

This non-judicial stamp paper forms an integral part of this agreement dated
executed between NAFED and _____

AGREEMENT

THIS AGREEMENT is made and entered into at New Delhi on this _____ day of _____, 2017 BY and BETWEEN:

National Agricultural Cooperative Marketing Federation of India Ltd., an apex level Cooperative Marketing Organization, registered under Multi State Cooperative Societies Act, 2002, having its Head Office at Nafed House, Siddhartha Enclave, Ashram Chowk, New Delhi-110014 through itsduly authorized, (hereinafter referred to as the "**NAFED**" which expression shall unless excluded by or repugnant to the subject or context or meaning thereof be deemed to mean and include its representatives, nominees, affiliates, successors in business and permitted assigns) of the first part;

AND

M/s _____, a cooperative/ firm/ company registered under the provisions of [Companies Act of 1956 or 2013], having its Regd Office at _____, through its _____ **Mr.** _____, **resident of** _____, duly authorized (hereinafter referred to as "**MILLER**" which expression shall unless otherwise repugnant to the context or meaning thereof include and always be deemed to include its successors and assignees) of the second part.

RECITALS

WHEREAS:

- A. NAFED is an apex level organization of Agricultural Marketing Cooperatives in India to organize, promote and develop marketing , processing and storage of agricultural, horticultural and forest produce, undertake inter- state and export of agricultural produce. NAFED is also a Central Nodal Agency for procurement of notified agricultural commodities under Price Stabilization Fund (PSF) on behalf of Govt. of India. NAFED also procures Pulses for Buffer Stocking under Price Stabilization Fund (PSF) Scheme of Government of India.
- B. As per directives of the Government of India, NAFED shall undertake supply of pulses (both in whole and milled form) to various Government Institutional buyers across India.
- C. For this purpose, NAFED has invited an expression of interest to empanel Millers across India to sub-contract milling activity of pulses in possession of NAFED under National buffer stock and supply of processed pulses to its various Buyers.

- D. The Miller has submitted its details in the format prescribed by NAFED along with various supporting documents and has consequently been shortlisted by NAFED for empanelment and participation in bidding of milling contracts for lifting stocks from NAFED warehouses, milling & processing of pulses and delivery of processed pulses to Buyers.
- E. As per the orders received from Buyers, NAFED will list various 'Contracts/ Tenders' for processing of pulses and invite bids from Miller for processing and supply of processed pulses to Buyers. The tenders/contracts will provide complete details including variety of whole pulses to be processed, location of raw material, order quantity, minimum outturn ratio, quality specifications to be achieved and delivery location with timelines. Each tender/contract will be linked to storage point of whole pulses to be processed and to the assigned delivery location.
- F. NAFED has also appointed a 'Service Provider' to provide an e-platform ('Portal') to manage online bidding process and offer supply chain management services to NAFED for pulses including empanelment of millers, stock assaying and mapping, online bidding management through e-auction, tracking orders deliveries, payment management etc.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET FORTH HEREIN, AND OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, PARTIES HERETO AGREE AS FOLLOWS:

1. Interpretations. Unless the context otherwise requires in this Agreement:

- 1.1 The use of words importing the singular shall include plural and masculine shall include feminine gender and vice versa;
- 1.2 Reference to any law shall include such law as from time to time enacted, amended, supplemented or re-enacted;
- 1.3 Reference to the words "include" or "including" shall be construed without limitation;
- 1.4 Reference to this Agreement, or any other agreement, deed or other instrument or document shall be construed as a reference to this Agreement or such agreement, deed or other instrument or document as the same may from time to time be amended, varied, supplemented.
- 1.5 The term "Buyer(s)" refers to all the Government Institutions desirous of taking supplies of pulses through NAFED.

2. Empanelment of the Miller

NAFED hereby undertakes and agrees to empanel the Miller and allow the Miller to participate in bidding of milling contracts NAFED may post in future.

3. Term and termination of the empanelment

3.1 Terms of empanelment

The Miller will be empanelled with NAFED and will be allowed to participate in all the bids for duration of 24 months from the date of execution of this agreement. The empanelment duration may be extended further at sole discretion of NAFED.

3.2 Termination of empanelment

3.2.1 In the event the Miller having been adjudged as insolvent or going into liquidation or winding up its business, NAFED shall be at liberty to terminate the agreement and to realize from the Miller all resultant losses, damages, costs incurred without prejudice to any other rights or remedies under the agreement and law at risk and cost of the Miller.

3.2.2 NAFED reserves right to terminate the empanelment at any point of time at its sole discretion without assigning any reason by providing a notice period of 30 days.

3.2.3 NAFED will also terminate the empanelment in event of:

- Failure in completing any of the contracts/tenders awarded in specified timelines.
- Any default in compliances specified in contract(s)/tender(s)
- Any corrupt practice is undertaken by the Miller

3.2.4 In the event of breach by the Miller of any terms and conditions of the contract(s)/tender(s), or failing to observe any of the provisions, obligations governing the contract(s)/tender(s), the Miller's empanelment will be terminated with immediate effect. Any losses pertaining to occurrence of such event shall be borne by the Miller.

3.2.5 In event of termination of empanelment, the Miller shall continue to furnish all on going contract(s)/tender(s) successfully. After termination, the Miller cannot bid for any new contract(s)/Tender(s).

4. Scope of work of the Miller.

4.1 Registration on 'Portal':

4.1.1 The miller will register online on the Portal and will obtain its 'Member ID' and 'Password'.

4.2 Pre-inspection of NAFED stocks:

4.2.1 The Miller will be provided with complete details including variety of whole pulses to be processed, location of raw material, order quantity, minimum outturn ratio, quality specifications to be achieved and delivery location with timelines for each contract. The Miller may pre-inspect the NAFED stocks, at its own cost, before submission of the bids

4.3 Online bid submission:

4.3.1 The Miller will be intimated by NAFED about the listing of tenders/contracts on the electronic portal.

4.3.2 The Miller will submit bids online through the Portal for various contracts/tenders listed by NAFED.

4.3.3 Millers shall have to make offer for a complete lot and confirm to off take quantity from warehouse, delivery quantity to delivery centers and lead times.

4.3.4 The bidding may be on different parameters depending upon the requirement of the contract/tender listed on Portal and it may differ from contract to contract.

4.3.5 NAFED reserves all rights to reject highest /lowest bid, depending on the nature of contract, after conclusion of bidding process if the bid is found not competitive. The confirmation of acceptance or rejection of highest/lowest bid depending on the nature of contract will be intimated by the Portal.

4.4 Lifting of stocks from NAFED warehouse –

4.4.1 The miller shall be responsible for lifting the unprocessed pulses from NAFED specified warehouses and transport (which includes handling, transportation, transit insurance, loading/unloading, entry tax etc.) to its milling unit. The cost of transportation will be factored while calculating the cost of pulses.

4.4.2 Miller shall be responsible for quality & quantity of pulses and shall acquire due insurance of the stocks in favour of NAFED while transportation, milling and storage of pulses at milling unit

4.5 Milling and processing of pulses

4.5.1 The Miller will process the raw pulses into milled/whole pulses as per the quality specifications prescribed by NAFED in the contract/tender. The by-products will be retained by the Miller and cost will be adjusted accordingly depending on the terms to be uploaded on portal from time to time in addition to this agreement.

4.5.2 The pulses should be processed in the premises maintained in hygienic conditions that shall be open to inspection at any reasonable time by NAFED/ Service Provider

4.5.3 The Miller will be responsible to maintain the stock of pulses lifted from NAFED warehouse in a separate identifiable space and infest free condition. NAFED/ Service Provider will be empowered to undertake quality control checks during the storage of pulses by the Miller during the period of the contract.

4.6 Packaging of pulses –

4.6.1 Miller will undertake packaging of the processed pulses as pre-specified in respective contract/tender.

4.6.2 The packaging and labeling shall confirm with all the applicable laws and regulatory requirements along with the packaging standards specified in the respective contract/tender and to other provisions set out by NAFED.

4.6.3 Failure on the part of the Miller to meet with the packing and labeling requirements shall entitle NAFED/Buyer to reject the goods. In the event of continuing failure that is not rectified by the Miller within stipulated working days being notified by NAFED/Buyer, NAFED shall be entitled to terminate the contract.

4.7 Assaying & QC of processed pulses –

4.7.1 The Miller will assist the Quality Control staff of NAFED/ Service Provider/ Buyer to draw samples and conduct quality checks as per methodology prescribed in the contract/ tender. The sampling of stocks may take place at miller location and/or buyer delivery location, as pre-defined in the contract/tender.

4.8 Delivery to 'Buyer' –

4.8.1 The Miller shall be responsible for delivery of processed pulses to the Buyer/NAFED specified delivery locations within the stipulated time frame without tampering the stocks

4.8.2 The Miller shall obtain the Delivery Receipt (confirming the quality and quantity of the processed pulses) from the buyer (nominated by NAFED) ensuring success of the delivery and hand over the original receipt to NAFED

4.8.3 Miller shall be responsible for quality & quantity of processed pulses delivered up to delivery point and shall acquire due insurance of the stocks while transportation of pulses till delivery point. In case of rejection of stocks at Buyer's end, the total cost of transportation in replacement of stock shall be borne by the Miller

4.9 Order tracking and status update –

4.9.1 The Miller will be responsible for providing regular updates (on Portal) of all the activities including lifting of stocks from warehouse, assaying, lot wise completion of milling, packaging and delivery to buyer on the e-portal.

4.10 No Miller shall pledge the whole or processed pulses, belonging to NAFED, for availing cash credit limit for his business transactions. If such instances are noticed or brought to the notice of NAFED through departmental or any other sources, the contract will be cancelled and such millers shall be blacklisted for a minimum period of 03 years.

5. **Earnest Money Deposit**

The Miller must deposit EMD before participation in the bidding process. The amount to be deposited as EMD (equivalent to 2% of the market value of the contract) will be pre-

defined in the bidding contract. The Miller can bid for any number of contracts/tenders listed on the Portal before their scheduled bidding closing time.

EMD (without any interest) of the unsuccessful bidders of the contract, including those whose bids are not accepted due to non-fulfillment or not meeting the conditions attached to the bid, shall be returned.

EMD of the Successful Miller would be retained by NAFED and will be refunded after submission Performance Security by the Miller to NAFED.

6. Security Deposit

6.1 On award of contract/tender, the Successful Miller will have to submit Security Deposit in the form of Bank Guarantee equivalent to Market Value of the quantity of processed pulses delivered at the specified delivery location mentioned in the contract or existing market price of processed pulses at buyer delivery point, whichever is higher.

6.2 The Bank Guarantee will be refunded, subject to deductions as detailed in the terms and conditions of the tenders/contracts, after successful completion of the specific contract.

7. Consideration and payments

7.1 It is hereby agreed and accepted between the parties that, NAFED shall pay to the Miller and the Miller shall be entitled to receive from NAFED, for the milling activity performed by Miller under various contracts, a service charge equal to quantity of processed pulses delivered to NAFED/ buyers multiplied by the rate quoted as per the bid offered by the successful Miller in the bidding process on the electronic portal.

7.2 NAFED shall make payment, if any, to the Miller within specified timelines as mentioned in the terms & conditions of the contract.

7.3 100% payment will be effected based on receipt of the pre-receipted bills, after successful completion of a milling contract event. Payment shall be made by way of ECS/NEFT/RTGS for which necessary bank details shall be provided by the Miller. TDS under Income Tax and/or Service Tax Acts, if applicable, shall be deducted from the bills. The Miller shall also comply with the Provident Fund obligations.

8. Completeness of the contract

The contract between NAFED and Miller shall be deemed as complete only if

- 8.1 The miller completes the supply of processed quantity of pulses, as per the required quality specifications and within the stipulated time lines to the NAFED/ NAFED's buyer, or
- 8.2 In the event of any variation in delivery time and/or quality and/or quantity of the supplied pulses to NAFED/ NAFED buyers, the dispute between the Miller and NAFED/ NAFED buyer is settled (either amicably or through legal proceedings), or
- 8.3 In the event the Miller is not able to supply the processed pulses to NAFED/ NAFED buyer for any reason attributed to the Miller, the cost of the order is recovered from Miller by revoking its bank guarantee submitted before lifting of stocks and blacklisting Miller from further participation in future contracts. Any extra liability which is not covered by revoking the Bank Guarantee will be paid by the Miller

9. Indemnification

The Miller shall keep NAFED indemnified against all losses or damages, claims, compensation, penalty, fine, levies, etc. on account of slackness, deficiency, failure to observe any obligations under the contract, failure to comply with statutory/ mandatory provisions pertaining to the contract by the Miller in respect of the milling services provided etc., whatsoever.

10. Force Majeure

- 10.1 Force Majeure means any event or combination of events or circumstances beyond the control of the parties hereto which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which adversely affects the abilities of the parties to perform obligations under this Agreement, which shall include but not be limited to: (a) Acts of God i.e. fire, drought, flood, earthquake, epidemics, natural disasters; (b) Explosions or accidents, air crashes and shipwrecks, act of terrorism; (c) Strikes or lock outs, industrial dispute; (e) War and hostilities of war, riots, bandh, act of terrorism or civil commotion; (f) The promulgation of or amendment in any law, rule or regulation or the issue of any injunction, court order or direction from any Governmental Authority that prevents or restricts a party from complying with any or all the terms and conditions as agreed in this Agreement; (h) Any event or circumstances analogous to the foregoing.

- 10.2 It is agreed between the parties that the performance of obligations under this agreement is subject to force majeure condition which shall mean any event or combination of events or circumstances beyond the control of the parties hereto.
- 10.3 Neither party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations.
- 10.4 During the continuance of the Force Majeure, Nafed reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances so warrant, the Nafed may also suspend the agreement for such period as is considered expedient, the Miller agrees and consents that they shall have no right to raise any claim, compensation of any nature whatsoever for or with regard to such suspension.
- 10.5 The Miller agrees and understands that if the Force Majeure condition continues for a long period, then the Nafed in its own judgment and discretion, may terminate this Agreement and in such case Miller agrees that they shall have no right or claim of any nature whatsoever and Nafed shall be released and discharged of all its obligations and liabilities under this Agreement

11. General Provisions:

- 11.1 Governing Laws: This agreement will be governed and construed in accordance with the laws of the republic of India without giving effects to the principles of conflicts of laws. Both parties agreed to submit the jurisdiction at New Delhi and further agreed that any cause of action arising under this agreement may be brought in a court at New Delhi.
- 11.2 Compliance with Laws, Notifications etc: That the Miller confirms that it has entered into this transaction with the full knowledge and understanding of this Agreement and subject to all the laws and notifications and rules applicable to this area, including terms and conditions laid down by the Government of India or any State Govt. and the undertakings given by the NAFED to the Competent Authority of the Government of India in this regard and that the Miller has familiarized itself with all the aforesaid and other applicable agreements, arrangements, undertakings, conditions on inspection of the documents with the NAFED.
- 11.3 Further Assurances: The parties hereto shall cooperate with each other, both during and after the term of this agreement, and to execute, when requested, any other document deemed necessary or appropriate by parties hereto to carry out the purpose of this agreement.

- 11.4 Severability: If any provision of this agreement is held to be invalid or enforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties hereto agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision.
- 11.5 Waiver: not a limitation to enforce
- 11.5.1 Failure of either party to enforce at any time or for any period of time the provisions hereof shall not be construed to be waiver of any provisions or of the right thereof to enforce each and every provision.
- 11.5.2 Any express or implied waiver by the NAFED of any default shall not constitute a waiver of any other default by the 'Miller' or a waiver of any of the NAFED rights. All original rights and powers of the NAFED under this Agreement will remain in full force, notwithstanding any neglect, forbearance or delay in the enforcement thereof by the NAFED, and the NAFED shall not be deemed to have waived any of its rights, or any provision of this Agreement, or any notice given hereunder, unless such waiver be provided in writing by NAFED, and any waiver by the NAFED of any breach by the 'Miller' of the Agreement, shall not be deemed a waiver of any continuing or recurring breach by the 'Miller' of the Agreement.
- 11.6 **No Assignment:** Neither party may assign or transfer its rights or obligations under this agreement without the prior written consent of the other party, and any assignment or transfer in derogations of the foregoing shall be null and void, provided, that either party shall have the right to assign the agreement, without the prior written consent of the party, to the successor entity in the event of merger, corporate re-organization or sale of all or substantially all of its assets. The terms of this agreement shall be binding upon such assignees.
- 11.7 **Notice:** Any notices required or permitted herein under shall be given to the appropriate party at the address specifies herein or as such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by the facsimile, upon confirmation of receipt; or if sent by certified by or registered mail postage etc.7 days after the date of mailing.
- 11.8 **Entire Agreement:** This agreement together all annexure, specifications and other attachments which are incorporated herein by reference, is the sole and entire agreement between the parties relating to the subject matter hereof. This agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. No supplement, modification or amendments of this agreement shall be binding unless executed in writing by both parties in this agreement. In the event of conflict of provisions of the main body of the agreement and attached annexure, specification or other materials, this agreement shall take precedence.

11.9 **Place of execution of agreement:** The execution of this agreement will be completed only its execution by the Nafed through its authorized signatory at the registered office at New Delhi after the copies duly executed by the Miller is received by Nafed. Hence, this agreement shall be deemed to have been executed at New Delhi even if the same has prior thereto executed this agreement at any place(s) other than New Delhi.

12. Applicable Law, Jurisdiction and Dispute Resolution:

12.1 This Agreement shall be constitute and the legal relation between the parties hereto shall be determined and governed according to the laws of Republic of India and only courts at High Court of Delhi shall have the jurisdiction in all matters arising out of /touching and/or concerning this agreement and parties to this agreement agree to irrevocably submit to the exclusive jurisdiction of those courts for purposes of any such proceeding. The aforementioned exclusive and irrevocable jurisdictions of aforesaid courts are irrespective of place of occurrence of any cause of action pertaining to any dispute between the parties.

12.2 All or any disputes arising out or touching upon or in relation to the terms of this agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act of 1996(as amended up to date) or any statutory amendments/modifications thereof for the time being in force r/w relevant provisions of Multi State Co-operative Societies Act of 2002. The venue of the arbitration shall be at New Delhi India and language of arbitration shall be English.

12.3 Nothing contained in this clause shall prevent the NAFED from seeking interim injunctive relief against the Miller in the courts having jurisdiction over the parties

IN witness whereof, we the parties hereto have set and subscribed their respective hand and seal on this Agreement on the day, month, year first as mentioned in the presence of the following witnesses as the intention is to carry the obligation under the agreement.

For an on behalf of Nafed

For and on behalf of Miller

(Name & Signature)

(Name & Signature)

Witness:

1. _____

2. _____

1. _____

2. _____