



STORAGE AGREEMENT

For

SILO PROJECT AT MURLI, SEHORE

1



M.P. WAREHOUSING & LOGISTICS CORPORATION

(A Public Sector Undertaking of Government of Madhya Pradesh)

**OFFICE COMPLEX, BLOCK 'A', GAUTAM NAGAR,
BHOPAL-462023**

003

STORAGE AGREEMENT

For

SILO PROJECT AT MURLI, SEHORE

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
राजिव
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

Madhya Pradesh Warehousing & Logistics Corporation
Bhopal

(A Fully Owned Company of Government of Madhya Pradesh)

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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

EXECUTIVE ENGINEER
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म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
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 स्थापित
 भोपाल

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
 BHOPAL



Chief Engineer

M.P. Warehousing & Logistics Corporation
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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHO PAL

PART IV

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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

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(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.F.)

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(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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म.प्र. वेयरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
बोम्बे



Chief Engineer

**M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)**

(Arun Pandey)
Managing Director

**M.P. Warehousing & Logistics Corporation
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(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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सचिव
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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

सचिव
म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

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सचिव
म.प्र. के.आर.हाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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Part I
Preliminary

म.प्र. के.आर.हाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Copy - 15th Nov. 13

EXECUTIVE ENGINEER
MPWLC



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मालिका मालिक
 म
 कमिशन एर

M.L. GUPTA
 Stamp Vendor
 Civil Court, Bhopal
 Mob: 9993673776

क्रियालय जिला
 22 MAY
 मो

सचिव
 म.प्र. केअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
 भोपाल

Chief Engineer
 M.P. Warehousing & Logistics Corporation
 BHOPAL (M.P.)

(Arun Pandey)
 Managing Director
 M.P. Warehousing & Logistics Corporation
 BHOPAL

SEJORGE AGRISERVICES PVT. LTD.
 MUMBAI

WHEREAS:

- (A) The Authority had resolved to procure an integrated storage facility for storage of Foodgrains comprising 4(four)Silos with a design storage capacity of 50,000(fifty thousand) metric tonnes, at MURLI in district SEHORE in the State of Madhya Pradesh on design, build, finance, operate and transfer ("DBFOT") basis in accordance with the terms and conditions set forth in this Agreement.
- (B) The Authority had accordingly invited proposals by its Request for Qualification No. 8807 dated 15th March, 2013 (the "Request for Qualification" or "RFQ") for short listing of bidders for construction, operation and maintenance of the above referred Storage Facility on DBFOT basis and had shortlisted certain bidders including, *inter alia*, Total Shipping & Logistics Private Limited, Surat Goods Transport Private Limited and Abel Manufacturing Co. Inc. (collectively the "Consortium") with Total Shipping & Logistics Private Limited as its lead member (the "Lead Member").
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the "Request for Proposals" or "RFP") from the bidders shortlisted pursuant to the RFQ for undertaking the Project.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the Consortium and issued its Letter of Award No. /MPWLC/Constn./Steel Silo/2013-14/7764 dated 1st March 2014 (hereinafter called the "LOA") to the Consortium requiring, *inter alia*, the execution of this Storage Agreement within 30 (thirty) days of the date of issue thereof.
- (E) The Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Storage Agreement pursuant to the LOA for executing the Project.

(F) By its letter dated 11th June 2014, the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium including the obligation to enter into this Storage Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Consortium for the purposes hereof.

The Authority vide its letter No. MPWLC/Constn/2014/1999, dated 13.06.2014 and letter No. /MPWLC/Constn/2014/2000, dated 13.06.2014 has agreed to the said request of the Consortium and the Concessionaire, and has accordingly agreed to enter into this Storage Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

mp/sa/240813

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)

Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Madhya Pradesh, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a **"person"** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;

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

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

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Bhopal are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (r) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the "winding-up", "dissolution", "insolvency", or "reorganisation" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference;



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



सचिव
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भोपाल

provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

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

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

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

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

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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MPVLC



1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

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

(a) this Agreement; and

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

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

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

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

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

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

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

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

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

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



Part II

The Concession

Arun Pandey
सचिव
ए.प्र. वेयरहाउसिंग एवं लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC



ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

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

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एण्ड लॉजिस्टिक्स कॉर्पोरेशन
मोपाल
म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER



ARTICLE 3 GRANT OF CONCESSION

3.1 The Concession

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

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

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

3. Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of the Applicable Laws, substitute itself by any



Chief Engineer

M.P. Warehousing & Logistics Corporation M.P. Warehousing & Logistics Corporation
BHOPI (M.P.) BHOPI

(Arun Pandey)
Managing Director

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

सचिव
म.प्र. वार्हाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 25, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 15 (fifteen) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

- (a) procured for the Concessionaire the Right of Way to the Licensed Premises in accordance with the provisions of Clause 10.3.1;
- (b) procured Applicable Permits, if any, relating to environmental protection and conservation and forest clearance; and
- (c) declared the Storage Facility as a Procurement Centre, to take effect on COD.
- (d) arranged for the Concessionaire the Right of Way for construction of approach road in accordance with the provisions of Clause 10.3.4

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

- (a) provided Performance Security to the Authority;
- (b) executed and procured execution of the Escrow Agreement;
- (c) executed and procured execution of the Substitution Agreement;
- (d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled under such Applicable Permits, as on the date the Concessionaire claims satisfaction of all the Conditions Precedent under this Agreement, are fulfilled;
- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;



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

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

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

4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 90 (ninety) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of an amount equal to the Bid Security.

4.4 Deemed Termination upon delay

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

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भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

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

Explanation:

Availability of the Storage Capacity shall mean, the capacity available for storage of Foodgrains in Silos, expressed as a percentage of the aggregate designed Storage Capacity (the "**Availability**") and shall include any deemed Availability in accordance with the provisions of this Agreement. For the avoidance of doubt, any Storage Capacity which is being utilised for storage of Foodgrains shall be included in the computation of Availability.

- 5.1.5 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL

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

5.2 Obligations relating to Project Agreements

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

The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

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

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

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

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म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



5.3 Obligations relating to Change in Ownership

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

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

- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation

India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to employment of foreign nationals

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

5.5 Obligations relating to employment of trained personnel

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

5.6 Obligations relating to medical aid

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

5.7 Obligations relating to taxes


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

5.8 Obligations relating to Storage operations

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

म.प्र. कोरहाडसिंह एण्ड लॉजिस्टिक्स कॉर्पोरेशन
साथिय
भोपाल


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



5.9 Branding of Storage Facility

The Storage Facility or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Storage Facility to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed. It is further agreed that the Storage Facility shall be known, promoted, displayed and advertised by the name of Silo storage facility, Government of Madhya Pradesh.

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एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल
म.प्र. के.आर.हाउसिंग

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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ENGINEER
MPWLC



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.F.)



ARTICLE 6

OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

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

मे. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Comm. 16th Nov. 13
EXECUTIVE ENGINEER
MPWLC
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) along with its Associates, it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or Government Instrumentality which may result



in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Consortium Members, together with {its/their} Associates, hold not less than 33% (thirty three per cent) of {its/their} issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Qualification shall hold less than 26% (twenty-six per cent) of such Equity for a period of 2 (two) years from the date of commercial operation of the project;
- (l) the Consortium Members and 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 each Consortium Member is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Storage Facility shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



- (q) all information provided by the Consortium Members in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under 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) it has good and valid right to the Licensed Premises, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

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

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

अ.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
मोपाल

(Arun Pandey)

Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL



mp/sa/240813

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Part III

Development and Operations

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सचिव
ए.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPW/LC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 45 (forty five) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 1.50 crore (Rupees one point five crore) in the form set forth in Schedule-F (the "Performance Security"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 45 (forty five) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



9.3 Release of Performance Security

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

9.4 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4 for performance of the obligations by the Concessionaire during the Agreement Period. The Performance Security created hereunder shall comprise the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Performance Security under Clause 9.2. For the avoidance of doubt, the Parties agree that no payments due to the Concessionaire under this Agreement shall be withheld by the Authority on account of the Performance Security created hereunder, save and except the Damages or other amounts which are to be appropriated in accordance with the provisions of this Agreement.

9.5 References to Performance Security

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

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म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



ARTICLE 10 RIGHT OF WAY

10.1 The Site

The site of the Storage Facility shall comprise the land as described in Schedule-A, and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee (the "Site").

10.2 Licence, Access and Right of Way

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

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

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

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

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

- 10.2.6 It is expressly agreed that trees on the Licensed Premises are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Licensed Premises

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Licensed Premises. Such memorandum shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Licensed Premises to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Licensed Premises during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Licensed Premises required and necessary for the Storage Facility, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any component of the Storage Facility that is integral to the proper functioning of the Storage Facility.

On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.



Chief Engineer

M.P. Warehousing & Logistics Corporation
Bhopal (M.P.)

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation

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MPWLC



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10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Annexure 1 of Schedule A and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. ,2000 (Rupees two thousand) per day for every 500 (five hundred) square metres or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Expert in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Licensed Premises not being granted to the Concessionaire or any construction on such part of the Licensed Premises remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed before COD. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Expert hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.2.

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for ancillary buildings and Associated Services or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Licensed Premises and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with the Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from the Appointed Date, instead of 90 (ninety) days as specified in Clause 10.3.4.

10.4 Premises to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Licensed Premises shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



acquisition and use of such Licensed Premises for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Licensed Premises.

10.5 Protection of Licensed Premises from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Expert

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

10.8 Geological and archaeological finds

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



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation

ARTICLE 11

UTILITIES, ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 Felling of trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Storage Facility. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the ownership rights to the felled trees shall vest in the legal owner thereof and the felled trees shall be disposed in such manner and subject to such conditions as the owner may reasonably determine.

सचिव
म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.F.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



ARTICLE 12

CONSTRUCTION OF STORAGE FACILITY

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

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

12.2 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Expert for review.
- (b) By submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.

(c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.

- (d) If the aforesaid observations of the Independent Expert indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Expert for review. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EMCOU. ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



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

12.3 Construction of Storage Facility

12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Storage Facility as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 365th (three hundred and sixty fifth) day from the Appointed Date shall be the scheduled date for completion of the Project (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that construction of the Storage Facility shall be completed on or before the Scheduled Completion Date.

2.3.2 The Concessionaire shall construct the Storage Facility in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without

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एन.ए. वेअरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

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

सचिव
ए.पी. वेयरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Expert shall require¹ the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Expert from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this behalf. The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation



Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 Delays during construction

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

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any person or property.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and affected persons or properties. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "Preservation Costs"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Expert. In



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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ENGINEER
MPWLC

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation



the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

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

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भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 No later than 30 (thirty) days prior to the likely completion of the Storage Facility, the Concessionaire shall notify the Independent Expert of its intent to subject the Storage Facility to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Expert.

14.1.2 All Tests shall be conducted in accordance with Schedule-I at the cost and expense of the Concessionaire. The Independent Expert shall observe, monitor and review the results of the Tests to determine compliance of the Storage Facility with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Expert during the course of any Test that the performance of the Storage Facility or any part thereof does not meet the Specifications and Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Expert shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Expert may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Storage Facility with Specifications and Standards.

14.2 Completion Certificate

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

Provisional Certificate

The Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "Provisional Certificate") if the Tests are successful and the Storage Facility can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Concessionaire (the "Punch List"); provided that the Independent Expert shall not withhold the Provisional Certificate for reason of



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAI

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EXECUTIVE ENGINEER
MPWLC
(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAI



any work remaining incomplete if the delay in completion thereof is attributable to the Authority.

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

14.4 Completion of Punch List items

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

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

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.F.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Paridey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOHAL



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रसचिक्
म.प्र. वेस्टाहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

with this Article 14 and the revised Completion Certificate, if any, shall be deemed to be the Completion Certificate, from the date thereof, for the purposes of this Agreement, including the determination of Fixed Charge.

14.5 Withholding of Provisional or Completion Certificate

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

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

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

14.7 Phased completion of Storage Facility

The Storage Facility may, for the purposes of completion, be divided into 2 (two) distinct sections, namely, section A comprising 2 (two) Silos; section B comprising the balance Silos, and the Provisional Certificate may, at the request of the Concessionaire, be issued separately for each of the 2 (two) sections. Upon issue of Provisional Certificate for any of the aforesaid sections, such section shall enter into commercial service in accordance with the provisions of Article 15, whereupon the Fixed Charge for Storage Capacity comprising such section shall become due and payable to the Concessionaire. For the avoidance of doubt, the Parties agree that notwithstanding anything to the contrary contained in this Clause 14.7, the obligations contained in Clauses 12.3 and 15.2 shall continue to be binding on the Concessionaire. The Parties further agree that upon completion of any section hereunder, the provisions of this Agreement shall apply as if



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.F.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

EXECUTIVE ENGINEER
MPWLC

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the Storage Facility comprises of that section and the rights and obligations of the Concessionaire for and in respect of that section shall be construed accordingly.

14.8 Safety certification prior to COD

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

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भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Storage Facility shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14 and the commercial operation date of the Storage Facility shall, subject to the provisions of Clause 15.1.2, be the date on which such Completion Certificate or the Provisional Certificate is issued (the "COD"). The Storage Facility shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect the Fixed Charge in accordance with the provisions of Article 27, provided, however, that the entry of Storage Facility into commercial service shall always be subject to compliance with the provisions of Clause 14.8. For the avoidance of doubt, the Parties expressly agree that if the Storage Facility is substantially completed but COD is delayed solely for reasons attributable to the Authority, 20% (twenty per cent) of the Fixed Charge shall be due and payable hereunder as if COD has occurred for the Project or any section thereof, as the case may be.

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

15.2 Damages for delay

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

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म.प्र. वेयरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL

Final Copy - 15th Nov. 13

EXECUTIVE ENGINEER
MPWLC



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the "Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Storage Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Storage Facility and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

16.2 Procedure for Change of Scope

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

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

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Expert as reasonable.



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

15th Nov. 13
EXECUTIVE ENGINEER
MPWLC



16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Expert, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "Change of Scope Order") requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

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

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Storage Facility by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Storage Facility and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five 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 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Authority^f, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

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

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 41.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.

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

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
मुंबई

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

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



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation



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

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

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

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

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

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

म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
भोपाल

SRE Infrastructure Finance
New Delhi

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC

SENIOR AGENT SERVICES PVT. LTD.
MUMBAI

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17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and restorative maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

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

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

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

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

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

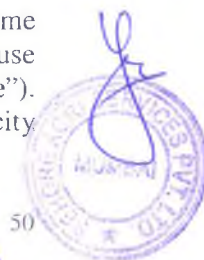
17.4.4 Any maintenance carried out by the Concessionaire as per the Maintenance Programme under this Clause 17.4 or as notified to the Authority under the provisions of Clause 27.8.2 shall be deemed to be scheduled maintenance (the "**Scheduled Maintenance**"). For the avoidance of doubt, any closure, suspension or reduction of Storage Capacity



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

arising out of Scheduled Maintenance shall be deemed as Non-Availability of Storage Capacity.

17.5 Major Overhaul

17.5.1 The Concessionaire may, as and when necessary, undertake Major Overhaul of a Silo, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Authority, at least 1 (one) year in advance, and requiring the Authority to evacuate Foodgrains from such Silo prior to the scheduled date of commencement of Major Overhaul. Provided that a Major Overhaul shall not be scheduled during the Harvest Season or during a period of 6 (six) months following the Harvest Season. For the avoidance of doubt, unless the Parties mutually agree, not more than 1 (one) Silo shall be subjected to a Major Overhaul during the course of an Accounting Year.

17.5.2 The Normative Availability of the Storage Facility shall be deemed to be reduced during the period of Major Overhaul and such reduction shall bear the same proportion as the capacity of the Silo being subjected to Major Overhaul does to the Storage Capacity.

17.5.3 The Fixed Charge due and payable to the Concessionaire shall be reduced proportionately to the extent of reduction in Availability of the Storage Facility during the period of Major Overhaul. For the avoidance of doubt, the Parties agree that the evacuation of a Silo shall cause disruption in the operations of the Authority and consequently, the Concessionaire shall be liable to pay Damages equal to 25% (twenty five per cent) of the Fixed Charge payable for a period of 1 (one) month following the recommissioning of such Silo.

17.6 Safety, breakdowns and accidents

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

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

17.7 De-commissioning due to Emergency

17.7.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Storage Facility, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Storage Facility for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

EXECUTIVE ENGINEER
MPVLC
15th Nov. 13



Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

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

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

17.8 Section closure

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

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

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

Unscheduled Maintenance

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

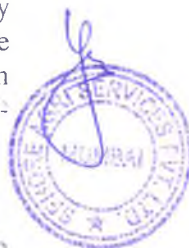


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



17.10 Damages for breach of maintenance obligations

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

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

17.11 Authority's right to take remedial measures

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

17.11.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.11.1 from any payments due to the Concessionaire from time to time.

17.12 Overriding powers of the Authority

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

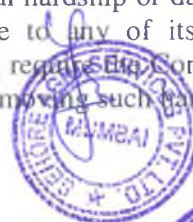


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL

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ENGINEER
MPWLC



17.12.2 In the event that the Concessionaire, upon notice under Clause 17.12.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.12.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.11 along with the Damages specified therein.

17.12.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Storage Facility or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.12.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.13 Restoration of loss or damage to the Storage Facility

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

17. Modifications to the Storage Facility

The Concessionaire shall not carry out any material modifications to the Storage Facility save and except where such modifications are necessary for the Storage Facility to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Expert may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, if any modification to the Storage Facility has a material effect on the safety thereof or the safety of users and other persons, the same shall be subjected to the tests and certification specified in Clause 14.8. For the avoidance of doubt, all modifications made



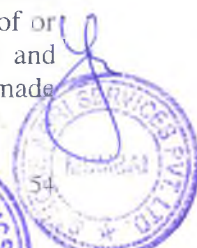
Chief Engineer

M.P. Warehousing & Logistics Corporation Managing Director
BHOPAL (M.P.)

M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



hereunder shall comply with the Safety Requirements, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

17.15 Excuse from performance of obligations

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

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

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

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

17.16 Safety Requirements

17.16.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Storage Facility, Users and other persons present in the premises. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Storage Facility, and shall comply with the safety requirements set forth in Schedule-L (the "Safety Requirements").

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

17.17 Barriers and diversions

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAI (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAI



17.18 Advertising on the Storage Facility

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

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भोपाल



ARTICLE 18

MONITORING OF OPERATION AND MAINTENANCE

18.1 Monthly status reports

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

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

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

18.2 Reports of unusual occurrence

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

- (a) death or injury to any person;
- (b) any damage or obstruction on the Storage Facility;
- (c) disablement of any element or system of the Storage Facility during operation thereof;
- (d) communication failure affecting the operation of the Storage Facility;

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



- (e) flood, smoke, fire, theft, trespass or other breach of security; or
- (f) such other relevant information as may be reasonably required by the Authority or the Independent Expert.

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

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

18.3 Inspection

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

18.4 Tests

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

18.5 Remedial measures

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

18.6.2 The Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Storage Facility into compliance with the Maintenance Requirements and the



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EXECUTIVE ENGINEER
MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arundhanii)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



procedure set forth in this Clause 18.5 shall be repeated until the Storage Facility conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.10.

सचिव
एम. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 19
SECURITY OF THE STORAGE FACILITY

19.1 Security

19.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the Storage Facility in accordance with the provisions of this Agreement, the Authority acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the Storage Facility for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Storage Facility and such agreement may *inter alia* provide for sharing of costs as may be agreed upon.

19.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Storage Facility and shall be responsible for the security arrangements for the Storage Facility in order to maintain orderly conduct of its business and the security thereof.

19.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Storage Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Storage Facility, without unduly or unreasonably disrupting the operations of the Storage Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in the discharge of their obligations for and in respect of the security of the Storage Facility.

1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.

The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Storage Facility without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



19.2 Insurance Premium

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

अ.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 20

CHANGE IN SPECIFICATIONS

- 20.1 Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Storage Facility (the "Modified Specifications")
- 20.2 In the event that the Authority introduces any Modified Specifications which require material alterations in the Storage Facility, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16; provided, however, that in the event that such Change in Scope causes any increase or decrease, as the case may be, in the O&M Expenses of the Concessionaire, the Variable Charge shall be modified in accordance with the principles specified in Article 41.

सचिव
एण्ड लॉजिस्टिक्स कार्पोरेशन
बोपाल
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 21

INDEPENDENT EXPERT

21.1 Appointment of Independent Expert

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Schedule-O, to be the independent consultant under this Agreement (the "Independent Expert"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-O to be the Independent Expert for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

21.2 Duties and functions

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

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

21.3 Remuneration

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

21.4 Termination of appointment

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

21.4.2 If the Concessionaire has reason to believe that the Independent Expert is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event of the termination of the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1.

21.5 Authorised signatories

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

21.6 Dispute resolution

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

म.प्र. वार्हाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 22

ACCEPTANCE AND DISPATCH OF FOODGRAINS

22.1 Notice for Intake and Dispatch of Foodgrains

22.1.1 The Authority shall, at least 3 (three) days prior to movement of Foodgrains into or out of the Storage Facility, as the case may be, by notice inform the Concessionaire of the quantity of Foodgrains that the Concessionaire shall receive for storage in the Storage Facility (the "Intake Notice") or the quantity of Foodgrains that the Concessionaire shall dispatch from the Storage Facility (the "Dispatch Notice"), as the case may be. The notice shall specify the anticipated time and date of arrival of Foodgrains at the Storage Facility or the time and date of dispatch of Foodgrains from the Storage Facility, as the case may be. For the avoidance of doubt, the Parties agree that the period of Intake Notice may be reduced to 4 (four) hours during the Harvest Season. The Parties further agree that in the event the quantity of Foodgrains specified in the Dispatch Notice is 1,000 (one thousand) metric tonnes or more, the period of notice hereunder shall not be less than 5 (five) days for every 1,000 (one thousand) metric tonnes or part thereof, and the Concessionaire shall complete the Bagging and stacking within the period specified in the Dispatch Notice.

22.1.2 The Authority shall specify the quantity of Foodgrains in its Intake Notice and the Dispatch Notice as its best estimate in good faith, but may revise the same no later than 12 (twelve) hours prior to the time and date of arrival or dispatch of Foodgrains, as the case may be. Provided, however, that any increase in quantities hereunder shall be subject to the period of notice specified in Clause 22.1.1.

22.1.3 The receipt and dispatch of Foodgrains shall ordinarily be undertaken within the Operating Hours. Provided that the Authority may require the Concessionaire to receive or dispatch Foodgrains round-the-clock during the Harvest Season or on the days when a railway rake is being loaded or unloaded, as the case may be.

22.1.4 If at any time the Concessionaire fails or becomes aware that it is likely to fail in accepting the quantity specified in an Intake Notice or a part thereof or in dispatching the quantity specified in a Dispatch Notice, or a part thereof, as the case may be, it shall notify the Authority, as soon as reasonably practicable, but no later than 12 (twelve) hours from the time of receipt of such notice, of: (a) such actual or anticipated failure; (b) the reason for such failure; (c) the likely duration of such failure; and (d) the aggregate quantity of Foodgrains that it will be unable to accept or dispatch, as the case may be. Any such failure in respect of the Intake Notice, unless attributable to the Authority or to a Force Majeure Event, shall be deemed to be Non-Availability to the extent thereof and treated as such in accordance with the provisions of this Agreement. In the event of any failure in respect of the Dispatch Notice, unless attributable to the Authority or to a Force Majeure Event, the Authority shall be entitled to recover from the Concessionaire Damages calculated at the higher of (a) 50% (fifty per cent) of the Bagging Charges and Stacking Charges computed with respect to the quantity of Foodgrains that was not



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



available for dispatch within the period specified in the Dispatch Notice, and (b) the actual demurrage and wharfage charges, if any, incurred by the Authority on account of such failure.

- 22.1.5 Any notice issued by the Concessionaire pursuant to the provisions of Clause 22.1.4 shall at all times conform with the provisions of Clause 27.8, and any violation thereof may be construed as Mis-declaration thereunder.

22.2 Delivery of Foodgrains by the Authority

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

22.3 Acceptance of Foodgrains by the Concessionaire

- 22.3.1 Upon arrival of Foodgrains at the Storage Facility, the Concessionaire may draw random samples thereof and conduct a visual inspection to determine their conformity with Foodgrains Specifications. In the event it appears necessary to conduct any Foodgrains Tests prior to Unloading, the Concessionaire may detain the Vehicle for upto 1 (one) hour and conduct Foodgrains Tests on random samples comprising at least one sample per 5 (five) MT and if the results of such Foodgrains Tests establish that the Foodgrains are not within the acceptable limits of Foodgrains Specifications, it may reject the Foodgrains and require the Vehicle to leave the Storage Facility.

- 22.3.2 Prior to accepting Foodgrains at the Storage Facility, the Concessionaire shall undertake testing and weightment thereof in accordance with the provisions of this Agreement.

- 22.3.3 For determining that the Foodgrains conform with the Foodgrains Specifications, the Concessionaire shall conduct tests in accordance with the procedure set out in Schedule - N (the "Foodgrains Tests").

- 22.3.4 The Concessionaire shall be obliged to accept the Foodgrains that conform with the Foodgrains Specifications, as determined by the Intake Report, and shall be deemed to have taken custody of such Foodgrains upon signing of the Intake Report.

(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL

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MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



22.4 Curing and rejection of Foodgrains

22.4.1 If the Intake Report determines that the Foodgrains contain moisture in excess of the limit specified in the Foodgrains Specifications, but within the ceiling of 2% (two per cent), the Concessionaire shall undertake Drying in accordance with the provisions of this Agreement. Provided, however, that in such an event, the modified quantity to be specified in the Intake Report shall be equivalent to the quantity of Foodgrains determined as if it contains a moisture content equivalent to the maximum limit specified in the Foodgrains Specifications.

22.4.2 If the Intake Report determines that the Foodgrains contain foreign materials in excess of the limit specified in the Foodgrains Specifications, but within the ceiling specified in Clause 28.4.1, the Authority may, by notice, require the Concessionaire to undertake Cleaning in accordance with the provisions of Clause 28.4. Provided, however, that in such an event, the modified quantity to be specified in the Intake Report shall be equivalent to the quantity of Foodgrains determined as if it contains foreign material equivalent to the maximum limit specified in the Foodgrains Specifications.

22.4.3 Save as provided in Clauses 22.4.1 and 22.4.2, if the Intake Report determines that any Foodgrains do not conform with the Foodgrains Specifications, the Concessionaire may by notice reject such Foodgrains within a period of 12 (twelve) hours from their arrival and require the Authority to undertake their removal from the Storage Facility within 72 (seventy two) hours of such notice. In the event the Concessionaire fails to reject any Foodgrains hereunder, such Foodgrains shall be deemed as fit and proper for storage in accordance with this Agreement. For the avoidance of doubt, the Parties agree that the Authority may require the Concessionaire to Bag and load the rejected Foodgrains in accordance with the provisions of Clauses 28.5 and 28.6.

22.4.4 The Foodgrains to be delivered at the Storage Facility shall have been harvested no earlier than about 6 (six) months from the date of delivery at the Storage Facility and the Authority agrees and undertakes not to deliver Foodgrains that have been harvested prior to such 6 (six) months. For the avoidance of doubt, the Parties agree that Foodgrains harvested more than about 6 (six) months prior to the date of delivery shall be deemed as not conforming with the Foodgrains Specifications and liable to rejection by the Concessionaire, save and except where such Foodgrains conform with Foodgrains Specifications.

22.4.5 Notwithstanding the provisions of Clauses 22.4.3 and 22.4.4, in the event the Parties mutually agree that any Foodgrains not conforming with the Foodgrains Specifications are to be stored in the Storage Facility, the same shall, to the extent possible, be segregated or stored in a separate Silo. For the avoidance of doubt, the Parties expressly agree that the Foodgrains Specifications shall not apply to such Foodgrains and the Concessionaire's obligations in respect thereof shall be restricted to compliance with Applicable Laws and Good Industry Practice. The Parties further agree that the provisions of Clause 22.2, insofar as they relate to modified Foodgrains Specifications, shall apply *mutatis mutandis* to the Foodgrains stored hereunder.

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



22.5 Weighment

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

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

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

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

22.6 Testing

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

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

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

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

22.7 Dispatch of Foodgrains

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

22.7.2 Upon receipt of a Dispatch notice, the Concessionaire shall retrieve Foodgrains from the Silos for dispatch thereof on a "first-in first-out" basis such that the Silo containing the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

EXECUTIVE ENGINEER
MPWLC

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oldest Foodgrains is evacuated first, save and except when directed otherwise by the Authority. For the avoidance of doubt, the Foodgrains stored in Bags in accordance with the provisions of Clause 23.1.3 shall ordinarily be dispatched first.

22.7.3 Prior to dispatch of Foodgrains, the Concessionaire shall undertake the testing, weighment, Bagging and Loading thereof in accordance with the provisions of this Agreement.

22.7.4 For determining that the Foodgrains conform with the Foodgrains Specifications, the Concessionaire shall conduct Foodgrains Tests.

22.7.5 The Authority shall be obliged to accept the Foodgrains that conform with the Foodgrains Specifications, as determined by the Dispatch Report, and shall be deemed to have taken custody of such Foodgrains upon signing of the Dispatch Report whereupon the risk and obligations in respect of such Foodgrains, including transportation thereof, shall be deemed to be transferred to the Authority. Provided that the Parties agree that in the event the Authority fails to lift the Foodgrains within 5 (five) days of the time and date specified in the Dispatch Notice, such Dispatch Notice shall be deemed to have been withdrawn and the Authority shall, in respect of the withdrawn Dispatch Notice, pay Damages equivalent to Re. 1 (Rupee one) per Bag per day.

22.8 Rejection of Foodgrains

22.8.1 In the event that a Dispatch Report determines any Foodgrains to be not in conformity with the Foodgrains Specifications, such Foodgrains shall be deemed to have been rejected by the Authority (the "**Rejected Foodgrains**"). Provided that where any Foodgrains contain moisture or foreign material in excess of the limit specified in the Foodgrains Specifications, the Concessionaire may Dry or Clean, as the case may be, such Foodgrains at its own cost and subject the same to Foodgrains Tests, and if such Foodgrains Tests determine the Foodgrains to be in conformity with Foodgrains Specifications, such Foodgrains shall be deemed to be fit and proper for dispatch in accordance with this Agreement.

22.8.2 The Concessionaire shall remove the Rejected Foodgrains from the Storage Facility within a period of 7 (seven) days from the date of the Dispatch Report and shall pay to the Authority, Damages equal to the product of 1.5 (one point five) times the Procurement Price and the quantity of Rejected Foodgrains, expressed in quintals, within 30 (thirty) days of the date of the Dispatch Report.

22.8.3 Notwithstanding anything to the contrary contained in this Article 22, the Parties agree that the quality of Foodgrains is likely to deteriorate with time and in the event Foodgrains are stored for more than 3 (three) years from the estimated date of their harvest, such Foodgrains shall not be liable to rejection on the ground that they are not in conformity with the Foodgrains Specifications. Provided, however, that the Authority may reject such Foodgrains if the Concessionaire shall have failed in undertaking the storage thereof in accordance with the provisions of this Agreement, Applicable Laws



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.F.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL



and Good Industry Practice, but only if such failure was notified and established by the Authority as and when it had occurred.

22.9 Handling of Bags

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

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भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 23

STORAGE OF FOODGRAINS

23.1 Storage of Foodgrains

- 23.1.1 The Concessionaire shall, prior to storage of Foodgrains in Silos, undertake screening and cleaning thereof in accordance with the provisions of this Agreement and Good Industry Practice.
- 23.1.2 Save as provided in this Agreement, the Concessionaire shall receive, process and store the Foodgrains at the Storage Facility in conformity with the processes specified in Schedule-Q and in accordance with Good Industry Practice.
- 23.1.3 The Concessionaire shall, at all times during the Operation Period, maintain and keep available, a ready stock of 200 (two hundred) MT of Foodgrains in Bags for immediate dispatch thereof upon receipt of a Dispatch Notice. For the avoidance of doubt, the Authority agrees that it shall undertake dispatch of Foodgrains such that no Foodgrains are stored in Bags for a period exceeding 9 (nine) months. The Authority further agrees that it shall pay to the Concessionaire Stacking Charges for the aforesaid stock at the rate specified in Clause 28.5.3.
- 23.1.4 The Concessionaire shall fumigate the Silos as often as required in accordance with Applicable Laws and Good Industry Practice, and in pursuance of instructions contained in schedule Q.

23.2 Storage on Covered Area Plinth

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



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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23.3 Handling Losses

The Authority acknowledges that after acceptance of Foodgrains pursuant to the provisions of Clause 22.3, the Concessionaire shall undertake cleaning and processing thereof in accordance with the provisions of this Agreement. The Parties expressly agree that the Authority shall disallow reduction on account of such cleaning and processing in the weight of Foodgrains (the "**Handling Losses**") delivered to the Concessionaire and that the Handling Losses shall be made good by the Concessionaire at the time of Dispatch.

23.4 Shortfall in Quantity

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

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

Explanation: The weight of Foodgrains stored in a Silo shall be determined as a factor of the volume of Foodgrains ascertained with reference to the scaled rulers specified in Schedule D. For this purpose, the Independent Expert shall, once every year, take a sample of Foodgrains of not less than 2 (two) cubic metres from the Silo (such sample to

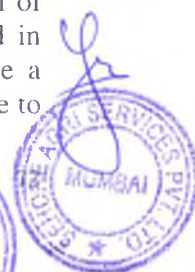


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director



be taken from different depths of the Silo at random, and not just from the surface) and weigh such sample to determine the volume to weight ratio. The volume to weight ratio so determined from the sample shall be extrapolated to the volume of Foodgrains stored in such Silo to determine the weight of Foodgrains therein. In determining the weight of Foodgrains hereunder, a margin of error of +/- 0.1% (plus/ minus zero point one per cent) shall be permissible with reference to the stock carried on the books of the Concessionaire and the Authority.

23.4.2 The Independent Expert shall:

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

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

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

23.4.3 If the Independent Expert shall determine any Shortfall under the provisions of this Clause 23.4, the Concessionaire shall pay to the Authority, Damages in accordance with the provisions of Clause 27.11, within 30 (thirty) days of the date of such determination.

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

23.5 Title, care and custody of Foodgrains

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

- (a) the sole and absolute property in the Foodgrains at the Storage Facility save and except foodgrains stored for and on behalf of third parties, shall at all times remain with the Authority and the Concessionaire shall provide a visible notification at the premises of the Storage Facility that such Foodgrains are owned by the Authority;
- (b) the Concessionaire agrees that nothing in this Agreement or under law shall confer in any circumstance, any right, title or interest in the Foodgrains or any part thereof, in favour of the Concessionaire and the Concessionaire agrees not to make any claim over the Foodgrains;
- (c) the Concessionaire shall store and handle the Foodgrains of the Authority, separate from any other foodgrain being stored in the Storage Facility in accordance with the provisions of this Agreement, and shall not undertake or permit any mingling or mixing thereof; and



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



- (d) the Concessionaire shall be liable for any loss or damage arising out of a breach by the Concessionaire of any of its obligations under this Agreement and it shall not be a defense for the Concessionaire to claim or plead that the standard of care required to be exercised by it as a bailee under Section 151 of the Indian Contract Act, 1872 is different from the standards set out in this Agreement.

23.6 Records of Storage Facility

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

23.7 Reporting of stocks

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

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

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ए.पी. वेआरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL

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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 24

KEY PERFORMANCE INDICATORS

24.1 Key Performance Indicators

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

24.2 Availability

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

24.3 Reliability

The reliability of the Storage Facility in any quarter shall be measured in terms of the number of Forced Closures occurring in the Storage Facility (the "Reliability"), but only if it is caused by any event other than Force Majeure, and the Concessionaire shall procure Reliability such that there are no more than 2 (two) Forced Closures in the Storage Facility in each quarter. In the event of a lower Reliability during any quarter, the Concessionaire shall pay Damages in accordance with the provisions of Article 27.

24.4 Shortfall

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

24.5 Monthly report

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

24.6 ISO certification

24.6.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, the applicable ISO certifications, including



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
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ISO /TS 22003:2007, or a substitute thereof for all the facilities at the Storage Facility, and shall provide a certified copy thereof to the Authority forthwith.

24.6.2 In the event of default in obtaining the certifications specified in Clause 24.6.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certifications for all facilities of the Storage Facility.

24.6.3 If the period of default in obtaining the ISO certifications under this Clause 24.6 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to 0.5% (zero point five per cent) of the Fixed Charge for every 1 (one) month of default beyond the aforesaid period of 3 (three) months.

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एम. के. आर. हाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Part IV
Financial Covenants

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सचिव
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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ARTICLE 25

FINANCIAL CLOSE

25.1 Financial Close

25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 60(sixty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding 90 (ninety) days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 60 (sixty) 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 solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

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

25.2 Termination due to failure to achieve Financial Close

25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.

25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.



ARTICLE 26

GRANT

26.1—Grant

26.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs. (Rupees)⁵, in accordance with the provisions of this Article 26 (the "Grant").

26.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 26.2, and the balance remaining, if any, shall be disbursed as O&M Support in accordance with the provisions of Clause 26.3.

26.2—Equity Support

26.2.1 Subject to the conditions specified in this Clause 26.2, the Grant shall be credited to the bank account specified by the Lenders' Representative and shall be applied by the Concessionaire for meeting the Total Project Cost (the "Equity Support").

26.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Authority, but shall in no case be greater than the Equity, and shall be further restricted to a sum not exceeding 20 % (twenty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 26.2.2 shall include Equity Support.

26.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Authority shall disburse each tranche of the Equity Support as and when due, but no later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

26.2.4 In the event of occurrence of a Concessionaire Default, disbursement of Equity Support shall be suspended till such Concessionaire Default has been cured by the Concessionaire.

26.2.5 Subject to the provisions of the Scheme of Financial Support to Public Private Partnership in Infrastructure as notified by the Central Government (the "Scheme for Financial Assistance"), the Authority shall, for funding the Grant specified in Clause 26.1.1, use its best endeavours and provide all reasonable support to the Concessionaire for obtaining viability gap funding under the Scheme for Financial Assistance. For the avoidance of doubt, it is expressly agreed that in the event of the Concessionaire being able to receive such viability gap funding for the Project, the same shall, for the purposes of this Agreement be deemed to be Grant by the Authority hereunder, to be disbursed in

⁵ The amount of Grant payable hereunder shall be determined by competitive bidding.



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

26.3 O&M Support⁵

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

26.3.2 The O&M Support shall be disbursed by the Authority in quarterly instalments and the first such instalment shall be released within 90 (ninety) days of COD. Each instalment shall be a sum equal to 5% (five per cent) of the Equity Support and such instalments shall be disbursed by the Authority until the Grant is exhausted. The O&M support shall be restricted to maximum of 20% (twenty percent) of the Total Project Cost.

PREMIUM

26.4 Premium

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

- (a) a sum of Rs. 1,00,000 (Rupees One Lac) as Premium for the 1st (first) year of the Concession Period; and
- (b) for each subsequent year of the Concession Period, the Premium shall be determined by increasing the amount for the respective year by 10% (ten per cent) as compared to the immediately preceding year. For the avoidance of doubt, and by way of illustration, if the Premium for the first year is Rs. 1 (one) crore, the Premium for the 2nd (second) and 3rd (third) years shall be equal to Rs. 1.10 cr. (Rupees one crore and ten lakh) and Rs. 1.21 cr. (Rupees one crore and twenty one lakh) respectively.}

⁵Clause 26.3 shall be omitted if the Grant determined by competitive bidding is 20% or less.

ARTICLE 27

STORAGECHARGES

27.1 StorageCharges

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

27.2 Base Fixed Charge

27.2.1 The monthly base fixed charge for the Accounting Year in which COD occurs shall be the product of Rs 57.5 (Rupees fifty seven and paise fifty) and the Normative Availability (the "Base Fixed Charge") for and in respect of the Normative Availability of Storage Capacity for the relevant month, and the same shall be revised annually in accordance with the provisions of this Article 27. For the avoidance of doubt, the Parties agree that the Base Fixed Charge for a part of any month shall be determined on a proportionate basis. The Parties further agree that the Base Fixed Charge hereunder has been fixed with reference to WPI as on April 1, 2013. By way of illustration, the Parties agree that if the Normative Availability is 9,800 MT, the Base Fixed Charge shall be the product of Rs. 57.5 and 9,800 i.e. Rs. 5,63,500 (Rupees five lakh sixty three thousand and five hundred).

27.2.2 The Base Fixed Charge for the Accounting Year in which COD occurs shall be the sum specified in Clause 27.2.1, and for each subsequent Accounting Year, the applicable Base Fixed Charge shall be determined by decreasing the Base Fixed Charge for the immediately preceding Accounting Year by 1% (one per cent) thereof. For the avoidance of doubt and by way of illustration, the Base Fixed Charge for the Accounting Year in which COD occurs shall be the amount specified in Clause 27.2.1 and for the second and third Accounting Years it shall be a sum equal to 99% (ninety nine per cent) and 98.01% (ninety eight point zero one per cent) respectively of the amount specified in Clause 27.2.1.

27.3 Fixed Charge

The Base Fixed Charge determined in accordance with Clause 27.2.2 shall be revised annually to reflect the variation in WPI occurring between the Reference Index Date for March of the year specified in Clause 27.2.1 and the Reference Index Date for the month of March preceding the Accounting Year for which such revision is undertaken, but such revision shall be restricted to 75% (seventy five per cent) of the variation in WPI (the "Fixed Charge"). For the avoidance of doubt and by way of illustration, if the WPI increases by 10% (ten per cent) between the Reference Index Dates for March [2013] and March 2014, the Fixed Charge for the Accounting Year commencing from April 1, 2014

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



shall be 107.5% (one hundred and seven point five per cent) of the Base Fixed Charge for that Accounting Year.

27.4 Variable Charge

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

27.4.2 The Variable Charge for storage of Foodgrains shall be Rupees Rs. 0.50 (zero point five) per quintal per month for Foodgrains actually stored in the Storage Facility for any month or part thereof in the Accounting Year in which COD occurs and shall be revised annually to reflect the variation in WPI occurring between the Reference Index Date for March of the year specified in this Clause 27.4.2 and the Reference Index Date for the month of March preceding the Accounting Year for which such revision is undertaken, but such revision shall be restricted to 75% (seventy five per cent) of the variation in WPI. For the avoidance of doubt the Parties agree that the Variable Charge hereunder has been fixed with reference to WPI as on April 1, 2013..

27.5 Computation of Storage Charge

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

27.6 Service Charges

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

27.7 Procurement Centre

Upon notification of the Storage Facility as a centre for procurement of Foodgrains during the Harvest Season (the "Procurement Centre") in accordance with the extant procurement arrangements of the State Government, the Authority shall pay to the Concessionaire charges calculated at the rate of Rs.13.50 (Rupees thirteen and paisa fifty) per quintal, or as per the applicable rate specified by the Authority from time to time.

Declaration of Availability

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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ENGINEER
M.P.WLC



of the cause or circumstances leading to a reduction in Availability, declare to the Authority forthwith the extent of Non-Availability with the particulars and period thereof.

27.8.2 The Concessionaire shall notify, no later than 15 (fifteen) days prior to the commencement of a month, its maintenance schedule for that month and any reduction in Availability arising as a result thereof. The Concessionaire shall, as soon as may be, notify any modifications of its maintenance schedule and shall confirm, with or without modifications, the reduction in Availability no later than 72 (seventy two) hours prior to its occurrence.

27.8.3 In the event that the Availability at any time is determined to be lower than 100% (one hundred per cent) of the Storage Capacity, or less than the reduced Availability notified under Clause 27.8.2, an event of mis-declaration of Availability (the "Mis-declaration") shall be deemed to have occurred and Availability for the relevant Accounting Year shall, for the purposes of payment of Fixed Charge, be deemed to be reduced as if the Mis-declaration had occurred for a period of 6 (six) months during that Accounting Year. For the avoidance of doubt, the Parties agree that deductions on account of Mis-declaration shall be made from the subsequent payments due to Concessionaire under this Agreement.

27.8.4 Notwithstanding the provisions of Clause 27.8.3, any reduction in Availability arising out of decommissioning due to Emergency or a Force Majeure Event or any cause specified in Clause 17.15 shall not be deemed to be Mis-declaration if the Concessionaire shall have notified the Authority in accordance with the provisions of Clauses 17.7, 17.15 or 34.5, as the case may be.

27.9 Incentives and Damages for Availability

27.9.1 In the event that the Availability in any month exceeds the Normative Availability, the Concessionaire shall be entitled to payment of an Incentive which shall be calculated on a pro rata basis equivalent to one half of the proportion that the Fixed Charge bears to the Normative Availability. For the avoidance of doubt and by way of illustration, the Parties agree that if the pro rata Fixed Charge for Availability of 1% (one per cent) in excess of Normative Availability is Rs.x, the incentive payable for Availability of 0.8% (zero point eight per cent) in excess of Normative Availability shall be Rs. 0.4x. The Parties further agree that the incentive shall not be due or payable for more than 1% (one per cent) in excess of the Normative Availability.

27.9.2 In the event that Availability at any time is less than the Normative Availability, the Fixed Charge payable for the relevant month shall be proportionately reduced and in addition, such reduction shall be multiplied by a factor of 0.5 (zero point five) for determination of Damages. Provided that the aforesaid factor of 0.5 (zero point five) shall be deemed to be 2 (two) during the period of Harvest Season. For the avoidance of doubt and by way of illustration, the Parties agree that if the pro rata Fixed Charge for 1% (one per cent) of Normative Availability is Rs. x, the Damages payable for reduction of 1% (one per cent) in Availability below the level of Normative Availability shall be Rs. 0.5x, which shall be



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



in addition to the pro rata reduction of Rs. x in the Fixed Charge payable for the relevant month. Provided that the Damages payable during the Harvest Season shall be Rs. 2x.

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

27.10 Damages for lower Reliability

In the event that the Reliability in a quarter exceeds 2 (two) Forced Closure in the Storage Facility, the Concessionaire shall pay to the Authority Damages equal to 2.5% (two point five per cent) of the Fixed Charge payable for the Storage Facility in accordance with the provisions of Clause 27.3 for each such Forced Closure in excess of 2 (two).

27.11 Damages for Shortfall

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

- (a) Procurement Price plus 50% (fifty per cent) thereof;
- (b) the highest wholesale price at which a transaction of sale of Foodgrains occurred during the preceding 6 (six) months at the nearest wholesale market for Foodgrains; and
- (c) the relevant Economic Cost published by FCI.

27.12 Audit and payment of Incentives and Damages

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

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

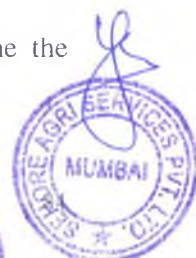


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EXECUTIVE ENGINEER
MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



27.12.2 Upon completion of the audit under the provisions of Clause 27.12.1, the Independent Expert shall compute and communicate to the Concessionaire and the Authority, by written notice, the Incentives or Damages, as the case may be, payable to or by the Concessionaire, as the case may be, in accordance with the provisions of Clauses 27.9, 27.10 and 27.11.

27.12.3 The Parties agree that the Incentives or Damages, as the case may be, shall be due and payable within 30 (thirty) days of the date of their determination by the Independent Expert under this Clause 27.12 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year. The Parties further agree that the Authority shall be entitled to set off the Damages against the Storage Charges or any other amounts payable by the Authority during the subsequent months.

27.12.4 The payment of Damages under this Clause 27.12 shall relieve the Concessionaire of its obligation to make good any losses of Foodgrains, save and except as expressly provided in this Agreement.

27.13 Taxes and duties

27.13.1 It is expressly agreed by the Parties that the Storage Charges shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 27.13.2. It is further agreed that the Concessionaire shall pay all taxes and duties, including the taxes and duties specified in Clauses 27.13.2, in accordance with Applicable Laws.

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

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

27.14 Billing and Payment

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
GIPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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म.प्र. वरहाडसिंह एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

27.14.2 The Concessionaire shall, with each Monthly Invoice submit, (i) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (ii) proof of Availability for the period billed; (iii) official documents in support of the variation in WPI as specified in Clauses 27.3 and 27.4; (iv) detailed calculations of the Storage Charges in accordance with Article 27; (v) detailed calculations of the Incentives and/or Damages to the extent provided by the Independent Expert in accordance with the provisions of Clause 27.12; (vi) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (vii) details of the Revenue Share payable by the Concessionaire in respect of use of the Unutilised Capacity and De-reserved Capacity (viii) details in respect of other Damages payable in accordance with the provisions of this Agreement; and (ix) the net amount payable under the Monthly Invoice.

27.14.3 The Authority shall, within 15 (fifteen) days of receipt of a Monthly Invoice in accordance with Clause 27.14.1 (the "**Payment Due Date**"), make payment of the amount claimed directly, through electronic transfer, to the designated bank account of the Concessionaire, save and except any amounts which it determines as not payable or disputed (the "**Disputed Amounts**").

27.14.4 All Damages and any other amounts due and payable by the Concessionaire in accordance with the provisions of this Agreement may be deducted from the Storage Charges due and payable to the Concessionaire and in the event the deductions hereunder exceed the Storage Charges in that month, the balance remaining shall be deducted from the Storage Charges due and payable to the Concessionaire for the immediately following month.

27.15 Disputed amounts

27.15.1 The Authority shall, within 10 (ten) days of receiving an invoice, notify the Concessionaire of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Authority shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

27.15.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 27.16.

27.16 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 27.14. In the event of delay



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



beyond such period, the Authority shall pay interest for the period of delay, calculated at the rate specified In Clause 47.4.1.

27.17 Discount for early payment

The Parties expressly agree that in the event the Authority pays the Storage Charges within 7 (seven) days of the date of submission of the invoice thereof, the Authority shall be entitled to deduct 0.5% (zero point five per cent) of the amount specified in the Monthly Invoice by way of discount for early payment.

म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
बोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 28

SERVICE CHARGES

28.1 Associated Services

28.1.1 The Concessionaire shall provide associated services including Unloading, Debagging, Drying, Cleaning, Bagging and Loading of Foodgrains, and such other services as may be mutually agreed between the Parties, in accordance with the provisions of this Agreement (the "Associated Services").

28.1.2 The Concessionaire shall, at its own cost, procure, maintain and operate the facilities and equipment required for providing Associated Services in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

28.1.3 The charges payable for the Associated Services shall include the Unloading Charges, Drying Charges, Cleaning Charges, Bagging Charges, Loading Charges, Stacking Charges, Bulk Unloading Charges, Bulk Loading Charges and such other charges as the Parties may mutually agree upon (the "Service Charges").

28.2 Unloading and Debagging of Foodgrains

28.2.1 Upon arrival of a Vehicle for delivery of Foodgrains at the Storage Facility, the Concessionaire shall undertake the unloading thereof in accordance with the provisions of this Agreement and Good Industry Practice (the "Unloading").

28.2.2 If the Foodgrains are delivered in Bags, the Concessionaire shall open the same for transfer of the Foodgrains to elevator hoppers of the Silos and shall roll up empty Bags and load them back on the respective Vehicles in accordance with the provisions of this Agreement and Good Industry Practice (the "Debagging").

28.2.3 The Authority shall pay to the Concessionaire charges for Unloading and Debagging, including sampling, testing and weighment, calculated at the rate of Rs. 2.25 (Rupee two and paise twenty five) per quintal (the "Unloading Charges").

28.2.4 In the event the Foodgrains delivered at the Storage Facility do not require any Debagging and are transferred directly from Vehicles to the Storage Facility, the Authority shall pay to the Concessionaire charges for sampling, testing and weighment, calculated at the rate of Re. 1.25 (Rupees one and paise twenty five) for every quintal equivalent of Foodgrains unloaded (the "Bulk Unloading Charges").

28.3 Drying of Foodgrains

28.3.1 In the event of the Intake Report determining that the Foodgrains contain moisture in excess of the limit specified in Clause 22.4.1, but such excess is within a limit of 0.5% (zero point five per cent) of the weight of Foodgrains, the Concessionaire shall



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EXECUTIVE ENGINEER
MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
RHOPL (M.F.)

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



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

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

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

28.4 Cleaning of Foodgrains

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

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

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

28.5 Bagging of Foodgrains

28.5.1 If the Authority requires delivery of Foodgrains in Bags, the Concessionaire shall transfer Foodgrains into Bags, duly stitched and stencilled, in accordance with the provisions of this Agreement and Good Industry Practice (the "Bagging").

28.5.2 The Authority shall pay to the Concessionaire charges for Bagging, including stitching and evacuation, calculated at the rate of Rs. 2 (Rupees two) per quintal (the "Bagging Charges").



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL

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28.5.3 The Authority shall pay to the Concessionaire charges for stacking of Bags calculated at the rate of Rs. 1.25 (Rupees one and paisa twenty five) per quintal (the "Stacking Charges").

28.6 Loading of Foodgrains

28.6.1 In the event the Dispatch Notice requires the Concessionaire to undertake Loading of Foodgrains, the Concessionaire shall, upon arrival of Vehicles for loading and dispatch of Foodgrains, undertake loading thereof in accordance with the provisions of this Agreement and Good Industry Practice (the "Loading").

28.6.2 The Authority shall pay to the Concessionaire charges for Loading calculated at the rate of Rs. 1.53 (Rupee one and paisa fifty three) per quintal for loading directly on a Vehicle and where breaking of stacks is required, the charges shall be Rs. 2.50 (Rupee two and paisa fifty) per quintal (the "Loading Charges").

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

28.7 Turn-around of Vehicles

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

28.8 Revision of Charges

Each of the charges specified in this Article 28 have been determined with reference to April 1, 2012 and shall be revised annually to reflect the variation in WPI to the extent of 75% (seventy five per cent) thereof, occurring between the Reference Index Date for March of the year in which the Bid was submitted and the Reference Index Date for the month of March preceding the Accounting Year for which such revision is undertaken.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



28.9 Billing and Payment

The provisions of Clauses 27.13 to 27.17 shall apply *mutatis mutandis* to billing and payment of Service Charges.

म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
बोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 29

PAYMENT SECURITY

29.1 Letter of Credit

- 29.1.1 The Authority shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Concessionaire, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to 125% (one hundred twenty five per cent) of the Fixed Charge payable for Normative Availability of the Storage Facility during a period of 1 (one) month (the "Letter of Credit"), which may be drawn upon by the Concessionaire for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-R and shall come into effect on COD, and shall be modified once every 2 (two) years to reflect the revision in Fixed Charge in accordance with the provisions of this Agreement.
- 29.1.2 The Letter of Credit shall be procured by the Authority from a bank where at least 40% (forty per cent) of the Authority's total monthly revenues are normally deposited. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Authority.
- 29.1.3 In the event of Authority's failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Concessionaire may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Bank that has issued the Letter of Credit shall, without any reference to the Authority, pay the amount due, upon the Concessionaire presenting the following documents, namely:
- (i) a copy of the Monthly Invoice which has remained unpaid; and
 - (ii) a certificate from the Concessionaire to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due has remained unpaid.
- 29.1.4 In the event that the amount covered by the Letter of Credit is at any time less than the amount specified in Clause 29.1.1 or is insufficient for recovery of payment due against the Monthly Invoice, the Authority shall, within a period of 15 (fifteen) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 29.1.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Fixed Charge, except to give effect to such revision once in every 2 (two) years.
- 29.1.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

सचिव
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कापिल
भोपाल

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Copy - 16th Nov. 13

EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



29.2 Third party usage of Storage Capacity

29.2.1 In the event the Concessionaire is unable to recover its Storage Charges through the Letter of Credit, and if the Storage Charges or part thereof remain unpaid for a period of 1 (one) month from the Payment Due Date, then notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall have the right to use the whole or part of the Storage Capacity for storage of Foodgrains or other commodities on behalf of third parties and to levy and appropriate the charges therefor. Upon payment of the outstanding dues and restoration of the Letter of Credit, the Authority may require the Concessionaire to restore the rights of the Authority to use the Storage Facility after commencement of the following Harvest Season or from such earlier date as the Parties may mutually agree upon.

29.2.2 The use of Storage Capacity pursuant to Clause 29.2.1 shall not extinguish any liability of the Authority or any claim that the Concessionaire may have against the Authority, save and except to the extent of any amounts recovered under the provisions of Clause 29.2.1.

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भ.प्र. के.आर.हाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 30

UTILISATION OF CAPACITY

30.1 Utilisation of Storage Capacity

30.1.1 Storage Capacity shall be deemed to be earmarked and reserved for exclusive utilisation by the Authority, and the Concessionaire shall be entitled to receive payment of Storage Charges for Availability thereof in accordance with the provisions of this Agreement. Provided, however, that at any time after the 10th (tenth) anniversary of COD, the Authority may, by a notice of at least 6 (six) months, release and de-reserve one or more Silos comprising the Storage Capacity and thereupon the obligation of the Authority to pay Storage Charges for such released and de-reserved Storage Capacity, and the obligations of the Concessionaire to provide Storage Capacity and Storage Services to the Authority shall cease from the date on which such notice takes effect, save and except as provided in Clause 30.1.2.

30.1.2 At any time after the release of Storage Capacity pursuant to the provisions of Clause 30.1.1, the Authority may, by a notice of at least 6 (six) months, require the Concessionaire to earmark and reserve one or more Silos comprising the whole or part of Storage Capacity, for a period of 1 (one) year or more. From the date on which such notice takes effect, the Storage Capacity, to the extent specified in the notice, shall be deemed to be earmarked and reserved for utilisation by the Authority and the Concessionaire shall be entitled to receive payment of Storage Charges for Availability thereof in accordance with the provisions of this Agreement.

30.1.3 In the event that any part of the Storage Capacity earmarked and reserved for the Authority in accordance with the provisions of Clause 30.1.1 is not utilised by the Authority or its nominees, the same shall be deemed to be unutilised capacity (the "Unutilised Capacity"), but only for the period when it is not being utilised or is not scheduled for utilisation by the Authority. The Concessionaire may, subject to the provisions of this Agreement, let out the Unutilised Capacity for storage of foodgrains belonging to third parties; provided that the revenues from use of Unutilised Capacity hereunder shall be subject to payment of Revenue Share under and in accordance with the provisions of Clause 30.3. For the avoidance of doubt, the Parties agree that the Concessionaire shall determine the quantum of Unutilised Capacity with prior approval of the Authority.

30.1.4 Subject to the provisions of Clause 30.1.1, the Parties expressly acknowledge and agree that the Authority may utilise, or cause to be utilised, the Storage Capacity for storage of Foodgrains owned by any other public or private entity; provided, however, that the Authority shall at all times be responsible and liable for discharging all its obligations under this Agreement, including the payment of Storage Charges and Service Charges.

30.1.5 The Parties expressly acknowledge and agree that any Storage Capacity which is released and de-reserved by the Authority (the "De-reserved Capacity.") in accordance with this Agreement may be hired out by the Concessionaire to third parties, and , and the revenues therefrom shall be deemed to be revenues from De-reserved Capacity on which



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



a revenue share will be due and payable by the Concessionaire to the Authority in accordance with the provisions of Clause 30.2.2.

30.2 Obligation to share revenues

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

30.2.2 The Concessionaire shall pay to the Authority, 10% (ten per cent) of the gross revenues, including the proceeds of any rentals, deposits, capital receipts or insurance claims, received in each month for and in respect of the De reserved Capacity (the **"Revenue Share from De-reserved Capacity"**.) which shall be set off against the Storage Charges payable by the Authority for that month.

30.2.3 In the event of any dispute relating to the Revenue Share from Unutilised Capacity and Revenue Share from De-reserved Capacity, the Dispute Resolution Procedure shall apply.

30.3 Revenue Statement

30.3.1 During the Operation Period, the Concessionaire shall furnish to the Authority, within 7 (seven) days of completion of each month, a statement of the charges and other receipts from Unutilised Capacity and the Revenue Share from Unutilised Capacity, substantially in the form set forth in Schedule-S (the **"Revenue Statement for Unutilised Capacity"**) and the charges and other receipt from De-reserved Capacity, substantially in the form set forth in Schedule-T (the **"Revenue Statement for De-reserved Capacity"**). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions and contractual rights hereunder.

30.3.2 The Concessionaire shall, for each Accounting year, consolidate the Revenue Statements for Unutilised Capacity and provide 2 (two) copies thereof, duly certified by the Statutory Auditor, to the Authority within 60 (sixty) days of the close of that Accounting Year.

30.4 Negotiable warehousing receipts

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



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

ARTICLE 31

ESCROW ACCOUNT

31.1 Escrow Account

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

31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "Escrow Agreement") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-X.

31.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package
- (b) all revenues from the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payment by the Authority, including the Storage Charges and Service Charges.

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

31.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of Project ;
- (b) all payments relating to construction of the Project subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;



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EMCOU / P. SHREE
MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Storage Agreement and certified by the Authority as due and payable to it;
- (e) any other amounts due and payable to the Authority, including Revenue Share from Unutilised Capacity and De-reserved Capacity, to the extent not set off in accordance with the provisions of this Agreement;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) Premium due and payable to the Authority;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Storage Agreement;
- (i) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire

31.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Revenue Share and any other amounts due and payable to the Authority;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Storage Agreement, including {Premium} and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Storage Agreement;



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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(Arun Pandey) MPWLC
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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भोपाल

- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Storage Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.

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म.प्र. के.एस.एल.एस. एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 32 INSURANCE

32.1 Insurance during Concession Period

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

32.2 Insurance Cover

Without prejudice to the provisions contained in Clause 32.1.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

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

32.3 Insurance for Foodgrains

Subject to the provisions of Clause 32.4, the Concessionaire shall effect and maintain, during the Operation Period, such insurances for such maximum sums as may be specified by the Authority to cover any shortfall in or loss of Foodgrains and such other insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary

म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोम्बे
सचिव



Chief Engineer
M.P. Warehousing & Logistics Corporation
BOMBAY (M.P.)

Final Copy 15th Nov. 13

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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

32.4 Notice to the Authority

No later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.5 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

32.6 Remedy for failure to insure

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

Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 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.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

Final Copy - 16th Nov. 13

EXECUTIVE MEMBER
MPVLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



32.8 Concessionaire's waiver

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

32.9 Application of insurance proceeds

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

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एम्.पी. वॉरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 33

ACCOUNTS AND AUDIT

33.1 Audited accounts

33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the revenues from Storage Charges, Variable Charges, Service Charges, charges for Unutilised Capacity, De-reserved Capacity and all incomes derived/collected by it from or on account of the Storage Facility and/or its use), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

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

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Fixed Charge, (b) receipts on account of Variable Charges, (c) receipts on account of Service Charges, (d) revenues from Unutilised Capacity, (e) revenues from De-reserved Capacity and (f) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

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

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

33.2.3 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.

~~{33.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.}~~

33.3 Certification of claims by Statutory Auditors

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

33.4 Set-off

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

33.5 Dispute resolution

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

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Part V

Force Majeure and Termination

सचिव
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 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 (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Storage Facility);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Storage Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver any critical equipment required for the Storage Facility and not available in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Order 15th Nov. 13

EXECUTIVE ENGINEER

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



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

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

34.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) 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;
- (c) any civil commotion, boycott or political agitation which prevents operation of the Storage Facility by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

34.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOBAL (M.P.)

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MEMBER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOBAL



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Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

34.5.1 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 34 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.

34.5.2 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.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 25.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event .



Chief Engineer
M.P. Warehousing & Logistics Corporation (Arun Pandey)
BHOPAL (M.P.)

Final Copy - 15th Nov. 13

EXECUTIVE ENGINEER
PWLC

Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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

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

34.7 Allocation of costs arising out of Force Majeure

34.7.1 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.

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

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fixed Charge, Variable Charges, Service Charges, revenues from Unutilised Capacity, revenues from De-reserved Capacity or debt repayment obligations, and for



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Copy - 15th Nov. 13

ENGINEER
MPLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



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determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

34.7.3 Notwithstanding anything contained in this Clause 34.7, if during the occurrence of a Force Majeure Event, the Storage Capacity or part thereof is deemed available for any reason whatsoever, the Authority shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Clause 34.7.

34.7.4 Save and except as expressly provided in this Article 34, 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.

34.8 Compensation for loss of Foodgrains due to Force Majeure Event

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

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

34.9 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 34, 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.

34.10 Termination Payment for Force Majeure Event

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

Final Copy - 15th Nov. 13

EXECUTIVE ENGINEER
MPWLC



(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



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

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

34.10.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were an Authority Default.

34.11 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.

34.12 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.

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म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 35.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.4, in the event of the Authority being in material breach or default of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material breach or default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss on account of Storage Charges, Variable Charges, Service Charges and revenues from Unutilised Capacity or De-reserved Capacity, debt repayment obligations, or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.4 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.

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)


(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

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

36.2 Authority to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all revenues under and in accordance with this Agreement, and appropriate the same for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension. Any balance remaining after meeting the aforesaid expenditure shall be deposited in a bank account to be designated by the Concessionaire. For the avoidance of doubt, the Authority shall continue to pay the Fixed Charge, Variable Charges and Service Charges under and in accordance with this Agreement and deposit the same in the aforesaid designated bank account after appropriating the expenses and costs specified hereinabove.

36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Storage Facility and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

स्मृति
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



36.3 Revocation of Suspension

36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the¹ Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

सचिव
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोपाल

(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 37 TERMINATION

37.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 90 (ninety) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Storage Facility without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

सचिव
म.प्र. के.आर.वा.सि. एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोम्बे



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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

सचिव
म.प्र. के.आर.हाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

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

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 37.1.3.

The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)

Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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

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

37.2 Termination for Authority Default

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Letter of Credit, within the period specified in this Agreement; or
- (c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

37.3 Termination Payment

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



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



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बोपाल

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

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD, save and except as provided in Clause 37.3.3.

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

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

37.3.3 Upon Termination on account of Concessionaire Default at any time prior to COD, no Termination Payment shall be due and payable for expenditure comprising the first 40% (forty per cent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty per cent), the provisions of Clause 37.3.1 shall, to the extent applicable to Debt Due, apply for and in respect of such excess expenditure. For the avoidance of doubt and by way of illustration, if the total expenditure incurred prior to the Transfer Date is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 37.3.3, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 48.1.

37.3.4 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Storage Facility, shall have been acquired and installed after the 10th (tenth) anniversary of COD, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 37.5.1, be made by the Authority to the Concessionaire.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
M.W.L.C.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



37.3.6 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 37.3.5, in the event any Project Assets, essential for the efficient, economic and safe operation of the Storage Facility, shall have been acquired and installed after the 10th (tenth) anniversary of COD, with prior written consent of the Authority, which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

37.3.7 The Concessionaire expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.4 Certain limitations on Termination Payment

37.4.1 Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

37.5 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Storage Facility forthwith;
- (b) take possession and control of all Foodgrains, materials, stores, implements, construction plants and equipment on or about the Storage Facility;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Storage Facility or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
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accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.7, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

सचिव
एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल
म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

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

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

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



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

38.2 Inspection and cure

38.2.1 Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.2.2 Immediately before the Transfer Date, the Independent Expert shall conduct an audit, in the presence of the Authority Representative and the representative of the Concessionaire, to determine the Shortfall, if any, in accordance with the provisions of Clause 23.4.1, and the Shortfall so determined shall be dealt with in accordance with the provisions of Clause 23.4.3. The Independent Expert shall prepare an inventory of the Foodgrains stored at the Storage Facility and such inventory shall be signed by the Authority Representative and the representative of the Concessionaire in verification thereof. Upon completion of the audit, the Authority shall be deemed to have taken possession and control of the Foodgrains stored at the Storage Facility.

38.3 Cooperation and assistance on transfer of Project

38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Storage Facility.

38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

म.प्र. वेशाहावासिंग एंजिनिस्टिक कॉर्पोरेशन
सचिव
मुंबई


Chief Engineer
M.P. Warehousing & Logistics Corporation
MUMBAI (M.P.)

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ENGINEER

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
MUMBAI



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38.4 Vesting Certificate

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

38.5 Divestment costs etc.

38.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

38.5.2 In the event of any Dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.

सचिव
अ.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Storage Facility for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Storage Facility during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Storage Facility conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained by the Authority in accordance with the provisions of Clause 39.2 or the Performance Guarantee, as the case may be.

39.2 Retention of Fixed Charge

39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 5 (five) times the monthly Fixed 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 Clause 39.1.

39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Expert shall carry out an inspection of the Storage Facility at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Storage Facility is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained by the Authority and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained by the Authority.

39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "**Performance Guarantee**"), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds by the Authority in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

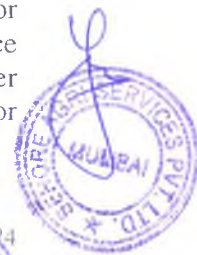
Final Copy - 16th Nov. 13

EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

M.P. Warehousing & Logistics Corporation
BHOPAL



Part VI Other Provisions

सचिव
ए.प्र. वॉरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL

Final Copy 25th Nov. 13

EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 40

ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

- 40.1.1 Subject to the provisions of Clauses 40.2, 40.3 and 40.4, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Storage Facility;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Storage Facility, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Storage Facility;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

- 40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-W.
- 40.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Final Copy - 18th Nov. 13

ENGINEER
M.P.WLC

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation



for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

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

40.4.2 Any assignment under this Article 40 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Final Copy - 15th Nov. 13

EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 41 CHANGE IN LAW

41.1 Increase in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.2 Reduction in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.3 Protection of NPV

Pursuant to the provisions of Clauses 41.1 and 41.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 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.

41.5 No claim in the event of recovery from Users

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

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रा. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
बोम्बे

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

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

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

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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



(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Storage Facility, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 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 42 (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.

42.4 Defence of claims

42.4.1 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 42, 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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



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.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, 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).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 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.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, 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.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

ARTICLE 43

43.1 Licensee rights

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

43.2 Access rights of the Authority and others

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

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

43.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Licensed Premises; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

43.4 Restriction on sub-letting

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

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL

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Chief Engineer
Housing & Logistics Corporation
BHOPAL (M.P.)



ARTICLE 44

DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.

44.1.2 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.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to Managing Director of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "Rules"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Bhopal, and the language of arbitration proceedings shall be English.

44.3.2 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.



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOHAL
15th Nov. 13

EXECUTIVE ENGINEER
MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation



44.3.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

44.3.5 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.

44.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such tribunal in accordance with the Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Final Order - 15th Nov. 13

EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

ARTICLE 45 DISCLOSURE

45.1 Disclosure of Specified Documents

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

45.2 Disclosure of Documents relating to safety

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

45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, but subject to the Applicable Laws, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

सचिव
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 46
REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

46.1.1 The Concessionaire shall maintain a complaints office at the Storage Facility where it shall keep a register (the "**Complaint Register**") open to the officials of the Authority and Users at all times for recording of complaints by such persons (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Storage Facility so as to bring it to the attention of all Users.

46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

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



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



ARTICLE 47

MISCELLANEOUS

47.1 Governing law and jurisdiction

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

47.2 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).

47.3 Depreciation

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

47.4 Delayed payments

- 47.4.1 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. 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



Chief Engineer
M.P. Warehousing & Logistics Corporation

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

47.4.2 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.

47.5 Waiver

47.5.1 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.

47.5.2 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.

47.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Storage Facility nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.7 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.

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एन.ए. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



47.8 Survival

47.8.1 Termination shall:

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

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

47.9 Entire Agreement

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

47.10 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 the Dispute Resolution Procedure set forth under this Agreement or otherwise.

47.11 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.

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EXECUTIVE ENGINEER
MPVLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



47.12 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.

47.13 Successors and assigns

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

47.14 Notices

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

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

Attention:

{ Designation:

Address:

Fax No:

Email: }

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

{ Address:

Fax No:

Email: },



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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EXECUTIVE ENGINEER
MPWLC



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(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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.

47.15 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.

47.16 Counterparts

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

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भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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ENGINEER
MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
Bhopal, M.P.

ARTICLE 48

DEFINITIONS

48.1 Definitions

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

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

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

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; 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 0.42% (zero point four two per cent)¹ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees. 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; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the

¹ This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be $100/240 = 0.416$ rounded off to two decimal points i.e. 0.42.



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

Final Copy 16th Nov. 13

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

EXECUTIVE ENGINEER
MPWLC



Concession Period is extended, but the revision on account of WPI shall continue to be made;

"Affected Party" shall have the meaning set forth in Clause 34.1;

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

"Appendix" shall have the meaning set forth in Clause 10.3.1;

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

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

"Appointed Date" means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine. For the avoidance of 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, as the case may be, the Appointed Date shall be deemed to occur only when each and every Condition Precedent is either satisfied or waived, as the case may be;

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

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

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

"Associated Services" shall have the meaning set forth in Clause 28.1.1;

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



“**Authority Default**” shall have the meaning set forth in Clause 37.2.1;

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

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

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

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

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

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

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

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

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

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

“**Bid**” means the documents in their entirety comprised in the bid submitted by the selected Consortium in response to the Request for Proposals in accordance with the provisions thereof;



"Bid Security" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. 50,00,000 (Rupees fifty lakh), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"Bulk Unloading Charges" shall have the meaning set forth in Clause 28.2.4;

"CAP" or "Covered Area Plinth" means the storage of Foodgrains in the open with adequate precautions such as rat and dump proof plinths, use of dunnage and covering of stacks with specially fabricated polythene covers.

"COD" or "Commercial Operation Date" shall have the meaning set forth in Clause 15.1;

"Change in Law" means the occurrence of any of the following after the date of Bid:

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Consortium Members, together with {its/their} Associates in the total Equity to decline below (i) 33% (thirty three percent) thereof during the Construction Period and a period of 2 (two) years following COD, and (ii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of any Consortium Member to the total Equity, if it occurs prior to the first anniversary of COD, shall constitute Change in Ownership;

"Change of Scope" shall have the meaning set forth in Clause 16.1;

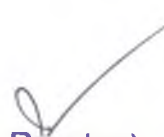
"Cleaning" means the process of reduction of foreign material (such as dust, fibre, stones or other foreign particles) from the Foodgrains, to be carried out at the Storage Facility, in accordance with the provisions of this Agreement and **"Clean"** shall be construed accordingly;


"Cleaning Charge" means the fee in Rupees per quintal as specified in Clause 28.4.3;

"Company" means the company acting as the Concessionaire under this Agreement;

"Completion Certificate" shall have the meaning set forth in Clause 14.2;

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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

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

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

“**Concessionaire Default**” shall have the meaning set forth in Clause 37.1.1;

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

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

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

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

“**Construction Works**” means all works and things necessary to construct and complete the Storage Facility in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Storage Facility or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

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

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

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

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



"Damages" shall have the meaning set forth in Sub-clause (x) of Clause 1.2.1;

"Debugging" shall have the meaning set forth in Clause 28.2.2;

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

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

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

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

"De-Reserved Capacity" shall have the meaning set forth in Clause 30.1.5;

"Development Period" means the period from the date of this Agreement until the Appointed Date;

"Dispatch Notice" shall have the meaning set forth in Clause 22.1.1;

"Dispatch Report" shall have the meaning set forth in Clause 22.6.3;

"Dispute" shall have the meaning set forth in Clause 44.1.1;

"Disputed Amounts" shall have the meaning set forth in Clause 27.14.3;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 44;

"Divestment Requirements" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

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एन.पी. वॉरहाउसिंग & लॉजिस्टिक्स कॉर्पोरेशन
भोपाल
सा. 2/0813

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOBAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOBAL



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

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

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

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

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

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

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

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

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

“Escrow Account” means an Account which the concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement, and includes the Sub-Accounts of such Escrow Account;

“Escrow Agreement” shall have the meaning set forth in clause 31.1.2;

“Escrow Bank” shall have the meaning set forth in clause 31.1.1;

“Escrow Default” shall have the meaning set forth in Schedule-X;



“FCI” means the Food Corporation of India;

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

“Financial Default” shall have the meaning set forth in Schedule-W;

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

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

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

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

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

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

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

“Force Majeure” or “Force Majeure Event” shall have the meaning ascribed to it in Clause 34.1;

“Forced Closure” means a complete or partial shutdown of any Silo of the Storage Facility due to a fault or any other reason, if it reduces Availability by more than 1% (one per cent) of the total StorageCapacityduring a continuous period of 24 (twenty four) hours;

“GOI” means the Government of India;

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

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म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)


(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



safe, economic, reliable and efficient construction, operation and maintenance of the Storage Facility and for providing safe, economic, reliable and efficient Storage Services;

"Government" means the Government of the State;

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

"Grant" shall have the meaning set forth in Clause 26.1.1;

"Handling Losses" shall have the meaning set forth in Clause 23.3;

"Harvest Season" means a continuous period of 60 (sixty) days in a year, to be notified by the Authority to the Concessionaire at least 7 (seven) days before the commencement thereof, and in the absence of such communication, it shall be deemed to commence on the 15th (fifteenth) day of April;

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

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 42;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 42;

"Independent Expert" shall have the meaning set forth in Clause 21.1;

"Indirect Political Event" shall have the meaning set forth in Clause 34.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and includes all insurances required to be taken out by the Concessionaire under Clauses 32.1 and 32.3 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"Intake Notice" shall have the meaning set forth in Clause 22.1.1;

"Intake Report" shall have the meaning set forth in Clause 22.6.3;

"Intellectual Property" means all patents, trade marks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals,

drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"Key Performance Indicators" shall have the meaning set forth in Clause 24.1;

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

"Lead Member" shall have the meaning set forth in Recital (B);

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

"Letter of Credit" shall have the meaning set forth in Clause 29.1.1;

"Licensed Premises" shall have the meaning set forth in Clause 10.2.2;

"Loading" shall have the meaning set forth in Clause 28.6.1;

"Loading Charges" shall have the meaning set forth in Clause 28.6.2;

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

"Maintenance Manual" shall have the meaning ascribed to it in Clause 17.3;

"Maintenance Programme" shall have the meaning ascribed to it in Clause 17.4.1;

"Maintenance Requirements" shall have the meaning set forth in Clause 17.2;

"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;

"Mis-declaration" shall have the meaning set forth in Clause 27.8.3;

"Monthly Invoice" shall have the meaning set forth in Clause 27.14.1;

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

"Non-Availability" means any partial or total lack of Availability;

"Non-Political Event" shall have the meaning set forth in Clause 34.2;

"Normative Availability" shall have the meaning set forth in Clause 5.1.4;

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“Operating Hours” mean the period between 8:00 a.m. and 6:00 p.m. on all days other than Sundays and bank holidays except for days of harvest season wherein it shall mean the period between 6:00 a.m. and 8:00 p.m. on all days including Sundays & bank holidays;

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

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

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

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

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

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

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

“Panel of Chartered Accountants” shall have the meaning set forth in Clause 33.2.1;

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

“Payment Due Date” shall have the meaning set forth in Clause 27.14.3;

“Performance Security” shall have the meaning set forth in Clause 9.1;

“Political Event” shall have the meaning set forth in Clause 34.4;

“Procurement Centre” shall have the meaning set forth in Clause 27.7;

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

"Project" means the construction, operation and maintenance of the Storage Facility in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project Agreements" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Substitution Agreement or any agreement for procurement of goods and services involving a consideration of up to Rs.1 (one) crore;

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

- (a) rights over the Site in the form of licence, Right of Way or otherwise;
- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, electrical systems, communication systems, relief centres, administrative offices and loading/ unloading facilities ;
- (c) Project Facilities situated on the Site;
- (d) buildings and immovable fixtures or structures forming part of the Storage Facility,;
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Storage Facility;

"Project Completion Date" means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14;

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

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

"Project Milestones" means the project milestones set forth in Schedule-G;

"Provisional Certificate" shall have the meaning set forth in Clause 14.3.1;

"Punch List" shall have the meaning ascribed to it in Clause 14.3.1;

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

"Reference Index Date" means, in respect of the specified month, that last day of the preceding month with reference to which the WPI is revised;

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मुंबई



Chief Engineer
M.P. Warehousing & Logistics Corporation
CHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



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

"Rejected Foodgrains" shall have the meaning ascribed to it in Clause 22.8.1;

"Reliability" shall have the meaning set forth in Clause 24.3;

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

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

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

"Revenue Share" means and refers to the Revenue Share from Unutilised Capacity and the Revenue Share from De-reserved Capacity;

"Revenue Share from De-reserved Capacity" shall have the meaning set forth in Clause 30.2.2;

"Revenue Share from Unutilised Capacity" shall have the meaning set forth in Clause 30.2.1;

"Revenue Statement for De-reserved Capacity" shall have the meaning set forth in Clause 30.3.1;

"Revenue Statement for Unutilised Capacity" shall have the meaning set forth in Clause 30.3.1;

"Right of Way" means the constructive possession of the Licensed Premises, together with all way leaves, easements, unrestricted access and other rights of way, howsoever described, necessary for construction, operation and maintenance of the Storage Facility in accordance with this Agreement;

"Safety Requirements" shall have the meaning set forth in Clause 17.16.1;

"Scheduled Completion Date" shall have the meaning set forth in Clause 12.3.1;

"Scheduled Maintenance" shall have the meaning set forth in Clause 17.4.4;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"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



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M.P. Warehousing & Logistics Corporation
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Managing Director

M.P. Warehousing & Logistics Corporation



- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 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 one year prior to the Transfer Date;

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

"**Substitution Agreement**" shall have the meaning set forth in Clause 40.3;

"**Suspension**" shall have the meaning set forth in Clause 36.1;

"**Taxes**" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Storage Facility, including Storage Services, charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever.;

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

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

"**Termination Payment**" means the amount payable, under and in accordance with this Agreement, by the Authority to the Concessionaire upon Termination. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.5;

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

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

- the capital cost of the Storage Capacity, ~~{less Equity Support}~~ as set forth in the Financial Package;
- the actual capital cost of the Storage Capacity upon completion of the Storage Capacity ~~{less Equity Support}~~; and
- a sum of Rs. 31.21 crore (Rupees thirty one crores and twenty one lacs), ~~less Equity Support~~;



provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost..

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

"Unloading" shall have the meaning set forth in Clause 28.2.1;

"Unloading Charges" shall have the meaning set forth in Clause 28.2.3;

"Unscheduled Maintenance" shall have the meaning set forth in Clause 17.9;

"Unutilised Capacity" shall have the meaning set forth in Clause 30.1.3;

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

"Variable Charge" shall have the meaning set forth in Clause 27.4.1;

"Vehicle" means a 2-axle or 3-axle truck being a goods carrier with a Gross Vehicle Weight of 7,500 (seven thousand five hundred) kilograms or more, but less than 25,000 (twenty five thousand) kilograms;

"Vesting Certificate" shall have the meaning set forth in Clause 38.4;

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Fixed Charge, Variable Charge and Service Charges in accordance with the provisions of Clauses 27.3, 27.4.2 and 28.8 respectively, the revision due on April 1 of any year shall be computed with reference to WPI as on March 31 of that year.

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

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एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



SIGNED, SEALED AND
DELIVERED

For and on behalf of

MADHYA PRADESH WAREHOUSING
& LOGISTICS CORPORATION,

BHOPAL by:

(Signature)

(Name)

(Designation) **Arun Pandey**
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

THE COMMON SEAL OF CONCESSIONAIRE has been
affixed pursuant to the resolution passed by Board
of Directors of the Concessionaire at its meeting
held on the 10th day of June 2014 hereunto affixed
in the presence of Vishal Gupta Director, who has
signed these presents in token thereof.



For Sehore Agri Services Pvt. Ltd.

Directors/Authorised Signatory

COUNTERSIGNED, SEALED AND
DELIVERED

For and on behalf of

GOVERNMENT OF MADHYA
PRADESH

(Signature)

(Name)

(Designation)

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन

In the presence
of: 1.

भोपाल

A.K. SONI

MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL

Rashmi Gala
ED Finance TSUP

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल



(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL

Schedules

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म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन,
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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Chief Engineer
M.P. Warehousing & Logistics Corporation
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SCHEDULE – A

(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Storage Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A.
- 1.2 An inventory of the Licensed Premises including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for ancillary buildings, or for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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M.P. Warehousing & Logistics Corporation
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Annex - I
(Schedule-A)

Site for the Storage Facility at Murli (District Sehore)

Note: Through suitable drawings and description in words, the land comprising the Site shall be specified briefly but precisely in this Annex-I. In the event there are any buildings or structures on the Site, the same shall be marked in the drawings and briefly described in words.

The details of the site are as follows :-

- The proposed site is situated in Sehore District.
- The proposed site is under the possession of M.P. Warehousing & Logistics Corporation.
- Site Details – Village Murli (Sehore), Patwari Halka no. 37, Khasra no. 5.
The extra 1 acre land will be kept reserved for parking.
- Proposed Site Area : 7 Acres
- Approach – Cost of proposed tar road (length 0.30 km.) is estimated Rs. 32.00 lacs.
- Approximate Distance : The proposed site is situated at an approximate distance of 3 km from the Railway Station.
- The layout plan is attached at Annexure – I(a)
- The specifications and the cross section is attached at Annexure – I(b)

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बोर्ड
सचिव

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

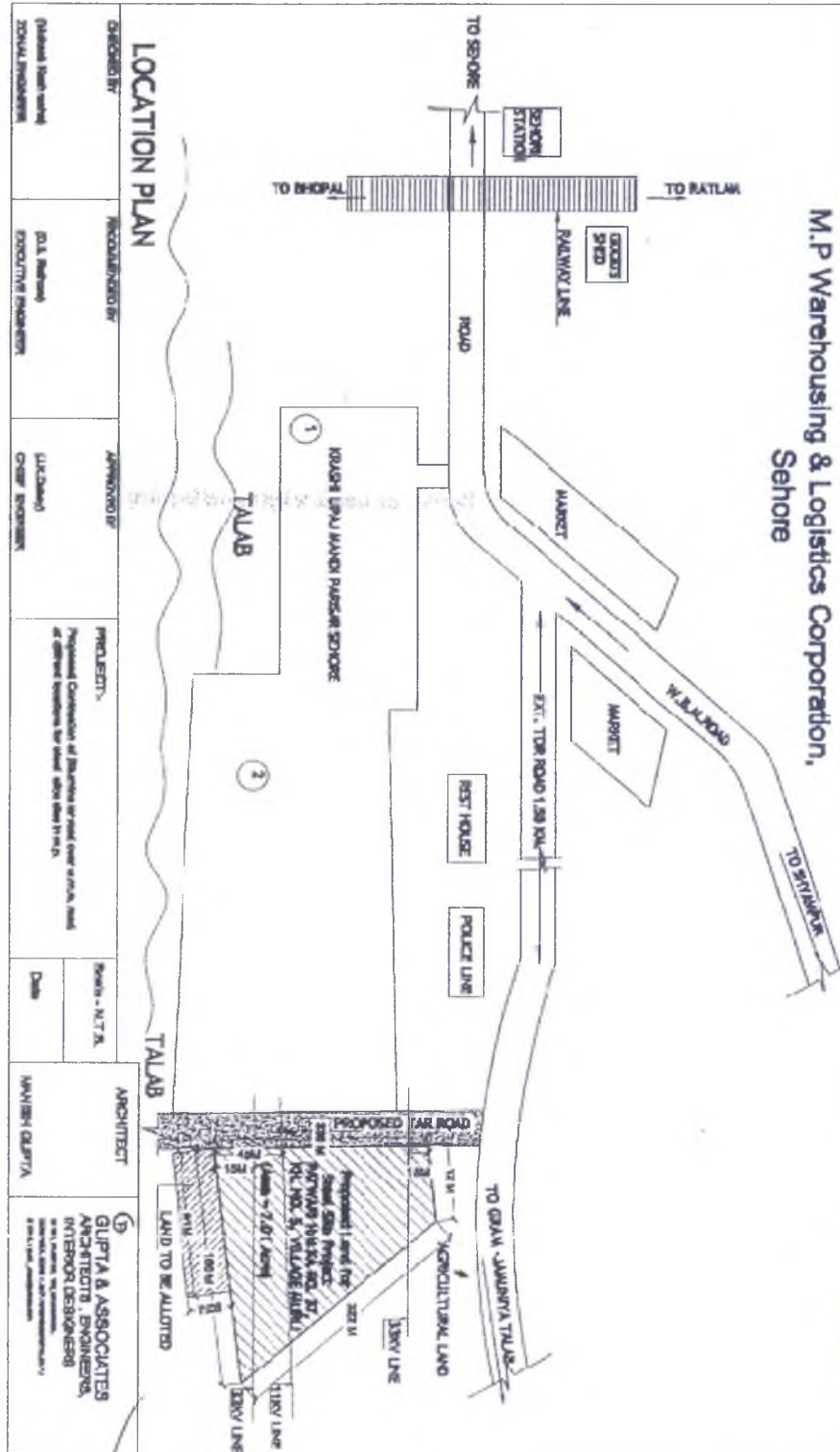


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ENGINEER
MPVLC



Annexure - I(a)



(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
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MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.P.)

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Annexure - I(b)

Road specification for construction of bituman road for SILO Project at different location

1	Embankment Construction with Material Obtained from Borrow Pits (construction of embankment with approved material CBR>7 obtained from borrow pits with all lifts and leads, transporting to site, spreading, grading to required slope and compacting to meet requirement of table 300-2)
2	Crusher Run Macadam Base (Providing crushed stone aggregate, depositing on a prepared surface by hauling vehicles, spreading and mixing with a motor grader, watering and compacting with a vibratory roller to clause 410 to form a layer of sub-base/Base)
	By Mixing Plant
	For 53 mm maximum size
	For 45 mm maximum size
3	Surface Drains in Soil (construction of unlined surface of average cross sectional area 0.40 sqm in soil to specified lines, grades, levels and dimensions to the requirement of clause 301 and 309. Excavated material to be used in embankment within a lead of 50 metres (average lead 25 metres).
5	Wet Mx Macadam (Providing laying, spreading and compacting graded stone aggregate to wet mix macadam specification including premixing the Material with water at OMC in mechanical mix plant carriage of mixed Material by tipper to site, laying in uniform layers with paver in sub-base / base course on well prepared surface and compacting with vibratory roller to achieve the desired density) and as per clause of section 400.
6	Construction of Shoulders with approved material / selected soil i/c excavation all lifts & leads i/c grading to required slope & camber of 4% and compacting using vibratory roller of 80 to 100 kN static weight to meet requirement as per relevant clause of 400.
	Earthen Shoulders (CBR value > 5)
	Hard Shoulders (CBR value > 12)
5	Prime coat (Providing and applying primer coat with bitumen emulsion on prepared surface of granular. Base including clearing of road surface and spraying primer at the rate of 0.75 kg/sqm using mechanical means).
6	Bituminous Macadam (Providing and laying bituminous macadam using crushed aggregates of specified grading premixed with bituminous binder, transported to site, laid over a previously prepared surface with paver finisher to the required grade, level and alignment and roller as per clauses 501.6 and 501.7 to achieve the desired compaction)
	Using 40-60 TPH Batch mix Plant and Paver Finisher Hydraustatic with Sensor Control
	for Grading I (40 mm nominal size) bitumen content 3.4%
7	Bituminous Concrete (Providing and laying bituminous concrete using crushed aggregates of specified grading, premixed with bituminous binder @ 5.4 to 5.6% of mix and filler, transporting the hot mix to work site, laying with a hydrostatic paver finisher with sensor control to required grade, level and alignment, rolling with smooth wheeled, vibratory and tandem rollers to achieve the desired compaction as per MORTH specification clause No. 509 complete in all respects).
	Using 40-60 TPH Batch mix Plant and Paver Finisher Hydraustatic with Sensor Control
	for Grading-II (30-45 mm thickness) with 60/70 bitumen (VG-30)

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Chief Engineer

**M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)**

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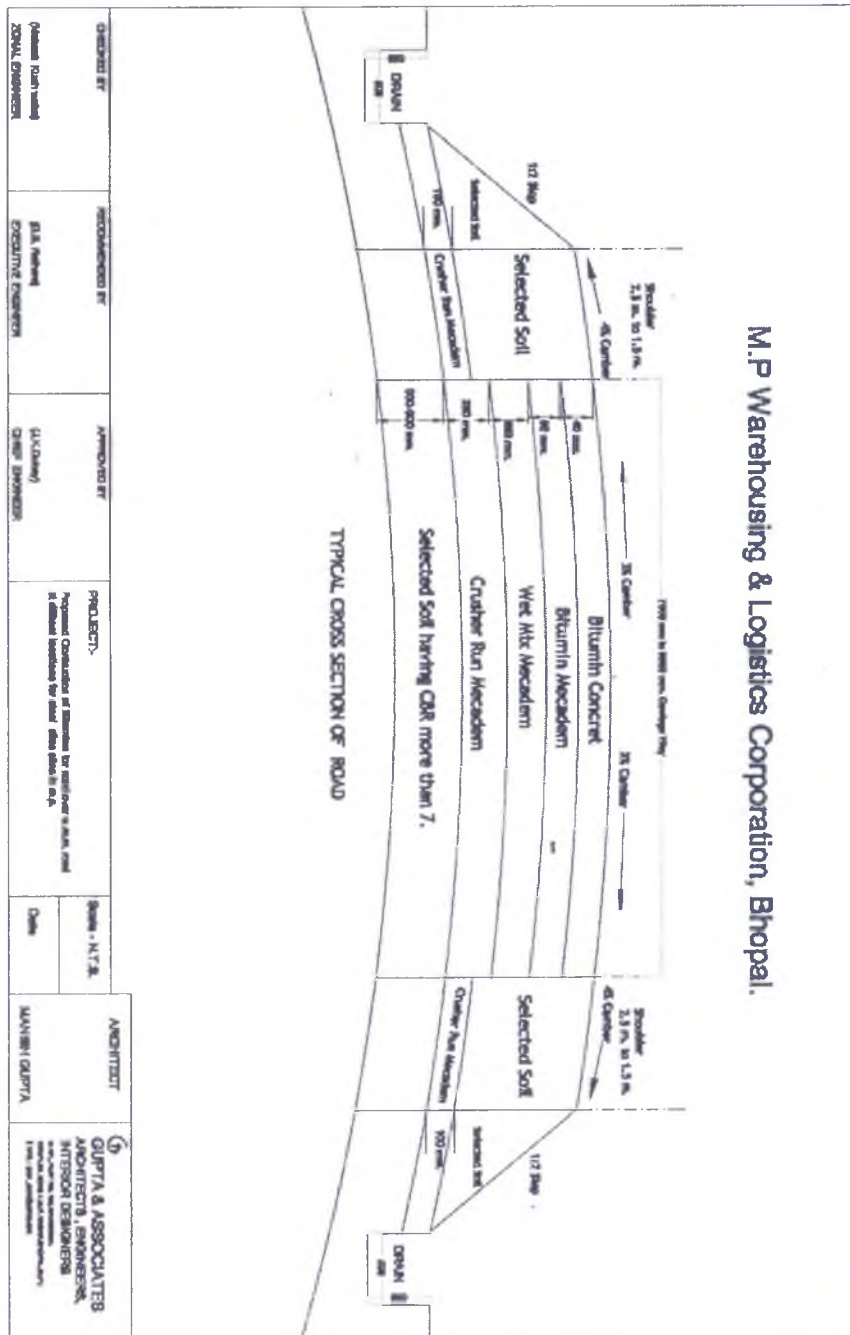
**ENGINEER
MPWLC**

**(Arun Pandey)
Managing Director**

**M.P. Warehousing & Logistics Corporation
BHOPAL**



M.P Warehousing & Logistics Corporation, Bhopal.



DESIGNED BY	INTERVIEWED BY	APPROVED BY	PROJECT	Scale - M.T.B.	DATE	ARCHITECT	6
(Name) (Designation)	(Name) (Designation)	(Name) (Designation)	Project Name			GUPTA & ASSOCIATES	ARCHITECTS, ENGINEERS, INTERIOR DESIGNERS, ETC.



(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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भोपाल

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE STORAGE FACILITY

- 1 **Development of the Storage Facility**
 - 1.1 Development of the Storage Facility shall include construction of the Storage Facility as described in this Schedule-B and in Schedule-C.
 - 1.2 Construction of the Storage Facility shall conform with the provisions of Annex-I of this Schedule-B and Annex-I of Schedule-C.
 - 1.3 Storage Facility shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule-D.

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भोपाल

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Annex - I
(Schedule-B)

Description of Storage Facility

1. Description of Storage Facility

1.1 The Storage Facility shall be constructed as briefly described below:

Storage Capacity (MT)	Minimum number of Silos	Minimum capacity of each Silo (MT)	Minimum diameter of each Silo (meters)	Minimum Daily intake capacity of Storage Facility (MT/hour)
50,000	4	10,000	32	150

1.2 The Silos shall be constructed from bolted,corrugated galvanised steel and shall have a flat bottom with sweep augur. The galvanization thickness, which is from hot dip process, should not be less than 350 grams/meter square, capable for lasting for 30 years. They shall be constructed in a manner that protects the Silos, conveyors and all other equipment from accumulation of ground water. The support slab of Silos shall be elevated so that all equipment is situated at a level above the once-in-50-years flood level at the Site.

1.3 The Storage Facility shall include the systems and equipment specified in Paragraph 2 of this Annex-1.

1.4 The Storage Facility, including its systems and equipment, shall conform to Applicable Laws, Applicable Permits, provisions of this Agreement and Good Industry Practice.

2. Systems

2.1 The systems and equipment to be installed and operated as part of the Storage Facility shall atleast include:

I. Pre-storage intake

(i) Vehicle weighment

Weighbridge with capacity of 60 MT

(ii) Unloading from vehicles

Rated unloading capacity (TPH)

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(iii) Sampling system/Laboratory

Number of samplers 2

II. Pre-storage foodgrain treatment:

(i) Cleaning

Rated handling capacity (TPH) 150

III. Foodgrain handling (receiving & stacking)

(i) Conveying

(a) Rated capacity of each stream (TPH) 150

(b) Number of streams 1

IV. Preservation

(i) Preservation

(a) Temperature monitoring system (per Silo) 1

(b) Aeration system (per Silo) 1

(ii) Fumigation

type of fumigant Alumunium Phosphide

Foodgrain handling

(i) Reclaiming arrangement from Silo

ated capacity of the Unit (TPH) 60

(ii) Conveying

ated capacity (TPH) 60

VI. Foodgrain dispatch

(i) Dispatch conveying
ated capacity of each stream (TPH)

0

(ii) Bagging System

Rated capacity (TPH) M.P Warehousing & Logistics Corporation
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VII. Plant Control

(a)	Plant operation	1
(b)	Foodgrain inventory	1
(c)	Quality and preservation	1
(d)	Truck identification and internal truck movement	1
(e)	Environment and safety	1
(f)	Disaster/Hazard management	1

2.2 The aforesaid systems and the equipment forming part thereof are briefly described below:

(a) Vehicle Weighment System

The Concessionaire shall provide at least one weighbridge for weighment of truck/ vehicle loaded with Foodgrains. Suitable weighing instrumentation shall be installed at the weight station. A computer shall be provided at this station which will be linked to the Plant Control System. The weighbridge shall be calibrated in accordance with the provisions of Schedule D.

(b) Foodgrain Intake System

The Foodgrain Intake System shall have a minimum capacity of loading 1,500 (one thousand five hundred) tonnes of Foodgrain per day into the Silos. The system is briefly described below:

(i) Unloading area

The unloading area shall consist of a covered concrete or steel building comprising at least 6 (six) unloading stations, each with an unloading hopper located underground to handle 30 (thirty) tonnes of Foodgrains per hour (TPH). Each underground hopper shall have an opening at the ground level with grate and baffles for unloading Foodgrains from Vehicles. Each unloading hopper will be provided with a discharge chain conveyor having a basket type diverter valve at the conveyor discharge end.

The unloading area shall include dust suppression baffles and positive air aspiration. Drainage in the unloading area shall be provided to prevent accumulation of water. The unloading area shall also provide for weather protection structures such as roof and partial end walls over the unloading stations and unloading hoppers. The grade level at the top of unloading hoppers shall be at least 200 (two hundred) mm above ground level to prevent ground water ingress into the unloading hoppers.

1 (one) Tippler shall be provided at the Unloading Area for receiving Vehicles carrying Foodgrains in bulk.

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भोपाल



(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
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(ii) Tunnels

The unloading hopper tunnels and the receiving conveyor and reject conveyor tunnels shall be located below grade level running beneath the unloading area. The tunnels shall be equipped with drainage slopes, sump pits and sumps, and sensing and monitoring instrumentation.

(iii) Grating and baffle

The top of each unloading hopper shall be equipped with grating to prevent the ingress of birds into the unloading hoppers and to prevent humans from accidentally falling into the unloading hoppers. The underside of the baffle shall be equipped with a special baffle arrangement for dust abatement.

(iv) Drying area

Drying area for 10 MT of Foodgrains shall be provided at the Storage Facility.

(c) Testing System

Each sample testing station shall comprise the following instrumentation:

- (i) Moisture tester;
- (ii) Dockage tester (Foreign Material and by-products);
- (iii) Manual insert grain probes (stand-by);
- (iv) Sample divider;
- (v) Hand sieves; and
- (vi) Sensitive lab scale

The system shall provide for a data entry table linked to the individual batch and displayed on the inspector's screen. The test data may be entered manually into the screen and the MIS should decide whether or not the batch is acceptable and pass the information to the Plant Control System which would then assign a destination to the batch.

(d) Foodgrain Cleaning System

Cleaners shall be provided for pre-cleaning of Foodgrains for dust, chaff and large foreign objects and also for cleaning Foodgrains prior to dispatch thereof. The capacity of the cleaning system shall be identical to the capacity of the receiving system.

(e) Silo Aeration System

Silo aeration system shall include the following components:

- (i) Internal perforated ducts on concrete channels;
- (ii) External ducting;
- (iii) Fans;
- (iv) Dampers;
- (v) Roof vents as required

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- (vi) Instrumentation (temperature monitoring system); and
- (vii) Air volume.

(f) Silo Fumigation System

A portable air recirculation power unit shall be installed to cater to all Silos. Each Silo shall be provided with a closed loop fumigation system comprising:

- (i) fixed plastic pipes to inject fumigants into the Silo aeration system;
- (ii) ducting at the bottom of the Silo; and
- (iii) fixed plastic pipes for collecting exhausted fumigant from the top of the Silo for recirculation thereof.

(g) Silo Temperature Monitor

A temperature monitoring and pest detection system shall be provided for each Silo. Each system shall consist of temperature sensing cables suspended vertically from the Silo roof and accessible from outside for maintenance. Each Silo shall be equipped with a controllable scanner capable of interfacing with the Plant Control System.

(h) Foodgrain Handling System

The Foodgrain Handling System shall have the capacity to reclaim and convey 60 (sixty) MT of Foodgrains per hour, including the capacity to shift such Foodgrains from one Silo to another.

(i) Foodgrain Dispatch System

The Foodgrain Dispatch System should have the capacity to dispatch 60 (sixty) MT of Foodgrains per hour. The system is briefly described below:

(i) Storage of Bags

A warehouse with a floor area of at least 100 sqm shall be provided for storage of Bags to be used for dispatch of Foodgrains.

(ii) Bagging and storage of bagged Foodgrains

The Bagging warehouse shall have a covered storage capacity of at least 200 (two hundred) MT and a CAP storage capacity of at least 500 (five hundred) MT of Foodgrains to be stored in Bags to enable dispatch of Foodgrains. Bagging lines having a minimum capacity of 60 (sixty) tonnes per hour for automatic Bagging of Foodgrains shall also be installed in the warehouse.

The bagging system shall consist of a transfer bag conveyor, bagging surge bins, bag machines and bag stacking conveyor.

(iii) Dispatch of Foodgrains

The system shall have the capacity to dispatch 6 (six) Vehicles in an hour. At least 4 (four) loading bays shall be provided for dispatch of Foodgrains.

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(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
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Separate shipping and receiving silos including bulk loading and unloading system with high speed shall be provided for dispatch of Foodgrains in bulk.

(j) **Bins for disposal of foreign material**

Separate bins shall be provided for bye-products and for foreign material comprising small rocks and other objects obtained after cleaning of Foodgrains prior to moving them into the Silos. Containers shall be provided for discharging chaff and grain dust obtained from the final cleaning process prior to dispatch of Foodgrains.

(k) **Designated area for disposal of rejected Foodgrains**

Covered area with protection from rain shall be provided for storing the rejected Foodgrains for a period of not more than 72 (seventy two) hours till they are removed by the Authority.

(l) **Plant Control System**

The Plant Control System shall be installed for operating the equipment in sequence, in accordance with the operational requirements of the Storage Facility. Equipment shall be interlocked through the Plant Control System so that the failure of one piece of equipment shall stop all other equipment upstream and also close all feed gates. It shall comprise, *inter alia*, the operation and control system, Foodgrain inventory control system, quality and preservation control system, Vehicle identification and movement control system and disaster/hazard management system.

3 **Project Facilities**

Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

4 **Specifications and Standards**

The Storage Facility shall be constructed in conformity with the Specifications and Standards specified in Schedule-D.



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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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SCHEDULE – C
(See Clause 2.1)
PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

2 Project Facilities for Storage Facility

Project Facilities forming part of the Storage Facility and to be completed on or before the Project Completion Date are described in Annex-I of this Schedule-C.

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सचिव
बोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Annex - I
(Schedule-C)

Project Facilities for Storage Facility

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Storage Facility. The Project Facilities shall include:

- (a) Vehicle parking area;
- (b) Fire hydrant system;
- (c) Reception, cafeteria and rest rooms;
- (d) Security equipment including Closed-circuit television (CCTV);
- (e) Public address system; and
- (f) Standby electricity generator.

2 Description of Project Facilities

The Project Facilities are briefly described below:

(i) Vehicle parking area

A parking area sufficient to accommodate 20 (twenty) 3-axle trucks, 4 (four) cars and 24 (twenty four) two-wheelers shall be provided.

(ii) Reception, cafeteria and rest rooms

The reception area for visitors to the Storage Facility shall comprise covered area of not less than 100 sqm. The cafeteria and rest rooms shall be provided in an additional covered area of at least 150 sqm. This shall also include a first-aid room.

(iii) Fire hydrant system

A fire hydrant system shall be installed in conformity with Applicable Laws, Applicable Permits and Good Industry Practice and shall include adequate underground water storage, pumping capacity and distribution network.

The fire hydrant system shall include an exclusive underground sump of suitable capacity which shall be connected with two or more sources of water supply with a dedicated motor and power source. Suitable pipe headers and branches shall be laid crisscrossing the Storage Facility with hydrates at required intervals. The sump shall be provided with a sufficient number of pumps including standby pumps. The pumps shall be both electric and diesel driven. Smoke detectors, fire alarms and water sprinklers shall also be provided in critical areas. The fire fighting system shall be controlled manually and by computer.



Chief Engineer

**M.P. Warehousing & Logistics Corporation
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**EXECUTIVE ENGINEER
MPW/LC**

**(Arun Pandey)
Managing Director**

M.P. Warehousing & Logistics Corporation



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(iv) **Security equipment including Closed-Circuit Television (CCTV)**

All sections of the Storage Facility shall be equipped with a Closed-Circuit Television system capable of retaining recorded footage for a period of one month. The Concessionaire shall install and operate such other security equipment as may be required in accordance with Applicable Laws, Applicable Permits and Good Industry Practice for assurance of the security of personnel and Foodgrains at the Storage Facility.

(v) **Public address system**

The Concessionaire shall provide a public address system with speakers in all sections of the Storage Facility to ensure that announcements are capable of being heard in any and all parts of the Storage Facility.

(vi) **Standby electricity generator**

The Concessionaire shall install and operate standby arrangements for generation and supply of electricity such that in the event of failure of supply of electricity from the grid, the Storage Facility shall remain operational. For this purpose, the Concessionaire may install solar power systems, invertors, diesel generators or such other equipments as it may deem fit

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न.प्र. वेशभूषण एवं सजावट कार्पोरेशन
न.प्र. वेशभूषण एवं सजावट कार्पोरेशन

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Storage Facility

- 1.1 The Storage Facility shall conform with the Specifications and Standards as specified in this Schedule – D and in this Agreement.
- 1.2 The Specifications and Standards applicable to the design and construction of the Storage Facility shall be as follows:

(a) **Building Code:**

National Building Code of India

(b) **Design Specifications:**

IS – 9178: Criteria for design of Steel Bins for storage of Bulk Materials*

Part I: General Requirements and Assessment of Loads

Part II: Design Criteria

Part III: Bins Designed for Mass Flow and Funnel Flow

(* Bulk density of wheat in the IS to be read as 750 kg per cubic

meter)

IS – 9215: Specifications for outdoor Steel Bins for Foodgrain Storage

(c) **Construction Specifications:**

IS - 5503: General requirements for Silos for Grain Storage

Part I: Constructional requirements

Part II: Grain Handling Equipment and Accessories

In the absence of any specific provision in this Agreement, the following standards shall apply in order of priority:

- (i) Bureau of Indian Standards (BIS);
- (ii) Relevant codes as applicable in the United States of America or the United Kingdom; and
- (iii) Any other specifications/standards proposed by the Concessionaire and reviewed by the Independent Expert.



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M.P. Warehousing & Logistics Corporation
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Managing Director

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- 1.4 The latest version of the specified codes and standards which were notified/ published at least 60 days prior to the last date of bid submission in respect of this Agreement shall apply.
- 1.5 In case of any inconsistency or conflict between the provisions of this Agreement and the applicable BIS Standards or Codes, the provisions of this Agreement shall apply.

2 Minimum capacity

The minimum capacity to be provided at the Storage Facility shall be as follows:

Item	Capacity
Space for storage of Foodgrains	50,000 MT
Vehicle Weighment System	Suitable for Vehicles with a total load of upto 50 MT
Vehicle Parking Area	20 Trucks, 4 cars and 24 two wheelers
Foodgrains Intake System	1500 MT/day; 150 MT/hr
Cleaning System	150 MT/hr
Bagging System	60 MT/hr
Designated area for storage of bagged Foodgrain	200 MT covered; 500 MT CAP
Shed for empty Bags	100 sqm

3 Weighbridges

The Concessionaire shall at all times conform with the provisions of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Packaged Commodities) Rules, 1977 or any substitute thereof. It shall also conform with the standards specified by the Bureau of Indian Standards for and in respect of weighbridges.

Calibration of Silos

The Silos shall be calibrated and appropriately marked with at least 2 (two) scaled rulers to identify the aggregate volume of each Silo in fractions of 1/500th (one upon five hundredth) of such aggregate volume. The scaled ruler shall be indelibly imprinted and shall be in the form of concentric circles running on the inside wall of the Silo such that the volume of the Foodgrain stored in the Silos can be readily ascertained by reference to such scaled rulers. The Silo shall be designed with appropriate mechanisms to enable easy access to and reading of the scaled ruler for verification of the volume of Foodgrain stored in a Silo at any point of time.



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M.P. Warehousing & Logistics Corporation
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MFWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
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SCHEDULE –E

(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall, as required under the Applicable Laws, obtain the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:

- (a) Consent to establish and operate under the provisions of the Water (Prevention and Control of Pollution) Act, 1974;
- (b) Consent to establish and operate under the provisions of the Air (Prevention and Control of Pollution) Act, 1981;
- (c) No Objection Certificate under the Noise (Prevention and Control of Pollution) Rules 2000 issued by the Pollution Control Board having jurisdiction; and
- (d) Permission of the local authority, as per Applicable Laws, for construction of the Storage Facility.

1.2 Applicable Permits, if any, relating to environmental protection (including forest clearance) shall have been procured by the Authority as a Condition Precedent.

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बोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

SCHEDULE –F

(See Clause 9.1)

PERFORMANCE SECURITY

Shri J. K. Dubey,
Chief Engineer
Madhya Pradesh Warehousing & Logistics Corporation
Office Complex, Block – ‘A’, Gautam Nagar
Bhopal, Madhya Pradesh


WHEREAS:

- (A) Sehore Agri Services Private Limited (the “Concessionaire”) and the Managing Director, Madhya Pradesh Warehousing & Logistics Corporation a public sector undertaking under the control of the Government of Madhya Pradesh and having its principal offices at Office Complex, Block – ‘A’, Gautam Nagar, Bhopal, Madhya Pradesh (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on behalf of the Secretary, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Madhya Pradesh having its principal office at Vallabh Bhavan, Bhopal Madhya Pradesh have entered into a Storage Agreement dated 13th June 2014 (the “Agreement”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of the Storage Facility at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of Rs. 1, 50, 00, 000 (Rupees one point five crore) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at (the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Construction Period, under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim,

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)


(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of a Superintending Engineer or equivalent, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.



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M.P. Warehousing & Logistics Corporation
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Managing Director
M.P. Warehousing & Logistics Corporation
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7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 40% (forty per cent) of the Total Project Cost which is deemed to be Rs.31.21crores (Rs. Thirty one crores and twenty one lacs) for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of two years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

म.प्र. वेल्डरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
 सचिव
 मुंबई

Signed and sealed this day of, 20..... at

SIGNED, SEALED AND DELIVERED
 For and on behalf of
 the BANK by:

(Arun Pandey)
 Managing Director
 M.P. Warehousing & Logistics Corporation
 BHOPAL



(Signature)
 (Name)
 (Designation)
 (Code Number)



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Chief Engineer
 M.P. Warehousing & Logistics Corporation
 BHOPAL (M.P.)

(Address)

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

सचिव
म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

SCHEDULE -G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the "Project Completion Schedule"). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance alongwith necessary particulars thereof.

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the 90th (ninetieth) day from the Appointed Date (the "Project Milestone-I").

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction at the Site and expended not less than 10% (ten per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the 180th (one hundred and eightieth) day from the Appointed Date (the "Project Milestone-II").

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced construction of the Silos and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 270th (two hundred and seventieth) day from the Appointed Date (the "Project Milestone-III").

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced installation of the Silos and expended not less than 60% (sixty per cent) of the Total Project Cost set forth in the Financial Package.

5 Scheduled Completion Date

5.1 The Scheduled Completion Date shall occur on the 365th (three hundred and sixty fifth) day from the Appointed Date.

5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Storage Facility in accordance with this Agreement.



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M.P. Warehousing & Logistics Corporation
DHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



6 Extension of period

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.

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भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



SCHEDULE -H

(See Clause 12.2)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

- (a) A Functional Block Diagram;
- (b) Process Flow Diagram(s);
- (c) Process and Instrumentation Diagrams (P & ID);
- (d) General Arrangement Drawings (layouts, sections and elevations) for:
 - (i) Unloading and sampling station;
 - (ii) dispatch and sampling station;
 - (iii) weighing system for intake and dispatch of Foodgrains;
 - (iv) bag unloading and receiving systems;
 - (v) storage systems including capacity of silos and their conveying systems; and
 - (vi) process tower including reject bins, cleaners, dust filters, bucket elevators, chain conveyors, belt conveyors, screw conveyors, spouting and ducting, and gates and diverters;
- (e) Silo bottom discharge arrangement;
- (f) Aeration system and fumigation system;
- (g) Silo temperature monitoring system;
- (h) Layout of ancillary buildings including security offices, weighing offices, electrical room and stand-by generator room, administrative office, control room, quality control laboratory, cafeteria and restrooms;
- (i) Fire hydrant system;
- (j) Fumigation system; and
- (k) Electric system.

म.म. वेयरहाउसिंग एंड लॉजिस्टिक्स कॉर्पोरेशन
राज्यपाल
नमो



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL



SCHEDULE -I

(See Clause 14.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of the Storage Facility, notify the Independent Expert and the Authority of its intent to subject the Storage Facility to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Storage Facility.
- 1.2 The Concessionaire shall notify the Independent Expert of its readiness to subject the Storage Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2 Visual and Physical Test

The Independent Expert shall conduct a visual and physical check of the Storage Facility, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Trial run

The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run to determine that the Storage Facility is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment. In the event any Foodgrains are required for conducting the trial run, the minimum quantity necessary for this purpose shall be provided by the Authority. Any damage caused to such Foodgrains during the course of such trial run shall be borne by the Concessionaire and reimbursed to the Authority either in cash or in the form of equivalent Foodgrains.

2.4 Tests for equipment

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
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MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Storage Facility and described in Paragraph 2 of Annex-I of Schedule-B.

2.5 Tests for weighment and testing facilities:

The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of weighment and testing facilities with the Specifications and Standards, Applicable Laws, Applicable Permits, Good Industry Practice and the calibration certificate issued by the manufacturers.

2.6 Environmental audit:

The Independent Expert shall carry out a check to determine conformity of the Storage Facility with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review:

The Independent Expert shall carry out a safety audit of the Storage Facility to determine its compliance with the provisions of Schedule-L and this Agreement.

2.8 Air compression and diesel generator sets:

The Independent Expert shall conduct or cause to be conducted Tests to determine that the air compression units of all utilities conform with their rated capacities; and the diesel generator sets are capable of being operated for 48 hours in full load and no load conditions.

3 Agency for conducting Tests

All Tests set forth in this Schedule-I shall be conducted by the Independent Expert or such other agency or person as it may specify in consultation with the Authority.

4 Tests for Safety Certification

Tests for determining the conformity of the Storage Facility with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws and Applicable Permits.

5 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Expert shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

6 Tests during construction

In pursuance of the provisions of Clause 13.3.1, and without prejudice to the provisions of this Schedule-I, the Independent Expert shall require the Concessionaire to carry out or cause to be carried out tests, in accordance with Good Industry Practice, for determining the compliance of the Construction Works with Specifications and Standards. The tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such tests shall, to the extent possible, not exceed 10% (ten per cent) of the tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice.

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एम.पी. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

SCHEDULE -J
(See Clauses 14.2 & 14.3)

COMPLETION CERTIFICATE

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Storage Agreement dated (the "Agreement") for the Storage Facility at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Storage Facility with the provisions of the Agreement, and I/We am/are satisfied that the Storage Facility can be safely and reliably placed in commercial service of the Authority and the users thereof.
- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of the Storage Facility have been completed, and the Storage Facility is ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED
For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name)
(Designation)
(Address)

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सचिव
भोपाल

✓
(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC



PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Expert), acting as Independent Expert, under and in accordance with the Storage Agreement dated (the "Agreement"), for the Storage Facility at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken for the Storage Facility/section ----- of the Storage Facility to determine compliance thereof with the provisions of the Agreement.
- 2 Construction Works forming part of the Storage Facility/section ----- of the Storage Facility that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. (Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,)^s I/We am/are satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Storage Facility/section ----- of the Storage Facility, pending completion thereof.

In view of the foregoing, I/We am/are satisfied that the Storage Facility/section ----- of the Storage Facility can be safely and reliably placed in commercial service of the Authority and the users thereof, and in terms of the Agreement, the Storage Facility/section ----- of the Storage Facility is hereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED
AND DELIVERED
For and on behalf of
Concessionaire by:

SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT EXPERT by:

(Signature)
(Name and Designation)
(Address)

(Signature)
(Name and Designation)
(Address)

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

^s May be struck out if not applicable. Also strike out other parts which are not applicable.



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC



SCHEDULE – K
(See Clauses 17.2 & 17.4)

MAINTENANCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Storage Facility in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the "Maintenance Requirements").
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.10 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.
- 3.2 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

4 Extension of time limit

Notwithstanding anything to the contrary specified in this Schedule-K, if the nature and extent of any defect or deficiency justifies more time for its repair or rectification than the time specified herein, the Concessionaire shall be entitled to additional time in



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
Logistics Corporation

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MPWLC



5 Emergency repairs/restoration

6 Inspection by the Concessionaire

7 Divestment Requirements

8 Display of Schedule - K

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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Annex - I
(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.

Nature of defect or deficiency	Time limit for repair/rectification
Breakdown of conveyor belts	24 hours
Breakdown of Elevator	24 hours
Breakdown of standby generating set	6 hours
Breakdown of, or defect in, silo temperature monitoring system	24 hours
Breakdown of, or defect in, weighbridge	24 hours
Breakdown of, or defect in, Foodgrain handling system	24 hours
Breakdown of, or defect in, fumigation system	7 days
Breakdown of, or defect in, Foodgrain dispatch system	24 hours
Breakdown of, or defect in, bagging machines	24 hours
Breakdown of, or defect in, laboratory equipment	24 hours
Breakdown of, or defect in, online samplers	24 hours
Breakdown of, or defect in, fire hydrant system	24 hours
Breakdown of, or defect in, plant control system	24 hours
Breakdown of, or defect in, Silo aeration system	24 hours
Breakdown of, or defect in, CCTV	12 hours
Breakdown of, or defect in, public address system	12 hours

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सचिव
भोपाल



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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SCHEDULE -L

(See Clause 17.16)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule - L.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement;
- (c) relevant Standards/Guidelines contained in internationally accepted codes; and
- (d) Good Industry Practice.

3 Safety measures during Operation Period

The Concessionaire shall develop, implement and administer a safety programme for the Storage Facility, staff, Users and other persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.

The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on or about the Storage Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.

- 3.3 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 3.1 of this Schedule-L for averting or minimising such accidents in future.



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation



Annex - I
(Schedule-L)

Safety Guidelines

1 System integrity

In the design of the Storage Facility, particular care shall be taken to minimise the likely incidence of failure.

2 Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various elements comprising the Storage Facility and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every quarter.

3 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a manual for management of disasters (the "Disaster Management Manual") to be prepared and published by the Concessionaire prior to COD. The Concessionaire shall provide 5 (five) copies each of the Disaster Management Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

4 Fire safety

The Concessionaire shall conform to the standards specified by the US National Fire Protection Association (NFPA) in NFPA-61-B.

4.2 To prevent fire in the Storage Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

4.3 To deal with incidents of fire, the Concessionaire shall provide a hydrant based fire-fighting system in conformity with the provisions of Annex-1 of Schedule C.

4.4 Since grain dust is classified as an explosive, the safety measures in respect thereof shall include the following:

- (i) The Foodgrains received at the Storage Facility shall be cleaned to eliminate dust and dockage; and



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

EXECUTIVE ENGINEER
MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



- (ii) an efficient dust aspiration system covering all points where dust dispersal is expected shall be installed and operated. The dust shall be collected in cyclones to eliminate any possibility of environmental pollution.

5 Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to COD, evolve and adopt a manual for surveillance and safety of the Storage Facility (the "**Surveillance and Safety Manual**"), in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Storage Facility, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Surveillance and Safety Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to COD.

6 Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Storage Facility and all persons affected by it.

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म.प. वार्डिंग & लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

SCHEDULE M

(See Clauses 22.2 & 22.7)

FOODGRAINS SPECIFICATIONS

1. Impurities in Foodgrains

The Concessionaire shall procure and ensure that the Foodgrains shall, prior to storage in the Storage Facility and before dispatch thereof from the Storage Facility, be free from obnoxious smell, discoloration, infestation, admixture of deleterious substances including toxic weed, seeds and argemonemexicana and lathyrussaltivers (khesari) in any form, and all other toxic material and impurities, save and except to the extent specified in Paragraph 2 of this Schedule M.

2. Maximum limit for impurities

2.1 The Foodgrains may contain impurities, damaged grains and foreign material not exceeding, in weight, the following limits:

(a)	Moisture	12%
(b)	Foreign matter	0.75%
(c)	Weevilled Foodgrains	3%
(d)	Other foodgrains	2%
(e)	Damaged Foodgrains ^s	2%
(f)	Slightly damaged Foodgrains	6%
(g)	Shrivelled and broken Foodgrains	7%

2.2 Within the overall limit specified for foreign matter, the poisonous weed seeds shall not exceed 0.4% of which Dhatura and Akra (Vicia species) shall not be more than 0.025% and 0.2% by weight respectively.

2.3 Kernels with glumes will not be treated as unsound grains. During physical analysis the glumes will be removed and treated as organic foreign matter.

2.4 Within the overall limit specified for damaged grains, ergot affected grains shall not exceed 0.05%.

2.5 ~~Any contaminants, toxins and residues in Foodgrains shall not exceed the tolerance limits set forth in Applicable Laws.~~

^sWithin the overall limit specified for Damaged Foodgrains, ergot affected Foodgrains shall not exceed 0.05% by weight.


Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)


(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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3. Modifications in Foodgrains Specifications

The Authority may, by notice of at least 30 (thirty) days prior to commencement of any specified period, modify the Foodgrains Specifications for and in respect of the Foodgrains to be procured during such specified period and in such an event, the modified Foodgrains Specifications shall apply for the intake, storage and dispatch of such Foodgrains.

म.प्र. वेअरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
भोपाल



mp/sa/240813

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

SCHEDULE-N

(See Clause 22.3.3)

Foodgrains Tests

- 1 The Concessionaire shall, prior to accepting Foodgrains for storage in the Storage Facility and prior to dispatch thereof from the Storage Facility, as the case may be, take at least 1 (one) random sample per 5 (five) MT of Foodgrains and test the same to determine the conformity thereof with Foodgrains Specifications.
- 2 The results of such Foodgrains Tests shall be recorded in the Intake Report in Annex-I and the Dispatch Report in Annex-II of this Schedule-N, as the case may be, and shall be signed by the Authority's nominee in verification thereof.

Sampling and testing methodology

- 3 The Concessionaire shall conform to the sampling and testing requirements specified in the codes listed below:

S.No.	IS/ BIS/ ISO Ref. No.	Description of Code
1.	2813	Terminology for Foodgrains
2.	IS: 4333 (Part 2)-2002 and ISO:712-1998	Method of Analysis & determination of moisture content in Foodgrains
3.	IS: 4333 (Part 3)-2002 and ISO:7971-2-1995	Method of Analysis of Foodgrains – Determination of Hectolitre Weight
4.	IS: 4333 (Part 4)-2002 and ISO: 520-1977	Determination of Mass of 1,000 Grains
5.	IS: 4333 (Part 1)-1996 (Reaffirmed 2001)	Method of Analysis for Foodgrains Part 1 Refractions (Second Revision)
6.	8972	Method of determination of co-efficient of friction of Foodgrains
7.	IS:11396-1985	Test Methods for determination for storability (safe storage life) of Foodgrains
8.	IS: 8184-1976 (Reaffirmed 1995)	Method for determination of ergot in Foodgrains



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAI (M.P.)

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ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAI



9.	IS: 6261-1971 (Reaffirmed 2000)	Methods for analysis for detection of insect and rodent contamination in grains and milled products
10.	IS: 5863 – 1985(Reaffirmed 2009)	Method for determination of malathion residues in food commodities
11.	IS:11374 – 1985 (Reaffirmed 2009)	Methods for determination of monocrotophos residues in foods
12.	IS: 5952-1970 (Reaffirmed 2004)	Methods for test for the estimation of parathion residues
13.	IS:11380 (Part 1) –1985 (Reaffirmed 2003)	Methods of sampling for the determination of pesticide residues: agriculture and food commodities
14.	IS:11301-1985 (Reaffirmed 2009)	Methods for determination of Phosalone residues in food commodities
15.	IS:14818 – 2000 and ISO:13690- 1999	Cereals and Pulses and Milled Products – Sampling of Static Batches
16.	IS: 6169 – 1983 (Reaffirmed 2004)	Method of determination of BHC (HCH) residue in food commodities

In the absence of any specific provision for Foodgrains Tests in this Agreement, the following standards shall apply in order of priority:

- Bureau of Indian Standards (BIS);
- Relevant codes as applicable in the United States of America or the United Kingdom; and
- Any other specifications/standards proposed by the Concessionaire and reviewed by the Independent Expert.



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EXECUTIVE ENGINEER
MPWLC



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(Arun Pandey)
Managing Director

M.P Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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पु. प्र. प्रसारहाउसिंग एण्ड लॉजिस्टिक्स कार्पोरेशन
कोपाल

Annex - I
(Schedule-N)

Form of Intake Test Report

Identification No. for the truck/tractor trolley					
Acceptance Quantity specified by Authority					
Date of Intake specified by Authority					
Name of Mandi from which Foodgrain procured					
Date on which Foodgrain purchased from Mandi					
Name and license number of commission agent (if any)					
Weight (in MT) received at Storage Facility					
Date of receipt at Storage Facility					
Entry time of vehicle at gate					
Exit time of vehicle at gate					
Lot Nos.					
Samples	Moisture reading (In % by weight)	Foreign matter (In % by weight)	Contaminants and toxins (In %)	Weevilled Foodgrains (In % by weight)	Other observations, if any
Sample 1					
Sample 2					
Sample 3					
Average reading					
Accepted or Rejected	Accepted/Rejected				
Weight (in MT) of accepted Foodgrains					

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Requires drying	Yes/No	
If yes, weight (in MT) of dried Foodgrains		
Requires cleaning	Yes/No	
If yes, weight (in MT) of cleaned Foodgrains		
Silo in which accepted Foodgrains stored		
	Name of Lab Technician	
	Signature	
	Name of nominated official of Authority	
	Signature	

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भोपाल

mp/sa/240813

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Annex - II
(Schedule-N)

Form of Dispatch Test Report

Identification No.					
Dispatch Quantity specified by Authority					
Date for dispatch specified by Authority					
Bags received from the Authority (number)					
Weight (in MT) ready for dispatch from Storage Facility					
Date of readiness for dispatch from Storage Facility					
Lot Nos.					
Samples	Moisture reading (In % by weight)	Foreign matter (In % by weight)	Contaminants and toxins (In %)	Weevilled Foodgrains (In % by weight)	Other observations, if any
Sample 1					
Sample 2					
Sample 3					
Average reading					
Destination					
Accepted or Rejected	Accepted/Rejected				
Requires drying	Yes/No				
If yes, weight (in MT) of dried Foodgrain					
Requires cleaning	Yes/No				
If yes, weight (in					

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भोपाल

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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)


(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MT) of cleaned Foodgrains		
Weight of rejected Foodgrains (in MT), after deducting weight of dried and cleaned Foodgrains		
Whether rejected Foodgrains replaced by conforming Foodgrains	Yes/No	
	Name of Lab Technician	
	Signature	
	Name of nominated official of Authority	
	Signature	

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भोपाल

mp/sa/240813

Special Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

SCHEDULE -O

(See Clause 21.1)

SELECTION OF INDEPENDENT EXPERT

1 Selection of Independent Expert

- 1.1 The provisions of the Model Request for Proposal for Selection of Technical Consultants, issued by the Ministry of Finance *vide* OM No. 24(23)/PF-II/2008 dated 21 May, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Expert.
- 1.2 In the event of termination of an Independent Expert appointed in accordance with the provisions of paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of paragraph 5 of this Schedule-O.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this Schedule-O.

2 Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with Schedule-P.

3 Fee and expenses

- 3.1 In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Construction Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 1% (one per cent) of the Total Project Cost. Payments not exceeding such 1% (one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Expert during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire. Provided, however, that the annual payment on account of fees and expenses to the Independent Expert during the Operation Period, shall not exceed 0.1% (zero point one) per cent of the Total Project Cost.

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कोयंबटूर



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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4 **Selection every three years**

No later than 3 (three) years from the date of appointment of Independent Expert pursuant to the provisions of Paragraph 1 of this Schedule-O, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-O; provided that the Authority may, at any time, engage another firm with prior written consent of the Concessionaire.

5 **Appointment of government entity as Independent Expert**

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the Authority shall not be eligible for appointment as Independent Expert.

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ए.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



SCHEDULE-P

(See Clause 21.2.1)

TERMS OF REFERENCE FOR INDEPENDENT EXPERT

1 Scope

1.1 These Terms of Reference for the Independent Expert (the "TOR") are being specified pursuant to the Storage Agreement dated (the "Agreement"), which has been entered into between the Authority and (the "Concessionaire") for the Storage Facility at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Storage Facility.

2 Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, mutatis mutandis, to this TOR.

3 Role and functions of the Independent Expert

3.1 The role and functions of the Independent Expert shall include the following:

- (i) review of the Drawings and Documents as set forth in Paragraph 4;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
- (iii) review, inspection and testing of Storage Facility as set forth in Paragraph 4;
- (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 4;
- (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;

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म.प्र.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)

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(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



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- (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
- (ix) assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
- (x) undertaking all other duties and functions in accordance with the Agreement.

3.2 The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Construction Period

- 4.1 The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys conducted as part of the Feasibility Report and any further revision thereof. The Independent Expert shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Expert shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Storage Facility sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Storage Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6 The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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- 4.7 The Independent Expert shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Storage Facility or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 4.8 The Independent Expert may inspect the Storage Facility more than once in a month if any lapses, defects or deficiencies require such inspections.
- 4.9 For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (the "Quality Control Manuals") or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Expert shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 4.10 The sample size of the tests, to be specified by the Independent Expert under Paragraph 4.9, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Expert may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 4.11 The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Expert in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 4.12 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 4 shall apply to such tests.



Chief Engineer
M.P. Warehousing & Logistics Corporation

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



- 4.13 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the Storage Facility is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.14 If at any time during the Construction Period, the Independent Expert determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons in the zone of construction, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 4.15 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Expert to inspect such works, and within 3 (three) days of receiving such notice, the Independent Expert shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 4.16 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
- 4.17 The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 4.18 Upon reference from the Authority, the Independent Expert shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.
- 4.19 The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.



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M.P. Warehousing & Logistics Corporation
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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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5 Operation Period

- 5.1 In respect of the Drawings and Documents received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Expert shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Independent Expert shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.4 The Independent Expert shall scrutinise and verify the Intake Reports and the Dispatch Reports and shall also conduct audits to determine the Availability, Reliability and Shortfall in accordance with the terms of the Storage Agreement.
- 5.5 The Independent Expert shall ensure periodic calibration of Weighment and Testing Equipment as well as periodic check of all scientific testing equipment.
- 5.6 The Independent Expert shall assess the amount of Incentives and Damages, if any, payable or recoverable, as the case may be, under Clause 27.12 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Storage Agreement.
- 5.7 The Independent Expert shall inspect the Storage Facility, at least once every quarter, preferably after receipt of the last monthly status report in the relevant quarter from the Concessionaire, but before the 20th (twentieth) day after the close of each quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Programme, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Storage Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.8 The Independent Expert may inspect the Storage Facility more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.9 The Independent Expert shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Storage Facility is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 5.10 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Expert shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



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- 5.11 The Independent Expert shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.
- 5.12 The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Storage Facility for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in Storage Facilities and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Expert shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.8.
- 5.13 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 18.5.
- 5.14 In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Storage Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Expert shall, in the presence of a representative of the Concessionaire, inspect the Storage Facility for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Storage Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, such additional amounts shall be payable by the Concessionaire.
- 6.2 The Independent Expert shall inspect the Storage Facility once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7 Determination of costs and time

- 7.1 The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



8 Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement.
- 8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Expert shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9 Other duties and functions

The Independent Expert shall perform all other duties and functions specified in the Agreement.

10 Miscellaneous

- 10.1 The Independent Expert shall notify its programme of inspection to the Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.

- 10.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.

- 10.3 The Independent Expert shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send 1 (one) of the copies to the Authority along with its comments thereon.

- 10.4 The Independent Expert shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.

- 10.5 Upon completion of its assignment hereunder, the Independent Expert shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. 2 (two) copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.

- 10.6 Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.



Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER

(Arun Pandey)

Managing Director
M.P. Warehousing & Logistics Corporation
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SCHEDULE – Q

(See Clause 23.1.2)

PROCESS OF FOODGRAIN STORAGE

1 Process of Foodgrain storage

- 1.1 The Concessionaire shall procure that storage of Foodgrains in Silos shall preserve the quality of Foodgrains in conformity with the Foodgrains Specifications.
- 1.2 The processes to be followed in the course of storage of Foodgrains at the Storage Facility shall conform to Applicable Laws, Applicable Permits, Good Industry Practice and the provisions of this Agreement.

2 Weighing process

- 2.1 Every incoming Vehicle shall be weighed on the weighbridge. The time for monitoring turnaround period of such Vehicle shall commence when the Vehicle is placed on the weighbridge. The weight of the Vehicle including the Foodgrains, if any, shall be recorded and its driver shall be provided with a unique identification number and the destination.
- 2.2 Every outgoing Vehicle shall also be weighed in the manner provided hereinabove. The exit time will be recorded along with the weight of the outgoing Vehicle and its driver will be issued a certificate stating, among other information, the net weight of Foodgrains, if any, contained in the Vehicle.

Identification and tracking of Vehicles

Each Vehicle will be provided a unique tracking ID which will be used to track it throughout its movement at the Storage Facility.

Screening and testing of Foodgrains

Samples from the Foodgrains shall be tested for their conformity with Foodgrains Specifications and the accepted Foodgrains shall be transported to the Silo through a conveyor. The Foodgrains not accepted as a result of such testing shall be transported outside the Silos for curing or rejection, as the case may be, in accordance with the provisions of Clause 22.4 of the Agreement.

5 Intake Processing

On its way to the Silo, the Foodgrains shall pass through the Head House (Handling tower), where the following operations shall be performed:

- (a) Screening through a primary separator in order to remove the gross wastes such as clods of earth;



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



- (b) screening with a magnetic separator in order to remove any steel particles;
- (c) passing through a cleaning system;
- (d) weighment to ascertain the exact weight of Foodgrains to be stored; and
- (e) transfer by bucket elevators and chain conveyors into the Silos.

6 Ventilation

Foodgrains stored in the Silos shall be regularly ventilated and the temperature shall be maintained within the specified range.

7 Fumigation of the Foodgrains

Fumigation of Foodgrains shall be carried out in accordance with Applicable Laws and Good Industry Practice, and at regular intervals to procure that the quality thereof is maintained and that Foodgrains are not affected by insects, rodents or bad grain. For the avoidance of doubt, the Concessionaire shall carry out at least 2 (two) fumigation cycles, once as a preventive fumigation and the other as a curative fumigation, such that the phosphine residue shall not exceed the limits specified by Applicable Laws.

8 Dispatch of Foodgrains

Foodgrains to be dispatched from the Storage Facility shall be taken out of each Silo for transfer to the Bagging warehouse or a bulk loading facility, as the case may be. Samples shall be taken at the discharge point of the conveyor and transmitted to sample testing stations located in the laboratory. Testing shall be performed by the Concessionaire in the presence of a representative of the Authority. In case, a sample fails to meet the Foodgrains Specifications, the Plant Control System shall reject the Foodgrains.

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मोपावले

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

SCHEDULE – R
(See Clause 29.1.1)
LETTER OF CREDIT

DATE:

To:

..... Limited (the “Concessionaire”)

From: (Specify the name and address of the bank issuing the Letter of Credit)[§] (the “Bank”)

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the “Letter of Credit”) No..... in favour of the Concessionaire named above, subject to the following terms and conditions:

1. On the instructions of the Authority, we hereby establish this Letter of Credit in favour of the Concessionaire in the maximum aggregate amount of Rs. ----- (Rupees -----) (the “Monthly Payment”), payable once every month, upon notice received from the Authority to this effect.

The Letter of Credit shall come into force with immediate effect and shall be valid and effective upto the 31st (thirty-first) day of March, 20-- (indicate the year falling after the year in which the Letter of Credit is issued) (the “Expiry Date”), and shall be automatically and compulsorily renewed every year by the Bank, 2 (two) months prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Concession Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.

This Letter of Credit provides security to the Concessionaire for the payment obligations of the Authority under the Storage Agreement dated entered into between the Authority and the Concessionaire (the “Storage Agreement”) for a Storage Facility at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer basis.

[§] As provided in Article 29 of the Storage Agreement, the bank issuing the Letter of Credit should be the bank where at least 40% (forty per cent) of the Authority's total monthly revenues are deposited.

[£] As provided in Clause 29.1.1 of the Storage Agreement, this amount shall be equal to about 125 % of the Fixed Charge payable by the Authority to the Concessionaire for Normative Availability of the Storage Facility during a period of one month. The Letter of Credit shall be modified and renewed once every 2 (two) years to reflect the revision in Fixed Charge in accordance with the provisions of the Agreement.



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MPWLC
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL



4. Any reference to the Storage Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Storage Agreement or agreement into the terms and conditions of this Letter of Credit.

5. The Concessionaire may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

(i) a copy of the Monthly Invoice (as defined in the Storage Agreement) issued by the Concessionaire to the Authority, any amounts whereof have remained unpaid; and

(ii) a certificate from the Concessionaire, under the hand of an Officer not below the rank of a Director of the Concessionaire, to the effect that the Monthly Invoice (as defined in the Storage Agreement) is in accordance with the Storage Agreement and that the amount due has remained unpaid and has not been disputed by the Authority.

6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Concessionaire has a right as between itself and the Authority to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.

7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Concessionaire that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Concessionaire is required to do for making effective its demand for payment in accordance with the Letter of Credit.

8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 2 (two) months prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Concessionaire and the Authority that the Bank elects not to renew this Letter of Credit for any such additional period.

9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.

10. The Letter of Credit shall be automatically replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.

11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.



Chief Engineer
M.P. Warehousing & Logistics Corporation
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MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL



12. All costs and expenses in connection with this Letter of Credit are to be on account of the Authority.
13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: (Name of Authority representative)
 (Designation)
 (Address, telephone and fax numbers)

To: (Name of the Bank representative)
 (Designation)
 (Address, telephone and fax numbers)

To: (Name of the Concessionaire representative)
 (Designation)
 (Address, telephone and fax numbers)

Signed and sealed this day of, 20... at

SIGNED, SEALED AND DELIVERED
 For and on behalf of
 the BANK by:

(Signature)
 (Name)
 (Designation)
 (Code Number)
 (Address)

NOTES:

- (i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.



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 MPWLC

Chief Engineer
 Warehousing & Logistics Corporation
 BHOPAL (M.P.)

(Arun Pandey)
 Managing Director
 Warehousing & Logistics Corporation
 BHOPAL



SCHEDULE -S

(See Clause 30.3.1)

REVENUE STATEMENT FOR UNUTILISED CAPACITY

Storage Facility:

Month:

Date	For corresponding month of previous year		For preceding month		For the month reported upon		
	Capacity utilised	Storage Charges realised (in '000 Rs.)	Capacity utilised	Storage Charges realised (in '000 Rs.)	Storage Charges per MT (in Rs.)	Capacity utilised	Storage Charges Due (in '000 Rs.)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							
31							
Total							

Total Revenue Share:

Remarks, if any:



Chief Engineer

**M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)**

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**EXECUTIVE ENGINEER
MPWEL**

(Arun Pandey)

**Managing Director
M.P. Warehousing & Logistics Corporation**



SCHEDULE -T

(See Clause 30.3.1)

REVENUE STATEMENT FOR DE-RESERVED CAPACITY

Storage Facility:

Month:

Date	For corresponding month of previous year		For preceding month		For the month reported upon	
	Capacity De-reserved	Storage Charges realised (in '000 Rs.)	Capacity De-reserved	Storage Charges realised (in '000 Rs.)	Capacity De-reserved	Storage Charges realised (in '000 Rs.)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28						
29						
30						
31						
Total						

Total Revenue Share:

Remarks, if any:



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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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Note: For every source of revenue from which the monthly revenues exceed Rs. 10 lakh, a separate statement substantially in the above format shall be submitted. The residual sources shall be combined and submitted in a separate statement.

म.प्र. वेयरहाउसिंग & लॉजिस्टिक्स कार्पोरेशन
भोपाल

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Managing Director
M.P Warehousing & Logistics Corporation
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Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



SCHEDULE -U

(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the "Panel of Chartered Accountants"). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-U.

2 Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing 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) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing 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 five years shall be awarded five points).



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

म.प्र. वेयरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
मोपाल

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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EXECUTIVE ENGINEER
MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



SCHEDULE -V

(See Clause 38.4)

VESTING CERTIFICATE

1 The Managing Director, Madhya Pradesh Warehousing & Logistics Corporation, a public sector undertaking under the control of the Government of Madhya Pradesh and having its principal offices at Office Complex, Block-'A', Gautam Nagar, Bhopal, Madhya Pradesh (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on behalf of the Secretary, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Madhya Pradesh having its principal office at Vallabh Bhavan, Bhopal Madhya Pradesh refers to the Storage Agreement dated (the "Agreement") entered into between the Authority and (the "Concessionaire") for a Storage Facility with a design storage capacity of 50,000 metric tonnes, at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer ("DBFOT") basis.

The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Storage Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of
Concessionaire by:

For and on behalf of
Authority by:

(Signature)
(Name)
(Designation)
(Address)

(Signature)
(Name)
(Designation)
(Address)

In the presence of:



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

2.

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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SCHEDULE -W

(See Clause 40.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

1 The Managing Director, Madhya Pradesh Warehousing & Logistics Corporation , a public sector undertaking under the control of the Government of Madhya Pradesh and having its principal offices at Office Complex, Block - 'A', Gautam Nagar, Bhopal, Madhya Pradesh (hereinafter referred to as the "**Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on behalf of the Secretary, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Madhya Pradesh having its principal office at Vallabh Bhavan, Bhopal Madhya Pradesh

2 Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at, (hereinafter referred to as the "**Concessionaire**" which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);

(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 Storage Agreement dated with the Concessionaire (the "**Storage Agreement**") for a Storage Facility with a design storage capacity of 50,000 metric tonnes at Murli in Sehore district in the State of Madhya Pradesh on design, build, finance, operate and transfer basis ("**DBFOT**"), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Storage Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Storage Agreement.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, 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 Storage Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Storage Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Storage Agreement shall apply, *mutatis mutandis*, to this Agreement.



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Storage Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Storage Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Storage Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Storage Facility as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "Notice of Financial Default") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Storage Facility in accordance with the provisions of Article 36 of the Storage Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Storage Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Storage Agreement; provided that upon written request from the Lenders' Representative and the



(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHO PAL

EXECUTIVE ENGINEER
MPWLC

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)



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Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Storage Facility including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.

3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for pre-qualification of the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall, request the Authority to:

- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Storage Facility in accordance with the provisions of the Concession Agreement;



Chief Engineer
W.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

(Arun Pandey)
Managing Director
W.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



- (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 thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Storage Agreement.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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MPWLC



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



5 TERMINATION OF STORAGE 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 Storage Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 37 of the Storage 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 Storage Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Storage Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim in accordance with the provisions of the Storage Agreement.

DURATION OF THE AGREEMENT

Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPL (M.P.)

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MPWLC
(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPL



7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Storage Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Bhopal and the language of arbitration shall be English.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director

M.P. Warehousing & Logistics Corporation
BHOHAL



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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 at Bhopal 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:

- म.प्र. वैआरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
सचिव
- (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 Storage Agreement and this Agreement, the provisions contained in the Storage 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:



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOHAL (M.P.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOHAL



- (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
- 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.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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ENDORSEMENT
MFWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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EXECUTED BY ENGINEER
MPWLC



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Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence of, Director, who has signed these presents in token thereof and, Company Secretary / Authorised Officer who has countersigned the same in token thereof⁵:

SIGNED, SEALED AND DELIVERED For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of

SENIOR LENDERS by the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1.

2.

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



⁵ To be affixed in accordance with the articles of association of the Concessionaire.



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CHIEF ENGINEER

Chief Engineer

M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



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SCHEDULE - X

(See Article 31)

ESCROW AGREEMENT

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

AMONGST

1. [**** LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **** (hereinafter referred to as the "Concessionaire" which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);

2. ****[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);

****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the "Escrow Bank" which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

The Managing Director, Madhya Pradesh Warehousing & Logistics Corporation, a public sector undertaking under the control of the Government of Madhya Pradesh and having its principal office at Office complex , Block-'A', Gautam Nagar, Bhopal, Madhya Pradesh (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) acting for and on behalf of the Secretary, Department of Food, Civil Supplies and Consumer Affairs, Govt. of Madhya Pradesh having its principal office at Vallabh Bhavan, Bhopal.



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

EXECUTIVE ENGINEER
MPWLC



WHEREAS :

- (A) The Authority has entered into a Storage Agreement dated.....with the Concessionaire ("**Storage Agreement**") for a Storage Facility with a design storage capacity of 50,000 metric tonnes at Murli in Sehore district in the State of Madhya Pradesh on Design build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Storage Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein

NOW IT IS HEREBY AGREED as follows:

DEFINITIONS AND INTERPRETATION

1 Definitions

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

"**Agreement**" means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

"**Storage Agreement**" means the Storage Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence



Chief Engineer
M.P. Warehousing & Logistics Corporation
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MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



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from the date on which a notice is delivered by the Government or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this



(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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M.W.L.C.



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Agreement and not defined herein but defined in the Storage Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Storage Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Storage Agreement shall apply, mutatis mutandis, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the



(Adin Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHO PAL

EXDCC - 13 ENGINEER
MPLWC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHO PAL (M.P.)



Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

The rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

(Arun Pandey)

Managing Director

M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC

Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)



The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) [all payments by the Authority, including Storage Charges and Service Charges];
- (d) any revenues, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) grant and any other monies disbursed by the Government to the Concessionaire;
- (b) all Storage Charges and Service Charges in exercise of its rights under the Storage Agreement; and
- (c) Termination Payments:

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म.प्र. व्हायरहाउसिंग एण्ड लॉजिस्टिक्स कॉर्पोरेशन
भोपाल

Provided that the Authority shall be entitled to appropriate from the aforesaid amounts, any Revenue Share due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

(a) all taxes due and payable by the Concessionaire for and in respect of Project and;

- (b) all payments relating to construction of the Project and, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Storage Agreement and certified by the Authority as due and payable to it;
- (e) any other amounts due and payable to the Authority, including Revenue Share, to the extent not set off in accordance with the provisions of this Agreement;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) Premium due and payable to the Authority;
- (h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Storage Agreement;
- (i) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (j) any reserve requirements set forth in the Financing Agreements; and
- (k) balance, if any, in accordance with the instructions of the Concessionaire

4.1.2 Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Storage Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPL (M.P.)

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MPWLC

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation



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- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Revenue Share and any other amounts due and payable to the Authority;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Storage Agreement, including [Premium,] and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Storage Agreement;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Storage Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL

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MPWLC



Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Storage Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation



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Bank from the Concessionaire or any other person hereunder or in connection herewith; and

- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Storage Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Authority and the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Storage Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments,



Chief Engineer
M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)

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EXECUTIVE ENGINEER
MPWLC

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



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close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

INDEMNITY

General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations



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under the Storage Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Storage Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of



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the International Centre for Alternate Dispute Resolution, New Delhi (the "Rules") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Bhopal and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government 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).



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MPWL



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11.3. Priority of agreements

In the event of any conflict between the Storage Agreement and this Agreement, the provisions contained in the Storage Agreement shall prevail over this Agreement.

11.4. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

11.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.7 Survival

11.7.1 Termination of this Agreement:

- (a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and



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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to



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be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

13 Original Document

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

रमचिव
मोपाव
T.M. केसरहाससिंग एण्ड लॉजिस्टिक्स कार्पोरेशन

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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M.P. Warehousing & Logistics Corporation
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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS
AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
SENIOR LENDERS by the
Lenders' Representative :

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
ESCROW BANK by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
AUTHORITY OF [***] by :

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of:

1.

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
BHOPAL



Chief Engineer
M.P. Warehousing & Logistics Corporation
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Appendices

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M.P. Warehousing & Logistics Corporation
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APPENDIX I LIST OF BID-SPECIFIC CLAUSES⁵

A. Clauses with non numerical footnotes

1. Recital: Para 2
2. Clause 26.1.1: Grant
3. Clause 26.3: O&M Support
4. Clause 26.4: Premium
5. Signature /Execution Page of the Storage Agreement
6. Schedule M: Foodgrains Specifications
7. Schedule-R: Letter of Credit
8. Schedule W: Substitution Agreement: Signature /Execution Page
9. Appendix I: List of bid specific clauses

B. Clauses where curly brackets are used

1. Recitals: Para 2
2. Recitals: Para B, D, E, F and G:
3. Clause 4.1.3 (f): Conditions Precedent
4. Clause 7.1(g), (k), (l), (m) and (q): Representations and Warranties of the Concessionaire
5. Clause 8.1.2: Disclaimer
6. Clause 26.4: Premium
7. Article 48: Definitions
 - "Associate "
 - "Bid"
 - "Change in Ownership"
 - "Consortium"
 - "Consortium Member"
 - "Total Project Cost"

C. Clauses with blank spaces

1. First line of the Agreement
2. Recital: Para 2
3. Recitals B, D and F
4. Clause 26.1.1: Grant
5. Clause 26.4: premium
6. Execution/Signature Page of the Storage Agreement
7. Schedule F: Performance Security: Recitals and execution page
8. Schedule J: Completion Certificate and Provisional Certificate

(Arun Pandey)
Managing Director
M.P. Warehousing & Logistics Corporation
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⁵ This Appendix-I contains a list of clauses that would need to be suitably modified for reflecting bid-specific provisions after the Concessionaire has been selected. This Appendix-I may be included in the draft storage agreement forming part of the bid documents. It may however, be deleted when the Storage Agreement is to be executed.



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M.P. Warehousing & Logistics Corporation
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9. Schedule P: Terms Of Reference For Independent Expert: Clause 1.1
10. Schedule R: Letter of Credit: Address Line, first Para, Para 3, 15 and Execution/ Signature Page
11. Schedule V: Vesting Certificate: Para 1 and Execution/Signature Page
12. Schedule W: Substitution Agreement: 1st Line, Para 2 and 3, Recital A and Execution/Signature Page
13. Schedule X: ESCROW Account: 1st line, Para 1,2,3 and,4, Recital A and Execution/ Signatory Page

सचिव
ल.प्र. के.आर.हासिंग एण्ड लॉजिस्टिक्स कापरेरेशन
भोपाल

(Arun Pandey)
Managing Director
M.P Warehousing & Logistics Corporation
BHOPAL



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M.P. Warehousing & Logistics Corporation
BHOPAL (M.P.)