to time in accordance with the provisions of this Article 15.2.2 to reflect the variation in Price Index occurring between the Reference Index Date ("**COD Reference Index Date**") for the month of January for the Accounting Year during which the COD of the first Rake has been achieved by the Service Provider till the Reference Index Date ("**Applicable Reference Index Date**") for the month of January for the year during which such revision is being undertaken, under the terms and conditions of this Agreement. The Authority Representative shall compute the variation in Price Index occurring between the COD Reference Index Date and the Applicable Reference Index Date, and shall express the latter as a multiple of the former (the "**Price Index Multiple**"). All Monthly Invoices to be submitted by the Service Provider to the Authority Representative, shall be the product of the Base Year Logistics Charges, Available Rakes, and the Price Index Multiple applicable on the date of the Monthly Invoice.

15.3. Invoices

15.3.1. On and after the date on which an amount has become due and payable to the Service Provider in accordance with the provisions of this Agreement, the Service Provider shall, by the fifth (5th) day from the date of expiry of the relevant month ("**Relevant Monthly Cycle**"), submit in triplicate to the Authority Representative, an invoice ("**Monthly Invoice**"), in such form and format as may be mutually agreed by the Parties hereto, duly signed by the authorized signatory of the Service Provider in respect to the Logistics Charges that are due and payable by the Authority, for the Relevant Monthly Cycle, in accordance with the provisions of this Agreement.

15.3.2. The Authority Representative shall, within 30 (thirty) days of receipt of an invoice in accordance with Article 15.3.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the nominated bank account of the Service Provider, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**").

15.3.3. All Damages payable by the Service Provider in accordance with the provisions of this Agreement shall be deducted from the Logistics Charges due and payable to the Service Provider for any Relevant Monthly Cycle and in the event the deductions hereunder exceed the Logistics Charges that are due and payable for such Relevant Monthly Cycle, the balance remaining shall be deducted from the Logistics Charges due and payable to the Service Provider for the immediately succeeding Relevant Monthly Cycle, and so on and so forth, till such time that all Damages have been duly set – off against the Logistics Charges.

15.3.4. For claiming payment of the Logistics Charges from the Authority Representative, the Service Provider shall submit: (i) the original invoice and a copy thereof in respect of Relevant Monthly Cycle; (ii) the certificate of the Service Provider that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (iii) official documents in support of Price Index variation as specified in Article 15.2.2; (iv) detailed calculation for the amounts claimed in the relevant Monthly Invoice; (v) details in respect of Taxes / duties/ GST which are reimbursable in accordance with the provisions of this Agreement; and (vi) details of Damages payable in respect of Key Performance Indicators in accordance with the provisions of this Agreement along with true copies of the original documents in support of the same.

15.3.5. The Service Provider, shall have obtained a GST registration under the Applicable Laws and shall ensure that the invoice to be raised with Authority Representative in accordance with the Terms of this Agreement is compliant with the provisions of the GST (if applicable), Applicable Laws and contains the requisite details in an accurate manner for claiming of tax credits by the Authority's Representative.

15.3.6. The Authority's Representative reserves the right to release payment of GST amount (if applicable) only upon its satisfaction of the invoice details being as per the GSTIN system under the Applicable Laws.

15.3.7. The Authority's Representative shall not entertain any claims related to future obligation arising on Service Provider in relation to input tax credit ("**ITC**") mismatch in GST return or wrongful availment of ITC by Service Provider, if the same is not intimated within a period of 90 (ninety) days from the date of issue of invoice.

15.4. Disputed Amounts

15.4.1. The Authority's Representative shall, within 15 (fifteen) days of receiving the Monthly Invoice, notify the Service Provider of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Service Provider shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Authority Representative may, if necessary, meet a representative of the Service Provider for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment.

15.4.2. If any amount is payable by either Party to the other Party upon determination of a dispute under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement.

15.5. Discount for early payment

The Parties expressly agree that in the event the Authority Representative pays the Logistics Charges, as the case may be, within 15 (fifteen) days of the date of submission of the Monthly Invoice and particulars thereof, the Authority Representative shall be entitled to deduct 0.5% (zero point five per cent) of the Logistics Charges, as the case may be, by way of discount for early payment.

15.6. Additional Payment for Higher Usage

In the event the Annual Transported Quantity for any Accounting Year of Operation Period exceeds the Annual Capacity, an additional payment ("**Additional Logistics Charges**") shall be payable by the Authority Representative to be calculated as per the requirements of **Schedule – H** of this Agreement, subject to the Availability of the Specialized Wagons, as per terms and conditions of this Agreement.

15.7. Right to set-off

In the event any amount is due and payable by the Authority Representative to the Service Provider, the Authority Representative may set – off any sums payable to the Authority Representative by the Service Provider and make payment of the remaining balances to the Service Provider, in accordance with the terms and conditions of this Agreement. Any exercise by the Authority Representative of its rights under Article 15.6 of this Agreement, shall be without prejudice to any other rights and / or remedies available to the Authority Representative, under this Agreement, under Applicable Laws and / or under equity.

15.8. Stabling/Parking of Specialised Wagons

15.8.1 The stabling facility will be provided at the Silos, and the Service Provider will be allowed to stable the Rakes at the Silos without any additional costs to the Service Provider. The Service Provider shall be solely responsible for the security of the Rakes and the Authority shall not be responsible in any manner whatsoever for any loss to the Specialised Wagons or the food grains and foodstuff if any which is loaded in the Specialised Wagons.

15.9. Other Costs and Charges

15.9.1 The Authority Representative shall bear the Logistics Charges, the Railway Freight Charges and the charges for stabling of Rakes (if any) and shall not be liable for any other charges, fees, costs and expenses with respect to the operation, management and maintenance of the Specialized Wagons or any other scope of work under this Agreement.

15.9.2 All other charges, fees, costs and expenses (including O&M Expenses, terminal charges, demurrage, wharfage, siding charges, haulage charges and other charges/costs under the agreement to be signed with the Railways under the LWIS Scheme) as may be payable/incurred or required to be incurred by the Service Provider with respect to performance of its services under this Agreement shall be solely borne and paid by the Service Provider at its own cost without any recourse to the Authority or Authority's Representative.

15.10. Taxes and duties

15.10.1 The Logistics Charges are inclusive of all Taxes, including any applicable statutory deductions viz. tax deducted at source towards income tax/ GST/ labour cess and any other Taxes etc. except GST as applicable on the Logistics Charges (if any) which will be reimbursed by the Authority.

15.10.2 The Authority reserves the right to claim from the Service Provider any amount of Tax, interest, penalty and litigation cost, if any, that may be incurred by the Authority in future due to any GST reporting/ compliance mistake(s) on part of the Service Provider.

ARTICLE 16

ADDITIONAL COMMERCIAL ACTIVITY

16.1. Additional Commercial Activity

16.1.1. The Service Provider may, upon receiving the prior written approval ("**Additional Commercial Activities Approval**") of the Authority, use the Specialized Wagons for additional commercial activities ("**Additional Commercial Activities**") for third parties. The Authority, may at its sole discretion and subject to the Additional Commercial Activities Conditions and such terms and conditions as it may deem necessary, provide such Additional Commercial Activities Approval to the Service Provider, upon receiving the written request of the Service Provider, subject to due compliance of each of the following terms and conditions ("**Additional Commercial Activities Conditions**"):

A. The Service Provider shall provide the detailed plan and proposed usage of the Specialized Wagons for the Additional Commercial Activities;

B. The Service Provider shall adequately satisfy the Authority that such Additional Commercial Activities shall not have any adverse impact on the operations of the Authority, the Project and the due performance of any of the duties, obligations and responsibilities of the Service Provider under this Agreement;

C. The Service Provider shall provide a written undertaking, on its letterhead, duly certified by a director of the Service Provider, that in case of any conflict between the requirements of the Authority in relation to the Project and the requirements of the Additional Commercial Activities, the requirements of the Authority shall at all times be provided precedence by the Service Provider;

D. The Service Provider shall provide a written undertaking, on its letterhead, duly certified by a director of the Service Provider, that the Service Provider shall share with the Authority, at least 5% (five percent) of the gross revenues, less any Taxes, as generated from the Additional Commercial Activities;

E. In the event that any Applicable Permits of the Railways is required to be obtained in relation to the Additional Commercial Activities, the Service Provider has duly obtained such Applicable Permits of the Railways, prior to the date of such written request. In this regard, the Service Provider shall provide a certified copy of such Applicable Permit of the Railways along with its written request; and

F. In the event that any Applicable Permits of the Railways is not required to be obtained in relation to the Additional Commercial Activities, the Service Provider shall provide a written undertaking, on its letterhead, duly certified by a director of the Service Provider, that no Applicable Permits are required to be obtained by the Service Provider from the Railway, in connection with the Additional Commercial Activities.

16.1.2. If the Authority is of the opinion that the Authority requires the assistance of any independent experts, consultants and / or advisors, in order to conduct surveys and / or studies, in order to ascertain and / or assess the possible impact of Additional Commercial Activities on the operations of the Authority, the Project and the due performance of any of the duties,

obligations and responsibilities of the Service Provider under this Agreement, the Authority may appoint such experts, consultants, advisors, in this regard, at the cost and expense of the Service Provider.

16.1.3. Notwithstanding anything contained under this Agreement and / or the Additional Commercial Activities Approval and notwithstanding that the Additional Commercial Activities Approval has been issued by the Authority to the Service Provider, the Authority reserves the right to withdraw, suspend and / or cancel the Additional Commercial Activities Approval, at any time, at its sole discretion, in the event that the Additional Commercial Activities is determined to have any adverse effect on the operations of the Authority, the Project and the due performance of any of the duties, obligations and responsibilities of the Service Provider under this Agreement. The decision of the Authority in this regard shall be final and binding on the Service Provider. All costs and / or expenses in relation to such withdrawal, suspension and / or cancellation of the Additional Commercial Activities Approval, shall be borne solely by the Service Provider.

16.1.4. In the event, that the Authority is desirous to make use of the Specialized Wagons for its own purposes other than for the Project, the Authority shall provide a written request in this regard to the Service Provider. The Service Provider may provide its consent, approval, permission and / or no – objection to the Authority, in this regard, provided that it is of the opinion that such proposed use of the Specialized Wagons by the Authority, shall not result in any adverse impact on the operations of the Authority, the Project and the due performance of any of the duties, obligations and responsibilities of the Service Provider under this Agreement. In this regard, for the use of the Specialized Wagons for such purposes, the Authority shall make payment at the rate of 5% (five percent) of the rates chargeable by the Railways for similar uses along with all Railway Freight Charges as per the Railway Agreement at actuals.

ARTICLE 17

INSURANCE

17.1. Insurance during Concession Period

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

17.2. Insurance Cover

Without prejudice to the provisions contained in Article 17.1, the Service Provider shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets, at replacement value;

(b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others caused by the Specialized Wagons/ Rakes, arising from any accident on account of the negligence of the Service Provider or a defect or deficiency in the Specialized Wagons/ Rakes;

(c) the Service Provider's general liability arising out of the Concession;

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

(e) workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Service Provider and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

17.3. Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Concession Period, as the case may be, the Service Provider shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 17. Within 30 (thirty) days of receipt of such notice, the Authority may require the Service Provider to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

17.4. Evidence of Insurance Cover

All insurances obtained by the Service Provider in accordance with this Article 17 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Service Provider shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Service Provider to the Authority.

17.5. Remedy for failure to insure

If the Service Provider shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Service Provider, 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 Service Provider.

17.6. Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Service Provider pursuant to this Article 17 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

17.7. Service Provider's waiver

The Service Provider hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Service Provider 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 Service Provider pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

17.8. Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Service Provider and it shall, notwithstanding anything to the contrary contained in this Agreement, apply such proceeds towards payment of Damages, necessary repairs, reconstruction, reinstatement, replacement, improvement or delivery of the Project and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

17.9. Compliance with conditions of insurance policies

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

ARTICLE 18

ACCOUNTS AND AUDIT

10.1. Audited accounts

18.1.1. The Service Provider shall maintain books of accounts recording all its receipts (including all revenues derived / collected by it from or on account of the Project and / or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Service Provider shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Service Provider during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

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

18.1.3. On or before the expiry of 2 (two) months from the end of each Accounting Year, the Service Provider shall provide to the Authority, for that Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the bills raised by the Service Provider for payment by the Authority, (b) the payments received and other revenues derived from the Authority, and (c) such other information as the Authority may reasonably require.

18.2. Appointment of auditors

18.2.1. The Service Provider shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in **Schedule - I**. All fees and expenses of the Statutory Auditors shall be borne by the Service Provider.

18.2.2. The Service Provider may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

18.2.3. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the "**Additional Auditors**") from the Panel of Chartered Accountants to audit

and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

18.3. Certification of claims by Statutory Auditors

Any claim or document provided by the Service Provider to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided for under this Agreement.

18.4. Dispute resolution

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

Part V: Force Majeure and Termination

ARTICLE 19

FORCE MAJEURE

10.2. Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 19.2, 19.3 and 19.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

10.3. Non-Political Event

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the infrastructural facilities of the Service Provider);

(b) strikes or boycotts (other than those involving the Service Provider, Railways, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 19.3;

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

(d) any delay or failure of an overseas Contractor to deliver rolling stock or any equipment in India if such delay or failure is caused outside India by any event specified in sub-article (a) above and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Service Provider in any proceedings for reasons other than (i) failure of the Service Provider to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Silos that could not reasonably have been expected to be discovered through an inspection of the Silos; or

(g) any event or circumstances of a nature analogous to any of the foregoing.

10.4. Indirect Political Event

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;

(c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(d) any civil commotion, boycott or political agitation which prevents procurement and assembly of Specialized Wagons or fulfilment of the duties, obligations and responsibilities of the Service Provider under this Agreement, for an aggregate period exceeding 15 (fifteen) days in an Accounting Year;

(e) failure of the Authority to permit the Service Provider to continue its duties, obligations and responsibilities under this Agreement, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;

(f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of such Contractor;

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

(h) any event or circumstances of a nature analogous to any of the foregoing.

10.5. Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 25 and its effect, in financial terms, exceeds the sum specified in Article 25.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Service Provider or of the Railways or of the Contractors;

(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Service Provider or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Service Provider’s or Railways or any Contractor’s inability or failure to

comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of the Railways or a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Service Provider by or on behalf of the Railways or such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

10.6. Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 19 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

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

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

19.5.3. For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 19.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

19.6. Effect of Force Majeure Event on the Concession

19.6.1. Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Article 4.1 for fulfilment of Conditions Precedent and in Article 19.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

(a) before the COD of the first Rake, the Concession Period and the SCOD shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after the COD of the first Rake, whereupon the Service Provider is unable to perform its duties, obligations and responsibilities under this Agreement, despite making best efforts

or it is directed by the Authority or any Government Instrumentality to suspend the duties, obligations and responsibilities of the Service Provider under this Agreement during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Service Provider was prevented from providing its duties, obligations and responsibilities under this Agreement on account thereof.

19.7. Allocation of costs arising out of Force Majeure

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

19.7.2. Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

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

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

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Service Provider.

19.7.3. For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in other costs on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of income or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

19.7.4. Save and except as expressly provided in this Article 19, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

19.8. Compensation for loss of food grains due to Force Majeure Event

Where any loss or shortfall of food grains occurs due to occurrence of a Force Majeure Event, the costs incurred and attributable to such event and directly relating to the loss of food grains shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, any loss or shortfall in food grains arising therefrom, but not exceeding the Insurance Cover, shall be borne by the Service Provider and paid to the Authority;

(b) upon occurrence of an Indirect Political Event, any loss or shortfall in food grains arising therefrom, but not exceeding the Insurance Cover, shall be borne by the Service Provider and paid to the Authority;

(c) upon occurrence of a Political Event, the Service Provider shall not be required to bear any loss or shortfall arising therefrom and such loss or shortfall shall be borne by the Authority.

19.9. Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 19, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days' period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

19.10. Termination Payment for Force Majeure Event

19.10.1. If Termination is on account of a Non-Political Event, the Authority shall pay the Termination Payment of an amount aggregating to 90% (ninety per cent) of the Debt Due less Insurance Cover to the Service Provider.

19.10.2. If Termination is on account of an Indirect Political Event, the Authority shall pay the Termination Payment of an amount equal to the sum of the following, to the Service Provider:

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

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

19.10.3. If Termination is on account of a Political Event, the Authority shall pay the Termination Payment of an amount that would be payable under Article 21.3.2 as if an Authority Default shall be deemed to have occurred, to the Service Provider.

19.11. Dispute resolution

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

19.12. Excuse from performance of obligations

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

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

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

The Parties agree that the Service Provider shall develop alternate or standby arrangements for provision of goods and services in accordance with the Good Industry Practice and failure on this account shall not excuse the Service Provider from performance of its duties, obligations and responsibilities hereunder.

19.13. Relief for Unforeseen Events

19.13.1. Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the "**Unforeseen Event**"), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Article 19.13.

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

19.13.3. The conciliation tribunal referred to in Article 19.13.2 shall conduct its proceedings in accordance with the provisions of Article 27 as if it is an arbitration proceeding under that Article, save and except as provided in this Article 19.13.

19.13.4. The conciliation tribunal referred to in this Article 19.13 shall conduct preliminary proceedings to satisfy itself that -

(a) an Unforeseen Event has occurred;

(b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and

(c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Article 19.13.

19.13.5. Upon completion of the conciliation proceedings referred to in this Article 19.13, the conciliation tribunal may by a reasoned order make recommendations which shall be:

(a) based on a fair and transparent justification;

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

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

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

19.13.6. Within 15 (fifteen) days of receiving the order referred to in Article 19.13.5, the Parties shall meet and make efforts in good faith to accept and put into effect, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement.

ARTICLE 20

COMPENSATION FOR BREACH OF AGREEMENT

20.1. Compensation for default by the Service Provider

In the event of the Service Provider being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Article 20.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement.

20.2. Compensation for default by the Authority

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

20.3. Compensation to be in addition

Compensation payable under this Article 20 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

20.4. Mitigation of costs and damage

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

ARTICLE 21

TERMINATION

21.1. Termination for Service Provider Default

21.1.1. Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Service Provider fails to cure the default within the Cure Period set forth below, the Service Provider shall be deemed to be in default of this Agreement (the "**Service Provider Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to the occurrence of a Force Majeure Event. The defaults referred to herein shall mean and include:

(a) the Performance Security, has been encashed and appropriated in accordance with terms and conditions of this Agreement, as the case may be and the Service Provider fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security, in accordance with terms and conditions of this Agreement, as the case may be, the Service Provider fails to cure, within a Cure Period of 15 (fifteen) days, the Service Provider Default for which whole or part of the Performance Security was appropriated;

(c) the procurement and supply of the Specialized Wagons/ Rakes in accordance with the requirements of Article 10.2.1 is not completed by the SCOD and the Service Provider continues to be in default upon the expiry of a Cure Period of 180 (one hundred and eighty) days;

(d) the Service Provider abandons or manifests intention to abandon the Project and / or its duties, obligations and responsibilities under this Agreement, without the prior written consent of the Authority;

(e) the Service Provider is in material breach of its duties, obligations and responsibilities under this Agreement;

(f) the average Availability of the Specialized Wagons, in any Accounting Year, is **50**% (**fifty** per cent) or less and fails to improve above such **50**% (**fifty** per cent) during the succeeding Accounting Year;

(g) the Service Provider has failed to make any payment to the Authority within the period specified in this Agreement;

(h) a material breach of any of the Project Agreements by the Service Provider has caused a Material Adverse Effect;

(i) the Service Provider creates any Encumbrance in breach of this Agreement;

(j) the Service Provider repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(k) a Change in Ownership has occurred in breach of the provisions of Article 5.3;

(l) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Service Provider under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Service Provider, and such transfer causes a Material Adverse Effect;

(m) an execution levied on any of the assets of the Service Provider has caused a Material Adverse Effect;

(n) the Service Provider is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Service Provider or for the whole or material part of its assets that has a material bearing on the Project;

(o) the Service Provider has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;

(p) a resolution for winding up of the Service Provider is passed, or any petition for winding up of the Service Provider is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Service Provider is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Service Provider are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Service Provider under this Agreement and the Project Agreements; and provided that:

A. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

B. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Company as at the Appointed Date; and

C. each of the Project Agreements remains in full force and effect;

(q) any representation or warranty of the Service Provider herein contained which is, as of the date hereof, found to be materially false or the Service Provider is at any time hereafter found to be in breach thereof;

(r) the Service Provider submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(s) the Service Provider has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;

(t) the Service Provider commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;

(u) when it is discovered by the Authority that the Service Provider or {the Selected Bidder / any of the Consortium Members} and their respective officers, employees, agents and advisers have:

A. not acted in a *bonafide* manner during the bidding process and the execution of the Agreement; and/or

B. directly or indirectly or through an agent, engaged in corrupt, fraudulent, coercive, undesirable or restrictive practices in the bidding process or the execution of the Project or other works under the Agreement.

For the purposes of this sub-article (v), the terms set forth are defined as follows:

"**corrupt practice**" means the offering, giving, receiving, directly or indirectly, of anything of value to influence the action of a public official in the bidding process or the execution of the Project or other works under the Agreement;

"**fraudulent practice**" means a misrepresentation or omission of facts in order to influence the bidding process, or to obtain payments from the Authority for the execution of the Project or other works under the Agreement;

"**coercive practice**" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or in discharging their duties in the execution of the Project or other works under the Agreement;

"**undesirable practice**" means establishing contact with any person connected with or employed by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the bidding process or the monitoring, inspection or reporting the execution of the Project or other works under the Agreement; and

"**restrictive practice**" means forming a cartel or arriving at any understanding or arrangement among bidders with the objective of restrictive or manipulating a full and fair competition in the bidding process.

21.1.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Service Provider Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Service Provider; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Service Provider of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Service Provider to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice subject to the provisions of Article 21.1.3.

21.1.3. The Authority shall, if there are Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Article 21.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to exercise its step-in rights in accordance with Article 21.7. In the event the Government receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' step-in right in accordance with Article 21.7: Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' step-in right, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Service Provider: Provided further that upon written request from the Lenders' Representative and the Service Provider, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

21.2. Termination for Authority Default

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

(a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Service Provider;

(b) the Authority has failed to make any payment to the Service Provider within the period specified in this Agreement; or

(c) the Service Provider repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

21.2.2. Without prejudice to any other right or remedy which the Service Provider may have under this Agreement, upon occurrence of a Authority Default, the Service Provider shall be entitled

to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Service Provider shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

21.3. Termination Payment

21.3.1. Upon Termination on account of a Service Provider Default, the Authority shall not be liable to make any Termination Payment. Provided that in the event that the Senior Lenders do not exercise their step-in rights under and in accordance with the provisions of the Article 21.7 and the Service Provider elects, not later than 180 (one hundred and eighty) days from the Transfer Date, to transfer the Right of Way to the Silos to the Authority, free of all Encumbrances, and if the Authority agrees to such transfer request, the Service Provider shall be entitled to a Termination Payment equal to 90% (ninety per cent) of the Debt Due less Insurance Cover. Provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 70% (seventy per cent) of such unpaid claims shall be included in the computation of Debt Due.

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

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity and the Service Provider shall not later than **15** (**fifteen**) days from the Transfer Date, transfer the Specialized Wagons/ Rakes as per Article 22 to the Authority, free of all Encumbrances.

21.3.3. Termination Payment shall become due and payable to the Company within **180** (one hundred and eighty) days of a demand being made by the Service Provider to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 4% (four per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed **210** (two hundred and ten) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

21.3.4. Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Service Provider.

21.3.5. The Service Provider expressly agrees that Termination Payment under this Article 21 shall constitute a full and final settlement of all claims of the Service Provider on account of Termination of this Agreement for any reason whatsoever and that the Service Provider or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

21.4. Certain limitations on Termination Payment

Termination Payment, due and payable under this Agreement, shall be limited to the Debt Due and Adjusted Equity, as the case may be, and the Authority shall at no time be liable to pay the Termination Payment in excess of **Rs. 156,00,00,000** (Rupees one hundred and fifty crore only); provided that the Termination Payment in relation to or arising out of Debt Due shall not exceed **Rs. 109,20,00,000** (Rupees one hundred nine crore and twenty lakhs only).

21.5. Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) be deemed to have been transferred the Right of Way to the Silos forthwith;

(b) be entitled to restrain the Service Provider and any person claiming through or under the Service Provider from entering upon the Silos; and

(c) succeed upon election by the Authority, without the necessity of any further action by the Service Provider, to the interests of the Service Provider under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Service Provider. For the avoidance of doubt, the Service Provider acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Service Provider and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

21.6. Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 21.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

21.7. Step-in rights of Senior Lenders

Upon occurrence of a Service Provider Default, the Senior Lenders shall be entitled to exercise step-in rights in accordance with their Financing Agreements, and upon receipt of a notice from the Senior Lenders in pursuance thereof, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from such occurrence, for enabling the Senior Lenders to exercise such step-in rights. For the avoidance

of doubt, the Parties expressly agree that following the exercise of step-in rights hereunder, if the Specialized Wagons/ Rakes can be operated for the purposes as envisaged herein and in accordance with the provisions of this Agreement, the Authority shall nullify its Termination Notice and restore the operation of this Agreement forthwith. The Parties further agree that any entity substituted by the Senior Lenders in exercise of such step-in rights may be rejected by the Authority in the event it does not fulfil the eligibility criteria specified in the Request for Proposals.

ARTICLE 22

DIVESTMENT OF RIGHTS AND INTEREST

22.1. Divestment requirements

22.1.1 Upon Termination prior to the expiry of the Agreement, the Service Provider shall comply with and conform to the following divestment requirements (the "**Divestment Requirements**"), no later than 15 (fifteen) days from the date of such Termination of the Agreement Period, as the case may be:

(a) deliver forthwith the actual or constructive possession of the Rakes, free and clear of all Encumbrances;

(b) cure all Specialised Wagons of all defects and deficiencies so that the Specialised Wagons/Rakes are compliant with the Agreement; provided that if such defects and deficiencies have arisen on account of accident, vandalism, arson, riot or natural calamity occurring no earlier than 120 (one hundred and twenty) days prior to such Termination of the Agreement Period, the Authority shall grant to the Service Provider such additional time, not exceeding 240 (two hundred forty) days, as may be reasonably required for repair and rectification thereof;

(c) deliver and transfer relevant records, reports and Intellectual Property pertaining to the Rakes including all software and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date so as to enable the Authority to operate and maintain the Rakes. For the avoidance of doubt, the Intellectual Property shall be adequate and complete for the operation and maintenance of the Rakes and shall be assigned or licensed to the Authority free of any encumbrance;

(d) transfer and/or deliver all Applicable Permits in respect of the Rakes, to the extent permissible under Applicable Laws;

(e) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Service Provider in respect of the outstanding insurance claims to the extent due and payable to the Authority; and

(f) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Service Provider in the Rakes and Insurance Cover, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

22.2. Inspection and cure

Not earlier than 90 (ninety) days before Termination prior to the expiry of the Agreement but not later than 15 (fifteen) days before the effective date of such Termination, the Authority shall verify, after giving due notice to the Service Provider specifying the time, date and venue of such verification and/or inspection, of the Specialised Wagons/Rakes, and if required, cause appropriate tests to be carried out at the Service Provider's cost for this purpose. The Service Provider shall at its own cost and expense, cure defaults if any, in the Specialised Wagons and the provisions of Article 23 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 22.

22.3. Vesting Certificate

The divestment of all rights, title and interest in the assets specified in Article 22.1.1 shall be deemed to be complete on the date on which all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule -J** (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Service Provider of all of its rights, title and interest in such assets, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Specialised Wagons/Rakes on the footing that all Divestment Requirements have been complied with by the Service Provider.

22.4. Divestment costs etc.

22.4.1 In the event of Termination prior to the expiry of the Agreement and attributable to the Service Provider, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Service Provider in the Specialised Wagons/Rakes in favour of the Authority upon such Termination.

22.4.3 In the event of Termination prior to the expiry of the Agreement and attributable to the Authority, it shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Service Provider in the Specialised Wagons/Rakes in favour of the Authority upon such Termination.

22.4.4 In the event of any dispute relating to matters covered by and under this Article 22, the Dispute Resolution Procedure shall apply.

ARTICLE 23

DEFECTS LIABILITY AFTER TERMINATION

23.1. Liability for defects after Termination

The Service Provider shall be responsible for all defects and deficiencies in the Specialized Wagons/Rakes for a period of 180 (one hundred and eighty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Authority in the Specialized Wagons during the aforesaid period. In the event that the Service Provider fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Service Provider's risk and cost so as to make the Specialized Wagons conform to the Standards and Specifications, specifications of the RDSO and the terms and conditions of this Agreement. All costs incurred by the Authority hereunder shall be reimbursed by the Service Provider to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained under the provisions of Article 23.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 23 shall not apply if Termination occurs prior to the COD of the first Rake.

23.2. Retention of Logistical Charges

23.2.1. Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Article 23.2.3, a sum equal to 5 (five) times the monthly Logistics Charge payable immediately preceding the Transfer Date shall be retained by the Authority for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Article 23.1.

23.2.2. Without prejudice to the provisions of Article 23.2.1, the Authority shall carry out an inspection of the Specialized Wagons at any time between 210 (two hundred and ten) days and 180 (one hundred and eighty) days prior to the Termination and if it determines that the status of the Project is such that a sum larger than the amount stipulated in Article 23.2.1 should be retained by the Authority and for a period longer than the aforesaid 180 (one hundred and eighty) days, such amount shall be retained for the period specified by it.

23.2.3. The Service Provider may, for the performance of its obligations under this Article 23, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Article 23.2.1 or 23.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in **Schedule - D** (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Service Provider's risk and cost in accordance with the provisions of this Article 23. Upon furnishing of a Performance Guarantee under this Article 23.2.3, the retention of funds in terms of Article 23.2.1 or 23.2.2, as the case may be, shall be dispensed with.

Part VI: Other Provisions

ARTICLE 24

ASSIGNMENT AND CHARGES

24.1. Restrictions on assignment and charges

24.1.1. Subject to the provisions of Articles 24.2, 24.3 and 24.5, this Agreement shall not be assigned by the Service Provider to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

24.1.2. Subject to the provisions of Article 24.2, the Service Provider 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 Service Provider is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

24.2. Permitted assignment and charges

The restraints set forth in Article 24.1 shall not apply to:

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

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

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

(d) liens or encumbrances required by any Applicable Law.

24.3. Substitution Agreement

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

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

24.4. Assignment by the Authority

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

ARTICLE 25

CHANGE IN LAW

25.1. Increase in costs

25.1.1. If as a result of Change in Law, the Service Provider suffers an increase in costs or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs 25,00,000 (Rupees twenty five lakh only) and 0.5% (zero point five percent) of the annual Logistics Charges in any Accounting Year, on and from the COD of the first Rake, the Service Provider may notify the Authority and propose amendments to this Agreement so as to put the Service Provider in the same financial position as it would have enjoyed had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notification by the Service Provider as aforesaid, the Parties shall meet as soon as reasonably practicable as but no later than 45 (forty-five) days and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.

25.1.2. Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the aforesaid notice, the Service Provider may by notice in writing require the Authority to pay an amount that would put the Service Provider in the same financial position it would have enjoyed had there been no such Change in Law resulting in cost increase, reduction in return or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Service Provider. The Authority shall make payment of such compensation within 45 (forty-five) days of receiving such notice or along with interest calculated at the rate of equal to 3% (three per cent) above the Bank Rate for the period of delay if the payment thereof is delayed beyond such 45 (forty-five) days provided that if the Authority shall dispute such claim of the Service Provider, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Article 25.1 shall be restricted to changes in law directly affecting the Service Provider's costs of performing its obligations under this Agreement.

25.2. Reduction in costs

25.2.1. If as a result of Change in Law, the Service Provider enjoys a reduction in costs or increase in net after tax return or other financial benefit, the aggregate financial effect of which exceeds the higher of Rs 25,00,000 (Rupees twenty five lakh only) and 0.5% (zero point five percent) of the annual Logistics Charges in any Accounting Year, on and from the Commercial Operation Date, the Authority may so notify the Service Provider and propose amendments to this Agreement so as to put the Service Provider in the same financial position as it would have enjoyed had there been so such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notification by the Authority as aforesaid, the Parties shall meet as soon as reasonably practicable as but no later than 45 (forty five) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

25.2.2. Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to the Article 25.2.1, the Authority may by notice in writing require the Service Provider to pay an amount that would put the Service Provider in the same financial

position as it would have enjoyed had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Authority's Representative. The Service Provider shall make such payment within 45 (forty five) days of receiving such notice or along with interest calculated at the rate equal to 3% (three per cent) above the Bank Rate for the period of delay if the payment is delayed beyond such 45 (forty five) days provided that if the Service Provider shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. The Authority shall also have the right to set – off such amount as claimed herein with the payments made under Article 15.1.

25.3. Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 25 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

ARTICLE 26

LIABILITY AND INDEMNITY

26.1. General indemnity

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

26.1.2. The Authority shall indemnify, defend, save and hold harmless the Service Provider against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the Silos, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Service Provider of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Service Provider, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Service Provider.

26.2. Indemnity by the Service Provider

26.2.1 Without limiting the generality of Article 26.1, the Service Provider shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

(a) Failure of the Service Provider to comply with Applicable Laws and Applicable Permits;

(b) Payment of Taxes required to be made by the Service Provider in respect of the income or other taxes of the Service Provider's Contractors, suppliers and representatives; or

(c) Non-payment of amounts due as a result of materials or services furnished to the Service Provider or any of its Contractors which are payable by the Service Provider or any of its Contractors.

26.2.2. Without limiting the generality of the provisions of this Article 26, the Service Provider shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign

patent rights, copyrights or other Intellectual Property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Service Provider or by the Service Provider's Contractors in performing the Service Provider's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Service Provider shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Service Provider shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Service Provider is unable to secure such licence within a reasonable time, the Service Provider shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

26.3. Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 26 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

26.4. Defence of claims

26.4.1. The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 26, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

26.4.2. If the Indemnifying Party has exercised its rights under Article 26.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the

prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

26.4.3. If the Indemnifying Party exercises its rights under Article 26.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

26.4.4. Provided that if sub-articles (b), (c) or (d) of this Article 26.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

26.5. No consequential claims

Notwithstanding anything to the contrary contained in this Article 26, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

26.6. Limitation of Liability

Notwithstanding anything to the contrary in this Agreement, the liability of one Party towards the other Party for any damages or compensation of any nature whatsoever under this Agreement, save and except Termination Payment, shall not exceed the Total Project Cost. The limitation hereunder shall not apply to any or all liabilities in respect of third parties.

26.7. Survival on Termination

The provisions of this Article 26 shall survive Termination.

ARTICLE 27

DISPUTE RESOLUTION

27.1. Dispute Resolution

27.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the mediation procedure set forth in Article 27.2.

27.1.2. The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

27.2. Mediation

In the event of any Dispute between the Parties, either Party may call upon independent third party, to be appointed by the Authority, to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the independent third party or without the intervention of the independent third party, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Service Provider for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Article 27.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Article 27.3.

27.3. Arbitration

27.3.1. Any Dispute which is not resolved amicably by mediation, as provided in Article 27.2 shall be referred to arbitration by a Board of Arbitrators appointed in accordance with Article 27.3.2. The arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996 (No 26 of 1996). The venue and seat of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

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

27.3.3. The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 27 shall be final and binding on the Parties as from the

date it is made, and the Service Provider and the Authority agree and undertake to carry out such Award without delay.

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

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

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

27.4. Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Service Provider and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Article 27.3, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 28

MISCELLANEOUS

28.1. Governing law and jurisdiction

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

28.2. Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

28.3. Depreciation

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

28.4. Delayed payments

28.4.1. The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in this Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

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

28.5. Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

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

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

28.6. Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority of any Project Agreement, Document or drawing submitted by the Service Provider nor any observation or inspection of the Specialized Wagons/ Rakes nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Service Provider from its obligations, duties and liabilities under this Agreement, Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Service Provider by reason of any review, comment, approval, observation or inspection referred to in sub-article (a) above.

28.7. Exclusion of implied warranties etc.

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

28.8. Survival

28.8.1. Termination shall:

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

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

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

28.9. Entire Agreement

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

28.10. Severability

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

28.11. No partnership

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

28.12. Third parties

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

28.13. Successors and assigns

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

28.14. Notices

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

(a) in the case of the Service Provider, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Service Provider may from time to time designate by notice to the Authority; provided that notices or other communications to be given to

an address outside the city specified in sub-article (b) below may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Service Provider may from time to time designate by notice to the Authority.

{Attention:

Designation:

Address:

Fax No:

Email:}

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

{Name:

Designation:

Address:

Fax No:

Email:}; and

(c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

28.15. Language

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

28.16. Counterparts

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

SCHEDULES

SCHEDULE- A: SPECIALIZED WAGONS

The approved diagram of the Specialized Wagons, the salient features and summary of weights is as given below:

SUMMARY OF WEIGHTS [ESTIMATED]			
S.NO.	DESCRIPTION	TONNES	MATERIAL
1	UNDERFRAME SECTIONS	2.38 t	IS:2062 Fe 410 Cu WA
2	TORSION BOX WITH BOLSTER	2.24 t	IS:2062 Fe 410 Cu WA
3	SUPERSTRUCTURE	6.32 t	IS:2062 Fe 410 Cu WA
4	C.B.C. COMPLETE WITH UNCOUPLING GEAR (NON-TRANSITION)	1.32 t	STANDARD IRS
5	BOGIE	10.80 t	CASNUB 22-HS MOD-1
6	30"x30" DISCHARGE GATES & HATCHES	0.72 t	
7	AIR BRAKE WITH RIGGING COMPLETE	1.62 t	GRADUATED RELEASE TYPE WITH LSD
8	CAT WALK AND LADDER	0.54 t	IS:2062 Fe 410 WA
9	OTHERS	0.50 t	IS:2062 Fe 410 Cu WA
10	ESTIMATED TARE	26.44 t	
11	CARRYING CAPACITY	60.84 t	
12	GROSS LOAD	87.28 t	
13	AXLE LOAD	21.82 t	
14	GROSS VOLUME	84.28 Cum	
15	LOADABLE VOLUME	81.76 Cum	* SEE NOTE
16	TRACK LOADING DENSITY	6.82 t/m	
② 17	C.G. FROM RAIL LEVEL (EMPTY)	1130 mm	
② 18	C.G. FROM RAIL LEVEL (LOADED)	2182 mm	

*LOADABLE VOLUME HAS BEEN ESTIMATED AFTER LEAVING 100mm FROM TOP OF THE ROOF INSIDE.

SALIENT FEATURES

BOGIES:-
TWO AXLE CAST STEEL BOGIE TYPE "CASNUB 22-HS MOD-1" WITH AN AXLE LOAD OF 22.9 t IS FITTED WITH THE FOLLOWING:-
(I) SPRING PLANK,
(II) LONG TRAVEL HELICAL SPRINGS,
(III) LOAD PROPORTIONATE FRICTION DAMPING DEVICE,
(IV) TAPER ROLLER CARTRIDGE BEARINGS WITH NARROW JAW ADAPTERS,
(V) ELASTOMERIC PADS,
(VI) CONSTANT CONTACT POLYMER TYPE SIDE BEARERS,
(VII) WHEELS OF ONE METRE DIA. ON TREAD WITH 2 METRE WHEEL BASE.

BRAKES:-
② DOUBLE PIPE GRADUATED RELEASE AIR BRAKE SYSTEM FITTED WITH LOAD SENSING DEVICE.

COUPLER:-
STANDARD AUTOMATIC CENTRE BUFFER COUPLER OF KNUCKLE TYPE NON-TRANSITION

PROVISION FOR LOADING AND UNLOADING:-
(I) CONTINUOUS OPENING WITH HATCH COVER AND PROPER SEALING
(II) TWO NOS. GRAVITY DISCHARGE GATES AT BOTTOM FOR UNLOADING.
(III) END TO END CATWALK ON EITHER SIDE OF HATCH.
(IV) LADDER AT BOTH ENDS.

OTHER PARTICULARS:-
(I) STUB CENTRE SILL - STANDARD 'Z' SECTION
(II) FABRICATED SOLEBAR
(III) SHEAR PLATE WITH TORSION BOX TO TAKE LONGITUDINAL LOAD.

INFRINGEMENT:-
DESIGN OF THE WAGON IS WELL WITHIN THE MAXIMUM MOVING DIMENSION OF REVISED SCHEDULE OF DIMENSIONS 2004 DIAGRAM No. 1D 1676mm GAUGE (B.G.) EXCEPT THE HATCHED PORTION.

DETAIL AT 'X'
INFRINGEMENT DETAILS

© COPY RIGHT
THIS DRAWING IS THE PROPERTY OF RITES LTD. GURGAON AND SHOULD NOT BE REPRODUCED COPIED USED FOR TENDERING PURPOSE WITHOUT THE SPECIFIC AUTHORITY/ APPROVAL OF RITES LTD., RITES BHAWAN, 1, SECTOR-29, GURGAON – 122 001.

ALT.	ITEM	AUTHY.	DESCRIPTION	CKD.	DATE
④			REVD SPACE WINDOW ADDED & SALIENT FEATURES FOR BRAKE MODIFIED SINGLE PIPE TO DOUBLE PIPE		24/19
③			DRAWING REVISED & REDRAWN.	Sd/-	9/07
②		WR/ES/BFG	DATA OF C.G. ADDED	Sd/-	7/07
①		RLY BD	CAT WALK WIDTH MODIFIED	Sd/-	2/07

ASSEMBLY DRGS.

SUPERSEDED BY: :
SUPERSEDES :

SCALE			
	P	D Komilla	01/07
	C	Keswani	01/07
	D	S Mhare	01/07
	J.S.		

BOGIE COVERED HOPPER WAGON FOR FOOD GRAIN TYPE 'BCBFG'

DIAGRAM

B.G. RITES LTD. [RSD] GROUP

RSD-6337-052

SCHEDULE- B: LWIS MASTER CIRCULAR

FREIGHT MARKETING MASTER CIRCULAR / LWIS/2018/0

भारत सरकार **GOVERNMENT OF INDIA**
रेल मंत्रालय **MINISTRY OF RAILWAYS**
(रेलवे बोर्ड **RAILWAY BOARD**)

No. 2016/TC (FM)/ 4/12(LWIS) Rail Bhavan, New Delhi – 110 001, dated *02.07.2018*

General Managers
All Indian Railways.

Sub: LIBERALIZED WAGON INVESTMENT SCHEME (LWIS)
*****

Ministry of Railways has reviewed the existing Liberalized Wagon Investment Scheme (LWIS) issued vide Freight Marketing circular No. 11 of 2011 dated 02.01.2012 and formulated a revised Liberalized Wagon Investment Scheme (LWIS). A copy of the revised Liberalized Wagon Investment Scheme (LWIS) is enclosed herewith. The revised scheme will be in supersession of existing Liberalized Wagon Investment Scheme (LWIS) issued vide Freight Marketing circular No. 11 of 2011 dated 02.01.2012 and all its amendments dated 17.09.2012, 10.06.2013, 21.08.2013, 01.09.2014, 27.10.2014.

This scheme will come into force with immediate effect. The terms & conditions of the revised Liberalized Wagon Investment Scheme (LWIS) will also apply to the customers who have already made investment for procurement of wagons or obtained approval from Ministry of Railways for procurement of wagons under the existing LWIS.

Necessary changes may accordingly be made in the Agreement by incorporating the new clauses in the existing agreements of LWIS customers as per the revised policy.

This issues with the concurrence of Finance Directorate of Ministry of Railways.

The receipt of this letter may please be acknowledged.

DA : As above.

(Mudit Chandra)
Director Freight Marketing

No. 2016/TC (FM)/ 4/12(LWIS) Rail Bhavan, New Delhi – 110 001, dated *02.07.2018*

Copy forwarded to:
1. The Deputy Comptroller & Auditor General of India (Railways), Room No. 224, Rail Bhawan with 36 spares.
2. Principal Financial Advisor, All Indian Railways.

For **Financial Commissioner/Railways**

Page 1 of 11

No. 2016/TC (FM)/ 4/12(LWIS) Rail Bhavan, New Delhi – 110 001, dated 02.07.2018

1. The Principal Chief Commercial Manager, All Indian Railways.
2. The Principal Chief Operations Manager, All Indian Railways.
3. The Chief Freight Traffic Manager, All Indian Railways.
4. The Chief Commercial Manager (FM), All Indian Railways.
5. CAO/PTS, Northern Railways, IRCA Building, New Delhi.
6. The Managing Director / Chief Commercial Manager, Konkan Railway Corporation Ltd., Belapur Bhawan, Plot no. 6, Sector-11, CBD Belapur, Navi Mumbai – 400014.
7. The Managing Director, Centre For Railway Information System (CRIS), Chanakyapuri, Near National Rail Museum, New Delhi.
8. Director General, National Academy for Indian Railways, Lalbaug, Vadodara - 390004, Gujarat.
9. Director General, Indian Railways Institute of Transport Management, Hardoi By-pass Road, P.O. Manak Nagar, Lucknow – 226 011 Uttar Pradesh.
10. AM(Traffic), AM(Commercial), AM(Mech.), Adv.(F), Adv.(Vig.), Adv. (Chg), EDPM, EDPG, EDTC(R), EDV(T), ED(FC), EDME(Chg.), DF(C), Dir (Chg.), Dir (Punct.) in Railway Board for information please.
11. PSO/Sr.PPS to CRB, FC, MT, ME, M(RS), M(Tr.), MS and Secretary, R.Bd. for kind information of CRB, FC, MT, ME, M(RS), M(Tr.), MS and Secretary.

(Mudit Chandra)
Director Freight Marketing

LIBERALIZED WAGON INVESTMENT SCHEME

1.0 GENERAL

The existing Liberalized Wagon Investment Scheme (LWIS) circulated vide Freight Marketing Circular No. 11 of 2011 along with all its amendments, stand superseded by the revised Liberalized Wagon Investment Scheme (LWIS). The terms & conditions of the revised Liberalized Wagon Investment Scheme (LWIS) shall also be made applicable to the customers who have already made investment for procurement of wagons or obtained approval from Ministry of Railways for procurement of wagons under the existing LWIS.

2.0 DEFINITIONS AND ABBREVIATIONS

Definitions and abbreviations of some of the terms used in this document are as under.

2.1 **ACT** means Railway Act 1989

2.2 **IR:** Railway Administration.

2.3 **MOR**: Ministry of Railways, Government of India.

2.4 **Investors**: This refers to End Users or WLCs.

2.5 **End User**: Rail customers who are producers or consumers of the goods transported by rail.

2.6 **Wagon Leasing Company (WLC):** A Leasing Company engaged in the business of procuring railway wagons and making them available to other business entities authorized to deploy such wagons for operation over IR network in accordance with the extant policy of MOR.

2.7 **Lessor**: A WLC engaged in the business of leasing wagons to Lessee(s).

2.8 **Lessee**: It refers to End Users, Investors under Terminal Development Scheme or Operators under Concession granted by IR to run trains on IR network.

2.9 **Leased Wagons**: Wagons given on lease by a Lessor to a Lessee.

2.10 **Idle Leased Wagons**: Wagons owned by a Lessor and held on IR network or a private siding awaiting nomination of a Lessee.

2.11 **High Capacity Wagons (HCW)**: Wagons with payload which are at least 2 tonnes higher than the payload of extant similar wagons on IR for 25.0 or 22.9 tonne axle load route, as the case may be. The dimension of such wagons should be such that it gives commensurate higher payload in the full train length without changing the laid down standard composition of rakes. Such wagons will operate on specific routes approved by IR and will not form a part of the wagon pool of IR.

2.12 **Special Purpose Wagons (SPW)**: Wagons designed for rail transportation of a specific commodity or group of commodities. Such wagons will operate on specific routes or close circuits approved by MOR and will not form a part of the wagon pool of IR.

2.13 **Wagon Leasing Scheme (WLS)**: The Scheme introduced by MOR in the year 2008 for leasing of wagons and their operation on IR.

2.14 **Terminal Development Scheme**: Scheme introduced by MOR in 2008 to encourage development of railway terminals through investment from private sector.

3.0 TYPES OF WAGONS PERMITTED FOR PRIVATE PROCUREMENT

Following types of wagons may be procured under this Scheme.

(i) High Capacity Wagons (HCW)
(ii) Special Purpose Wagons (SPW)

4.0 PROCUREMENT OF WAGONS

Following types of investors may procure wagons.

(i) WLC (for leasing to End users)
(ii) End users (for their own traffic only)
(iii) Logistics providers exclusively for the end user company

5.0 PROCEDURE FOR PROCUREMENT OF WAGONS

5.1 General conditions and procedure for procurement of wagons is laid down in Annexure - A.

5.2 Procurement of wagons will be allowed only with prior administrative approval of MOR.

5.3 Privately procured wagons will be inducted into service only after completion of the mandatory safety and quality inspections by authorized agencies as notified by MOR.

5.4 MOR reserves the right to terminate the Agreement with any investor procuring wagons under LWIS on payment of the residual value as assessed by IR.

6.0 OPERATION OF PRIVATELY OWNED WAGONS

HCW and SPW will be operated as per the provisions prescribed in Annexure - B.

7.0 MAINTENANCE OF WAGONS

7.1 Maintenance of Wagons will be undertaken by IR on payment as per agreements to be executed with the investor.

7.2 The haulage charges for moving the wagons in rake formation from a private terminal to the workshop/maintenance depot/train examination point of the railway administration and back to the loading point shall be borne by the railway administration.

8.0 FREIGHT RATES AND CONCESSIONS

8.1 Freight concessions will be permitted to End Users only as indicated in Annexure - C.

8.2 However, if the investor has availed of any concession, subsidy or any other financial benefit for procurement of wagons from any other Ministry or from Ministry of Railways under any other Scheme, he will not be eligible under this scheme. The investor will give an

undertaking to this effect. In case of false undertaking, benefit given if any, shall be recovered through a suitable mechanism to be developed by the Railways.

9.0 RESTRICTED COMMODITIES

Transport of Coal and coke, ores and minerals including iron ore will not be permitted in privately owned wagons.

10.0 LIEN

In cases of default of payment by the investor, IR may exercise lien on the privately owned wagons and the consignment loaded in such wagons to recover its dues. However, in case of leased wagons the relevant provisions of the WLS will apply.

11.0 DISPUTE RESOLUTION

All disputes in regard to implementation of the agreements with the Zonal Railway, under this scheme, will be resolved as per The Arbitration And Conciliation (Amendment) Act, 2015 by General Manager of the Zonal Railway.

*****

Annexure - A

General conditions and procedure for procurement of High Capacity and Special Purpose Wagons for LWIS

Following procedure and conditions are laid down for procurement of wagons by prospective investors under LWIS:-

1. The Principal Chief Operations Manager (PCOM) of the concerned loading railway should be contacted along with specific details of the proposal. The details should include number of rakes required, type of wagons, commodity, loading station(s), destination station(s), proposed specific route(s) or close circuit(s) and any other information relevant to the proposal.

2. After examination of the proposal regarding its operational feasibility, No Objection Certificate (NOC) shall be issued by the PCOM of the loading railway in consultation with the PCOM of the destination railway. NOC should normally be issued within 10 days of receipt of application.

3. NOC should clearly indicate number of rakes, type of wagon, loading station, unloading station(s), commodity, route or the close circuit for movement of the traffic in such rakes, etc.

4. Application along with NOC should be forwarded by the zonal railway to the Executive Director/Freight Marketing (EDFM), Railway Board for examination by the TT Directorate and issue of final approval of the Railway Board for permitting procurement of rakes under LWIS.

5. On the basis of the approval of the Railway Board, an Agreement will be signed between the Principal Chief Commercial Manager (PCCM) of the concerned Railway and Investor which will be valid for the codal life of the rake inducted under the agreement.

6. Wagons should be procured in units of rake with 4% maintenance spares and one brake van.

7. Rakes will be procured by customers directly from wagon manufacturers or through import subject to compliance with current applicable IRS designs and specifications and inspection by nominated agency of IR, namely, RDSO.

8. Customers will be required to incorporate following warranty clause in the purchase contract with the wagon manufacturer.

   "Supplies shall be guaranteed against any manufacturing defect/poor workmanship quality etc. for a period of 24 months of commissioning or 30 months from the date of delivery, whichever is earlier. During this period contractor will arrange to repair/replace any defective part free of cost or replace complete set if required. Further, since these wagons are to be utilized by the customers of Indian Railways, they are hereby authorized to invoke this warranty clause in case of any default on the part of wagon manufacturer."

9. Information regarding placement of order for procurement of rakes may be advised to the PCOM of the concerned zonal railway as well as EDFM, Railway Board.

10. Date of actual induction of the rake on IR network may be informed to the PCOM and EDFM, Railway Board. The zonal railway will keep the details of the wagons and brake-vans procured for each rake.

11. On receipt of documents about commissioning of the rake under LWIS, a commercial notification will be issued by the PCCM in consultation with PCOM. The notification should have all relevant details mentioning inter alia, the details of the concession, the date of commencement of the concession period, the name of the investor, wagon numbers, commodity, approved circuits, the base freight at the time of notification etc.

12. Each rake procured by investor will thus have an associated loading and unloading point(s) over specific route(s) or close circuit(s) as approved by the Railways as per the above procedure.

13. Terminal for loading/unloading

13.1 The rakes procured under LWIS will operate between private sidings/ terminals equipped to handle the traffic for which LWIS customer must have a tie-up with such private sidings/terminals or own its private terminal/sidings for handling of such wagons.

13.2 The wagons can also be operated from railway goods sheds notified in terms of Wharfage Rules, wherever feasible, on the recommendation of PCCM and approval of PCOM provided such rake handling will not in any way hinder or restrict or hamper handling of inward or outward traffic in rail wagons at present and as far as possible, even in the foreseeable future. Operation in the goods shed will only be allowed after due clearance for handling such special purpose wagon traffic.

13.3 The associated loading and unloading point or points can be changed as per the requirement of the LWIS customer. This change is subject to the operational feasibility and NOC from the concerned Zonal Railway and approval of the Railway Board.

14. In case the LWIS customer wants to carry commodity other than for which permission has been given, the same may be permitted provided that commodity is produced/consumed by LWIS customer and can be carried in rake/rakes for which permission has been granted. E.g. If BCCW rake/rakes under LWIS have been procured for loading cement and fly ash and the investor desires to change the number of rake/rakes dedicated to either of the commodity, it should be allowed.

15. However, in the case of leased wagons, changes in the associated loading and unloading point(s) and the route(s) or closed circuit(s) can be made as per the requirement of the WLC subject to the certification of operational feasibility and approval of the Railway Board. Each such case shall, however, be processed for issue of a fresh NOC from the concerned Zonal Railway and the approval of Railway Board as per the procedure prescribed above.

16. Agreement between the Railway and the Investor should be signed within six months from the date of Approval from Railway Board is granted and Rake(s) should be procured under this scheme within one year from the date of signing of the Agreement failing either of which conditions the said approval shall be deemed to have lapsed, unless specific prior extension is given by the Railway Board in both the cases.

Annexure - B

Conditions for operation of High Capacity and Special Purpose Wagons in LWIS

IR will operate HCW and SPW as per the conditions prescribed below:-

1. Private wagons falling in this category will not be merged in the wagon pool of IR. Rakes comprising of such wagons will be identified as exclusively belonging to the private investor who has procured them.

2. Loading in wagons procured under this Scheme will be permitted only against indents registered by End Users subject to extant rules for allotment of wagons.

3. Indents for loading in such wagons will be placed at the approved loading point for the approved destination point for movement over specific route(s) or closed circuit(s) as approved by the Railways.

4. If the End User does not place any indents, these wagons will remain idle in his premises.

5. Stabling and Wharfage Charges

5.1 If IR has to stable these rakes in railway owned yards at the request of the End User or otherwise, stabling charges as notified by MOR will be payable as per Rates Master Circular Demurrage-Wharfage-Waiver/2016/0 issued vide letter No.TC-I/2016/201/1 dated 19.05.2016 and its amendment/revision/extension from time to time.

However if an LWIS rake is detained in railway terminal (goods shed), beyond the permissible free time up to the time of release of the rake, detention charge shall be levied.

5.2 For using railway goods shed, Terminal Access Charges, Detention Charges and Ground Charges shall be levied as per the following :-

5.2.1 Terminal Access Charge

The LWIS investor dealing with their rakes at railway owned terminals will be required to pay Terminal Access Charge (TAC) at the rates as notified from time to time by Railway Board.
Charges mentioned above will be levied on per rake basis, irrespective of the actual rake composition or actual number of wagons on a train at the railway terminal.
Terminal Access Charge (TAC) will be collected at the time of preparation of RR. The methodology for levy of TAC is given below :

Type of rake handling at Railway goods shed	Terminal Access Charge (TAC)
Loaded rake in and empty rakes out	1 x Rate of TAC
Empty rake in and loaded rake out	1 x Rate of TAC
Loaded rake in and loaded rake out	1.5 x Rate of TAC

Note : Rate of Terminal Access Charge will be as per Rates Master Circular/CRT-CCR-Hub & Spoke/2015/0 dated 07.04.2015 and its amendment/corrigendum from time to time.

5.2.2 Permissible Free time and Detention Charge for use of Railway goods sheds

5.2.2.1 Total Permissible Free time at Railway goods sheds on an LWIS train will be as per type of stock i.e. flat wagons, covered wagons, box wagons or tank wagons as specified, irrespective of the activity or activities done on the rake and number of operations performed according to para 2.2 of Rates Master Circular Demurrage-wharfage waiver 2016_0 dt. 19.05.2016 and amendments issued time to time. This free time will be applicable till a rates circular is issued for free time for the specific stock type.

5.2.2.2 Free time will commence from the time of placement of the first wagon of the LWIS train.

5.2.2.3 An LWIS train will be considered to be released at the time at which the last wagon of the rake is released i.e. at the time at which the rake has been released in its entirety and is available for removal from the placement line(s).

5.2.2.4 Detention Charge will be levied for occupation of railway goods sheds beyond the permissible free time up to the time of release of the rake.

5.2.2.5 Detention charge would be levied at the prevailing rate of Demurrage Charge as notified from time to time for full rake.

5.2.2.6 PCCM/PCOM (whoever is designated for dealing with demurrage) of a Zonal Railways may notify a higher Detention Charge (up to six times the normal rate). Higher Detention Charge will be applied for those LWIS rakes who take excessive time to release their rakes or do so repeatedly

5.2.3 Ground Usage Charge

5.2.3.1 Ground Usage Charge will be levied for the use of ground at Railway goods sheds.

5.2.3.2 LWIS operators will be permitted a free time for use of ground at the railway goods sheds.

5.2.3.3 Permissible free time for use of ground for dealing with a LWIS train will be same as is permitted under Wharfage rule for goods traffic, irrespective of the activity or activities done on the rake and number of operations performed, which at present is as under :

Type of goods shed	Free time (in hours)
Group-I	12
Group-II	15
Group-III	30

5.2.3.4 Free time for the purpose of Ground Usage Charge will commence from the expiry of the free time for loading and/or unloading the traffic. Ground Usage Charge will be levied after expiry of the Permitted Free time till the time all goods are removed from the ground by the LWIS operators and ground becomes available to be allotted to the next train.

5.2.3.5 However, if advance stacking has been availed by the LWIS operator, Ground Usage Time will commence from the time advance stacking has been permitted to the time all goods are removed and ground made free for use by the next train. Ground Usage will be levied after making allowance for permissible free times for advance stacking and for ground usage.

5.2.3.6 Ground Usage Charge will be levied on per train per hour basis irrespective of the number of goods on the ground.

5.2.3.7 Ground Usage Charge will be levied for full rake at the prevailing rate of Wharfage charge, and its amendment/corrigendum issued from time to time:

5.2.3.8 PCCM of a Zonal Railway may apply higher Ground Usage Charge (up to six times the normal rate applicable for the 6th Day). Higher Ground Usage Charges will be applied for those LWIS operators who repeatedly fail to release the ground at the goods sheds within two days.

5.2.4 Ground Usage Charge for advance stacking

5.2.4.1 LWIS operator may be permitted advance stacking of goods on the ground of any goods sheds for 24 hours free of any charge for loading on an incoming train.

5.2.4.2 Ground Usage Charge at the rates mentioned in Para (c)(vii) will be levied in accordance with (c)(v) if the ground is not cleared at expiry of the free time for advance stacking. However, no ground usage charge will be levied till the placement of the empty rake for loading even after lapse of the advance stacking period. The empty rake will be supplied only after expiry of the permitted time for advance stacking or completion of stacking, whichever is earlier.

5.2.5 Waiver of Detention Charge and Ground Usage Charge

Detention Charge and Ground Usage Charge will be treated on par with Demurrage Charge and Wharfage Charge for the purpose of consideration of waiver etc. under justified circumstances as per extant instructions as applicable to waiver of Demurrage/Wharfage charge.

6. IR will have no right to use these wagons, except as stipulated in Para 7 below, for loading of traffic of any customer other than the End User for the wagons concerned.

7. Notwithstanding Para 3 and 6 above, HCW or SPW may be used by IR for traffic offered by customers other than the End User subject to a prior mutual written agreement between IR and such Investors or WLCs regarding the terms of such usage.

8. Investor will not be entitled to any residual value of the rake procured by him.

9. Freight traffic transported in the SPW in an approved circuit will originate from a private siding or terminal and terminate at a private siding or terminal capable of handling the traffic in such special purpose wagons.
However, Railway goods shed can also be used for loading / unloading provided found feasible as per the conditions mentioned in Para 13(ii) of Annexure A and in Para 5.2 above.

10. Wherever relevant, provisions of the Terminal Development Scheme will apply for operation of SPW.

*****

Annexure-C

FREIGHT CONCESSIONS in LWIS

Freight concessions to the End Users that will be granted for each loading in the rakes consisting of new HCW and SPW procured under LWIS are as under:-

A. **HCW operating on approved specified routes**

1. Investments in HCW, with a payload of 2 tonnes more than the payload of extant similar wagons (as mentioned in Para 2.11 of the scheme) will be eligible for a freight concession of 12% for a period of 20 years.

2. For each additional tonne of payload in excess of what is prescribed in Para 1 above, an additional 0.5% of freight discount will be granted for 20 years.

3. Payload will be reckoned in terms of integral units of tonnes after rounding off the fractions to the lower integer.

B. **SPW operating in approved Closed circuits**

Freight concession of 15% will be granted for a period of 20 years for each loading of a new rake of SPW procured under LWIS operating between existing or new private terminals capable of handling the traffic in such special purpose wagons in an approved close circuit.

The above mentioned freight concessions of 12% and 15% shall henceforth be granted in each case on the Base Freight Rate prevailing at the time of booking during the currency of the concession period of 20 years.

The concession shall be applicable to (a) rakes that are already running over Indian Railways system with prospective effect only and (b) new rakes that will be inducted in Indian Railways System. Arrangements may be made to incorporate the change in the existing LWIS agreements for the rakes which have already been inducted.

C. No freight will be charged for movement of empty rake to the next destination provided the distance travelled by empty rake is less or equal to the distance travelled by the train before unloading. However, if the distance travelled by empty rake is more than the loaded distance then for additional distance travelled by empty rake over and above the loaded distance, empty freight rate shall be charged at 50% of loaded freight of public tariff on carrying capacity of the wagons.

*****

SCHEDULE- C: DETAILS OF THE PROCURING SILOS, DISTRIBUTION SILOS AND IN-PRINCIPLE APPROVAL

Tentatively to be completed by	**Procuring Silos Location**	**Storage Capacity (in MT)**	**Distribution Silos Location**	**Storage Capacity (in MT)**
2020	Barnala	50,000	Katihar	50,000
	Patiala	50,000	Ahmedabad	50,000
	Kotkapura	25,000		
	Jind	50,000		
	Bhattu	50,000		
	Sangrur	100,000		
	Sub-total	**3,25,000**	**Sub-total**	**1,00,000**
2021	Jalalabad	50,000	Changsari	50,000
	Sahnewal	50,000	Palanpur and Siddhpur	50,000
	Batala	50,000	Kannauj	50,000
	Sonepat	50,000	Basti	50,000
	Panipat	50,000	Dhamora	50,000
	Chhehreata	50,000	Bhagalpur	50,000
			Borivali	50,000
	Sub-total	**3,00,000**	**Sub-total**	**3,50,000**
2022	Rohtak	50,000	Deoria	50,000
			Fatehpur	50,000
			Faizabad	50,000
			Gorakhpur	50,000
			Lucknow	50,000
			Agra	50,000
			Baroda	50,000
			Amreli	50,000
			Madhubani	50,000
			Darbhanga	50,000
			Samastipur	50,000
			Khagaria	50,000
			Saran	50,000
			Motihari	50,000
			Madhepura	50,000
			Malda	50,000
	Sub-total	**50,000**	**Sub-total**	**8,00,000**
	Total Capacity	**6,75,000**	**Total Capacity**	**12,50,000**

Annex 1 (Schedule-C)
(Annexure 2 to Corrigendum No. 2)

भारत सरकार GOVERNMENT OF INDIA
रेल मंत्रालय MINISTRY OF RAILWAYS
(रेलवे बोर्ड RAILWAY BOARD)

Rail Bhawan, New Delhi – 110 001

No. **2018/TC(FM)/4/23** Dated ***10.10.2018***

Executive Director (T),
Food Corporation of India,
16-20, Barakhamba Lane,
New Delhi – 110 001.

Sub: Approval for procurement of 40 rakes of BCBFG wagons under LWIS.
Ref: ED(T)/FCI's letter No.Movt./HLC-Silo/2017/Part dated 30.08.2018.

******

Food Corporation of India, vide the aforementioned letter, has requested for approval of procurement of rakes under Liberalized Wagon Investment Scheme (LWIS).

The proposal has been examined in Railway Board and accordingly 'In-principle Approval' of Ministry of Railways is hereby communicated for procurement of 40 rakes of BCBFG wagons, through the proposed Logistic Service Provider, for transportation of food grains on following conditions:

1. The approval has been granted in relaxation of '*Para 8.1 of the General Conditions*' and '*Para 12 of Annexure 'A'*" of the LWIS Policy, issued vide Freight Marketing Master Circular/LWIS/2018/0 dated 02.07.2018, as detailed in para 4 & 5 below.

2. This is an 'In-principle Approval' only and the procedure for formal approval, as per Annexure 'A' of the LWIS Policy, shall need to be sought prior to the actual induction of the rakes by FCI.

3. FCI shall appoint a Logistic Service Provider for carrying out activities under the Policy, under intimation to the Railway Board.

4. The proposed Logistic Service Provider shall be responsible for paying freight to Railway(s). Consequently, the freight concession as applicable as per Annexure 'C' of the LWIS Policy will be granted to the proposed Logistic Service Provider.

5. FCI will specify the proposed clusters including Originating and Destination points on which the transportation of food grains will take place, so that operational

Page 1 of 2

473

feasibility of same may be examined by concerned zonal Railways. The base station for the rakes would also need to be specified by FCI.

6. The referred dispensation in policy is a special exemption given to FCI for transporting food grains in the country, and is not to be treated as a precedence by other investors under wagon investment schemes.

This issues with the concurrence of Finance Directorate of Railway Board.

This has the approval of the Competent Authority.

Encl: Copy of Master Circular of LWIS dated 02.07.2018

10/10/18

(Mudit Chandra)
Director Freight Marketing

Copy to:

1. Principal Chief Operations Manager, all Indian Railways
2. Principal Chief Commercial Manager, all Indian Railways
3. EDF(C), EDTT(F), EDTT(M), EDME(Fr.)/Rly Board – for information please

Page 2 of 2

SCHEDULE- D: PERFORMANCE GUARANTEE

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

From: ……..

[Name of the Bank, and its Branch Address]

To:

1. The Authority vide letter no. _____ dated _____ has issued Letter of Award to _____ (the "**Successful Bidder**") for Procurement of Specialized Wagons and Bulk Movement of Food grains for 30 years from Procuring Silos to Distribution Silos at_____ the state of_____, India.
2. _____ (the "**Successful Bidder**") has promoted and incorporated a Special Purpose Vehicle in the form of a limited liability company _____ the "**Service Provider**") having its registered office in the State of _____ to enter into a Service Agreement for undertaking, inter alia, the Project and to perform and discharge all its obligations thereunder.
3. In order to perform and discharge all its obligations concerning the "**Project**", the Service Provider is required to give Food Corporation of India (the "**Authority**") a guarantee by a recognized bank based in India in the sum of Rs. _____ on (Indian Rupees _____ as security for compliance by the Service Provider with its obligations under the Service Agreement during the Agreement period.
4. At the request of the Successful Bidder and / or the Service Provider, the Guarantor has agreed to give Authority the said guarantee on the terms set out therein.
5. We, (Name of Bank] (The" **Guarantor**") with its registered office at (Address of Head Office), unconditionally guarantee to pay Authority upon first written demand and without any deduction any sum claimed by the Authority up to a maximum of Rupees _____ (Indian rupees _____ only) (the "**Guaranteed Sum**") Subject to the conditions set out below.
6. The Guarantor unconditionally and irrevocably promises to pay on demand the Guaranteed Sum, without protest or demur whatsoever upon the receipt of a written demand from Authority, which shall be final and conclusive as against the Guarantor requiring the Guarantor to make the payment to the Authority.
7. The Guarantor waives any requirement that Authority demand any debt or payment from the Service Provider before presenting it with a demand under this Guarantee.
8. Authority shall notify the Guarantor of its demand for payment of the Guaranteed Sum without any deduction of whatsoever nature and without reference to any claim or counter claim or set off, in accordance with the Service Agreement. Such notification by the Authority, shall be conclusive and binding on the Guarantor.
9. No underlying dispute as between Authority and the Service Provider nor any pending application for interim relief or arbitration proceedings or other legal proceedings shall constitute any ground for prevention, delay or obstruction for making payment to the

Authority by the Guarantor and the existence of any disputes or difference or claims in arbitration or otherwise shall not constitute any ground for non-payment on this Guarantee.

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

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

12. This Guarantee shall be valid and effective up to_____[2] (Date of validity of the Bank Guarantee for Performance Security) for enabling Authority to lodge a claim for payment under the Guarantee till the date of expiry of the term of the Guarantee. The Guarantor shall be obligated to make payment upon the Guarantee forthwith on demand, if the claim is lodged within the claim validity period and the obligation to pay is subject to normal limitation for payment of claims upon a guarantee. Time is of essence for payment and in the event of failure to make payment, Guarantor shall be obliged to pay compound interest at 2% above the prime lending rate of the Guarantor institution, compounding quarterly in the event of the Guarantor's failure to make payment upon the Guarantee for any reason whatsoever. Payment of interest as provided is no excuse for delayed payment or non-payment of the Guaranteed Sum.

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

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

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

16. Cover message for this Guarantee has been sent to FCI bankers i.e. ICICI Bank Ltd., 9 Phelps building, C.P., New Delhi. IFSC code ICIC0000007 through SFMS

17. The Guarantee binds the Guarantor, its successors and permitted assigns.

    SEAL OF [THE BANK] _____

    NAME OF [THE BANK] SIGNATURE _____

    NAME _____

[2] Period of not less than 12 months for bank guarantee during Procurement Period and not less than 24 months during Operation Period

TITLE _____

DATE _____

Note:

1) The Guarantee issuing Bank shall send cover for BG issued through SFMS platform to the FCI banker, i.e. ICICI Bank Ltd., 9 Phelps building, C.P., New Delhi. IFSC code ICIC0000007 as per the details below:
   a) MT 760 COV for issuance of bank guarantee
   b) MT 767 COV for amendment of bank guarantee
   c) Issuing bank shall mention FCI beneficiary office code in field 7037 of MT760COV/MT767COV.
   d) FCI beneficiary code will be "FCIHA11", where HA11 is four digit unit code of FCI Headquarters.
2) The Bidder shall submit copy of SFMS message as sent by the issuing bank branch alongwith the original Guarantee.

   Guarantee submitted without these details shall not be accepted

SCHEDULE- E: KEY DATES

S. No	No of Rakes	SCOD from the Appointed Date
1	2	Appointed Date + 12 months
2	2	Appointed Date + 15 months
3	2	Appointed Date + 18 months

SCHEDULE- F: SUBSTITUTION AGREEMENT

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

AMONGST

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

2 …..... Limited, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at …....., (hereinafter referred to as the "**Service Provider**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

3 …….. (insert name and particulars of Lenders' Representative) and having its registered office at …....., acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders' Representative**", which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

(A) The Authority has entered into a Service Agreement dated …..... with the Service Provider (the "**Service Agreement**") for Procurement of Specialized Wagons and Bulk Movement of Food grains for 30 (thirty) years from Procuring Silos to Distribution Silos, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Service Agreement.

(D) In order to enable implementation of the Project including its financing, procurement, and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Service Agreement.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

"Agreement" means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Service Provider for a minimum period of 3 (three) months;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956, including any re-enactment or amendment thereof, selected by the Lenders' Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

"Notice of Financial Default" shall have the meaning ascribed thereto in Clause 3.2.1; and

"Parties" means the parties to this Agreement collectively and "Party" shall mean any of the Parties to this Agreement individually.

1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Service Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Service Agreement.

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Service Agreement shall apply, mutatis mutandis, to this Agreement.

2 ASSIGNMENT

The Service Provider hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Service Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE SERVICE PROVIDER

3.1. Rights of substitution

3.1.1. Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Service Provider by a Nominated Company under and in accordance with the provisions of this Agreement and the Service Agreement.

3.1.2. The Authority hereby agrees to substitute the Service Provider by endorsement on the Service Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Storage Facility as Service Provider either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

3.2.1. Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Service Provider (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Service Provider for the purposes of this Agreement.

3.2.2. Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Service Provider by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3. At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Service Provider and undertake the operation and maintenance of the Storage Facility in accordance with the provisions of Article 24 of the Service Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Service Agreement. The aforesaid Suspension shall be revoked upon substitution of the Service Provider by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Service Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Service Agreement; provided that upon written request from the Lenders' Representative and the Service Provider, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3. Substitution upon occurrence of Service Provider Default

3.3.1 Upon occurrence of a Service Provider Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Service Provider by a Nominated Company. 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Service Provider by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Service Provider by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Service Provider, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

3.4.1. The Authority and the Service Provider hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Storage Facility including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Service Provider towards the Authority under the Service Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2. To be eligible for substitution in place of the Service Provider, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3. Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

(a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Storage Facility in accordance with the provisions of the Service Agreement;

(b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and

(c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.

3.4.4. If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority shall thereupon transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Service Provider.

3.4.5. The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Service Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Service Provider to the Nominated Company, and upon such transfer hereunder, the Service Provider shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Service Agreement.

3.5. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Service Provider. The Service Provider irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Service Provider agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Service Provider's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Service Provider shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

Substitution of Nominated Company in Project Agreements

The Service Provider shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Service Provider in the event of such Nominated Company's assumption of the liabilities and obligations of the Service Provider under the Service Agreement.

5 TERMINATION OF SERVICE AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Service Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 21 of the Service Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Service Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Service Provider hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Service Provider, without any further reference to or consent of the Service Provider, the Debt Due upon Termination of the Service Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the revenue earned by the Service Provider.

6 DURATION OF THE AGREEMENT

6.1. Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

(a) Termination of the Agreement; or

(b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1. The Service Provider will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Service Provider of any of its obligations under this Agreement or on account of failure of the Service Provider to comply with Applicable Laws and Applicable Permits.

7.1.2. The Authority will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider's obligations under the Service Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3. The Lenders' Representative will indemnify, defend and hold the Service Provider harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Service Provider's obligations under the Service Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Service Provider and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such

other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

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

9.2. Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3. Priority of agreements

In the event of any conflict between the Service Agreement and this Agreement, the provisions contained in the Service Agreement shall prevail over this Agreement.

9.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5. Waiver

9.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

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

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

9.6. No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7. Survival

9.7.1. Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

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

9.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9. Successors and assigns

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

9.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto.

A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12. Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13. Original Document

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

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF SERVICE PROVIDER has been affixed pursuant to the resolution passed by the Board of Directors of the Service Provider at its meeting held on the …… day of 20…… hereunto affixed in the presence of ……, Director, who has signed these presents in token thereof and ……, Company Secretary / Authorised Officer who has countersigned the same in token thereof[3]: (Signature) (Name) (Designation) (Address) (Fax No.)	

[3] To be affixed in accordance with the articles of association of the Service Provider and the resolution passed by its Board of Directors.

(e-mail address) SIGNED, SEALED AND DELIVERED For and on behalf of the Senior Lender by: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address) In the presence of: 1. 2.	 SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by: (Signature) (Name) (Designation) (Address) (Fax No.) (e-mail address) In the presence of: 1. 2..

Annex- I

(Schedule-F)

Service Provider's Lenders

Serial No.	**Particulars of Lenders**	**Amount for which charge created**	**Brief description of assets financed against first charge**

SCHEDULE- G: PENALTIES

1. Penalty for reduced Availability of Specialized Wagons

For every 0.01% reduction in the Guaranteed Availability the penalties will be as under:

(Base Year Logistics Charge) * (Price Index Multiple for (n-1)th year) * Maximum of ((A_g – A_a), 0) * (Average number of Available Rakes during the Accounting Year)

where

A_g is the Guaranteed Availability

A_a is the Actual Availability during (n-1)th Accounting Year

Illustration:

At the beginning of Year 4, the following shall be measured:

- Total Hours in 3rd Year (Number of Days in the Year * 24 hours)
- A_a of the 3rd Year
- Price Index Multiple for 3rd Year
- Average Number of Available Rakes during the 3rd Accounting Year

Consider:

- Total Hours (for a 365 day year) = 365*24 = 8760
- Non-Available Hours for all Available Rakes during the Accounting Year = 1000hrs, Permitted Non-Available Hours for all Available Rakes during the Accounting Year =100hrs then A_a, Available Hours during 3rd Accounting Year for all Available Rakes during the Accounting Year= 8760-(1000-100) = 7860
- Price Index Multiple for 3rd Year is = 1 + (10%* (WPI_3 –WPI_b)/ WPI_b)+ (10% * (CPI_3 –CPI_b)/ CPI_b) + 80% * 0] = 1+10%*((105-100)/100)+10%*((106-100)/100) =1+10%*0.05+10%*0.06= 1+.0.005+0.006 = 1.011
- Average Number of Available Rakes during the 3rd Accounting Year = 6

Actual Availability = 7860/8760 = 89.73%

Penalty = (Base Year Logistics Charge) * (1.011) * Maximum of ((90% – 89.73%), 0)

= (Base Year Logistics Charge) * (1.011) * 0.27%. * 6

2. Penalty for Transit Loss

For every 0.01% of Transit Loss in excess to the Acceptable Transit Loss or part thereof, the penalties payable by Service Provider to Authority will be equivalent to the product of (i) Transit Loss in excess to the Acceptable Transit Loss and (ii) the cost of the food grains determined based on the economic cost (as published by the Authority, from time to time) of the food grains.

SCHEDULE- H: LOGISTICS CHARGES

1) Base Year Logistics Charges

The Base Year Logistics Charges as set forth in the Bid of the selected bidder in its Bid and applicable to the Service Provider is as follows:

Base Year Logistics Charges	Rs. per year per Rake	As per Bid	Rs. …… (Rupees in words)

The Base Year Logistics Charges is applicable for the first Accounting Year of the Operation Period.

2) Calculation of Logistics Charges payable in a month

Total Logistic Charges payable for a month in nth Accounting Year in Rupees =

(Base Year Logistics Charge) X (Available Rakes) X (Price Index Multiple for nth year) X (1/12)

where Price Index Multiple for nth Accounting Year is =

$1 + (10\%* (WPI_n – WPI_b)/ WPI_b)+ (10\% * (CPI_n – CPI_b)/ CPI_b) + 80\% * 0]$

Wherein

- WPI_n is the Wholesale Price Index (All Commodities) for month of March immediately preceding the date of revision ; and
- WPI_b is the Wholesale Price Index (All Commodities) for month March of the Accounting Year immediately preceding the start of the Base Year
- CPI_n is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for the month of March immediately preceding the date of revision ; and
- CPI_b is the annual average of All India Consumer Price Index for Industrial Workers published by Labour Bureau, Government of India for month March immediately preceding the start of the Base Year

3) Calculation of Additional Logistic Charges

Additional Logistics Charges payable in nth Accounting Year in Rupees =

20% * (Base Year Logistics Charge) * (Price Index Multiple for (n-1)th year) * Maximum of $((Q_{n-1} - Q_c) / Q_c)$, 0) * (Average number of Available Rakes during the Accounting Year)

where

Q_{n-1} is the Annual Transported Quantity during (n-1)th Accounting Year

Qc is the Annual Capacity

SCHEDULE- I: PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Article 19.2.1 of the Service Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "**Panel of Chartered Accountants**"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule - I.

2 Invitation for empanelment

The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

(a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act 1956/2013, including any re-enactment or amendment thereof, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rs. twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in

accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule - I.

SCHEDULE- J: VESTING CERTIFICATE

The Food Corporation of India (the "**Authority**") refers to the Service Agreement dated .... (the "**Agreement**") entered into between the Authority and .... (the "Service Provider") for providing Rakes/Specialised Wagons for bulk movement of food grains from Procurement Silos to Distribution Silos.

The Authority hereby acknowledges compliance and fulfilment by the Service Provider of the Divestment Requirements set forth in Article 22.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Service Provider in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Service Provider to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this …..day of....., 20.... at……..

AGREED, ACCEPTED AND SIGNED	SIGNED, SEALED AND DELIVERED
For and on behalf of Service Provider by:	For and on behalf of Authority by:
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)

In the presence of:

l. 2.