

MODEL
Operation, Management and Development Agreement

Between

Government of the State of¹

and

[²] Limited

for

[³] Terminal Market Complex⁴

¹ Name of concerned State to be inserted

² Name of the Company formed by PE to be inserted

³ Location of Terminal Market Complex to be inserted

⁴ To be vetted by a competent legal authority

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OPERATION, MANAGEMENT AND DEVELOPMENT AGREEMENT

This Operation, Management and Development Agreement (the "OMDA") made on this ___day of __, ___

BY AND BETWEEN

1. The Government of the State of-----, (hereinafter referred to as the "GOS", which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the FIRST PART; and
2. [], a company incorporated under the Companies Act, 1956 having its registered office at [] (hereinafter referred to as the "PE", which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the SECOND PART.

GOS and PE are hereinafter collectively referred to as "Parties" and individually as "Party".

WHEREAS

- (A) GOS is an authority which is responsible for the development Terminal Market Complexes on a public-private-partnership (PPP) basis through a BOO model for designing, engineering, financing, procuring, constructing, operationalizing and maintaining of the Terminal Market Complex in the State.
- (B) GOS had accordingly invited Proposals for short listing of bidders for the aforesaid under its Notice Request For Proposals (RFP) No..... Dated ("The Tender Notice"), *inter alia*, for the design, engineering, financing, procurement, construction, operation and maintenance of the Terminal Market Complex on a Build Operate Own basis subject to and on the terms and conditions contained in the Tender Notice and had pursuant thereto short listed the bidder *inter alia*, the consortium comprising., and (Collectively the "Consortium") with as its Lead Member.
- (C) After evaluation of the Bids so received GOS accepted the Bid of the individual applicant or a Consortium and issued its Letter of Intent No..... dated ("LOI") to the individual applicant or the Consortium requiring, *inter alia*, the execution of this OMDA within 30(thirty) days of the date thereof.
- (D) The Individual applicant or Consortium has promoted and incorporated the SPV as a company under the Companies Act 1956, hereinafter referred to as Private Enterprise (PE), to enter into this OMDA pursuant to the LOI for undertaking, *inter alia*, the design, engineering, financing, procurement, construction,

operation and maintenance of the Terminal Market Complex, as defined hereinafter on BOO basis as referred to in Recital 'A' and to fulfill other obligations pursuant to the LOI and has requested GOS to accept it as the entity which shall undertake and fulfill and perform the obligations and exercise the rights of the Individual applicant or Consortium under the LOI, including the obligation to enter into this OMDA for the design, engineering, financing, procurement, construction, operation and maintenance of the Terminal Market Complex on a BOO basis.

- (E) GOS has agreed to the said request of the Consortium and has accordingly agreed to enter into this OMDA with the PE pursuant to the LOI for, inter alia, the design, engineering, financing, procurement, construction, operation and maintenance of the said Modern Terminal Market Project on BOO⁵ basis.
- (F) It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.

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

⁵ Build, Own and Operate

CHAPTER I
DEFINITIONS AND INTERPRETATION

1.1 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:

1. "Agreement" or "this Agreement" shall mean the OMDA
2. "Amendment to the APMC Act" shall mean the Amendment to the existing provision of the state Agricultural Produce Marketing (Development and Regulation) Act passed by the State of
3. "Applicable Law" means all laws, brought into force and effect by GOI, GOS and the local laws of the land including rules, regulations and notifications made there under and judgments, decrees, injunctions, writs and orders of any court of record, as may be in force and effect during the subsistence of this Agreement.
4. "BOO" shall mean Build, Operate and Own
5. "Change in Law" means the occurrence of any of the following (other than in respect of any tax laws or any environmental laws) after the date of submission of a binding offer or bid for the TMC by the private participants during the international competitive bidding process initiated by the GOS for the purposes of selection of the Private Participants (the "Bid Date"):
 - a. the modification, amendment, variation, alteration or repeal of any existing Indian law or the enactment of any new Indian law, by the Indian Parliament;
 - b. the commencement of any Indian law enacted by the Indian Parliament which has not yet come into effect except to the extent where such Indian law was enacted prior to the Bid Date with a commencement date after the date hereof and such Indian law takes effect on that commencement date without any material amendment or a change in the interpretation, application or enforcement of any Indian law by the Supreme Court of India or GOS;
 - c. after the date of grant of any Clearance a change in the terms and conditions attaching to such Clearance or the attachment of any new terms or conditions or such Clearance ceasing in part or in whole to

remain in full force and effect otherwise than on account of any action or inaction of the PE;

Provided however that the creation or introduction of a Regulatory Authority (including the framing of rules and regulations in relation thereto or there under) having jurisdiction over the TMC shall not constitute a Change in Law.

Provided further an event, the adverse effect of which can be insured against, shall not constitute Change in Law.

6. "Clearance" means any consent, license, approval, permit, ruling, exemption, no objection certificate or other authorization or permission of whatsoever nature which is required to be obtained from and/or granted by the GOI and the GOS for facilitating clearances required for the project including the license under State APMC Act for operationalization of the TMC.
7. "COD" means the commercial operations date of the Market Assets and Essential Assets as per the Independent Consultant
8. "Consortium Members" shall mean [names to be inserted].
9. "Deemed Clearances" means authorization/ permission to operate the Terminal Market Complex through a single license in the state, source Agriculture Produce directly from farmers and sell directly the produce to the end users.
10. "Development Standards and Requirements" mean the standards set forth in Schedule 4 hereof.
11. "Dispute" shall mean any dispute, difference, question or controversy between the Parties arising out of, in connection with or in relation to this Agreement.
12. "Effective Date" means the date on which the Conditions Precedent have been satisfied or waived according to the terms hereof and shall be deemed to be the date of commencement of the OMDA.
13. "Essential Infrastructure/Assets" shall have the meaning assigned hereto in Schedule 2 hereof.
14. "Force Majeure" shall mean events as described in Clause 14

15. "GOI" means the Central Government of India and any ministry, department, or instrumentality of the central government.
16. "GOS" means the Government of the State of ⁶ and any department, or instrumentality of the state government entrusted with the responsibility of development of Terminal Market Complex under the Public private Partnership in the State
17. "Independent Consultant (IC)" shall mean the independent consultant appointed in accordance with Clause 6.5 hereof.
18. "Initial Development Plan" shall mean the development plan for the development of the Terminal Market Complex submitted by the Bidder/Applicant or Successful Bidder to GOS during the international competitive bidding process for development of the Terminal Market Complex and annexed hereto as Schedule 13.
19. "Lead Institutions" means the Principal Stakeholders in the proposed Terminal market Complex Project such as concerned State Government, Successful bidder as Private Enterprise, Producer's Association who play a major role in construction and operationalisation of the TMC.
20. "Mandatory Capital Projects" means the minimum capital projects associated with the Market Infrastructure/Assets and Essential Infrastructure/Assets as provided in Schedule 1 and as finalised through bid.

21. "Market Services" means the services provided through the Market Infrastructure/Asset, Essential Infrastructure /Assets and Additional Infrastructure/assets as provided in Schedule 1.
22. "Master Plan" means the master plan for the development of the Terminal Market Complex, evolved and approved, which sets out the plans for the phased development of the full Terminal Market Complex area, covering Market Services, Essential Services and Non Market Services which is for a⁷year time horizon and which is updated and each such updating is subject to approval of the Nodal Officer.
23. "Market Fee" shall mean the statutory fee payable to the GOS for transactions in Agricultural produce.
24. "National Horticulture Mission (NHM)" shall mean the mission launched under the Centrally Sponsored Scheme of the Union ministry of agriculture to promote the holistic growth of the horticulture sector.
- 25(a) "State Horticulture Mission" is the agency identified under NHM for implementation of NHM programmes in the concerned states.
25. "Nodal Officer (NO)" will mean the Principal Secretary/Secretary of the concerned nodal State Government Department assigned to deal with setting up and operationalization of TMC and will be a single point contact for all coordination work relating to TMC.
26. "Non Market Services" shall have the meaning assigned hereto in Schedule 2 hereof.
27. "Operation, Management and Development Agreement" or "OMDA" means the operation management and development agreement entered into, on or about the date hereof, between GOS and the PE;
28. "Operations and Maintenance Standards and Requirements" shall mean the standards set forth in Schedule 5
29. "Performance Bond" shall mean an unconditional and irrevocable bank guarantee enforceable and encashable at 10 percent ⁸ of the Mandatory Capital Project value and validity set forth in Clause 6.8 hereof.

⁷ To be inserted

⁸ Relevant location based on State Specific Terminal Market Complex

30. "Perishable Agricultural Produce" will include all horticultural produce such as fruits, vegetables, flowers, spices, aromatics, herbs, medicinal plants, and non-horticultural produce such as meat products, dairy products, and fish and marine products etc.
31. "PE" shall refer to the Private Enterprise (individual or a consortium) that is successful bidder constituted as company under Companies Act 1956 and is awarded the contract to Design, Engineering, Financing, Procurement, Construction, Operation and Maintenance of the Terminal Market Complex by the GOS.
32. "Producer Association " means the farmer societies, farmers cooperative societies registered in India engaged in Agricultural and allied activities, Producer Company, registered NGO's empanelled with GOI/State Govt./Planning Commission and SHGs recognized under schemes of Government of India or State Governments and working in agricultural production, Independent Commodity Boards and other registered organizations such as APMCs etc engaged in production, procurement and trading of agricultural commodities. The producer association should be separate from the Lead Technical and Lead Financial Member
33. "Product Standards" mean the standards set forth in Schedule 6 hereof.
34. "Project Agreements" shall mean the following agreements:
- a. OMDA Agreement;
 - b. The Lease /Sale Deed;
 - c. Shareholders Agreement;
 - d. Terminal Market Complex Operator Agreement if any; and
 - e. Project Agreement shall mean any one of them.
35. "Project" means the design, development, construction, modernization, Upgradation, finance, management, operation and maintenance of the TMC as provided for under the OMDA;

36. "Sale/ Lease Deed" means the sale/ lease deed entered into between the applicant and [Party Name] in relation to lease of the demised premise for Terminal Market Complex and the assets thereon, on or about the date hereof.
37. "Shareholders Agreement" means the shareholders agreement dated on the about the date hereof entered into between the shareholders of PE.
38. "State Assets" shall mean the land acquired and Sold/leased/provided on equity basis by GOS to the PE for establishment of TMC.
39. "Terminal Market Complex (TMC)" shall mean demised premises as set forth in the Lease Deed / Sale Deed/equity participation by State Government (please specify) as well as assets both at the collection centers and the terminal market complex hub for providing Essential Services, Market Services and Non-Market Services⁹
40. "Terminal Market Complex Services" means the services constituting Market Services, Essential Services and additional services rendered by the TMC to the Users for the discharge of its various functions and obligations as stated in Schedule 1
41. "Termination" means the expiry or termination of this Agreement hereunder. Unless terminated through termination notice, the Agreement shall expire on the Termination Date
42. "Termination Date" means the date on which this Agreement hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice.
43. "User Charges" shall refer to service charges for Market services, Non Market Services and Essential Services and shall have the meaning assigned thereto in Clause 10.

⁹ Insert, the location and name of the Terminal Market Complex

1.2 **Priority of Agreements:**

In the event of any conflict between this Agreement and any other agreement such as

- a. The Lease /Sale Deed;
- b. Shareholders Agreement;
- c. Terminal Market Complex Operator Agreement if any; and
- d. Project Agreement

The provision of this agreement shall prevail.

CHAPTER II

GRANT FOR OPERATION, MANAGEMENT AND DEVELOPMENT OF TMC

2.1 Grant/ Subsidy

2.1.1 GOS hereby grants to the PE, to the full extent that it lies within the power of GOS so to grant, the right and authority during the term¹⁰ to operate, maintain, develop, design, construct, upgrade, modernize, finance and manage the Terminal Market Complex and to perform services and activities constituting Market Services, Non Market Services and Essential Services at the Terminal Market Complex and the PE hereby agrees to operate, maintain, develop, design, construct, finance and manage and at all times keep in good repair and operating condition the Terminal Market Complex and to perform services and activities constituting Market Services, Non Market Services and Essential Services at the Terminal Market Complex, in accordance with the terms and conditions of this Agreement .

Release of Subsidy

- (a) Subsidy of NHM for Terminal Market Complex Project will be released in following five installments.
- d. I installment on completion of 25% of project ----- 15% of the approved subsidy
 - e. II installment on completion of 50% of project ----- 20% of the approved subsidy
 - f. III installment on completion of 75% of project ----- 25% of the approved subsidy
 - g. IV installment on completion of 100% of project ----- 30% of the approved subsidy
 - h. V installment on completion of one year of operation of project ----- 10% of the approved subsidy
- (b) Release of subsidy shall be subject to utilization of previous subsidies for this project and Inspection certificate is issued by Joint inspection team comprising of Nodal officer or his representative, IC and a representative of DAC, Ministry of Agriculture for satisfactory completion of prescribed mandatory capital project. Release of subsidy shall also subject to equity participation of

¹⁰ the term of the agreement shall continue in full force and effect from its commencement from the Effective Date until the 15th anniversary of the Effective Date (unless terminated within this period)

Producer Association, as promised by the PE. In case % of equity participation from Producers Association, at time of release of fourth installment of subsidy, is less than.%(Please fill up the percentage) mentioned at time of submission of technical bid and considered at the time of evaluation of the bid, the PE has not made reasonable efforts¹¹ for ensuring participation of Producer's associations, GoI/State Government shall have the right to withhold release of entire amount of subsidy to PE. Further SHM/State Government may:

- (i). Intimate this requirement to PE through written communication within 15 days of the due date of release of first installment of subsidy,
- (ii). Stop release of IV and V installment of subsidy till the PE fulfils the required equity participation from Producers' Associations

(a) Provided that if the percentage of equity participation by producer association remains below the percentage of equity of the project as promised /quoted, by the PE at the time of bidding and considered at the time of evaluation of the bid, within two years of signing of OMDA or transfer of land to PE whichever is later, despite reasonable efforts made by PE, no restrictions shall be imposed on the PE in this regard and the eligible subsidy shall be released to him as due.

¹¹ Reasonable effort would include all individual efforts to formally invite Producers Association for equity participation, including that of to invitation by publicity through Mass Media including that for Initial Public Offer (IPO)

2.1.2 Without prejudice to the aforesaid, GOS recognizes the right of the PE during the Term, in accordance with the terms and conditions of this Agreement, to:

- (i) Design, engineer, finance, procure, construct, operate, maintain, and to regulate the use by third parties of the Terminal Market Complex;
- (ii) Enjoy complete and uninterrupted possession and control of the Terminal Market Complex Site and the Existing Assets for the purpose of providing Market Services, Non Market Services and Essential Services
- (iii) Determine, demand, collect, retain and appropriate charges from the Users of the Terminal Market Complex in accordance with Clause 12 hereto.
- (iv) Operate the Terminal Market Complex through a single license all over the state, source Agriculture Produce directly from farmers and sell directly the produce to the end users.

2.2 Purpose of the PE

2.2.1 Market Services, Non Market Services and Essential Services

Subject to the foregoing and to Applicable Law, PE shall undertake/provide Market Services and Essential Services at the Terminal Market Complex Site as described in Schedule 1 and 2. PE may undertake/provide Non Market Services at the Terminal Market Complex Site, provided however the same should have been a part of the Master Plan. PE and NO shall upon mutual agreement between the Parties update list of Non Market Services to include such other activities, as requested by PE. The Non Market Services are described in Schedule 3.

2.2.2 Notwithstanding anything contained in this Agreement, the PE shall not undertake any activities at the Terminal Market Complex Site other than Market Services, Non Market Services and Essential Services.

2.2.2.1 Clearances

2.2.2.1.1 The execution of the Agreement provides for Deemed Clearances to PE for operating the Terminal Market Complex Business. The Parties hereby expressly acknowledge and agree that it shall be the sole responsibility and obligation of the PE to obtain and, at all times, continue to maintain all other Clearances which are required by Applicable Law for undertaking and implementing the Project as set forth in detail in the OMDA. Towards this end, GOS shall, upon application by the PE in full compliance and sustenance

with Applicable Law (and provided under Applicable Law the PE is entitled to receive such Clearance), to grant such Clearances as are required for or in connection with the Project, within the relevant statutory period (if any), and where no statutory period is prescribed, GOS shall facilitate and ensure securing such Clearances as are required for or in connection with the Project within forty five (45) days after the relevant application duly completed and in full compliance with Applicable Laws has been submitted

- 2.2.2.1.2. The PE hereby undertakes that in order to expedite the grant of Clearances excluding Deemed Clearances, it will, in a diligent and timely manner, (i) prepare and file applications, which are in full compliance with the Applicable Law, with the concerned authorities; (ii) follow-up the aforesaid applications with the concerned authorities; and (iii) respond in a timely manner to all requests for further information and clarifications.

2.3 Other Material Investments

Without prejudice to the generality of Clause 2.2, the PE shall not during the Term, without the consent of the GOS hold any shares, ownership participation or any other ownership interest in any undertaking other than the Terminal Market Complex.

2.4 Employees / Agents

The PE shall not require, permit or suffer any of its employees, PE, sub-PE¹², partner, business associate, licensee, sub-licensee, sub-lessee or agent to carry on any activity or business at, or in relation to, the Terminal Market Complex or the Terminal Market Complex Site, which the PE is prohibited from engaging in or conducting under this Agreement.

2.5 PE Ownership Structure

The PE Ownership Structure will be as per the Shareholders Agreement (to be structured) as defined in this Agreement.
Central Govt. Equity will have certain features as given in Schedule 14 thereof.
GOS, as its discretion, can have Equity in the PE as per features given in Schedule 14 thereof.

CHAPTER III

MARKET FEE

3. GOS Authorization

4.

Wherever the PE is not exempt from payment of Market Fee, the GOS shall authorize the PE to collect the prescribed Market Fee on behalf of GOS. Towards this, the PE should use services of any scheduled nationalized commercial bank in consultation with GOS.

(NOTE to GoS: The PE may be partially for a limited period or fully exempted from payment of [Market Fee¹³] to the [GOS/ state marketing board] for Agricultural Perishable Produce which is transacted through the electronic auction system of the TMC. (Wherever it is agreed; however such waiver wherever provided can attract good private enterprise for the terminal market)

The GOS further authorizes the PE to collect applicable User Charges in TMC to be collected from the users as per provision of section 4.1.

3.1 In consideration of the aforementioned Grant, the PE hereby agrees to make the following payments to the GOS in the manner and at the times mentioned hereunder.

3.1.1 Market Fee

3.1.2 The PE will be liable for payment of [prescribed Market Fee¹⁴ as per statute] to the [GOS/ state marketing board] for Agricultural commodities which is transacted through the TMC unless specifically waived prior to transaction.

The PE shall at all times be liable to pay the Market Fee on a monthly basis prior to the 7th day of next month or as prescribed by GOS or its authorized body/organization.

In case of non-payment of Market Fee to the GOS/ state marketing board, within the time period as stipulated as above, the PE shall be liable to pay an interest rate of calculated on a daily basis on the outstanding arrears in this respect.

3.2 The applicable Revenue used for final verification/reconciliation of the Market Fee shall be the Revenue of the PE as certified by the Independent Auditor.

3.3 Right of Inspection

The GOS and its representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the PE in order to check or audit any information (including the calculation of Revenue) supplied to the GOS under this Agreement. The PE shall make available to the GOS and its representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. If any such exercise reveals that information previously supplied to the GOS was in any material respect inaccurate on the basis of information available to the PE at the time, the costs of any such exercise shall be borne by the PE.

CHAPTER IV USER CHARGES

4.1 User Charges

4.1.1 For a period of first three years from date of commencement of operations of TMC, the charges for providing basic services of aggregation at collection enters and auction at the TMC should not exceed 2% of value of produce. All other services including value added services should be market based and PE will have freedom to fix these service charges. Service quality levels as prescribed in the OMDA will have to be complied by PE.

4.1.2 The Market Charges for Market Services other than those specified in 10.1.3 above shall be borne by the respective user of the Market Service

4.2 Non Market Charges

Subject to Applicable Law, the PE shall be free to fix the charges for Non Market Services wherever allowed by GOS, subject to the provisions of the existing contracts and other agreements. The Non Market Charges would be payable by the person/ entity availing the service/ facility.

4.3 Charges for Essential Services

4.3.1 Notwithstanding the foregoing, Essential Services, shall be provided free of charge to Users unless otherwise specified in Schedule 3

CHAPTER- V

REPRESENTATIONS AND WARRANTIES

Project Cost

5.1 The project cost includes the cost of infrastructure and land excluding the cost of non-marketing infrastructure and land for non-marketing services. The cost of land will be limited to a level as allowed under wholesale market component of National Horticulture Mission for calculating subsidy. The total project cost will not be less than minimum project cost based on mandatory capital projects as prescribed by the GOS.

- a. The PE has been selected through a transparent and open comprehensive bidding process conforming to the provisions of the scheme.
- b. The project shall provide service against payment of user charges as set forth for the Agreement.
- c. The total project cost is reasonable and based on the standards and specifications normally applicable to such projects.
- d. The grants/subsidy provided through GOS to PE for meeting the total project cost or any part thereof shall not exceed in aggregate 40% of the total project cost and a maximum subsidy of Rs 50 crore.

5.2 Representations and Warranties by PE

The PE hereby represents, warrants and confirms to the GOS that on the date hereof:

- a. It is duly organized and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transaction hereby contemplated;
- b. It has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to perform its obligations under this Agreement;

- c. 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 obligations enforceable against it in accordance with its terms;
- d. The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the PE or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
- e. All information furnished to the GOS, and as updated on or before the date of this Agreement is true and accurate in all material respect;
- f. 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 any other judicial, quasi judicial or other authority or body, the outcome of which may result in the breach of this Agreement;
- g. It has complied with all Applicable Laws and Applicable Permits in all material respects;
- h. It is not in breach of the Concession Agreement or of any Project Agreements or Financing Agreements; and
- i. No representation or warranty contained herein or any other document furnished by it to the GOS contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

The PE further represents and warrants to the GOS that:

- a. It is duly organized and validly existing under the laws in India and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transaction hereby contemplated;
- b. It has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to perform its obligations under this Agreement;
- c. 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 obligations enforceable against it in accordance with its terms;

- d. The execution, delivery and performance of this Agreement will not conflict with or result in a breach or constitute default under or accelerate performance required by any of the terms of Memorandum and Articles of Association of the PE or any applicable law or any covenant, contract, arrangement or understanding, or any decree or order of any court to which it is a party or by which it or any of its properties or assets is bound or affected;
- e. All information furnished to the GOS, as updated on or before the date of this Agreement is true and accurate in all material respect;
- f. 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 any other judicial, quasi judicial or other authority or body, the outcome of which may result in the breach of this Agreement;
- g. It has complied with all Applicable Laws and Applicable Permits in all material respects;
- h. It is not in breach of the OMDA Agreement or of any Project Agreements or Financing Agreements; and
- i. No representation or warranty contained herein or in the OMDA Agreement or any other document furnished by it to the GOS contains or will contain any untrue or misleading statement of material facts or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

5.3 In the event of any occurrence or circumstance coming to the knowledge of the Party making any representation hereunder which renders any of its aforesaid representations or warranties untrue or incorrect at any time of implementation of scheme during the subsistence of this Agreement, such party shall immediately notify the other parties hereto about the same. Such notification shall not have the effect of remedying any such representation or warranty that has been found to be incorrect or untrue.

CHAPTER- VI

PROJECT MONITORING AND INFORMATION

- 6.1** The PE agrees and undertakes that subject to the provision of this agreement PE will facilitate to the Independent Consultant (IC) engaged by GOS to undertake regular monitoring and periodic evaluation of the Project Compliance with the agreed milestones and performance levels as set forth in the OMDA agreement together with brief description of the causes of slippage or non-compliance, if any therein.

Without prejudice to the generality of the foregoing, the PE undertakes to submit the following reports to the NO and IC on a regular basis:

- (a) Monthly activity report
 - (b) Other operating statistics as required by MOA, GOS and Relevant Authorities
 - (c) Reports on various indicators of performance measurement as specified in this Agreement
 - (d) Quarterly financial accounts
 - (e) Annual budget
 - (f) Annual update of Master Plan
 - (g) If so required by the GOS, the PE shall deliver to the NO and IC the Daily Volume & Price Record.
 - (h) Such other reports/ information (or analysis thereof) that GOS or IC may request from time to time
- 6.2** Maintenance of Records
- (a) The PE shall maintain accurate, up-to-date and complete financial records in accordance with the requirements of Applicable Laws and this Agreement.
 - (b) The PE shall maintain accurate, up-to-date and complete records relating to the operation and maintenance of assets, which it owns or operates, and operational performance of the Terminal Market Complex.

- (c) The PE shall make available and, if reasonably requested by the NO and IC, provide copies of, on reasonable notice by the NO and IC and at reasonable times, the records referred to in Clause 8 for inspection by the NO and IC. The NO shall be entitled to appoint one or more authorized representatives to check and take copies of any such records. The PE shall provide the NO and IC with such further information, explanations and other assistance as may be reasonably required by the NO and IC or any of its authorized representatives for the purpose of checking any of such records.
- (d) All records required to be maintained in accordance with this Clause shall be held for a period of five years from the date of creation of the relevant records or until twenty four months after the expiry or earlier termination of the Term, whichever is the later,.

6.3 Provision of Accounts

- (a) If required, the PE shall deliver to the NO, copies of the annual report, audited profit and loss account, balance sheet and cash flow statement for the PE (and (if applicable) for any subsidiary of the PE) as at the end of and for that accounting reference period, together with copies of all related director's and auditor's reports.
- (b) Each set of accounts delivered hereunder shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in India and consistently applied and in accordance with all Applicable Laws and, together with those notes and subject to any qualifications contained in any relevant auditor's report, shall give a true and fair view of the state of affairs and profits or loss for the period covered by such accounts.
- (c) The accounting reference period of the PE shall be a twelve-month period.

6.4 Changes in Business

The PE shall inform the NO of any material change or proposed material change in the conduct or condition of the Terminal Market Complex Business, as soon as reasonably practicable prior to (or, if it is not reasonably practicable prior to, as soon as reasonably practicable after the occurrence of) any such change, (including the termination of any key contracts, any litigation or other dispute which may have a material effect on the Terminal Market Complex Business and any material change in or restructuring of the capitalization or financing of the PE).

6.5 Rights of Inspection

The GOS and its representatives shall be permitted to inspect at any time any part of the Terminal Market Complex Site or any of the assets at the Terminal Market Complex and undertake any survey or other check in order to monitor compliance with the PE's obligations under this Agreement, or check the quality of service performance by the PE or any Relevant Authority, or for any other reason whatsoever, for which purpose the PE shall grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith, provided that such persons shall not interfere with the performance of the relevant works or give any instruction in relation thereto or interfere with the carrying on of the Terminal Market Complex Services.

6.7 Notification of Disputes

The PE shall notify the NO of any dispute that arises or is threatened against the PE and/or the Terminal Market Complex, the adverse outcome of which might have a material adverse effect on the PE or the Terminal Market Complex, or any of the Terminal Market Complex Services.

CHAPTER-VII

ROLE OF LEAD INSTITUTION/PRINCIPAL STAKE HOLDERS

7. Roles and responsibilities of the concerned agencies

For successful operation of the Terminal Market Complex Projects, the role and responsibility of the concerned agencies in implementation and operation of the project is envisaged to be as follows:

i) Role of the Private Enterprise

The Private Enterprise (PE) would have the following rights and obligations:

- a. The successful bidder would constitute a Company (hereinafter referred to as Private Enterprise) under the Companies Act, 1956 for the purpose of implementation and operation of TMC immediately before the award of bid. The Private Enterprise would have to mandatory provide the infrastructure facilities and services to be prescribed at the TMC as well as CC complex in the 'Hub-and -Spoke' Format. Private Enterprise would ensure equity participation by Producers' Association as provided in the Guidelines.
- b. The Terminal Market Complex (hub) would be linked to a minimum number of Collection Centers (spokes), which are required to support the TMC project. The Collection Centers would be located at key production centers to establish backward linkage with growers and to allow easy access to farmers for the marketing of their produce;
- c. The Private Enterprise would have the option to provide additional facilities to render complimentary services such as input supply, processing, agro machinery and equipments, durables etc.;

- d. The Private Enterprise would have the option to deal in non perishable commodities not exceeding the prescribed limits, at the terminal market complex in order to attain volumes and economic viability of the project;
- e. The Private Enterprise would have the freedom to buy the commodities from the farmer directly or through the TMC/ CC;
- f. The Private Enterprise would provide services to the farmers in making direct supply to processing units, retail chain and exports, at their choice;
- g. The Private Enterprise would provide advisory services to farmers on inputs, prices, quality, multi-modal transport and exports;
- h. Private Enterprise should encourage the involvement of agri-clinics and agri business centers/farmers associations/SHGs/PRI under collection centers of TMC;
- i. The Private Enterprise would ensure the mandated service quality requirements and product standards.
- j. Farmers would be free to sell their produce either through the CC/TMC or the TMC directly or to any other marketing channel not related with the project;
- k. The Private Enterprise would promote Farmers' Associations and progressively involve them in the operation and management of the CCs;
- l. The Private Enterprise would be responsible for taking all steps to get timely possession of land for setting up of the TMC and the CCs and obtain necessary licenses, clearances and approvals for the establishment and operation of the market;
- m. The Private Enterprise should obtain the APMC license as required under the law;
- n. The Private Enterprise would make timely payment of all statutory and other dues collected on their behalf such as market fee, cess and taxes etc to State Government/ State Agricultural marketing Boards/APMC as the case may be and as prescribed to the PE by those entities. Any delay in

payment/transfer of such dues collected may invite penalty as prescribed by those entities. Private Enterprise may if required enter into a separate agreement such as Trust and Retention Agreement (TRA) with concerned State government or its authorized agency including the State Government banking agency for collection and timely transfer of such statutory and other dues to the State Government and its authorized agencies in a timely manner.

- o. The Private Enterprise would be free to levy User charges for providing basic services of aggregation at collection centers and auction at the TMC restricting same to maximum 2% of value of produce during the first three years of operation while for the rest the PE would be free to levy based on commercial consideration.
- p. The Private Enterprise Assets for TMC should be created and operationalise in a timely manner. The assets for the TMC so created should be used by the Private Enterprise for which they have been approved by the Government and should not be diverted for any other purpose. State government will ensure compliance on this matter.
- q. Investment from the Lead Member of the Private Enterprise in the complex should be more than 26% of the project equity for the first five years of operation of TMC. The lead member of the PE is the member who provides the technical knowhow for setting up the TMC project and operationalisation of the same.
- r. PE should encourage involvement of Agri-clinics and Agri-business centres/farmers associations/SHGs under each collection centre that can play an important role in establishing backward linkages and organizing farmers. PE shall ensure involvement of local Panchayatiraj Institutions in establishing backward linkages to collection centres. This should be reflected in OMDA.

- s. PE shall take adequate precaution for segregating facilities for handling perishable commodities and meat/fish/poultry in TMC.
- t. Assets for TMC should be created and operationalise in a timely manner. The assets for the TMC so created should be used for the purpose for which they have been approved by the Government and should not be diverted for any other purpose. State government will ensure compliance on this matter.

iii) Role of the State Government

The State Government would play a pro-active role and designate, an officer of the rank of Secretary to the Government as Nodal Officer for the purpose of Terminal market Complexes project.. The responsibility of the State Government/SHM would include:

- a. Approval of the number, location and provision of land for the TMC. If the state so decides, it may form a SPV as Shell Company to procure/purchase/receive the land and develop and transfer this to the successful PE.
- b. Approval of the PIM including minimum infrastructure for the project and the bidding process and implementation modalities of the project;
- c. Technical Financial appraisal of the detailed business plan of the complex;
- d. Convergence with other development programmes for infrastructure support to TM/CC such as road connectivity, power and water supply;
- e. Finalization of the successful bidder/PE through an open, transparent competitive bidding process as per the operational guidelines on TMC, and entering into Operation, Management, Development Agreement(OMDA) after approval of subsidy by EC of NHM as

specified in the guidelines and facilitate timely release of subsidy to PE as provided in the Guidelines.

- f. To ensure timely handing over possession of land to PE for smooth execution of Project.
- g. To facilitate involvement of Panchayati Raj Institutions in establishing backward linkages to the Collection Centers.
- h. To encourage the involvement of agri-clinics and agri-business centers under each collection center that can play an important role in establishing the backward linkages and organizing the farmers.
- i. Monitor and Review the progress of the project from time to time.
- j. To ensure issue of license required under State APMC Act for TMC including collection centers subject to satisfactory performance of PE under OMDA.
- k. To facilitate speedy resolution of disputes, if any, arising out of the implementation of the terminal market complex.
- l. The assets for the TMC so created should be used for the purpose for which they have been approved by the Government and State government will ensure compliance on this matter.
- m. State Government may, if required will enter into a separate agreement with the PE and its banking agencies for collection by PE and transfer to itself or it's authorized agency of the statutory and other dues in a timely manner.
- n. Assets for TMC should be created and operationalise in a timely manner. The assets for the TMC so created should be used for the purpose for which they have been approved by the Government and should not be diverted for any other purpose. State government will ensure compliance on this matter.

ROLE OF NODAL OFFICER

The Nodal Officer can exercise his rights on the following:

1. Details on rules of operation of the Terminal Market Complex
2. Progress report on the development of the Terminal Market Complex
3. Levying liquidated damages on the PE equivalent on delay in commencement of construction of such Mandatory Capital Project.
4. Levying liquidated damages on PE for the completion of any Mandatory Capital Project
5. Levying liquidated damages on PE for non-incurrence of Mandatory Capital Project Capital cost.
6. Progress and achievement of ISO within the defined time frame
7. Collection % of Revenue in the event of default of PE in achieving Objective Service Quality as per the Master Plan

The Nodal Officer will perform and facilitate in the following:

1. Approve the Master Plan
2. Nomination of a panel of three consultants for selection of IC.
3. Assistance in obtainment of Clearances for the PE
4. Assistance in obtainment of necessary infrastructure and utilities including water, electricity, and telecommunication facilities.
5. Assistance in obtainment of land by the PE

Provide regulatory facilitation for purposes of co-ordination between the aggrieved party and the concerned regulatory agency (ies)

CHAPTER -VIII

DEFAULT

8.1 PE Event of Default

Following events shall constitute an event of default by the PE under this Agreement unless such event of default has occurred as a result of Force Measure act or omission of the GOS:

- (a) The PE commits or causes any breach of the provisions of this agreement
- (b) Any of the representation and warranties of the PE are found at any time to be false or incorrect and fails to cure the same, within a Cure Period of 10 (ten) business days; or
- (c) Suspension by the PE of the performance of the obligations under this Agreement or under the license as issued in Clause 3.1 (vi) for a period exceeding 30 consecutive days (except during the subsistence of an event of Force Majeure);
- (d) Failure by the PE to operate and maintain the Terminal Market Complex in accordance with the Applicable Laws;
- (f) Non-achievement or Continued breach of obligations under Objective Service Quality Requirements, or Product Standards, or Development Standards and Requirements and infrastructure standard for a period of 3 months following the date that PE first becomes liable to pay liquidated damages in respect thereof
- (g) PE, directly undertakes or performs either itself or through contract, sub-contract, agency, lease, license or otherwise, any activity other than Terminal Market Complex Services.
- (h) Default by the PE under any provisions of the Financing Documents.
- (i) Failure by the PE to make any payment due hereunder within 30 days of the due date or as prescribed by GoS in respect thereof.
- (j) The PE commits Default under the OMDA Agreement unless such default has occurred solely as a result of any breach of the OMDA Agreement by the GoS or due to Force Majeure; or

- (k) The PE is adjudged bankrupt or insolvent or is ordered to be wound up or passes an effective resolution for its winding up or a receiver is appointed for the PE or for the whole or a material part of its assets.
- (l) Non-adherence, violation, non-compliance, or breach of the Master Plan or any Major Development Plan and non-remedy of the same within a period of 30 days.
- (m) The PE is ordered to be wound up by a court; The PE files a petition for voluntary winding up; or Levy of an execution or restraint on the PE's assets; or Appointment of a provisional liquidator, administrator, trustee or receiver of the whole or substantially whole of the undertaking of PE by a court of competent jurisdiction
- (n) Any activity or business undertaken by the PE other than operation, maintenance, development, design, construction, Upgradation, modernization, financing and management of the Terminal Market Complex

Upon occurrence of default by PE under OMDA Agreement, the consequences thereof shall be deemed to be a material breach of the OMDA agreement by PE and treated as a PE default under OMDA Agreement and shall be accordingly dealt with under and in accordance with the provision of the OMDA agreement for such breach under the OMDA agreement.

8.2 Waiver

8.2.1 Waiver by any party of a default by another party in observance and performance of any provision of or obligation 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 authorized representative of the party; and
- (c) shall not affect the validity or enforceability of this agreement in any manner.

8.2.3. 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.

8.3 Liquidated Damage

The maximum liability for liquidated damages of 10 % payable for delay in commencement or completion of any Mandatory Capital Project as set forth in the Detailed Project Report and as accepted by GoS and the said default is unremedied. The maximum liability for liquidated damages of 10% payable for non-incurrence of the Mandatory Capital Project capital value.

8.4 Survival

8.4.1 Termination of this Agreement

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

8.4.2 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.

CHAPTER -IX
TERM OF AGREEMENT

9.1 Terms And Expiry

This Agreement shall come into force and effect upon the execution hereof and shall remain in full force and effect so long as either of PE or GOS remain to be discharged, or a period of fifteen years from the date hereof, whichever is later.

CHAPTER- X
DISPUTES 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 within [... ..] days of communication thereof shall be decided finally by reference to arbitration as per 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 state capital and the language of arbitration shall be English.

10.2 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 Delhi shall have jurisdiction over all matters arising out of or relating to this Agreement.

Chapter - XI

Indemnity

11.0

The PE will indemnify and hold harmless the GOS and Lead Institution against any and all Proceedings, actions and third party claims for any loss, damage, Cost and expense arising out of any breach by the PE Of this Agreement, the Agreement of any of Project Agreement or the Financing Agreements, or on account of failure of the PE to comply with Applicable Laws or Applicable Permits, or on account of disbursement or failure to disburse the subsidy under NHM Grant or any part thereof.

Miscellaneous

12.1 Amendments

No amendment or waiver of any provision of this Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

12.2 Agreement to Override Other Agreements; Conflicts

- (a) This Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.
- (b) In the event of a conflict between the terms of this Agreement and those of any other Project Agreement, the terms of this Agreement shall prevail.

12.3 **Severability**

12.4

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.

12.4 **Successors and assigns**

This Agreement shall be binding on and shall work to the benefit of the Parties and their respective successors and permitted assigns.

12.5 **Language**

All notices, certificates, correspondence or other communications under or in connection with this Agreement, any other Project Agreement or the Project shall be in English

12.6 **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. 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 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.

12.7 Original Document

This Agreement is made in two (2) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses.

12.8 Confidentiality

Neither the PE nor the GOS shall, unless otherwise agreed (which agreement may be on such general or specific terms as the parties may determine), disclose to any third party any information which is the property of the other party to this Agreement or which otherwise relates to its business, secrets, dealings, transactions or affairs unless, and to the extent that, such disclosure:

- (a) is reasonably required for the exercise or performance by either party of its rights or obligations under this agreement; or
- (b) is required pursuant to any relevant statutory or regulatory requirements or duties or any relevant terms of the Applicable Laws; or
- (c) relates to information which is already in the public domain, other than as a result of breach of this Clause by the party seeking to make such disclosure;

Provided that, in the case of any disclosure in accordance herewith, the Party disclosing such information shall, so far as reasonably practicable, impose on the third party receiving such information such obligations as may be appropriate to maintain its confidentiality.

12.9 Assignment

The PE shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, sub-license or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorized officers and representatives as of the day and year first above written.

Signed by

For and on behalf of **GOS**

Name

Designation

Address

In presence of (1)

(2)

Signed by

For and on behalf of the **PE**

Name

Designation

Address

In presence of (1)

(2)

Schedule 1
Mandatory Capital Projects

(As per approved bid and as reflected in Master Plan)

Mandatory Capital Project means the capital projects associated with the Market Infrastructure/Assets and Essential Infrastructure/Assets submitted in the Initial Development Plan of the bid.

I. Market Infrastructure / Assets

a. Mandatory Capital Project Components (indicative list) to be provided as Market Infrastructure/Assets at the central Terminal Market Complex (TMC) hub are:

<u>Description of capital component</u>	<u>No. / Minimum Capacity</u>	<u>Approx. cost</u>
i. Electronic auction facility		
ii. Cold storage facility		
iii. Temperature controlled warehouse		
iv. Ripening chamber		
v. Sorting, grading, washing and packing lines		
vi. Labeling of produce		
vii. Quality testing facility		
viii. Material handling equipment (palletisation and plastic crates)		
ix. Movement and parking facility for vehicles		
x. Futures trading facility		
xi. Transport services (including cool chain)		
xii. Banking services including settlement of transactions		
xiii. Vehicle fuelling services		
xiv. Waste and refuse treatment and disposal		
xv. Basic lodging services		
xvi. Storage area of plastic crates		
xvii. Standards for the produce arriving at the market		
xviii. Bulk Weighment etc		
xix. Price displays / bulletin service		

(b) Mandatory Capital Project Components (indicative list) to be provided as Market Infrastructure/Assets at the collection center for Perishable Agricultural Produce handled by the PE

<u>Description of capital component</u>	<u>No. / Minimum Capacity</u>	<u>Approx. cost</u>
i. Washing, grading, sorting, weighment services		
ii. Multi-modal transport services including to central TMC		
iii. Plastic crates		
iv. Facility for collection and aggregation of produce		
v. Services for settlement of Transaction		

II. Essential Infrastructure/Assets:

“**Essential Infrastructure/Asset**” means the provision of the infrastructure for following User facilities and services at the TMC on non-chargeable basis:

<u>Description of capital component</u>	<u>No. / Minimum Capacity</u>	<u>Approx. cost</u>
(a) Toilets		
(b) Waiting rooms		
(c) Drinking water		
(d) Cleaning, heating, lighting and air conditioning public areas		
(e) Facilities for the disabled and other special needs people		
(f) Information desks		
(g) Policing and general security		
(h) Fire fighting services		
(i) Emergency services including emergency medical care room		
(j) Any other services deemed to be necessary for the safe and efficient operation of the Terminal Market Complex.		

III. Additional Infrastructure/Assets

In addition to the above, the TMC shall provide the following Infrastructure facilities and services at the TMC to the Users at nominal rates:

- (a) **Food items**
- (b) Infrastructure/ Facilities for Post Offices
- (c) Infrastructure/ Facilities for Public telephones
- (d) Infrastructure/ Facilities for access to internet
- (e) Vehicle parking

Schedule 2

Non Market Services

“Non Market Services” means the provision of the following indicative User facilities and services at the TMC but which are not eligible for subsidy including its land portion(indicative only and State Government will finalise).

- (a) Business Centre services
- (b) Catering services
- (c) Freight consolidators/forwarders or agent services
- (d) General retail shops
- (e) Hotels and Motels services including reservation services
- (f) Locker rental
- (g) Logistic Centers
- (h) Messenger services
- (i) Porter service
- (j) Restaurants, and other refreshment services
- (k) Vehicle rental services
- (l) Vending services
- (m) Leisure and Entertainment service
- (n) Shopping Complex
- (o) Secondary and Tertiary Processing

The PE is entitled to collect user charges for these services in line with prevailing market conditions. The indicative list of business or operations which cannot be established / performed in the terminal Market Complex (Negative List) :

- a. Arm Shop
- b. Gambling
- c. Contraband items

(Note: State Government can further add the items in the negative list as per specific requirements)

Schedule 3

Development Standards and Requirements

The design of all Terminal Market Complex facilities is to comply with all appropriate technical requirements, including the following:

Development Planning Principles

General:

- (a) Minimum Market capacity for the Terminal Market Complex area as per the Initial Development Plan and Master Plan submitted by the PE
- (b) Free access to and presence in it to registered persons taking part in activities related to the operations
- (c) There will be separate entry and exit for participants and vehicles
- (d) Terminal market will be open for business everyday in line with the market requirements
- (e) The hours of each of activities/facilities carried out in the market will be decided by the PE
- (f) All facilities capable of 24 hour operations
- (g) All plans must incorporate mandatory capital projects
- (h) Safety, sanitary and medical requirements must be fully complied with relevant act, rules and regulations prescribed by the law or the PE

Ripening Chambers and Cold Storage:

- (a) Ripening chambers must be equipped with all desired equipments and devices
- (b) Size/ Capacity must be in lined with the type of produce
- (c) Temperature, humidity, gassing and venting must be easily adjustable

Electronic Grading-Sorting lines:

- (a) Separate grading-sorting equipments/ processes should be adopted depending upon the requirement for different Produce
- (b) The practices adopted must provide for maintenance of quality and hygiene for grading and sorting
- (c) Facilities should meet all essential service standards
- (d) Grading Sorting Line must be capable of incremental expansion with minimum impact on current operations

Quality Station:

- (a) Separate and Trained staff should be appointed for the quality station
- (b) Adequate facilities to check the quality of produce being marketed must be provided

Pre-cooling Unit:

- (a) Development of pre-cooling facilities must be done required as per the nature of different produce
- (b) Must provide for quality and hygiene standards
- (c) It should meet the all technical and quality criteria as per the Master Plan by the PE

The standards being prescribed by the Ministry of Agriculture with reference to the cold chain component such as cold storages, controlled atmosphere storages, ripening chambers, reefer vans etc. will be complied with by the PE while establishing such facilities in the Terminal Market Complex.

IT Application and Networking

- (a) The Terminal Market Complex must be adequately supported by IT and automated data processing systems with provisions for networking with other agricultural markets and market boards and such other institutions as decided by the GoS

Development Standards

1 National Building Code (India)

Confirm to the National Building Code (NBC) which sets out safety and durability aspects to be incorporated into building structure.

2 Indian Standard Codes

Confirm to the relevant code for the specific aspect of development. The Indian Standard Codes are a comprehensive range of Standards and practices as per Bureau of Indian Standards, to be adopted in all aspects of design and construction in India.

3 Electrical Specifications

All electrical equipments, wiring and provisions for the supply of power and lighting at TMC shall conform to the relevant standards laid down in the Indian Electricity Act

4 Fire Safeties

Conform to appropriate Fire Safety Standards as applicable

5 Statutory Agency Requirements

Meet all requirements of the statutory agencies, including Ministry of Agriculture, Customs authorities, Ministry of Environment & Forests, Pollution Control Board

Applicable Laws:

Adhere to all conditions, regulations, measures and all requirements of whatever kind imposed by local byelaws and other applicable Central, State and Local Government laws.

Schedule 4

Operations and maintenance standards and requirements

Operation Planning Principles

The operation and maintenance of the Terminal Market Complex will at all times be in compliance with the following:

- (i) Ensure that the electronic auction, controlled atmospheric storage, cold storage, ripening chamber and other infrastructure are operated and are maintained in accordance with the stated provisions at the Terminal Market Complex
- (ii) Ensure that appropriate arrangements are in place at the Terminal Market Complex to prevent man/animal nuisance in and around the operational area;
- (iii) Ensure that suitable contingency arrangements are in place at the Terminal Market Complex to deal with the following events:
 - i. Removal of disabled machinery/equipment from the market complex;
 - ii. Equipment/ machine damage/ accidents in and around the vicinity of the Terminal Market Complex;
 - iii. Fires at the Terminal Market Complex;
 - iv. Natural calamities and disasters;
 - v. strikes at the Terminal Market Complex;
- (iv) Ensure that emergency alarm bells have been installed to link the facility to the emergency services (fire, medical and police) and to the Terminal Market Complex manager;
- (v) Provide GOS with such access to the Terminal Market Complex for its personnel, vehicles and agents as GOS reasonably requires for the performance of the GOS Services;
- (vi) Provide GOS with a continuous supply of electrical power and water sufficient to enable it to perform the GOS Services;
- (vii) Make office accommodation and the facility available at all times to GOS personnel and agents of GOS deployed at the Terminal Market Complex in the provision of the GOS Services wherever and whenever required, at terms and conditions applicable to GOI agencies;
- (viii) The PE shall at all times maintain and upgrade the Market equipment as per the provisions of the Master Plan

Schedule 5

Product , Process and Service Standard

The Terminal Market Complex should follow the following product standards:

“AGMARK' Standards”

It is mandatory for the Terminal Market Complex to meet the Agmark Standards of grading and sorting for fresh fruits and vegetables defined by Directorate of Marketing and Inspection (DMI), MoA India at the commencement of operations. It is desirable to fulfill the requirement of the EurepGAP standards or other equivalent Standard in case of export to European countries and other over a period of time.

“ISO17025”

It is expected that the relevant Standards for processes and Services for the TMC need to be in place within two years of the commencement of the operation of the market.

Any other required and well-accepted standard can be followed to meet the quality standard of produce in the Terminal Market Complex and the same should be provided in the master plan.

The appropriate Food Safety Standards as prescribed by Ministry of Health or the Food Safety & Standards Authority of India as applicable will be complied with by the PE.

**SCHEDULE 6
INITIAL DEVELOPMENT PLAN**

[As approved]

Note: The Detailed Project Report will be prepared /finalized by the PE based on the initial Master Development Plan and the Terms & Conditions of the DPR as approved by the GOS will be binding on the PE.

SCHEDULE 7

FORM OF PERFORMANCE GUARANTEE

[ON THE LETTERHEAD OF THE ISSUER BANK]

Dated [•]

To

GOS

[•]

Subject: Performance Bank Guarantee

This PERFORMANCE BANK GUARANTEE (hereinafter the “**Guarantee**”) is made at [New Delhi] on the [•] day of [•] 2005

WHEREAS

- A. PE, a company incorporated under the Companies Act, 1956 having its registered office at [•] (hereinafter referred to as the “**PE**”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and

permitted assigns) has entered into an Operations, Management and Development Agreement dated [•] (hereinafter such agreement, as amended and supplemented, referred to as the “OMDA”) with Government of the State of (hereinafter referred to as “GOS”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) for undertaking the Project.

- B. As per the terms and conditions of the OMDA, the PE is obliged to furnish to GOS an irrevocable, unconditional and automatic revolving bank guarantee from a scheduled commercial bank in India, of a value and validity as set forth hereunder.

- C. [•] having its registered office at [•] and a branch office at [], India, (hereinafter referred to as the “Bank”, which expression shall unless repugnant to the context or meaning thereof be deemed to mean and include its successors), being a schedule commercial bank in India, has at the request of the PE, agreed to issue this performance bank guarantee, in accordance with the terms and conditions set forth hereunder, in favour of GOS.

NOW THEREFORE, the Bank hereby undertakes the pecuniary responsibility of the PE to the GOS for the due performance of the OMDA and hereby issues in favour of the GOS this irrevocable and unconditional performance and payment bank guarantee (hereinafter referred to as the “Guarantee”) on behalf of the PE.

1. The Bank for the purpose hereof unconditionally and irrevocably undertakes to pay to the GOS without any demur, reservation, caveat, protest or recourse; immediately on receipt of first written demand from the GOS, a sum or sums (by way of one or more claims) without the GOS needing to prove or to show to the Bank grounds or reasons for such demand for the sum specified therein and notwithstanding any dispute or difference between the GOS and the PE in respect of the performance of the OMDA or moneys payable by PE to the GOS or any matter whatsoever.

2. The Bank acknowledges that any such demand by the GOS of the amounts payable by the Bank to the GOS shall be final, binding and conclusive evidence in respect of the amounts payable by the PE to the GOS.

3. The Bank hereby waives the necessity for the GOS from demanding the aforesaid amount or any part thereof from the PE and also waives any right that the Bank may have of first requiring the GOS to pursue its legal remedies against the PE, before presenting any written demand to the Bank for payment under this Guarantee.

4. The Bank further unconditionally agrees with the GOS that the GOS shall be at liberty, without the Bank's consent and without affecting in any manner the Bank's obligation under this Guarantee, from time to time to:
 - (i) vary and/or modify any of the terms and conditions of the OMDA,
 - (ii) extend and / or postpone the time for performance of the obligations of the PE under the OMDA, or
 - (iii) forbear or enforce any of the rights exercisable by the GOS against the PE under the terms and conditions of the OMDA.

and the Bank shall not be relieved from its liability by reason of any such act or omission on the part of the GOS or any indulgence by the GOS to the PE or other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of relieving the Bank of its obligations under this Guarantee.

5. The Bank's obligations under this Guarantee shall not be reduced by reason of any partial performance of the OMDA. The Bank's obligations shall not be reduced by the failure by GOS to timely pay or perform any of its obligations under the OMDA.

6. Any payment made hereunder shall be made free and clear of and without deduction for, or on account, any present or future taxes, levies, imposts, duties, charges, fees, commissions, deductions or withholdings of any nature whatsoever and by whom ever imposed; and here any withholding on a payment is required by law, the Bank shall comply with such withholding obligations and shall pay such additional amount in respect of such payment such that the GOS receives the full amount due hereunder as if no such withholding had occurred.

7. This Guarantee shall be a continuing bank guarantee and shall not be discharged by the change in constitution of any member of the PE and the Guarantee shall not be affected or discharged by the liquidation, winding up, bankruptcy, reorganization, dissolution or insolvency of the PE or any member of the PE or any other circumstances whatsoever.
8. This Guarantee shall have a minimum validity of at least twelve (12) months and shall be rolled over and renewed at least three (3) months prior to its expiry so as to keep it valid until the expiry or early termination of the OMDA, whichever is earlier. Provided however that in the event the Bank does not renew the Guarantee three (3) months prior to its expiry in the manner provided above, the GOS shall have the right to encash the entire amount of the Guarantee. This Guarantee shall remain valid and subsisting until released by GOS in writing.
9. This Guarantee shall be in addition to and not in substitution or in derogation of any other security held by the GOS to secure the performance of the obligations of the PE under the OMDA.
10. The Bank agrees that the GOS at its option shall be entitled to enforce this Guarantee against the Bank, as a principal debtor in the first instance without proceeding at the first instance against the PE or any other security/ guarantee that GOS may have.
11. The quantum of the Guarantee shall be Rs. 5 crore (Rupees 5,00,00,000 only) during the first five (5) years after the effective date of the OMDA; and Rs. 3 crore (Rupees 3,00,00,000 only) during the period after the expiry of the five (5) years after the effective date for the remainder of the term of the OMDA (such amount being the “**Full Amount**” of the Guarantee). In the event any portion of the Guarantee is en-cashed pursuant hereto, then immediately following such encashment, the Bank shall replenish the Guarantee to its Full Amount. In the event the Guarantee is not replenished to its Full Amount within one (1) month of its encashment, the GOS shall have the right to en-cash the entire Guarantee.

12. This Guarantee is subject to the laws of India. Any suit, action, or other proceedings arising out of this Guarantee or the subject matter hereof shall be subject to the exclusive jurisdiction of courts of New Delhi, India.

13. The Bank has the power to issue this Guarantee in favour of the GOS.

14. Capitalised terms not otherwise defined herein shall have the respective meanings given such terms set forth in the OMDA.

In witness whereof the Bank, through its authorized officer, has set its hand and stamp on this ____ day of ____ 2006.

In presence of (1)

(2)

SCHEDULE 8

DUTIES OF INDEPENDENT CONSULTANT

The scope of duties of Independent Consultant is:

- (a) Review all designs, drawings, specifications and procurement documents. These may, inter-alia, take account of conformity and reasonableness of various aspects including technical, architectural, Master Plan and Major Development Plans prepared by the PE.
- (b) Carry out a 'benchmarking' exercise for the project specifications and cost against national and international Terminal Market Complex projects of similar scope and nature.
- (c) Monitoring of the construction, operation and management of the TMC as per the agreement including monitoring on the basis of objective service quality requirements, development standards and requirements, monthly activity report , other operating statistics, performance indicators, financial plans, other such reports, information (or analysis thereof) submitted by PE.
- (d) Monitoring of progress of Mandatory Capital Projects with respect to timeliness and quality
- (e) Review and approval of the Master Plan
- (f) Prescribe procedures and formats for accurate, up-to-date and complete records relating to the operation and maintenance of assets, which it owns or operates, and operational performance of the Terminal Market Complex with respect to specified standards as per the Master Plan.
- (g) Any other duties as would be deemed necessary and specified in his appointment letter.

The duties so outlined in the Agreement or part hereof shall impart an implicit responsibility on the IC of immediate reporting of any deviations from the work plan, proposed as per the conditions in the Agreement, to the NO.