

Date: 19/09/2015

**SEEKING/EXPRESSION OF INTEREST (EOI) FOR APPOINTMENT OF PROJECT MANAGEMENT AGENCY (PMA) FOR ESTABLISHMENT OF COMMON INFRASTRUCTURE PROJECTS UNDER THE XII PLAN SCHEME OF APEDA "AGRICULTURE EXPORT PROMOTION PLAN SCHEME OF APEDA--SCHEME COMPONENT INFRASTRUCTURE DEVELOPMENT"**

APEDA extends financial assistance under its XII Plan scheme entitled "Agriculture Export Promotion Plan Scheme of APEDA" to Public Sector undertakings under the following components :

**Infrastructure Development:** Assistance to the tune of 90% of eligible cost is extended to PSUs for setting up common infrastructure facilities like Centres for Perishable Cargo (CPC), integrated Post harvest handling facilities, Vapour Heat Treatment facilities/ irradiation facilities, electron beam facilities etc.

APEDA intends to invite Expression of Interest (EOI) in the form of eligibility - techno bid from interested and technically qualified agencies for engagement as Program Management Agency (PMA) for implementation of the above mentioned Common Infrastructure Projects. One or more agency may be selected /appointed by the APEDA as Program Management Agency on the basis of the EoIs received.

Brief background of the scheme, Role of PMA and the detailed procedure for submission of EOI has been given at **Annexure – I**, The prescribed format for submission of EOI is at **Annexure –II**. Draft Memorandum of Agreement (MoA) is at **Annexure – III**, which is to be executed by the successful bidder after selection.

The EOI must be accompanied with a refundable Earnest Money Deposit (EDM) of Rs. 5.00 lakh ( Rupees Five Lakh Only ) separately in the form of Demand Draft drawn in favour of APEDA, New Delhi", payable at New Delhi.

The selection would be done on the basis of Combined Eligibility Cum Technical Based System (CECTBS). The details of the schemes, the eligibility /evaluation criteria may be seen at the APEDA's website [www.apeda.gov.in](http://www.apeda.gov.in) captioned as **(Seeking Proposals / Expression Of Interest (EOI) For Appointment Of PMA For Implementation Of Common Infrastructure Projects Under The XII Plan Scheme Agriculture Export Promotion Plan Scheme Of APEDA--Scheme Component Infrastructure Development"**

The proposal /EOIs should be addressed to General Manager (Infrastructure) APEDA. The complete proposals /EOIs should reach on or before 9.10.2015, at 5:00 P.M. A pre-bid meeting will be held at 11:00 A.M. on 30.09.2015 in APEDA, Conference Room.

For any further details , undersigned may be contacted.

## **Annexure – I**

Notice for Inviting Expression of Interest for engagement of Program Management Agency to assist APEDA in implementation of Common Infrastructure Projects.

APEDA extends financial assistance under its XII Plan scheme entitled "Agriculture Export Promotion Plan Scheme of APEDA" to Public Sector undertakings under the following components :

### **1. Introduction.**

The inadequacy of post harvest infrastructure facilities which result in huge inefficiencies and wastages has persistently been identified as a major constraint in boosting export of perishable products from the country. APEDA has been actively involved in creation of infrastructure for agriculture produce to improve quality and value addition of produce and to achieve optimum shelf life resulting into increased quality exports of Indian agriculture produce. Recently, major focus has been laid to encompass setting up of processing units for horticulture produce and also strengthen the logistics infrastructure.

#### **1.1 Setting up of Infrastructure for Common Use**

Under its Financial Assistance Schemes, APEDA provides 90% assistance of the eligible project cost to State Government Agencies for setting up of common infrastructure facilities such as integrated pack houses having cold storage facilities along with material handling; Centre for Perishable Cargo at airports; infrastructure at seaports, ICDs, Land Custom Stations, Processing Units, Testing Laboratories, etc. for common use by exporters for exports of agriculture products.

#### **1.2 Infrastructure Set up by private exporters**

Financial Assistance as subsidy is extended to private exporters for purchase of specialised transport units; setting up of intermediate storage; setting up of mechanized handling facilities such as sorting grading, washing, waxing, ripening, packing, palletisation, pre cooling, cold storage, pre-shipment treatment such as fumigation, x-ray screening, hot water dip, vapour heat treatment, Irradiation etc., cable cars for banana, Vapour Heat Treatment, ETP, specialized storage facilities such as CA, MA, etc.

Details of the financial assistance schemes of APEDA can be accessed from our website [www.apeda.gov.in](http://www.apeda.gov.in)

### **2. Terms of Reference (TOR) / Scope of Work**

The PMA should be a reputed Pan Indian Institution with extensive experience in project development, management, financing, implementation and monitoring of cluster Development Infrastructure Projects.

The PMA shall perform the following functions to assist APEDA in the implementation of the Scheme :-

- i. To assist APEDA in organizing workshops/ media campaigns aimed at sensitizing the potential stakeholders about the scheme.
- ii. To assist APEDA in inviting Expression of Interest and preparation of bid documents for projects under the Scheme.
- iii. To assist APEDA in selection of project through evaluation /appraisal of techno –feasibility reports and DPRs submitted for Common Infrastructure Projects. Appraisal of the DPRs will include examination of financial viability and sustainability of ownership & Management structure of the projects.
- iv. To assist in the evaluation of any amendments to the project /DPRs.
- v. To assist the SPVs in achieving financial closure and obtaining necessary clearances from various authorities for the Project.
- vi. To monitor and report the progress of the Common Infrastructure Projects to APEDA.
- vii. To maintain and update the database of the projects on monthly basis in the software decided by APEDA.
- viii. Any other assignment for overall improvement of the Scheme and its implementation.
- ix. To assist APEDA in obtaining Utilization Certificates (UCs) and bills towards the advance released along with physical verification report etc.
- x. To facilitate APEDA in implementation of the project, its commissioning and its operation.

### **3. Eligibility Criteria**

The agencies intending to bid for appointment as PMA shall fulfill the following pre-qualification criteria :-

- a) Shall be an institution consulting Firm/Company which has minimum five years experience in conducting feasibility study, development implementation and monitoring of similar projects successfully.
- b) Should have presence in at –least 3 states.
- c) Should be willing and capable of staying on with the implementation of the project till its completion i.e. from concept to commissioning.
- d) Should have an average annual turnover of at least Rs. 10 Crores during each of the last three financial years.
- e) Should have executed at least five similar cluster based infrastructure development project of at least Rs. 10 crores each in last five years.
- f) Should preferable have the experience of establishing backward linkages in implementation of such projects.

- g) Should not be blacklisted or debarred by any government Ministries / Department.

#### 4. **Bidding procedure**

The agency qualifying the above criterion shall submit the bids in two separate Envelopes. One Envelope would contain the eligibility Bid i.e. documents in support of the eligibility conditions as mentioned above as per point- 3 above. The other Envelope would contain the Technical Bid in support of the Technical Criteria.

The Format for submission of Eligibility Bid and Technical Bids has been given in Annexure – II- A,B & C

#### 5. **EMD & Submission of Bids**

The applicants shall submit their EOI in prescribed Format along with a Demand Draft of Rs. 5,00,000/- (Rupees Five Lakhs only ) in favour of APEDA New Delhi as bid document Processing Charges. Eligibility and Technical bids shall be submitted in two separate sealed envelopes: one clearly marked "Expression of Interest for Program Management Agency (PMA) for Common Infrastructure Projects – Eligibility Proposal" and the other clearly marked " Expression of Interest for Program Management Agency (PMA) for Common Infrastructure Projects– Technical Proposal" The two envelopes should be enclosed in a large cover superscribed as "EOI for Program Management Agency (PMA) for Common Infrastructure Projects".

**APEDA will provide half percent commission of the grant approved of the project, which will include all expenses like travel accommodation, out-of-pocket expenses, service tax or any other statutory levies etc.**

Every sheet and all forms compete in all respect shall be signed by the person/persons duly authorized to sign on behalf of the applicants. Any/all corrections made in the offer shall be duly authenticated by the signature of the authorized signatory.

#### 6. **Evaluation of Bids: -**

Based on an evaluation of the Eligibility Proposal Bid, the short listed bidders will be called for technical presentation. The Technical Bid will be evaluated on a scale of 100. The comparative weightage for each activity of Technical Bid would be as below:

S.N	Evaluation Criteria	Weightage (total)
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			marks – 100)
<b>1.</b>	<b>Past experience of the firm</b>		<b>60%</b>
1.1	Number of years of experience for infrastructure projects		20%
1.2	Experience of providing advisory services for Common Infrastructure Projects in agriculture sector /industrial/parks /AEZs		
1.3	Experience of providing transaction/procurement management assistance to Central of State government or PSUs for projects of more than INR 10 crore		20%
1.4	Experience of providing assistance in successful implementation of Common Infrastructure Projects with at least INR 10 crore project cost.		20%
1.5	Experience of managing multi-disciplinary teams for providing assistance to large projects of Central for State Government of PSUs with project fee of at least INR 1 crore for each project		20%
<b>2.</b>	<b>Experience of Key Personnel*</b>		<b>25%</b>
	Position	Experience	Qualification
	Team Leader	Professional/Sectors/Specialist with 15 years experience	MBA/CA or ICWA/Post Graduate in any discipline
	Team Members	Chartered Accountant with 5 years professional experience	<b>C.A</b>
		Civil/Mechanical Engineer with 5 years professional experience	B.Tech/M.Tech
		Expertise in implementation and commissioning of Common Infrastructure Projects with 5 years professional experience	B. Tech/M.Tech (Food Technology)/M.Sc (Food Science)
<b>3.</b>	<b>Financial Strength of the Consultant</b>		<b>15%</b>
	Average Turn over figure for last 3 years		50%
	Average Net profit figure for last 3 years		50%
	<b>Total points</b>		<b>100</b>

- The agency may deploy additional manpower as per actual requirement of the work. However, the CVs of only the above mentioned personnel will be considered for technical evaluation. In case of replacement of a team member, if necessary, after the appointment of PMA, the substituted person should have an equivalent or higher qualification.

**The Agency obtaining maximum marks on the basis of evaluation of the Technical bid will qualify. The agencies, who qualify in the eligibility criteria , may be called for presentation if, so required.**

**7. Terms of Payments**

Professional Fee shall be paid as per following Schedule of Payment.

<b>Fee Amount</b>	<b>Payment Milestones</b>
<b>STAGE – I</b>	
15% Of Professional Fee	On Final Approval of the Project by APEDA Authority
<b>STAGE II – Project wise</b>	
15% of Professional Fee	On signing of the MOU between APEDA and beneficiary
10% of Professional Fee	On release of 1 <sup>st</sup> installment of grant to the approved project
10% of Professional Fee	On release of 2 <sup>nd</sup> installment of grant to the approved project
15% of Professional Fee	On release of 3 <sup>rd</sup> installment of grant to the approved project
15% of Professional Fee	On release of 4 <sup>th</sup> installment of grant to the approved project
20% of Professional Fee or balance eligible fee for the project, whichever is lower	On completion of the project

- (a) Fee as above is inclusive of fee for professional services, travel, accommodation, service tax or any other statutory levies and all out of pocket expenses of personnel of PMA.
- (b) PMA and any of its associates shall no enter into separate agreements with any of the Project SPV (s) for services related to designing, engineering, procurement, construction management & supervision of project.

**8. Penalty clause**

For non-performance/delayed performance, any or all of the following penalties may be imposed on the selected organization.

- i) EMD will be forfeited in case of any mid-way unilateral withdrawal from the bidding process.
- ii) Forfeiture of Performance Guarantee in case of any midway unilateral withdrawal from the assignment.

**9. Performance Guarantee**

After selection of the suitable applicant for appointment as PMA, the amount of EMD shall be refunded to the unsuccessful bidders. The successful bidder has to provide a Bank Guarantee amounting to Rs. 5.00 lakhs to APEDA as a performance security valid till the completion of the terms of engagement. This Bank Guarantee shall be forfeited in the event of breach of the terms of the contract.

#### **10. Disclaimer**

APEDA shall not be responsible for any late receipt for any reasons whatsoever. The applications received late will not be considered and will be returned unopened to the applicant.

#### **11. APEDA reserves the right**

- a) To reject any/all application without assigning any reason thereof.
- b) To relax or waive any of the conditions stipulated in this documents as deemed necessary in the best interest of APEDA and the objective of the scheme without assigning any reasons thereof.
- c) To include any other items in the Scope of Work at any time after consultation in the pre-bid meeting or otherwise during the course of implementation of the scheme.

#### **12. Rejection of EOI**

The applications will be summarily rejected if:

- a) It is not received in proper sealed cover with superscription as indicated above.
- b) It is not in prescribed form and not containing all required details/information/ documents.
- c) It is not properly signed.
- d) It is received after the due date and time.
- e) Offer is received by telex, fax, telegram or e-mail
- f) Bid received without cost of bid document and EMD.

#### **13. Last date of submission of bids:**

The application/EOI compete in all respect should reach APEDA on or before 9.10.2015 at 5:00 P.M.

#### **14. Clarification:**

Clarification, if any may be sought from Agricultural and Processed Food Products Export Development Authority, 3<sup>rd</sup> Floor, NCUI Building, 3 Siri Institutional Area, August Kranti Marg, New Delhi – 110016.





Format for Submission of EOI

## A. Introduction of Applicant

1	Name of the applicant Agency	
2	Address	
3.	Name of the contact Person to whom all references shall be made regarding this EOI	
4	Designation of the person to whom all reference shall be made regarding this EOI	
5.	Address of the person to whom all referenced shall be made regarding this EOI	
6	Telephone (with STD code)	
7	Mobile No. of the contact person	
8.	Email id of the contact person	
9.	Fax No. ( with STD code)	

## B. Eligibility Criteria

S.No.	Particulars	Details	Documents
1.	Experience in conducting feasibility study, development implementation and monitoring of similar projects successful.	Years of experience	Attach support documents
2.	Presence in the States	Number and name of the States	-DO-
3.	Average annual turnover of at least Rs. 10 crores during the last 3 financial years	3 financial year turnover	Last 3 years audited balance sheet
4.	Successful execution of clusters based infrastructure projects of Rs. 10 crores each in last five years	Turnover of the projects in the last five years – year wise	Attach support documents
5.	Backward linkages expertise in the implementation of the projects	Number of years / name of the projects	-DO-
6.	Whether black listed /debarred by Govt. or its department	Yes/No	Self declaration in support of yes / no

## C. Technical Criteria

S.N	Technical Criteria	Weightage (total marks – 100)	Marks	Remarks
<b>1.</b>	<b>Past experience of the firm</b>	<b>60%</b>	<b>60</b>	
1.1	Number of years of experience for infrastructure projects	20%	12	
1.2	Experience of providing advisory services for Common Infrastructure Projects in agriculture sector /industrial/ parks /AEZs	20%	12	
1.3	Experience of providing transaction/procurement management assistance to Central of State government or PSUs for projects of more than INR 10 crore	20%	12	
1.4	Experience of providing assistance in successful implementation of Common Infrastructure Projects with at least INR 10 crore project cost.	20%	12	
1.5	Experience of managing multi-disciplinary teams for providing assistance to large projects of Central for State Government of PSUs with project fee of at least INR 1 crore for each project	20%	12	
<b>2.</b>	<b>Experience of Key Personnel*</b>	<b>25%</b>	<b>25</b>	
	Position	Experience	Qualification	
	Team Leader	Professional/Sectors/Specialist with 15 years experience	MBA/CA ICWA/Post Graduate any discipline	20% 5
	Team Members	Chartered Accountant with 5 years professional experience	<b>C.A</b>	80% 20
		Civil/Mechanical Engineer with 5 years professional experience	B.Tech/M.Tech	
		Expertise in implementation and commissioning of Common Infrastructure Projects with 5 years professional experience	B. Tech/M.Tech (Food Technology), M.Sc (Food Science)	
<b>3.</b>	<b>Financial Strength of the Consultant</b>	<b>15%</b>	<b>15</b>	
	Average Turn over figure for last 3 years	50%	7.5	

	Average Net profit figure for last 3 years	50%	7.5	
	<b>Total points</b>	<b>100</b>	<b>100</b>	

Note : The applicant must provide all the supporting documents in confirmation of the following:

1. Past experience of the firm as per S.No. -1
2. Experience of key personnel as per S.No. -2
3. Financial strength of the consultant as per S.No. -3

Technical marks will be allotted /evaluated with respect to individual weightage based on supporting documents provided.

**DRAFT MEMORANDUM OF AGREEMENT.**

THIS MEMORANDUM OF AGREEMENT (MOA) has been entered into a New Delhi on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

BETWEEN

The President of Union of India, acting through Chairman, APEDA, Govt. of India represented by \_\_\_\_\_(hereinafter referred to as APEDA, which expression shall unless repugnant to the context thereof, includes its successors, assigns) and having its office at \_\_\_\_\_ First Part

And

M/s \_\_\_\_\_ Second Part:

WHEREAS

- (a) APEDA has launched "Agriculture Export Promotion Plan Scheme of APEDA" aimed primarily at provided adequate infrastructure facilities for its scheduled products along value chain form farm to market.
- (b) APEDA has issued Guidelines for implementation of CIS and intends to facilitate establishment of Common Infrastructure Project which would be a mechanism to bring farmers, processors and retailers together and link agricultural production to market to maximize value addition, minimize wastage and improve farmers' income.
- (c) To ensure that proposed "Agriculture Export Promotion Plan Scheme of APEDA" objectives of APEDA has decided to engage a Program Management Agency (PMA) to provide management, capacity building, co-ordination and monitoring support. The major role of PMA envisaged, inter-alia, is as follows:
  - i. To assist APEDA in organizing workshops/ media campaigns aimed at sensitizing the potential stakeholders about the scheme.
  - ii. To assist APEDA in inviting Expression of Interest for projects under the Scheme.
  - iii. To assist APEDA in selection of project through evaluation /appraisal of techno –feasibility reports and DPRs submitted for Common Infrastructure Projects. Appraisal of the DPRs will include examination of financial viability and sustainability of ownership & Management structure of the projects.
  - iv. To assist in the evaluation of any amendments to the project /DPRs.

- v. To assist the SPVs in achieving financial closure and obtaining necessary clearances from various authorities for the Project.
- vi. To assist APEDA in release of the grant under the Scheme.
- vii. To monitor and report the progress of the Common Infrastructure Projects to APEDA.
- viii. To ensure implementation of the project, its commissioning and the first consignment exported from the approved project.
- ix. To maintain and update the database of the projects on monthly basis in the software decided by APEDA.
- x. Any other assignment for overall improvement of the Scheme and its implementation.

- (d) APEDA is desirous of availing services of M/s \_\_\_\_\_ for acting as PMA under the "Agriculture Export Promotion Plan Scheme of APEDA" and M/s \_\_\_\_\_ has agreed to undertake the assignment of render services as indicated in Scope of Services, as st out in this MOA by itself and /or through its group companies.

**NOW, IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO AS UNDER :**

**(1) DEFINITIONS :**

- (a) "Approval " means approval in writing by designated officers of APEDA.
- (b) "DPR" means Detailed Project Report prepared y SPV seeking assistance under "Agriculture Export Promotion Plan Scheme of APEDA" and approved by APEDA Authority .
- (c) " Force Majeure" means any event or circumstance or combination of events or circumstance which prevents the Party claiming Force majeure ( the affected Party) from performing its obligations under this MOA and which event or circumstance (i) which is beyond the reasonable control and not arising out of the default of the Affected Party (ii) the Affected Party has been unable to overcome such circumstance or event by the exercise of due diligence and reasonable efforts, skill and care,. Such events or circumstance shall include, without limitation, the effect of any natural element or other acts of State or God including, but not limited to , fire, flood, earthquake, lightning, cyclone, landslides or other natural disasters, strikes or other industrial disturbance, was, riots, civil commotion, terrorist attacks, embargoes, blockades, governmental restriction, intervention of civil, naval or military authorities, change in applicable law.
- (d) "Scheme" or "Agriculture Export Promotion Plan Scheme of APEDA" in accordance with guidelines published /to be published by Government of India, APEDA and includes any amendments thereto.
- (e) Project SPV, means a corporate body registered under the Companies Act formed by Industry association. Groups of entrepreneurs or otherwise in respect of a Project approved under the Scheme and includes other legal

entities /corporate bodies specifically approved for purposes of implementation of the Project.

- (f) Program Management Agency or PMA for purposes of this MOA for development as per Scheme.
- (g) Services shall have meaning ascribed thereto in Clause 2 hereto.
- (h) Any other term not defined above, shall have the same meaning as described in the guidelines of the Scheme.

## (2) **APPOINTMENT OF PMA AND SCOPE OF SERVICES**

APEDA hereby appoints M/s \_\_\_\_\_ hereby agrees to act as 'Program Management Agency' to assist APEDA in smooth implementation of the scheme and shall provide following services ('Services'):

- i. **Information Dissemination on the Scheme:** M/s \_\_\_\_\_ would assist APEDA in organizing workshops/ media campaigns aimed at sensitizing the potential stakeholders about the scheme.
- ii. **Inviting expression of interest (EOI) for the projects:** M/s ---- would assist APEDA APEDA in inviting Expression of Interest for projects under the Scheme.
- iii. **Evaluation and appraisal of EOI/techno-feasibility reports and Detailed Project Reports (DPRs):** M/s \_\_\_\_\_ would assist APEDA in selection of project through evaluation /appraisal of techno –feasibility reports and DPRs submitted for Common Infrastructure Projects. Appraisal of the DPRs will include examination of financial viability and sustainability of ownership & Management structure of the projects and to assist in the evaluation of any amendments to the project /DPRs.
- iv. **Credit Linkage:** M/s \_\_\_\_\_ would the SPVs in achieving financial closure and obtaining necessary clearances from various authorities for the Project.
- v. **Release of Grant:** M/s \_\_\_\_\_ would assist APEDA in release of the grant under the Scheme.
- vi. **Monitoring & Reporting:** M/s \_\_\_\_\_ would monitor and report the progress of the Common Infrastructure Projects to APEDA.
- vii. To ensure implementation of the project, its commissioning and the first consignment exported from the approved project.
- viii. To maintain and update the database of the projects on monthly basis in the software decided by APEDA.

- ix. Any other assignment for overall improvement of the Scheme and its implementation.

**(3) Responsibilities of APEDA**

- a) APEDA would duly notify and inform all the relevant stakeholders including industry and its registered exporters from industry association, state governments, concerned Ministries/organization of Government of India, banks and financial institutions about appointment of M/s \_\_\_\_\_ as PMA.
- (b) APEDA would provide all necessary facilitating support to M/s \_\_\_\_\_ in discharge of the services mentioned in para 2 above.

**(4) Fee**

In consideration of M/s \_\_\_\_\_ agreeing to provide the services, as mentioned at Para (2) above, APEDA shall pay professional fees ('Professional Fee') to M/s -----as per details given below:

- a) Fees shall be.....percentage of the grants-in-aid amount given by APEDA per each approved project, inclusive of taxes as applicable. Project cost for purpose of this MOA shall have same meaning as defined in the Guidelines of "Agriculture Export Promotion Plan Scheme of APEDA" scheme and as approved by Govt. of India.
- b) Professional fee shall be paid as per following schedule of payments.

<b>Fee Amount</b>	<b>Payment Milestones</b>
<b>STAGE – 1</b>	
10% of professional fee	On signing of the _____ between APEDA and the PMA.
<b>STAGE II – Project wised</b>	
30% of professional fee	On final approval of the project by the APEDA
15% of professional fee	On release of 1 <sup>st</sup> installment of grant to the approved project
15% of professional fee	On release of 2 <sup>nd</sup> installment of grant to the approved project
15% of professional fee	On release of 3 <sup>rd</sup> installment of grant to the approved project
10% of professional fee	On release of 4 <sup>th</sup> installment of grant to the approved project
5% of Professional fee or balance eligible fee for the project whichever is lower	On completion of project.



- c) Fee as above is inclusive of fee for professional services, travel, accommodation, service tax or any other statutory levies and all out of pocket expenses of personnel of M/s \_\_\_\_\_.
- d) M/s \_\_\_\_\_ shall not enter into separate agreements with any of the project SPV (s) for services related to designing, engineering, procurement, construction management & supervision of project. M/s \_\_\_\_\_ shall not be eligible to be appointed as PMC under "Agriculture Export Promotion Plan Scheme of APEDA" Scheme.
- e) At the time of payment of signing fee, 2<sup>nd</sup> party, i.e. M/s \_\_\_\_\_ shall furnish a bank guarantee which will be equal to amount of the signing fee to be paid.

## **5) Commencement**

M/s \_\_\_\_\_ shall commence the work immediately on signing of MOA.

## **6) Co-ordination and Monitoring**

**APEDA would coordinate, monitor and guide implementation of project under the scheme. M/s \_\_\_\_\_ shall submit monthly progress report to APEDA on progress and seek inputs, directions and approvals, as the case may be.**

## **7) Validity**

This MOA shall be valid until and unless it is expressly terminated. During validity of MOA, APEDA and M/s \_\_\_\_\_ will take effective steps for implementation of MOA. Any act on part of APEDA and M/s \_\_\_\_\_, after termination of this MOA by way of communication, correspondence etc. shall not be construed as an extension of MOA.

## **8) Penalty**

For non performance and/nor non adherence to time-lines stipulated in Operational Guidelines for this scheme for scope of work related to Second Party, following all or any penalty would be imposed on the second party by First Party, until and unless such delay is condoned by APEDA for valid and acceptable reasons, after due consideration:

- i) Deduction of 0.5% (zero point five percent) fee for balance portion of fee for each project for each week of delay or part thereof subject to a maximum of 3 (three) percent of balance fee.

ii) Forfeiture of Security Deposit/Bank Guarantee/Performance Guarantee in case of any midway unilateral withdrawal from the assignment.

## **(9) Force Majeure**

### **i) Breach of MOA**

The failure of a party to fulfill any of its obligations under MOA shall not be considered to be a breach of, or default under this MOA insofar as such inability arises from an event of Force Majeure, provided and party affected by such an event (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out terms and conditions of this MOA, and (ii) has informed other party as soon as possible about occurrence of such an event.

### **ii) Extension of Time**

Any period within which a party shall, pursuant to this MOA, complete any action or task, shall be extended for a period equal to time during which such party was unable to perform such action as a result of Force Majeure.

## **(10) Termination**

### **a) Termination by APEDA**

APEDA may terminate this MOA, by not less than thirty (30) day written notice of termination to M/s \_\_\_\_\_, to be given after occurrence of any of events specified in paragraphs (i) through (iii) below:

- i) If M/s ..... does not remedy a failure in performance of its obligations under MOA, within sixty (60) days of receipt after being notified or within such further period as APEDA may have subsequently approved in writing.
- ii) If M/s \_\_\_\_\_ becomes insolvent or bankrupt: or
- (iii) If, as result of Force Majeure, APEDA is unable to perform a material portion of obligation for a period of more than sixty (60) days.

### **(b) Termination by M/s \_\_\_\_\_**

M/s \_\_\_\_\_ may terminate this MOA, by not less than thirty (30) days written notice to APEDA, such notice to be given after occurrence of any event specified below:

- i) If APEDA fails to pay any due to M/s \_\_\_\_\_ pursuant to this MOA within sixty (60) days after receiving written notice from..... that such payment is overdue; or

- ii) If, as the result of force majeure, M/s \_\_\_\_\_ is unable to perform a material portion of Services for a period of not less than sixty (60) days.
- (c) The termination of this MOA shall not prejudice or affect in anyway rights and benefits accrued or liability and duties imposed on parties of this MOA.

### **(11) Miscellaneous Clauses**

- (a) M/s \_\_\_\_\_ shall notify to APEDA of any material change in its status or shareholding in particular, where such change would impact on performance of obligations under the MOA.
- (b) Any failure or delay on part of APEDA to exercise right or power under MoA shall not operate as waiver thereof.
- (c) Workers employees, staff or agents engaged or employed by or on behalf of M/s \_\_\_\_\_ shall neither be nor deemed to be worker, employee, staff agents of APEDA under any circumstances what so ever and there is no such agreement for or regarding workers of M/s \_\_\_\_\_ as well as APEDA.
- (d) Notwithstanding anything in this MoA, in no event shall APEDA be liable under laws of contract, tort, misrepresentation warranty, negligence, strict liability or otherwise, for any special indirect, incidental or consequential damages (including loss of profit arising out of an connection with this MoA).
- (e) Neither execution and delivery by M.s ABC of this MoA nor performance by M/s \_\_\_\_\_ of its obligations hereunder will violate, conflict with, or result in breach of, or constitute a default under, any provision of law, statue, rule or regulation or any judgment, order, or decree of any court of governmental body applicable to it, or its articles of incorporation or by-laws.

### **(12) Arbitration**

It is hereby agreed between the two Parties that project shall be executed in manner and form outlined in this Agreement and Scheme Guidelines. If any dispute or difference of any kind whatsoever arises between parties in connection with or arising out of or relating to or under this agreement or under the Scheme, the Parties shall promptly and in good faith negotiate, with a view to reaching an amicable resolution and settlement. In event no amicable resolution or settlement is reached within a period of thirty (30) days from date on which above-mentioned dispute or difference arose, such dispute or difference shall be referred to an arbitrator who shall be appointed from among a panel of officers of this Ministry or from panel of officers so nominated by the Ministry of Law. The seat of arbitration shall be Delhi and arbitration shall be conducted in English language. Arbitration and Conciliation Act, 1996, shall govern arbitral proceedings.

Existence of any dispute or difference or intimation or continuance or arbitral proceedings shall not postpone or delay performance by Parties of their respective obligations under or pursuant to this Agreement. Further, this Agreement shall remain subsisting and operative during the arbitral proceedings and no payment due and payable to either party shall be withheld except payment in dispute, if any.

Courts of Delhi alone shall have jurisdiction with respect to arbitration or any other dispute.

IN WITNESS WHEREOF the parties thereto have put their hand this day and date first above mentioned;