

**ASSAM STATE AGRICULTURAL
MARKETING BOARD**

DEED OF AGREEMENT

For

**Operation & Maintenance of
Organic Agriculture Produces
Market Complex at Sixmile**

On

PPP mode

JULY, 2014

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(On a stamp paper of appropriate value)

This agreement is made on thisday ofof 2014 at Guwahati.

BETWEEN

THE ASSAM STATE AGRICULTURAL MARKETING BOARD, acting through its Chief Executive Officer, who is fully competent to enter into this agreement on behalf of the **Assam State Agricultural Marketing Board, (hereinafter referred to as the “Authority” or “The Lessor”** which expression shall, unless the context otherwise requires, include its administrators, successors and assigns) of **ONE PART**;

AND

_____ a trust/society/company incorporated under the provisions of Companies Act, 1956 and having its registered office at _____ represented by the _____ (hereinafter referred to as the **“Lessee”** which expression shall, unless the context otherwise requires, include its successors/ successors in business and permitted assigns and substitutes) of the **SECOND PART**.

With the objective of promoting organic agriculture in the state of Assam by providing a marketing hub in Guwahati city for organic agriculture produces the Department of Agriculture, Assam and Assam State Agricultural Marketing Board has taken initiative for establishment of the “Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Guwahati”. With the financial assistance under the scheme of Rastriya Krishi Vikash Yojana and some additional contribution from ASAMB the construction works of the aforesaid market complex has been completed.

NOW THIS Lease Agreement witnesseth and it is agreed by and between the Parties hereto as follows:

WHEREAS the Authority is desirous of refurbishing and Operation & Maintenance of Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M) through Public-Private-Partnership ("**Project**").

AND WHEREAS with an objective to seek private sector participation in the aforesaid Project, the Authority, undertook the process of selection of a suitable Lessee through competitive bidding process, after issuing a Request for Proposal document (RFP) dated _____, 2014 inviting Bids from prospective Bidders to implement the said Project.

AND WHEREAS the Lessee, selected through the transparent competitive bidding process, met the Eligibility Criteria as laid down in the RFP document and quoted the highest annual lease payment for the right to successfully undertake the operation and maintenance of the Project. After evaluation of the Proposals so received, the Authority accepted the Proposal of the Lessee and issued Letter of Intent dated _____, 2014 to the Lessee requiring, inter alia, the execution of this Lease Agreement.

AND WHEREAS the Lessee acknowledges and confirm that it has undertaken a due diligence and audit of all aspects of the Project including technical & financial viability and legal due diligence and on the basis of its independent satisfaction hereby accepts the lease and agrees to implement the Project at its own cost and expense in accordance with the terms and conditions of this Lease Agreement.

AND WHEREAS following the issue of the Letter of Intent and (i) submission by the Successful Bidder of the Performance Security of Rs. 50.00 lacs (Rupees fifty lacs) in the form of Fixed Deposit Receipt (FDR) in favour of the Authority and (ii) payment of the Annual Lease rental of Rs. _____ plus service tax (Rupees _____ plus service tax) to Authority within 3 (three) weeks of date of receipt of the Letter of Intent to the Successful Bidder, the Authority hereby agrees and grants to the Successful Bidder this Lease on the mutually agreed terms and conditions for the Lease Period to Operate and Maintain the Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M) as described under **Schedule "A"**.

AND WHEREAS the Lessee hereby accepts the lease granted and undertakes to implement the Project in accordance to the provisions of this Lease Agreement.

NOW THEREFORE, in view of the offer, mutual promises and consideration set out herein, the Authority and the Lessee (each individually a "**Party**" hereto, and collectively the "**Parties**") hereby agree to be bound by the provisions of this Lease Agreement.

ARTICLE 1

Definitions and Interpretation

1.1 Definitions

In this Agreement the following words shall have the meaning respectively stated hereunder:

- 1.1.1 “**Applicable Laws**” means all laws which are applicable to the Project and/or the Lessee extending to the State of Assam, having been enacted or brought into force by Government of India or Government of Assam including regulations and rules 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.
- 1.1.2 “**Authority**” means Assam State Agricultural Marketing Board represented through its Chief Executive Officer.
- 1.1.3 “**Agreement**” means and includes this signed Lease Agreement (including the Schedules of the lease Agreement, the “Letter of Intent”, “Notice to commence business” issued by Authority, the written clarification(s), addendums, amendments, etc. to the RFP Document issued subsequently to the Bidders and all other documents/papers attached as annexure/ appendix).
- 1.1.4 “**Clearance**” means as on the date of execution of this Agreement, any consents, licenses, approvals, permits, exemptions, registrations, filings or other authorizations of whatever nature, which is necessary for effective operation of the Project.
- 1.1.5 “**Competent Authority**” means any agency, authority, department, ministry, public or statutory Person of the Government of Assam or Government of India.
- 1.1.6 “**Change in Law**” means the occurrence of any of the following events after the execution of this agreement:
- i) Enactment of any new Law.
 - ii) The repeal in whole or in part (unless re-enactment with the same effect) or modification of any existing Law.
 - iii) The commencement of any Law, which has not yet entered into effect.

- iv) The change in interpretation or application of any Law by a Court of Record.
- v) The imposition or requirement for a new statutory or regulatory approval or a modification in the terms and conditions on which a statutory or regulatory approval has already been obtained.
- vi) A fresh imposition of a tax or duty that was not in existence on the Proposal Acceptance Date. It is specially clarified that a change in the rate of a tax or duty etc. shall not be considered a Change in Law for the purpose of this Article if the tax or duty etc. itself was in existence on the Proposal Acceptance Date.

1.1.7 **“Cost”** means all expenditure properly incurred (or to be incurred) by the Lessee, on the Project, including overheads and similar charges, but does not include profit.

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement;
- (c) include any extension(s) of such period

1.1.9 **“Day”** means calendar day, **“Month”** means 30 (thirty) days and **“Year”** means 365 days.

1.1.10 **“Directive”** means any present or future requirement, instruction, direction, order, rule or regulation issued by any Competent Authority which is legally binding or which is notified by the Authority to the Lessee, and any modification, extension or replacement thereof from time to time in force.

1.1.11 **“Encumbrances”** means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security, interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any

insurance policy pertaining to the Project Site, physical encumbrances or encroachments on the Project Site where applicable herein.

- 1.1.12 **“Financial Year”** shall mean the financial year beginning on 1st April and ending on 31st March.
- 1.1.13 **Force Majeure”** or **“Force Majeure Event”** shall mean an act, event, condition or occurrence specified in the Article 15.
- 1.1.14 **“Facilities”** shall mean all the components of Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M), that includes (but may not be limited to) project components defined in Schedule 2
- 1.1.15 **“Good Industry Practice”** means those practices, methods, techniques, standards, skill, diligence and prudence which are generally and reasonably expected and accepted from a reasonably skilled, prudent and experienced operator engaged in construction, operation, maintenance and management of projects akin to the Project. It would include good engineering practices in the project management which would be expected to result in the performance of its obligation by the Lessee and in operation and maintenance of the Project in accordance with this lease Agreement, Applicable Laws, Clearances, reliability, safety, environment protection, economy and efficiency.
- 1.1.16 **“Lessee”** means _____, the Successful Bidder registered under the Companies Act, 1956, having its registered office at _____ and includes its successors/ successors in business and permitted assigns and substitutes.
- 1.1.17 **“Lessee's Representative”** means the Person appointed by Lessee under Article 17.15
- 1.1.18 **“Lease Period”** is the period of **7 (Seven) years** including any extensions of it for which this Lease is granted, commencing from the execution of the lease Agreement.
- 1.1.19 **“Material Adverse Effect”** means consequences of events outside the control of the Affected Party which (a) render any right vested in a Party by the terms of this Lease ineffective, or (b) significantly impairs or frustrates the ability of any Party to observe and perform in a timely manner its obligations under this Agreement, or (c) frustrates a material provisions of this lease Agreement or any of the Project Agreements.

- 1.1.20 “**Operation and Maintenance Period**” is the period commencing from the start of Lease Period to the Transfer Date.
- 1.1.21 “**Party**” means any of the parties to this Lease Agreement.
- 1.1.22 “**Proposal Acceptance Date**” means date of signing of this Agreement.
- 1.1.23 “**Performance Security**” means a FDR for an amount of Rs. 50.00 lacs (Rupees fifty lacs) from a scheduled bank in favor of the authority valid up to 3 (Three) months, beyond the lease period.
- 1.1.24 “**Performance Standards**” means the standards to which the operation, maintenance and management of the Project must adhere and which the Lessee undertakes to meet.
- 1.1.25 “**Person**” means any natural person, firm, corporation, company, partnership, joint venture, trust or other entity, having legal capacity to sue and be sued in its name.
- 1.1.26 “**Project**” means, Operation & Maintenance of the Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M) during the lease period.
- 1.1.27 “**Project Site**” means the land, civil structure and rights in relation thereto, provided by the Authority to the Lessee on, under, in or through which the facilities or any other construction relating thereto is situated, located, passes through, sits upon or overlies, or any part of the activities which are to be executed, more particularly delineated in Schedule 2 and depicted in the map annexed to Schedule 1.
- 1.1.28 “**RFP**” means the Request for Proposal document issued by the Authority. The terms "RFP" and "Request for Proposal" are synonymous with "Tender Documents" and "Bidding Documents".
- 1.1.29 “**Schedules**” mean the Schedules to this Agreement.
- 1.1.30 “**Statutory Auditors**” means an Independent, recognized and reputable firm of the Chartered Accountants duly licensed to practice in India and acting as the Independent statutory auditors of the Lessee under the provisions of Companies Act, 1956 including any statutory modification or re-enactment or replacement thereof, for the time being in force.
- 1.1.31 “**Site Possession**” means delivery to the Lessee of possession of the Project Site or any part thereof, free from all Encumbrances, and the grant of all Easement Rights and all other rights appurtenant thereto, so that the Lessee enjoys complete uninterrupted and quiet possession and control of the Project Site throughout the subsistence of this Lease Agreement.

- 1.1.32 **“Tax”** means any tax, duty, levy, toll charge whatsoever charged, imposed or levied under Applicable Laws.
- 1.1.33 **“Tender/ Bid/ Proposal”** means the Lessee's quoted Financial Proposal and detailed Lessee's Proposal for the Project, submitted to the Authority and as accepted by the Authority.
- 1.1.34 **“Termination Date”** means the date on which this Lease Agreement terminates by efflux of time or by issuance of a Termination Notice.
- 1.1.35 **“Termination Notice”** means the communication issued in accordance with this Lease Agreement by a Party to the other Party for terminating this Lease Agreement.
- 1.1.36 **“Third Party”** means any Person, real or judicial, or entity other than the Parties to this Lease Agreement.
- 1.1.37 **“Transfer Date”** means the day immediately following the last day of the Lease Period, including any extensions thereto or earlier termination thereof, in accordance with the terms of the Lease Agreement.
- 1.1.38 **“Users”** means Person(s) using the Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M).
- 1.1.39 **“User Charges”** means revenue from Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M) through levy of entry Fee, Parking fee, revenue from sale of organic agriculture produces and agriculture inputs, revenue from testing of agriculture produces, revenue from sale of food and beverages etc., the Lessee shall have the right to determine, demand, charge, collect, revise, retain and appropriate the User Charges as per the prescribed directive of the Authority.

1.2 Principles of Interpretation.

- 1.2.1. In this Agreement, unless the context otherwise requires,
- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from

time to time may be amended, modified, supplemented, extended or re-enacted;

- (c) references to a **“person”** and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **“include”** and **“including”** are to be construed without limitation and shall be deemed to be followed by **“without limitation”** or **“but not limited to”** whether or not they are followed by such phrases;
- (f) references to **“construction”** or **“building”** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and **“construct”** or **“build”** shall be construed accordingly;
- (g) references to **“development”** include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and **“develop”** shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a **“business day”** shall be construed as a reference to a day (other than a Sunday) on which banks in Guwahati are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;

- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (s) any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;

- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears; and
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”).

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

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

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

1.3 Measurements and Arithmetic Conventions

1.3.1. All measurements and calculations shall be in metric system and calculations done in 2 decimal places, with the third digit of 5 or above rounded up and below 5 rounded down except in Annual lease rental, calculation which shall be rounded off to nearest Rupee Hundred (100).

1.4 Priority of Documents

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

(a) this Agreement; and

(b) all other agreements and documents forming part hereof;

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

1.5 Ambiguities within Agreement

1.5.1. In case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

(b) Between the Articles and the Schedules, the Articles shall prevail, save and except as expressly provided in the Articles or the Schedules;

(c) Between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(d) Between the written description on the Drawing and the specific written dimension, the latter shall prevail; and

(e) Between any value written in numerals and that in words, the later shall prevail.

ARTICLE 2

Scope of the Project

2.1. Scope of the Project

2.1.1. The scope of the Project (the "Scope of the Project") shall mean and include, during the Lease Period:

- (a) Operation and maintenance of the Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M) in accordance with the provisions of this Agreement for the Lease period; and
- (b) Performance and fulfilment of all other obligations of the Lessee in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Lessee under this Agreement.

ARTICLE 3

Ownership of Assets

- 3.1 It is agreed that the Project facilities will be put into use and commissioned within 45 days of the execution of this agreement.
- 3.2 All assets owned and provided by the Authority in the Project shall always be the property of Authority. A layout of the project site is provided in Schedule 1. A list of all such assets are provided in Schedule 2. Lessee shall take all reasonable due care of Authority's assets and properties and shall be fully responsible for any loss or damage thereof or thereto, caused as a result of any negligence on its part. It is declared, agreed and acknowledged that all immovable properties including but not limited to land and building as also movable properties except those belonging to Lessee are and shall remain the sole, exclusive and absolute property of Authority and the status of Lessee shall be that of a Licensee.
- 3.3 Lessee may bring at its own option and choice, but with due intimation to Authority, any equipment or assets for the purpose of Lessee's duties hereunder, such intimation to specify the equipment and assets being brought in by Lessee. These assets would be kept separately identified and shall remain the property of Lessee, to be removed forthwith on the expiry or sooner termination of this Agreement. No liability whatever shall attach to Authority for any loss or damage to Lessee's assets, however.
- 3.4 Lessee declares that in entering into this Agreement on the terms and conditions set out herein, Lessee has made its own assessment of the Facilities and the use and income-potential thereof.

ARTICLE 4

Lessee's Responsibilities and Covenants/ Undertakings

- 4.1 Lessee shall be responsible for the efficient management, operation and maintenance of the Project facilities to high standards commensurate with aims and objectives of the Authority in setting up the Organic Agriculture Produces Market Complex at Sixmile, Khanapara, Dist.: Kamrup (M).
- 4.2 Lessee will collect the user charges as per rates specified in the Schedule 3.
- 4.3 Lessee shall punctually settle and pay the amounts owing to Authority (including but not limited to) guaranteed Annual lease rentals within the time agreed and not to allow the same to fall in arrears.
- 4.4 That for any capital expenditure to be made by the Lessee in the civil structure, the lessee will submit plan, estimate, design, etc. to the authority and the same would have to be approved by the Chief Executive Officer, ASAMB. No construction works shall be carried out by the Second Party without specific and written permission by the Second Party.
- 4.5 Lessee shall provide internal maintenance and janitorial and security services in the Facilities.
- 4.6 Lessee shall at its own cost and expense provide adequate personnel, qualified and experienced, for the purposes of operating and maintaining the Facilities and shall be responsible for maintaining proper records.
- 4.7 Lessee will ensure that all the employees of the Project remain neat and clean and properly dressed. Lessee will also ensure that it will not employ any person to work

on the project who is suffering from any contagious or infectious disease. For this purpose, the Lessee will obtain medical certificate for each of its employees as and when asked to do so.

- 4.8 Lessee shall duly discharge and settle all payments and dues including but not limited to salary/wages/provident fund/employees insurance and any other dues or claims whatsoever as per law, and whether statutory or contractual and also including any termination compensation or dues, owing to its personnel and staff including any contract labor engaged by Lessee provided for the purposes of maintaining and/or operating the said facilities and to indemnify and keep Authority fully indemnified against all claims and demands from or on behalf of any such personnel or staff of Lessee and all actions, proceedings, damages, costs and expenses resulting from any such claims and demands.
- 4.9 Lessee shall use the property of the Organic Agriculture Produces Market Complex at Sixmile and the premises solely for the purpose as mentioned in this agreement
- 4.10 Lessee shall organize one training cum seminar every quarter on organic farming and/ or organic certification and/ or good agricultural marketing practices and one National event in a year for growth and for export avenues of organic agriculture produces of North East region.
- 4.11 Lessee shall not cause, permit or suffer any misuse of the facilities and the areas, such misuse to include the holding or conducting of any programmes not intimated to the Authority in advance. Lessee have to submit a written letter giving details of the programme to Authority in reasonable advance period so that the Authority may in its discretion approve or reject any programme within 1 week of the intimation of the programme by Lessee. The Authority will necessarily send a written letter of rejection to Lessee, if deemed so.

- 4.12 Lessee shall arrange to display the methods, process of organic cultivation and good agricultural marketing practices including the procedures for obtaining organic certification of agricultural produces.
- 4.13 The Lessee will arrange, at its own cost, for security and safety of the market functionaries and other visitors coming to the Organic Agriculture Produces Market Complex at Sixmile.
- 4.14 The Lessee will maintain/repair including necessary painting at the interval of 3 years at its own cost.
- 4.15 The Lessee will arrange temporary accommodation for support staff, at their own cost, at suitable location in the market complex premises with the approval of the competent authority.
- 4.16 The Lessee should maintain the flora and fauna of the complex. Sincere effort shall be made by the Lessee to keep the area green and plastic free.
- 4.17 Lessee shall supply high quality food & Beverages under strict hygienic conditions and provide decent services to the market functionaries and / or visitors in the accommodation provided for Canteen facilities. Cleanliness and salubrious surroundings are to be maintained always within the project premises by the Lessee.
- 4.18 Lessee will ensure that the garbage from the project must be disposed of at the safest place outside the project premises in an environment friendly manner and as per the local urban laws.
- 4.19 Lessee will make adequate provisions and measures for security, fire protection, and fire fighting arrangement as may be prescribed by the competent authority, at their own cost.

- 4.20 Lessee shall comply with and scrupulously observe all applicable laws, rules and regulations and statutory requirements at its own costs related to the facilities including but not limited to those relating to food and beverages, and the conditions attaching to any permission or approval and shall indemnify and keep Authority fully and comprehensively indemnified against any default or breach or non-observance of any laws, rules, regulations, requirements, conditions etc. and any consequences, liabilities, damages, costs, charges and expenses arising out of or in consequence of any such default, breach or non-observance as aforesaid.
- 4.21 Lessee shall keep insured at their cost at all times all the buildings, facilities, furnishings and equipments in the joint name with the Authority against all thefts, fire, earthquake, accidents, damages and other natural calamities etc. and bear all expenses for payment of premium, etc. incurred for such insurance. A copy of the insurance policy shall be furnished to the Authority for records.
- 4.22 Lessee shall at its own cost and expenses pay all statutory and non statutory dues including but not limited to as given below in clauses (a) to (f). Lessee shall produce copies of payment vouchers / money receipts etc. towards the payment against sub clause (a) and (b) below as may be called for by the Authority
- (a) All power and water supply expenses.
 - (b) All taxes such as Income Tax, Sales Tax, Service Tax and Water Tax, Urban Tax and other taxes as may be imposed by the Central Government and / or State Government and /or local authorities except the property tax/land tax and building tax which will be borne by the Authority.
 - (c) All costs and expenses of the management and operation of the Facilities.
 - (d) All demands, dues/liabilities and or expenses incurred and payable to any supplier of stocks and supplies and other consumable.
 - (e) All expenses for the internal upkeep and maintenance of the Facilities including but not limited to painting, polishing, sanitary, plumbing, electric maintenance, landscaping as well as repairs and replacements.

- (f) All other expenses towards running of Facilities such as charges for internet, telephone, telex, fax, etc. All expenses of clothing and uniform of the officer/staff/ personnel of Lessee.
- 4.23 Lessee shall not store or allow storage of any explosive or inflammable materials in the premises of the captioned unit except such materials as required for construction works in the area with proper and valid license.
- 4.24 Authority will not be made party to any dispute between Lessee and any supplier, vendor, service provider, etc. with whom Lessee enters into contract with.
- 4.25 Lessee shall not charge, encumber, or create any lien or any rights whatsoever on any assets, facilities or properties belonging to Authority or any part thereof.
- 4.26 Lessee will not sub-let either the whole project or a portion of the same to any third party without prior permission of the Authority. Lessee will require prior written permission of the Authority before any sub-lease, license or any such contractual agreement is entered into. Any sub contract/ sub lease entered between Lessee will automatically expire on expiry of Term of this agreement or in the event of termination of this agreement between the Lessee and Authority.
- 4.27 The Lessee shall get the maintenance of specialized items like Electricity, Cold Rooms, Ripening Chamber, Lifts, DG set etc. through Original Equipment Manufacturers only.
- 4.28 Lessee will supervise, monitor and control the activities of Contractors, sub-contractors, their employees and agents under their respective Project Agreements as may be necessary.
- 4.29 Lessee will take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims.

- 4.30 Lessee shall allow access to Authority and its authorized representatives at all times to inspect the project facilities, financial and statutory records and other relevant accounts of Lessee relating to receipt and expenditure, sale of tickets from operation and management of the Facilities.
- 4.31 Lessee shall forthwith, upon expiry of the Term, surrender in good condition, free from any lien or encumbrances, repair and other subject to normal wear and tear any equipment and articles or other property of Authority to such person as nominated by Authority.
- 4.32 Lessee shall develop and maintain a Project website giving details of the Organic Agriculture Produces Market Complex at Sixmile with online booking facility and Users feedback section.
- 4.33 Besides the roles and responsibilities laid down in the RFP, the Lessee will also have to undertake those responsibilities as prescribed by Authority from time to time and those detailed in this Agreement being executed between Authority and Lessee.

ARTICLE 5

Authority's Responsibilities/Covenants

- 5.1 It shall be Authority's obligation to ensure that the following are made available or executed by the Authority:
- (a) All litigation involving the Project, prior to the date of signing of lease agreement and wherein the actions have been filed against the Authority, the same shall be contested and conducted solely by the Authority. The Lessee shall be in no way held responsible or liable as a reason thereof.
 - (b) Any liability arising out of in providing the Project facilities free of Encumbrances shall be borne solely by the Authority.
 - (c) The Authority shall ensure that from the date of execution of this agreement and till the completion of the Lease Period, the Lessee has access to the Project Site for the purpose of carrying out the Lessee's obligations under this lease Agreement.
 - (d) The Authority shall assist in getting permissions and exemptions as may be required under laws relating to it and regulating the Project as applicable in the State of Assam.
- 5.2 Authority reserves the right to initiate for obtaining grants-in-aid from Govt. / Public Sector / Other Agencies for the development and promotion of organic farming and marketing in the State of Assam under the project, a mutual decision with the Lessee will be formulated in regards to the execution of such fund.
- 5.3 Authority hereby reserves the right to inspect the project facilities and books of accounts of the lessee with respect to the Project during the subsistence of the Agreement.

- 5.4 Authority reserves the right to establish, regulates and revise the prevailing user charges and linking it to the market inflationary trends/indices.
- 5.5 Authority reserves the right to give recommendations with regard to procedures and standards of quality to ensure that high standards of quality are maintained by Lessee.
- 5.6 It is expressly understood that the financial obligations on the part of Authority are confined to those specifically set out in this Agreement, and Authority will not be expected or obliged to provide any additional finances or incur any additional expenditure of any kind whatsoever.
- 5.7 Authority reserves the rights to increase the annual lease rentals by a certain percentage of escalation every year after mutual discussion and agreement with the Lessee in writing.
- 5.8 Authority will give due preference in organization of Government sponsored programmes and/ or training cum seminar relating to organic cultivation, organic certification and good agricultural marketing practice at the project site.

ARTICLE 6

Commercial Consideration

- 6.1. In consideration of the rights, privileges and interests granted by the Authority to the Lessee in terms of this Agreement, the Annual Lease rental of Rs. _____ (Rupees _____) only per year plus Service Tax as applicable) shall be payable by the Lessee to the Authority for each financial year during the term of this agreement in the Authority's or its nominee's bank account at a scheduled bank (to be intimated later on) payable at Guwahati.
- 6.2. The first Annual Lease rental shall be due and payable on the date of signing of this agreement and accordingly, the lessee shall deposit the subsequent Annual Lease rental within 10 (Ten) days prior to the same date every year.

In the event of delay in payment by the Lessee, the lessee shall be required to pay the Authority interest at the rate of 10% per annum for the defaulted period. In the case of delay in payment by the Lessee beyond 30 days, it shall be a Lessee Event of Default and the Authority shall have the absolute discretion to terminate the agreement in accordance with Article 13.

ARTICLE 7

Performance Security

- 7.1 The Lessee shall ensure that for the entire Lease Period, it will maintain a Performance Security of Rs. 50.00 lacs as Performance security in the form of FDR of any Nationalized Bank duly pledged to the Chief Executive Officer, Assam State Agricultural Marketing Board, Ulubari, Guwahati- 7 valid up to 3 (Three) months, beyond the lease period.
- 7.2 Upon occurrence of a Lessee Event of Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate relevant amounts from the Performance Security as damages. Upon such encashment and appropriation from the Performance Security, the Lessee shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level of the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Lessee shall, within the time so granted replenish or furnish to the Authority a fresh Performance Security as aforesaid, failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 13.
- 7.3 That the amount of Performance Security deposit of Rs. 50.00 lacs shall be released after expiry of the agreement or termination, after adjustment of dues, if any , payable by the Lessee to the Authority under this Lease agreement. In case of termination by the Lessee, the security money shall be forfeited.

ARTICLE 8

Publicity and Promotional Expenses

- 8.1 The promotion, publicity, advertisement including any charges on this account will be part of the responsibility of Lessee.
- 8.2 Lessee shall be responsible for adequate advertisement and publicity (in print and electronic media) including as may be necessary in connection with the promotion of the project and optimum utilization of the various Facilities in consonance however with the image, philosophy, objectives of the project.
- 8.3 All publicity materials in electronic and print media and also for the advertisement through leaflets, brochures, etc and also in signboards, hoardings, etc. for the project under this agreement should prominently mentioned the following :
- “.....” Logo of: Authority
A Unit of:
Managed by:
- 8.4 The logo of Authority must be displayed in signboard and in the advertisement and publicity materials brought out by the Lessee. The Lessee will be free to arrange marketing of the project in the domestic and international market and launch publicity campaign at its own cost. Further, the Lessee will have to display the instructions / request of the Authority to the market functionaries/ visitors/ guests at proper places of the project.

ARTICLE 9

Accounts and Audit

- 9.1. The Bankers for the purpose of this agreement shall be decided by Lessee with intimation to Authority. Lessee shall open and operate the aforesaid bank accounts in connection with the operation and management of the Project.
- 9.2. All monies, cash receipt, cheques and negotiable instruments relating to Project revenue shall be deposited in the Bank Account earmarked for the purpose, within maximum 4 working days.
- 9.3. The Lessee shall maintain books of accounts recording all its receipts (including all user charges and other revenues derived/collected by it from or on account of the Project and its facilities), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Lessee shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement.
- 9.4. The Authority shall have the right to inspect the records of the Lessee during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 9.5. Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm of Chartered Accountants to audit and verify all those matters, expenses, costs, realizations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

ARTICLE 10

Ownership of logos, names and marks

- 10.1 All names, brands, etc of Organic Agriculture Produces Market Complex at Sixmile, its sub-components and Facilities will be the property of Authority only. Exception may be made by the Authority for those brands and names that operate outside Organic Agriculture Produces Market Complex at Sixmile under the same brands and names. Operator will have to take specific written permission before using such brands and names.

- 10.2 That the Lessee will have to use the name of Authority with its logo on the tickets, receipts and on every bit of paper/ pad to be used for and on behalf of the Authority.

ARTICLE 11

TERM

- 11.1 The initial Term of the Lease agreement will be of 7 years unless at the end of this term, Authority may grant an extension to the Lessee or appoint another Lessee as it deems fit on terms and conditions set by Authority. The decisions of Authority in this regard shall be final and binding.
- 11.2 The terms of the lease agreement will be extended in accordance with Article 15 dealing with Force Majeure.

ARTICLE 12

Performance Evaluation

12.1. Annual Performance evaluation

Authority through its nominated staff or agency will evaluate the performance of the Lessee based on the provisions of this agreement and on the Key performance indicators as specified in the Schedule 4 to this agreement on a specified time interval defined under Clause 12.2. Schedule 4 provides a list of such Key performance indicators.

12.2. Schedule of Inspection

12.2.1. Scheduled Inspection

For the purpose of performance evaluation, the term of the lease agreement is divided into two phases:

- Phase-1: Two years from the date of the signing of the lease agreement, which is termed as Performance Evaluation Period.
- Phase-2: From the beginning of 3rd year to the completion of Term in conformity with the Agreement.

During the Phase-1 term, the inspection of the project site and performance evaluation will be carried out in every six months with respect to capabilities/ quality of Operation and Management of the centre by the bidder both in terms of facilities, management and training cum seminar and event organised as per Key Performance Indicators.

The performance evaluation during the Phase-2 period will be on yearly basis.

12.2.2. Unscheduled Surprise Inspection

However, Authority reserves the right to undertake any surprise unscheduled inspection in addition to the above mentioned scheduled inspection on the basis of receipt of any written complaints and feedback of the users of the Project or on its own to ensure that provisions of this agreement are complied with.

12.3. Reporting requirements

Authority or any of its nominated person/ agency shall inspect the Project site to undertake any scheduled or unscheduled surprise inspection as per Clause 12.2. It shall make a report of such inspection (the “**Performance Evaluation Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to compliance with the obligations of the Lessee and Key Performance Indicators and send a copy thereof to the Authority and the Lessee within 7 (seven) days of such inspection.

12.4. Remedial measures

12.4.1. The Lessee shall repair or rectify the defects or deficiencies, if any, set forth in the Performance Evaluation Report and furnish a report in respect thereof to the Authority within 30 (thirty) days of receiving Performance Evaluation Report, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 30 (days) days, the Lessee shall submit progress reports of the repair works once in every 15 days until such works are completed in conformity with this Agreement.

12.4.2. In the event that remedial measures are not completed by the Lessee in conformity with the provisions of this Agreement within 30 (thirty) days of receiving Performance Evaluation Report or extended period, it will amount to Lessee’s Event of default and Authority will have the right to terminate this Agreement as per Article 13.

12.4.3. In the event the Lessee fails to repair or rectify any defect or deficiency set forth in the Performance evaluation report within the period specified in Clause 12.4.1, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at 0.1% (zero point one per cent) of Performance Security. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

ARTICLE 13

Termination

13.1. Termination for Lessee Default

Each of the following events or circumstances, to the extent not caused by a default of the Authority or Force Majeure, and if not cured within the “**Cure Period**” which shall be 60 (sixty) days from the date of notice of default (the “**Default Notice**”) from the Authority, shall be considered for the purpose of this Agreement as Events of Default of the Lessee (“**Lessee Events of Default**”):

- i) The Lessee is in breach of its obligations under this Lease Agreement, which has a Material Adverse Effect upon the Authority or the Project.
- ii) The Lessee is in breach of any representation or warranty made under this Agreement or it repudiates this Lease Agreement.
- iii) Delay in payment of annual lease rentals by the Lessee.
- iv) The Lessee has failed to make any payment to the Authority within the period specified in this Agreement.
- v) The Lessee fails to achieve the Key Performance Indicators as per Article 12 as provided for in this Lease Agreement.
- vi) The Lessee abandons the Project or any of its material obligations as provided under this Agreement.
- vii) The Lessee fails to maintain Performance Security under Article 7 or any replenishment or furnishing of fresh Performance Security in the event of partial appropriation by the Authority.
- viii) Any transfer pursuant to law of either (a) the rights and/or obligations of the Lessee under this Lease Agreements and/ or (b) all or material part of the assets or undertaking of the Lessee; except (i) to the extent permitted by this Lease Agreement or (ii) where any such transfer, in the reasonable opinion of the Authority, does not affect the ability of the Lessee to perform its obligations under this Lease Agreement.

- ix) In the event a resolution is passed by the shareholders of the Lessee for the voluntary winding up of the Lessee.
- x) The Lessee is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Lessee or for any of its property that has a material bearing on the Project;
- xi) Any petition for winding up of the Lessee is admitted by a court of competent jurisdiction or the Lessee is ordered to be wound up by court, *except* if such petition is for the purpose of amalgamation or reconstruction, provided that as part of such amalgamation and reconstruction, the property, assets and undertaking of the Lessee are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Lessee under this Agreement and provided that:
 - (a) The amalgamated entity or reconstructed entity has the technical capability and the operating experience necessary for the performance of its obligations under this Agreement;
 - (b) The amalgamated entity or restructured entity has the financial standing to perform its obligations under this Agreement and has a credit worthiness at least as good as that of the Lessee as on the Compliance Date;
- xii) The Lessee assigns this lease Agreement or any of its rights or obligations under the Lease Agreement, where such assignment is not in accordance with the terms and conditions of the Lease Agreement.
- xiii) The Lessee submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars.
- xiv) The Lessee commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority;

13.2. Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Lessee Default, the Authority shall be entitled to terminate this Agreement by issuing a notice (**“Termination Notice”**) to the Lessee; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Lessee of its intention to issue such Termination Notice and grant

15 (fifteen) days to the Lessee to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

13.3. Compensation for default by the Lessee

In the event of the Lessee being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 13.3 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority. For the avoidance of doubt, it is agreed that recovery of Damages or any sum payable under this Clause shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

13.4. Termination By Lessee

13.3.1. Notwithstanding anything to the contrary herein contained, this Agreement may also be terminated:

13.3.2. By Lessee by an irrevocable notice of 60 days in writing to Authority, given after the completion of a period of 3 years reckoned from the date of commissioning of the Project, subject to meeting the obligations namely, viz.,

- (a) Continuing the operations and services in the same way, quantitatively and qualitatively, as before through the notice period including payment of all statutory and non statutory dues arising out from execution of this agreement; and
- (b) The payment of all the sums due to Authority including the guaranteed annual lease rental amount under this Agreement until the termination of this Agreement pursuant to the notice.
- (c) It is understood that Authority shall also meet its obligations during the notice period.

ARTICLE 14

Lessee's presence to cease on expiry or termination

- 14.1. Upon expiry of the term or of a sooner termination of this Agreement:
- 14.1.1. It is agreed that on revocation of the Lease agreement or vacation of the Project by the Lessee for any reason whatsoever, the Lessee will not remove any moveable items without written permission of the Chief Executive Officer, ASAMB, and if required the Authority shall have the option to retain the same with payment of consideration as may be mutually agreed upon.
- 14.1.2. Subject to the above clause and permission of Authority, Lessee shall forthwith remove itself and all its belonging from the Project facilities and areas within 30 days and Authority shall immediately assume care of the management and operation of the Project facilities and the areas, directly or through any other agency. Lessee shall have no right to prevent such operation and management by Authority and expressly agrees that in exercise of this right, Authority will be entitled to prevent Lessee and its officers, staffs, agents or servants from entering and having any access whatever to the project facilities save and except for removal of Lessee's belongings.
- 14.1.3. That in case the Lessee fails to vacate the possession of the Project at the expiry/ cancellation of the Lease period and if the extension is not given to the Lessee, the lessee shall be liable to pay way of damages/ penalty three times the prescribed yearly Lease rentals for every such year of unauthorized occupation till eviction is completed.
- 14.1.4. That it is specifically made clear that the premises in question are public premises within the meaning of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and provisions of the said Act shall apply for eviction purpose or any other law applicable to the context for eviction purpose.
- 14.1.5. Lessee shall surrender the assets in good condition, free and clear of any charges, liens and Encumbrances created or suffered by the Lessee, repair and order subject to normal wear and tear of any equipment, articles or other property of Authority (which Lessee may have the use under or pursuant to this Agreement) to such person/agency as nominated by Authority for the purpose.

ARTICLE 15

Force Majeure

- 15.1 When a party to this Agreement is unable (wholly or in part) by reason of force majeure to carry out any obligation under this Agreement then the Party shall,
- (a) Give the other Party prompt notice of that force majeure with, reasonably fully particulars thereof and in so far as known, the probable extent to which it will be unable, to perform or be delayed in performing that obligation, and
 - (b) Use all possible diligence to remove that force majeure as quickly as possible. During the duration of the force majeure, the obligations of the Parties so far as they are affected by force majeure shall stand suspended, and Authority's compensation shall be reduced on a pro-rata basis. The period of suspension or that affected by force majeure shall then be added to the period of this Agreement.
- 15.2 If after a period of seven (7) days the force majeure has not ceased, the Parties shall meet in good faith where they have not already met earlier, to discuss the situation and endeavor to achieve a mutually satisfactory resolution to the problem.
- 15.3 If the force majeure continues for a period beyond three months and no mutually satisfactory resolution is possible then the party receiving the notice for force majeure shall have the right to terminate this agreement.
- 15.4 In this Agreement, "**force majeure**" means an act of God, war, blockade, lightning, fire, earthquake, storm, flood, strike, governmental restraint and expropriation.

ARTICLE 16

DISPUTE RESOLUTION

16.1. Dispute resolution

16.1.1. Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 16.2.

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

16.2. Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the **Chief Executive Officer, ASAMB** and the Chairman of the Board of Directors of the Lessee for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 16.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 16.3.

16.3. **Arbitration**

16.3.1. In the event of any dispute or difference arising between the Parties arising out of or relating to or in respect of this Agreement, the same shall be referred to the sole arbitration of an arbitrator to be appointed by the Empowered Committee on PPP constituted by the Government of Assam under in accordance with The Arbitration and Conciliation Act 1996. The venue of such arbitration shall be District of Kamrup (Metro) at Guwahati, and the language of arbitration proceedings shall be English.

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

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

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

ARTICLE 17

Miscellaneous Provisions

17.1. Indemnities

The Lessee is responsible to the Authority for the due performance and discharge of its obligations and responsibilities under this Agreement and shall indemnify the Authority against all claims, actions, proceedings, damages, costs and expenses incurred by it as a result of any failure or default on the part of the Lessee in discharging and performing such obligations and responsibilities.

17.2. Consent

Whenever in this agreement the consent or approval of either party hereto is requested, such consent or approval shall not be unreasonably withheld provided that any party acting within the terms of this agreement withholds their consent, the same shall not be construed as unreasonable. Further all requisite consents and approvals in respect of all such matters shall be expeditiously dealt with by both the parties keeping in view the desire for efficacious operations. Urgent matters expressly mentioned as such shall be dealt with immediately.

17.3. Agreement to be Repository

It is expressly declared that:-

- (a) This Agreement is the sole Repository of the terms and conditions concerning the subject matter of this Agreement. All prior Agreements or Understandings whether contained in any signed Agreement or Memorandum of Understanding or in any correspondence exchanged between the Parties or otherwise in any oral discussions, stands superseded and abrogated provided that the Request

for Proposal and Lessee proposal form a part of this agreement. In case of any differences in the clauses between the Request for Proposal and Lessee Proposal, the clause in the Request for Proposal document will be binding.

- (b) This Agreement can only be amended by a subsequent Agreement between the parties which is reduced to writing and not otherwise. All duly executed amendments shall be similarly executed in duplicate and shall form part of this Agreement.

17.4. Relations between the Parties

Nothing contained herein shall be construed as establishing or creating a relationship of master and servant, partnership, joint venture, principal and agent between the Parties hereto shall be a strictly principal to principal relationship and nothing contained herein shall be construed as a sale, transfer or disposal and/or creating any interest in the project in favor of Lessee the use thereof allowed to Lessee being only that of a licensee and strictly on and subject to the terms and conditions stated herein.

Neither Party hereto shall be liable for the debts or obligations of the other Party hereto except as where expressly provided as herein.

17.5. Confidentiality

The Parties hereto shall keep mutually confidential and exclusive of third Parties confidential information/ expert information/ expert techniques and the like as they may receive from each other during the course of this Agreement.

17.6. Governing Law and Jurisdiction

This lease shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts of Assam shall have jurisdiction over all matters arising out of or relating to this Lease Agreement.

17.7. **Waiver**

Waiver by either Party of any default by the other Party in the observance and performance of any provisions of or obligations under this Agreement:

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and
- (c) shall not affect the validity or enforceability of this Lease Agreement in any manner.

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

17.8. **Exclusion of implied warranties**

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

17.9. **Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other legal and valid 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 upon one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided, failure to agree upon any such provisions shall not be a subject matter to dispute resolution under this Lease or otherwise.

17.10. Custody of Documents

The Design Documents shall be in the custody and care of the Lessee. Unless stated otherwise in this lease Agreement, the Lessee shall provide four copies for the use of the Authority.

17.11. Copyright

The Lessee, as beneficial owner, hereby transfers to the Authority copyright and registered design and all other intellectual property rights subsisting in or accruing to the Lessee, in relation to the Design Documents made or to be made by or on behalf of the lessee, during the lease Period for which such copyright subsists in such works. The Authority hereby grants to the Lessee non-exclusive royalty-free license to use such documents and drawings solely for the purpose of complying with its obligations under this Lease Agreement.

17.12. Use of the Authority's Documents

Copyright in the Technical Requirements and other documents issued by the Authority to the Lessee shall (as between the Parties) remain the property of the Authority. The Lessee may, at its cost, copy, use and communicate any such documents for the purposes of this Lease Agreement. They shall not, without the Authority's consent, be used, copied or communicated to a Third Party by the Lessee, except as necessary for the purposes of this Lease Agreement.

17.13. Compliance with Laws and Directives

- (a) The Lessee shall, in all matters arising in the performance of this Lease Agreement comply with, give all notices under, and pay all taxes, levies and other similar charges required by the provisions of any Central or State law or directive or any regulation of any legally constituted public authority having jurisdiction over the Project. The lessee shall obtain all permits, licenses or approvals required for any part of the Project in reasonable time, taking into account the delivery time for the Equipments and Materials and required for completion of the project. The Authority and the Lessee shall comply with all the laws as applicable.
- (b) In the performance of this Lease Agreement, the Lessee shall ascertain and comply with all relevant laws and directives. The Authority will provide such reasonable assistance as may be requested by the Lessee in ascertaining the nature and extent of such relevant Indian laws and directives.
- (c) The lessee shall indemnify the Authority, the Authority's officers, employees and agents against all governmental penalties and fines payable to a Competent Authority, together with any reasonable legal expenses incurred in connection therewith, to the extent arising out of any failure of the Lessee, any Subcontractor or their respective agents or employees to comply with any law or directive applicable to the start-up, operation and maintenance activities conducted at the Project Site, during the performance of its obligations.
- (d) If the Lessee or the Authority finds any divergence between any law or directive and the Technical Requirements, it shall give to the other Party a written notice specifying the divergence and proceed in accordance with provisions for termination as given in Article 13.

17.14. Joint and Several Liability

If the Lessee is a joint venture of two or more Persons, all such Persons shall be jointly and severally liable to the Authority for the fulfilment of the terms of this Lease Agreement. Such Persons shall designate one of them to act as "Lead Member" with authority to bind the joint venture and each of its members. The composition or the

constitution of the joint venture shall not be altered without prior approval of the Authority and as per the specific provisions in this regard provided in this Lease Agreement.

17.15. Notifications

- (a) Wherever provision is made for the giving or issuance of any notice, instruction, consent, approval, certificate or determination by any Person, unless otherwise specified, such communication shall be in writing and shall not be unreasonably withheld or delayed. Wherever provision is made for a communication to be "written" or "in writing", this means any hand-written, typewritten or printed communication, including the agreed systems of electronic transmission.
- (b) All certificates, notices or written orders between the Parties shall either be delivered by hand against written acknowledgement of receipt, or be sent by registered acknowledgement due pre-paid post or courier or one of the agreed systems of electronic transmission. In the event of any dispute, unless such acknowledgement of receipt is provided, the communication shall be treated as not given.
- (c) In the case of the Lessee, all communication shall be marked for the attention of the person and to the address provided below, or to such other person or address as may be intimated to the Authority by the Lessee from time to time.

Name of Lessee's Representative : _____

Address for communication : _____

- (d) In the case of the Authority, all communication shall be addressed to:

Name of Authority's Representative: _____

Address for communication : _____

17.16. Language

The language of this Lease Agreement is the English language. All correspondence, drawings, designs, design data, Tests reports, certificates, specifications and information shall be in the English language. All other written and printed matter required for operation and maintenance shall be executed in the English language. Instructions and notices to the public and staff and all other signs and information notices shall be in English, Hindi/ Local language.

17.17. Counterparts

This lease may be executed in 2 (two) counterparts, each of which when executed and delivered shall constitute an original of this Lease Agreement.

IN WITNESS whereof the Parties have executed and delivered this Lease Agreement as of the date first above written.

SIGNED SEALED AND DELIVERED

For and on behalf of **Assam State Agricultural Marketing Board**
(Authority) by:

_____ (Signature)

_____ (Name)

_____ (Designation)

SIGNED SEALED AND DELIVERED

For and on behalf of _____
(Lessee) by:

_____ (Signature)

_____ (Name)

_____ (Designation)

WITNESSES:

1)

2)

Date:

Place:

Schedule 1

The layout plan of the Market Complex
(Comprising of 4 pages- “*Layoutplan- OrgMktComp_Sixmile.pdf*”)

Schedule 2

Project facilities

1. Market Complex Building comprising of the following facilities/accommodation:

Facilities	No. of Unit	Area/ Unit	Capacity/Unit
A) Ground Floor			
i) Vegetable grading & auction yard	-	714.98 M ²	-
ii) Store/ Godown	1	28.59 M ²	10.00 MT
iii) Ventilated Godown	1	49.95 M ²	10.00 MT
iv) Cold Room	2	68.82 M ²	5.00 MT
v) Banana ripening unit	1	49.35 M ²	5000 Nos. /Batch
vi) Covered parking yard	-	834.76 M ²	
vii) Other utility area.	-	236.62 M ²	
B) First Floor			
i) Grading and auction yard for fruits and flowers	-	928.70 M ²	
C) Second Floor			
i) Retail Market Yard for fruits, vegetable and flowers	-	634.27 M ²	
ii) Retail Market for day to day consumable	-	455.39 M ²	
iii) Electronic Auction Hall	1	246.60 M ²	
iv) Administrative Block	1	167.93 M ²	
v) Training Hall	1	5.81 M ²	
vi) Laboratory	1	36.21 M ²	
vii) Lobby/ Restaurant	-	213.67 M ²	

2. Other facilities:

- i) Toilet blocks
- ii) Entrance gate with Security Shed
- iii) Deep tube well with Sump & Overhead Water Tank
- iv) Electrical Substation & External Electrification
- v) DG Set- 1 unit
- vi) Weighing Scale- 2 units
- vii) Truck Parking yard
- viii) Retaining cum boundary wall etc.

The property worth Rs. 7.70 Crore (approx.) at costs, excluding the cost of land.

Schedule 3

User Charges

1. Market users' fee/charges to be finalized after discussions with the Authority. Market users' fee/charges will include the service charge for providing space for auctioning of commodities, storage/cold storage rent, ripening charge of fruits and weighing charge, if any.

2. Parking Fee- to be notified by the Authority

3. Food and beverages at MRP

Timings

- Open all days
- Entry Time - 7.00 AM – to 10.00 PM

Schedule 4

Key Performance Indicators

Sl. No.	Parameter	Benchmark and frequency
1	Timely payment to the Authority of annual lease rentals	First Annual Lease rental on the date of signing of this agreement and subsequent Annual Lease rental within 10 (Ten) days prior to the same date every year
2	Number of Training cum Seminar organised (on organic farming and/ or organic certification and/ or good agricultural marketing practices)	Minimum 1 (one) per quarter (every three months)
3	Number of National Events organised (for growth and for export avenues of organic agriculture produces of North East region).	Minimum 1 per annum
4	Resolution of Customers complaints or action on customer feedback	Within 1 week of the complaint
5	Project web site uptime for online booking, project details	90%
6	Painting / whitewash of Project facilities	At an interval of 3 years
7	General upkeep and cleanliness of the site	At all times
8	Incident response time (Accidents, fire fighting, medical emergencies etc)	Within 15 minutes
9	Submission of reports to the authority	Within the specified timelines
10	Advertisement in Print and electronic media	1 advertisement per quarter in print media and 1 advertisement per quarter in electronics media
11	Maintenance of books of accounts for the project	At all times

12	Maintenance of specified insurance policies for the project facilities	At all times
13	Compliance with timely payment to staff	Every month
14	Displaying the methods, process of organic cultivation and good agricultural marketing practices including the procedures for obtaining organic certification of agricultural produces	At all times
15	Use of Logo of the Authority in printed literature, tickets and sign boards	At all times
16	Disposal of wastes in an environmentally friendly manner as per the local urban laws	At all times
17	Compliance with the labour laws and other applicable laws / permits	At all times
18	Cleanliness of toilet blocks	At all times
19	Dissemination of information through signboards, Audio visual aids, website and help desk in the project premises	At all times