

AGREEMENT

BETWEEN

**PRESIDENT OF INDIA ACTING THROUGH
DEVELOPMENT COMMISSIONER, (MICRO, SMALL AND MEDIUM ENTERPRISES),
GOVERNMENT OF INDIA
(GOI)**

AND

(Project Company)

FOR

**SETTING UP OF NEW MINI TOOL ROOM AT CHENNAI UNDER PUBLIC PRIVATE
PARTNERSHIP (PPP) MODE ON BUILD, OWN AND OPERATE (BOO) BASIS**

Dated _____

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AGREEMENT

This Agreement is made on this the _____ day of _____, 201_ at _____
("Agreement")

BETWEEN

1. **President of India** acting through the Development Commissioner (Micro, Small and Medium Enterprises), Government of India represented by _____ (hereinafter referred to as "**GOI**" or "**Authority**", which expression shall unless repugnant to the context thereof, include its successors, assigns) and having its Office at _____, New Delhi, of the **ONE PART**;

AND

2. _____, a company registered under the Companies Act, 1956, having its Registered Office at _____ (hereinafter referred to as the "**Project Company**" which expression shall include its successors and permitted assigns) of the **OTHER PART**;

(Authority and Project Company are individually referred to as the "Party" and collectively referred to as the "Parties")

WHEREAS

- A. Ministry of Micro, Small and Medium Enterprises, Government of India (Authority), with a view to improve the competencies of the Micro, Small and Medium Enterprises, decided to make available, increased and enhanced tool rooms and related training services to Private Sector Player (PSP) through Public Private Partnership (PPP) mode {Built, Operate and Own (BOO) format} and thus to bridge the gap between demand and supply of tool room facilities and trained man power in related areas for the industry, framed a scheme vide Govt. Notification No. _____ dated _____ termed as "Scheme for Setting up of New Mini Tool Rooms" for designing and manufacturing quality tools and tool room training facilities (Hereinafter referred to as the "**Scheme**");
- B. Based on a study commissioned by the Authority, Chennai was identified as one of the potential locations for setting up a New Mini Tool Room under the Scheme;
- C. The Authority had accordingly invited applications by its Notice No. *** dated *** (the "**RFQ**") for short listing of bidders for construction, operation and maintenance of the above referred New Mini Tool Room on BOO basis and had short listed certain bidders including, inter alia, the consortium/bidder comprising ****, **** and **** (collectively the "**Consortium/Bidder**") with **** as its Lead Member.
- D. Authority vide Request for Proposal No. _____ dated _____ ("**RFP**") invited competitive proposals from eligible entities for implementing the Project under the Scheme, through competitive bidding route and in response thereto, Authority received proposals from various eligible entities for implementing the Project;
- E. Authority, after evaluating the aforesaid RFPs, accepted the proposal submitted by the Selected Bidder and issued Letter of Acceptance dated _____ ("**Letter of Acceptance**") to the Selected Bidder, a copy whereof is hereto annexed as Schedule "A";¹

- F. Accordingly as per the terms and conditions of the RFP Document, the Selected Bidder had incorporated the present Project Company as a limited liability company under the Companies Act, 1956;
- G. In accordance with the Scheme, RFP document and Letter of Acceptance, the Parties have agreed to enter into this Agreement setting out their respective rights and obligations;
- H. The Project Company shall be required to design, finance, procure, construct, operate and maintain the Mini Tool Room as per the terms laid down in the Scheme and the Agreement (hereinafter referred to as the **“Project”**);

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively ascribed to them:

“Accounting Year” means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year.

“Agreement” means this agreement including its Recitals, the Schedules hereto, as of the date hereof and includes any amendment hereto made in accordance with the provisions hereof.

“Applicable Laws” means all laws in force and effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India, including judgments, decrees, injunctions, writs or orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

“Agreement Period” means the period, as defined under Clause 4.1 of the Agreement, starting from the Appointed Date.

“Applicable Permits” means all clearances, permits, authorizations, consents and approvals under or pursuant to any of the Applicable Laws, required to be obtained and maintained by the Project Company, in order to implement the Project and to provide Project Facilities in accordance with this Agreement.

“Appointed Date” means the date on which Financial Close is achieved or an earlier date that the Parties may by mutual consent determine, and shall be deemed to be the date of commencement of the Agreement Period.

“Arbitration Act” means the Arbitration and Conciliation Act, 1996 and shall include any amendment to or any re-enactment thereof as in force from time to time.

“Captive Consumption” means any one of the following:

- (i) when more than **25%** (twenty five percent) of revenue of the Project is obtained from a single entity in any one financial year except where such entity is a Government owned entity or where the order(s) has/have been obtained through an approved tendering procedure; **or**
- (ii) when more than **25%** (twenty five percent) of machine or man hour capacity of the Tool Room Facility is dedicated towards servicing a single entity in any one financial year except where such entity is a Government owned entity or where the order(s) have been obtained through an approved tendering procedure.

“Conditions Precedent” means the conditions set out in Article 3 hereof.

“COD” means the Commercial Operation Date of the Project which shall be the date on which the Independent Engineer has issued the Completion Certificate of the Project.

“Commencement Date” means the date of this Agreement.

“Completion Certificate” means the certificate to be issued by the Authority based on the recommendations of the Independent Engineer certifying completion of construction of the Project by the Project Company in accordance with the Project Requirements as per Schedule C.

“Contractor” means any Person with whom the Project Company may enter into any of the Project Agreements.

“DPR” means the Detailed Project Report prepared by the Project Company in respect of the Project;

“EPC Contract” means the contract, if any, entered into by the Project Company *inter alia* for the purpose of design, engineering, procurement of equipments, machinery and materials and construction of the Project Facilities in accordance with the provisions of this Agreement;

“Encumbrances” means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Article 14.1;

“Event of Default” shall have the meaning ascribed thereto in Article 10.

“Financial Close” means the date on which the Financing Documents for the Project have been executed and become effective and the Project Company has fulfilled all the conditions needed for draw down of financing and the Project Company has immediate access to such financing and which shall in any case not be later than 180 days from the date hereof.

“Financing Documents” means collectively the documents evidencing Lenders' commitment to finance the debt component of cost of the Project.

“Force Majeure Event” means a force major event which:

- (a) is beyond the control of the Party claiming to be affected thereby (the "Affected Party");
- (b) prevents the Affected Party from performing or discharging its obligations under this Agreement; and
- (c) the Affected Party has been unable to overcome or prevent despite exercise of due care and diligence.

“Force Majeure Period” means, the period commencing from the date of occurrence of a Force Majeure Event and ending on the date on which the Affected Party, acting in accordance with the Good Industry Practice, resumes or should have resumed such of its obligations.

“Good Industry Practice” means the exercise of that degree of skill, diligence, prudence and foresight in compliance with the undertakings and obligations under this Agreement which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project of the type similar to that of the Project.

“GOI” means the Government of India.

“Government Agency” means GoI, or any state government or Governmental department, commission, board, body, bureau, agency, authority, instrumentality, Court or other judicial or administrative body, central, state, or local, having jurisdiction over the Project Company, the Project Site/ Project Facilities or any portion thereof, or the performance of all or any of the services or obligations of the Project Company under or pursuant to this Agreement.

“Grant” means Rs._____ (Rupees _____ only), being the lowest funding assistance quoted by the Selected Bidder in response to RFP.

“Implementation Period” means the period beginning from the Appointed Date and ending on the COD.

“Independent Engineer” shall have the meaning ascribed thereto in ARTICLE 11

“Insurance Proceeds” means the proceeds of the insurance policies taken by the Project Company.

“Lenders” means financial institutions, banks, funds or trusts who provide or refinance the debt component of the cost of the Project (including guarantees, risk participation facility, take-out facility and other forms of credit enhancement) and includes subscribers to/ trustee for the holders of debentures/bonds or other securities issued by the Project Company to meet the cost of the Project.

“MSME” means Micro, Small and Medium Enterprises.

“Material Adverse Effect” means material adverse effect on (a) the ability of either Party to exercise any of its rights or perform/discharge any of its duties/obligations under and in accordance with the provisions of this Agreement and/or (b) the legality, validity, binding nature or enforceability of this Agreement.

“Material Breach” means a breach by either Party of any of its obligations under this Agreement or covenants of Scheme, which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“Mini Tool Room Facility” shall have the meaning ascribed thereto in Project Requirements, as stated in Schedule C.

“Parties” mean the Parties to this Agreement collectively.

“Party” means either of the Parties to this Agreement individually.

“Person” means (unless otherwise specified or required by the context), any individual, company, corporation, partnership, joint venture, trust, unincorporated organisation, Government or Government Agency or any other legal entity.

“Project” means design, financing, procurement, construction, operations and maintenance of the Project Facilities in accordance with the provisions of this Agreement.

“Project Agreements” means collectively this Agreement, EPC contract, procurement contracts, operations & maintenance contract, lease agreement and any other material contract (other than the equity documents and Financing Documents) entered into or may hereafter be entered into by the Project Company in connection with the Project.

“Project Cost” means the lowest of the following:

- (a) Actual capital cost of the Project upon completion of the Project as certified by Independent Engineer;
- (b) A sum of Rs. 16 crores (Rupees Sixteen crores only);
- (c) The capital cost of the Project, as set forth in the proposal submitted by the Consortium/Bidder; and
- (d) the capital cost of the Project as set forth in the Financing Documents;

For the purposes of calculation of Project Cost, the cost of land and building shall not exceed 25% (twenty five per cent) of Project Cost, as calculated under any of the above categories

“Project Facilities” means Mini Tool Room Facility set out in Schedule B to be designed, constructed, operated, maintained by the Project Company on the Project Site, in accordance with the Project Requirements, as stated in Schedule C.

“Project Monitoring Committee” or **“PMC”** shall mean the committee constituted as such under the Chairmanship of Additional Secretary & Development Commissioner (MSME) in terms of the Scheme.

“Project Requirements” means requirements as stated in the Schedule C.

“Project Site” means the land on which the Project is to be set up and the Project Facilities are to be provided by the Project Company in accordance with the Project Requirements, as stated in Schedule C.

“Project Company” means [_____]², a company incorporated by the Selected Bidder.

“Repo Rate” shall mean the Repo Rate as defined by Reserve Bank of India.

“RFP” shall have the meaning ascribed thereto in Recital D.

“Rs.” or “Rupees” or “Indian Rupees” refers to the lawful currency of the Republic of India.

“Scheduled Project Completion Date” means the last date of the 18 (eighteen) months from the Appointed Date. .

“Scheme” shall have the meaning ascribed thereto in Recital A.

² Please specify the names of entities / persons to whom LOA has been issued.

“Selected Bidder” means the bidder whose proposal has been accepted by the Authority.

“Tax” means and includes all taxes, fees, cess, levies that may be payable by the Project Company under any Applicable Law.

“Termination” means termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement.

“Termination Date” means the date specified in the Termination Notice as the date on which Termination occurs due to default of any of the Parties to the Agreement

“Termination Notice” means the notice of Termination by the Parties in accordance with the applicable provisions of this Agreement.

“Training Centre Facility” shall have the meaning assigned thereto in Project Requirements, as stated in Schedule C.

“Transaction Advisor” means a Person appointed as such by GOI in terms of the Scheme and shall have the meaning ascribed thereto in the Scheme

1.2. Interpretation

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Applicable Law shall include the laws, acts, ordinances, rules, regulations, notifications, guidelines or byelaws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting Persons shall include natural persons, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- (d) the headings 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;
- (f) references to "construction" include investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to day shall mean a reference to a calendar day;

- (i) any reference to month shall mean a reference to a calendar month;
- (j) the Schedules 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;
- (k) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference;
- (l) references to recitals, Articles, sub-articles, clauses, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to recitals, Articles, sub-articles, clauses and Schedules of or to this Agreement;
- (m) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Transaction Advisor shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Transaction Advisor, as the case may be, in this behalf and not otherwise;
- (n) unless otherwise stated, 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.

1.3. Measurements and Arithmetic Conventions

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

1.4. Ambiguities and Discrepancies

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

- (a) between two Articles of this Agreement, the provisions of specific Articles relevant to the issue under consideration shall prevail over those in other Articles;
- (b) between the written description on the drawings and the specifications and standards, the latter shall prevail;
- (c) between the dimension scaled from the drawing and its specific written dimension, the latter shall prevail;
- (d) between any value written in numerals and that in words, the latter shall prevail;

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the subsistence of this Agreement;

- (a) To plan and design the Project in accordance with the provisions of this Agreement and conforming to Building Bye-Laws and applicable regulations, including arranging approval from Competent Authority.
- (b) Construction and installation of the Project Facilities on the Project as set out in Schedule B and in accordance with the Project Requirements, as stated in Schedule C;
- (c) Operation and Maintenance of the Project Facilities in accordance with the provisions of this Agreement; and
- (d) Performance and fulfilment of all other obligations of the Project Company 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 Project Company under this Agreement.

In addition to the above-stated Scope of Work, the Project Company shall adhere to all the terms & conditions set forth in this Agreement and the Schedules hereof.

ARTICLE 3**CONDITIONS PRECEDENT****3.1 Conditions Precedent**

Subject to the express terms to the contrary, limited aspects of the Implementation Period (when commenced) and any legitimate rights arising in law, the rights and obligations under this Agreement shall take effect only upon fulfilment of all the Conditions Precedent set out in Clause 3.2 on or before the expiry of a period of 180 (One Hundred and Eighty) days from the Commencement Date. However, the Authority may at any time at its sole discretion and in writing, waive fully or partially any of the Conditions Precedent of the Project Company.

3.2 Conditions Precedent for Project Company

The Project Company shall have:

- a. Acquired the Project Site as per Article 6 of the Agreement;
- b. Made all the applications at its own cost and procured the necessary clearances that are required for commencing the construction and execution of the works unconditionally or if subject to conditions then all such conditions have been satisfied in full and such clearances are in full force and effect;
- c. Provided Performance Security to the Authority;
- d. Executed the Financing Arrangements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Project Company;
- e. Delivered to the Authority 3 (three) true copies of the Financing documents duly attested by a Director of the Project Company;
- f. Delivered to the Authority from the Consortium Members, their respective confirmation, in original, of the correctness of their Representations and Warranties as set forth in this Agreement; and
- g. Delivered to the Authority a legal opinion from the legal counsel of the Project Company with respect to the authority of the Project Company to enter into this Agreement and the enforceability of the provisions thereof
- h. Provided that upon request in writing by the Project Company, the Authority may, at its sole discretion and in writing, waive fully or partially any or all the Conditions Precedent set forth in this Article 3.2.

3.3 Obligations to satisfy Condition Precedents

- a. Each Party hereto shall use all reasonable endeavours at its cost and expense to procure the satisfaction in full of its respective Conditions Precedent set out above within 180 (One Hundred and Eighty) days of Commencement Date.
- b. The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

3.4 Non-fulfilment of Conditions Precedent

- a. In the event that any of the Conditions Precedents relating to the Project Company have not been fulfilled within 180 (One Hundred and Eighty) days of the signing of this Agreement and also, the Authority has not waived them fully or partially, this Agreement shall cease to have any effect as of that date and shall be deemed to have been terminated by the mutual agreement of the parties and no Party shall subsequently have any rights or obligations under this Agreement and Authority shall not be liable in any manner whatsoever to the Project Company or persons claiming through or under it.
- b. In the event the Authority has terminated this Agreement under Article 3.4 (a) due to non-fulfilment of Conditions Precedent by the Project Company, the Authority shall not be liable in any manner whatsoever to the Project Company or its contractors, agents and employees and the Authority shall forfeit the Performance Security of the Project Company.
- c. Instead of terminating this Agreement as provided in paragraph (a) above or as the case may be, the Parties may extend the time for fulfilling the Conditions Precedent by mutual agreement.

ARTICLE 4

AGREEMENT PERIOD

4.1. Agreement Period

- 4.1.1 The Agreement Period for the Project shall commence from the Appointed Date and shall extend for a period of 11(*eleven*) *years and 6 (six) months* from such date (the “**Agreement Period**”) and during which the Project Company is authorized to implement the Project and to operate the Project Facilities in accordance with the provisions hereof. For the avoidance of doubt, the Agreement Period shall include the Implementation Period.
- 4.1.2 At the end of the Agreement Period or early termination of this Agreement for any reason whatsoever, all rights provided under this Agreement shall cease to have effect.
- 4.1.3 In the case of Force Majeure event, the Agreement Period shall be extended by the period of Force Majeure event, with the maximum extension of Agreement Period being limited to 1 (one) year.

4.2. Implementation Period

- a. The “Implementation Period” shall be a period of *18 (eighteen) months* (starting from the Appointed Date) for the Project Facilities.
- b. The Project Company guarantees that the completion of construction and installation of the Project Facilities shall be achieved in accordance with the provisions of this Agreement and not later than the time specified in Clause 4.2.
- c. In the event that Commercial Operation Date (the “**COD**”) is not achieved on or prior to the Scheduled Project Completion Date for any reason other than Force Majeure or reasons attributable to the Authority or any Competent Authority, the Project Company shall, subject to sub-clause (d) below, pay to the Authority damages for delay beyond the Scheduled Project Completion Date to the extent of 1% of the Performance Security per week for every week of delay or part thereof until COD is achieved. Provided that nothing contained in this sub-clause (c) shall be deemed or construed to authorize any delay by the Project Company in achieving COD.
- d. In the event that COD does not occur within 6 (six) months from the Scheduled Project Completion Date, the Authority shall be entitled to invoke the Performance Security and to terminate this Agreement for a Project Company Event of Default in accordance with the provisions of Article 10 hereof. Provided that instead of terminating this Agreement, the Authority may at its sole option extend the time for achieving COD on such terms and conditions as it deems fit at its sole discretion.

4.3. Ownership of Project

The Project Company hereby agrees and undertakes to construct, install, operate and maintain the Project/Project Facilities over Project Site, procure necessary machinery, equipment and trained man power in accordance with the Project Requirements and implement the Project in accordance with this Agreement, Schedules and the Scheme, for the Agreement Period. The ownership of the

Project shall vest in Project Company subject to the terms and conditions of this Agreement. The Project Company shall be entitled to raise loans for the Project and secure the loans by way of charge, assignment, mortgage or otherwise over Project assets subject to Article 14.1 of this Agreement

ARTICLE 5**GRANT****5.1 Grant**

- 5.1.1 In consideration of the Project Company agreeing to develop and operate the Project in accordance with Project Requirements, the Scheme and this Agreement, Authority agrees to sanction and provide to the Project Company a cash support by way of an outright grant to the sum set forth in the Bid, namely, Rs _____ Crores (Rupees _____ Crores), in accordance with the provision of this Article.
- 5.1.2 The Grant Support shall be disbursed to the Project Company in accordance with the provisions of Article 5.2.
- 5.1.3 The Grant Support shall not exceed the sum specified in the Bid and as accepted by the Authority, and shall be further restricted to a sum not exceeding 40% (forty per cent) of the Project Cost. For the avoidance of doubt, the Project Cost to be reckoned for the purposes of this Clause 5.1.3 shall include Grant Support.

5.2 Grant Support

- 5.2.1 Subject to the conditions specified in this clause 5.2, the Grant Support shall be credited to the no lien account and shall be applied by the Project Company for meeting the Project Cost (the “Grant Support”);
- 5.2.2 The 20% (twenty percent) of the Grant Support shall be released upon (a) possession of Project Site by the Project Company, (b) achievement of Financial Close and (c) infusion of at least proportionate contribution of the Project Company’s portion of the Project Cost. The expenditure incurred by the Project Company for acquisition of Project Site shall be considered as part of the Project Company’s contribution subject to such expenditure being not more than 25% of the Project Cost;
- 5.2.3 35% of the Grant Support shall be released after the utilization of at least 60% of the 1st instalment of Grant Support and the proportionate contribution brought in by the Project Company under Clause 5.2.2 as above and infusion of at least proportionate contribution of the Project Company’s portion of the Project Cost;
- 5.2.4 35% of the Grant Support shall be released after the utilisation of the 1st instalment of Grant Support and the proportionate contribution brought in by the Project Company under Clause 5.2.2 and 60% of the 2nd instalment of Grant Support and proportionate contribution brought in by the Project Company under Clause 5.2.3 as above and infusion of at least proportionate contribution of the Project Company’s portion of the Project Cost;
- 5.2.5 Balance 10% of the Grant Support, being the final instalment of Grant Support will be paid a) upon full utilisation of 2nd and 3rd instalments of Grant Support and the proportionate contribution under Clause 5.2.3 and 5.2.4 above, b) infusion and utilisation of the balance 10% of the Project Company’s portion of the Project Cost and c) on achievement of COD with commissioning of the Project and furnishing of Completion Certificate;

Illustration:

Assuming:

Project Cost = Rs. X

Grant Support Amount = Rs. Y

Therefore:

Project Company's portion of Project Cost (Debt + Equity) = Rs. $(X-Y)$

VGF % = $(Y/X) * 100$ %

The Grant Support shall be released at various stages during the construction period by GOI upon fulfilment of the following conditions (in addition to other conditions mentioned in the Agreement):

- 1st tranche (20%) of Grant support [i.e., Rs. $(0.20*Y)$] to be released by GOI only after the infusion of an amount equal to Rs. $[0.20*(X-Y)]$ into the Project Company's accounts;
- 2nd tranche (35%) of Grant support [i.e., Rs. $(0.35*Y)$] to be released by GOI only after the infusion of an amount equal to Rs. $[0.55*(X-Y)]$ (excluding Grant Support) into the Project Company's accounts;
- 3rd tranche (35%) of Grant support [i.e., Rs. $(0.35*Y)$] to be released by GOI only after the infusion of an amount equal to Rs. $[0.90*(X-Y)]$ (excluding Grant Support) into the Project Company's accounts;
- 4th (last) tranche (10%) of Grant support [i.e., Rs. $(0.10*Y)$] to be released by GOI only after the infusion of an amount equal to Rs. $(X-Y)$ (excluding Grant Support) into the Project Company's accounts.

- 5.2.6 The Project Company shall submit the Utilisation Certificate (UC) for the amounts (as specified in clause 5.2.2, 5.2.3, 5.2.4, 5.2.5) utilized as per the format in accordance to GFR 19A (**Schedule D**);
- 5.2.7 The amounts specified in clause 5.2.3, 5.2.4 and 5.2.5 shall be released only after the Project Company has submitted a certificate from the Independent Engineer and statutory auditor stating that the total grant support amount already received by Project Company from GOI does not exceed VGF % of the total investment (including GOI grant support) in the Project by the Project Company. For the avoidance of doubt, at no point of time shall the GOI Grant Support amount exceed VGF % of the total project investment (including GOI grant support) in the Project by the Project Company.
- 5.2.8 Project related accounts of the Project Company shall be subject to access of GOI, in case if required for investigations of matters relating to this Agreement;
- 5.2.9 On the happening of Project Company's Event of Default, GOI shall be entitled to suspend the release of Grant Support till such default has been cured by the Project Company.

5.3 Delay in release of Grant Support

- 5.3.1 If GOI delays release of Grant Support beyond a period exceeding 90 (ninety) days from the date on which the Certificate of Independent Engineer as mentioned in Clause 5.2.7 has been received, except where such delay is due to any deficiency on the part of the Project Company, the Project Company shall be entitled to collect from GOI, in addition to the Grant Support amount due, interest at the rate of the Repo Rate prevailing on the day on which the Grant Support amount falls due. The interest shall be calculated from the 91st day from the date of the receiving of the Certificate as mentioned in clause 5.2.7 by the GOI to the day on which Grant Support amount is actually released. Provided further that such delay by the GOI shall not exceed a total period of 180 days from the date on which the Certificate of Independent Engineer as mentioned in Clause 5.2.7 has been received, except where such delay is due to any deficiency on the part of the Project Company.
- 5.3.2 Delay beyond the 180 days provided in Clause 5.3.1 shall be treated as GOI Event of Default and provisions of Article 10 applicable to such GOI Event of Default shall apply.
- 5.3.3 Notwithstanding any condition contained herein, the liability of GOI towards payment of interest due to delay in releasing Grant Support as per Clause 5.3.1 shall be limited to a period starting from the 91st (ninety first) day and ending on the 180th (one hundred and eightieth) day from the date on which the Certificate of Independent Engineer as mentioned in Clause 5.2.7 has been received.

ARTICLE 6

PROJECT SITE

6.1 Project Site

- 6.1.1 It shall be the responsibility of the Project Company to acquire the Project Site either by way of purchase or long lease. In case of lease, the lease period should exceed the duration of the Agreement. The Project Company shall be in physical possession of the Project Site, in its own right, free from Encumbrances together with the necessary rights for the purpose of implementing the Project.

ARTICLE 7**PROJECT MONITORING AND COMPLETION****7.1 Project Monitoring Committee****7.1.1 Constitution**

Project Monitoring Committee (PMC) shall be constituted by the Authority as per the Schedule H of this Agreement.

The PMC may induct representatives of industry associations, research & development/ technical institutions and other private/public sector expert organisations as members or special invitees.

7.1.2 Role and Responsibilities

The PMC will take account of synergies of the Scheme with other schemes of the department in general.

PMC will ensure smooth implementation of the Scheme by undertaking monitoring and periodic reviews of the Project including compliance with the conditions mentioned under the Agreement.

7.2 Completion Certificate

During Implementation Period, the Independent Engineer shall supervise and monitor the progress of the Project. Upon completion of construction of the Project in accordance with the Agreement, the Project Company shall obtain Completion Certificate from Independent Engineer, confirming that the setting up of the Project is completed in accordance with Project Requirements (“**Completion Certificate**”).

The Project Company shall furnish a copy of the Completion Certificate to Authority duly vetted by Transaction Advisor.

7.3 GoI Nominee on Board of Directors**7.3.1** There shall be one nominee of the GoI on the Board of Directors of the Project Company till end of the Agreement Period.

ARTICLE 8

PROJECT COMPANY'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Project Company shall have the following obligations:

8.1 Financing Arrangement

- (a) The Project Company shall at its cost, expenses and risk, make such financing arrangement as would be necessary to finance the cost of the Project and to meet Project Requirements (as per the provisions of Schedule C) and other obligations under this Agreement in a timely manner.
- (b) The Project Company shall achieve Financial Close within 180 (one hundred and eighty) days from the Commencement Date or within such time as may be agreed to in writing by Authority.
- (c) The Project Company shall meet escalations, if any in the Project cost from its own sources without seeking additional Grant Support from Authority.

8.2 Project Implementation

- 8.2.1 The Project Company shall adhere to the Project Requirements and achieve COD on or before the Scheduled Project Completion Date.
- 8.2.2 The Project Company shall not be allowed to procure any used machinery, equipments and tools in the Project.

8.3 Operation and Maintenance

(a) Operation and Maintenance Requirements

The Project Company shall operate and maintain the Project/Project Facilities in accordance with the Project Requirements and Good Industry Practice by itself, or through a Contractor possessing the requisite technical, financial and managerial expertise/capability, but in either case, the Project Company shall remain solely responsible towards meeting the Project Requirements.

(b) Failure to meet Project Requirements

In the event the Project Company has failed to operate and maintain the Project Facilities in accordance with the Project Requirements, and such failure has not been remedied despite a notice to that effect issued by Authority (Notice to Remedy), Authority may, without prejudice to any of its other rights/remedies under this Agreement, be entitled to cause the repair and maintenance of the Project Facilities at the risk and cost of the Project Company. The Project Company shall reimburse all costs incurred by Authority on account of such repair and maintenance along with interest calculated at the Repo Rate within 7 (seven) days of receipt of Authority's claim therefore.

(c) Material Breach of Project Requirements

The Project Company shall be deemed to be in Material Breach of Project Requirements (as per the provisions of Schedule C) if the Independent Engineer acting reasonably and in accordance with the provisions of this Agreement, has determined that due to breach of its obligations by the Project Company:

- (i) there has been failure/undue delay in carrying out Project Requirements;
- (ii) the assured standards or any part thereof has deteriorated to a level which is below the acceptance level prescribed by the Project Requirements.

(d) Authority's Rights

Upon occurrence of a Material Breach of Project Requirements, Authority shall, without prejudice to and notwithstanding any other consequences provided therefore under this Agreement, be entitled to suspend the release of Grant Support and terminate this Agreement, as per Article 10.

8.4 Insurance

The Project Company shall at its cost and expense, purchase and maintain during the Implementation Period and thereafter such insurance as are necessary in accordance with Good Industry Practice.

8.5 Shareholding

- (a) The Project Company shall ensure that the consortium members/ Individual Bidder shall in aggregate hold not less than 51 (fifty one) % of the paid up equity capital of the Project Company throughout the Agreement Period.
- (b) The Lead Member of the Consortium shall maintain an equity stake of 26 (twenty six) % in the Project Company throughout the Agreement Period.
- (c) The Project Company shall, through consortium members or promoters or otherwise, contribute at least 15 (fifteen) % of the overall Project Cost.

8.6 General Obligations

The Project Company shall at its own cost and expense:

- (a) Prepare the Detailed Project Report (DPR) covering the technical, financial, institutional and O&M aspects of the Project based on the Project contours provided in the RFP;
- (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times;

- (c) Finance, construct, install, operate and maintain the Project/Project Facilities, procure necessary machinery, equipment and trained man power in accordance with the Project Requirements;
- (d) Recruit suitable functional professionals including technical staff in order to ensure that the Project is executed smoothly and operated efficiently to provide state-of-the-art tooling and training services based on global benchmarks;
- (e) Ensure that the Grant Support is utilized only for the purposes as laid down in the Schedule C;
- (f) Furnish periodic progress reports (the “**Progress Report**”) on quarterly basis to Authority / PMC / Independent Engineer, in the prescribed formats;
- (g) Maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement;
- (h) Make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (i) Be responsible for quality, soundness, durability, safety and the overall Project Requirements;
- (j) Afford access to the Project Facilities to the authorised representatives of GOI, Independent Engineer, Transaction Advisor, and any Government Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Project Company shall provide to such persons assistance reasonably required to carry out their respective duties and functions.
- (k) Make available the tooling facility to MSMEs in accordance with the provisions of Schedule E and submit a report annually to PMC / Independent Engineer on MSMEs serviced;
- (l) Provide training facility related to tooling in accordance with the provisions of Schedule E and submit a report annually to PMC / Independent Engineer on number of persons trained;
- (m) Levy, demand, collect and appropriate market driven charges from the users of the Project Facilities;
- (n) Hire technical consultants as may be required for the purposes of implementation of the Project; and
- (o) Perform all the obligations undertaken pursuant to this Agreement with the Authority.

8.6.1 The Project Company shall not abandon the operations of the Project, nor transfer assets as specified in Schedule C of this Agreement, without prior written consent of GOI;

8.7 No Breach of Obligations

The Project Company shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of Force Majeure Event.

8.8 Performance Security

- 8.8.1 The Project Company shall ensure that it will maintain Performance Security as specified in Schedule F and in the format as specified in Schedule G which shall remain valid at all times through the period specified.
- 8.8.2 The Performance Security shall be from a scheduled bank or a financial institution approved by the Authority, payable at Delhi.
- 8.8.3 Upon occurrence of a Project Company 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 Project Company shall, within 30 (thirty) days replenish, in case of partial appropriation, to its original level the Performance Security and in case of appropriation of entire Performance Security to provide a fresh Performance Security and the Project Company 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.

ARTICLE 9

GOI'S OBLIGATIONS

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, GOI shall have the following obligations:

9.1 GOI's Obligations

- (a) GOI shall release Grant Support in accordance with Article 5 provided that the Project Company is not in Material Breach of this Agreement and no Project Company's Event of Default has occurred. It is being clarified here that on Project Company's Event of Default, the Grant Support shall be withheld and the Agreement shall be terminated as per Article 10.
- (b) GOI shall observe and comply with all its obligations set forth in this Agreement.

ARTICLE 10**EVENTS OF DEFAULT AND TERMINATION****10.1 Events of Default**

Event of Default means either Project Company Event of Default or GOI Event of Default or both as the context may admit or require.

10.1.1 Project Company Event of Default

Any of the following events shall constitute an event of default by the Project Company ("**Project Company Event of Default**"):

- (i) The Project Company has failed to achieve Financial Close within 180 (one hundred and eighty) days from the date hereof.
- (ii) The Project Company has failed to adhere to the Project Requirements and in the reasonable estimation of the Transaction Advisor and/ or Independent Engineer, such failure is likely to delay achievement of COD beyond 4 months of the Scheduled Project Completion Date.
- (iii) The Project Company has failed to achieve COD within 4 months from the Scheduled Project Completion Date.
- (iv) The Project Company has committed Material Breach of this Agreement.
- (v) Any representation made or warranties given by the Project Company under this Agreement is found to be false or misleading.
- (vi) The Project Company has failed to ensure minimum shareholding requirements specified in Clause 8.5.
- (vii) A resolution has been passed by the shareholders of the Project Company for the voluntary winding up of the Project Company.
- (viii) A default has occurred under any of the Financing Documents and any of the Lender(s) has recalled its financial assistance and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable.
- (ix) The Project Company has abandoned the Project Facilities.
- (xii) The Project Company has repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement.
- (xiii) The Project Company uses the Project Facilities for Captive Consumption in violation of the Scheme.
- (xiv) The Project Company fails to make a payment to the Authority, including but not limited to penalty, within 60 (sixty) days from the date on which such payment falls due.

- (xv) The Project Company is in breach of any of its obligations under this Agreement and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by Authority.

10.1.2 GOI Event of Default

The following event shall constitute an event of default by the GOI ("**GOI Event of Default**"):

- (i) The GOI has not released grant support as per Article 5 and within the period specified in Clause 5.3.15.2.

10.2 Termination due to Project Company Event of Default

10.2.1 Termination for Project Company Event of Default

- (i) Without prejudice to any other right or remedy which GOI may have in respect thereof under this Agreement, upon the occurrence of a Project Company Event of Default, GOI shall be entitled to terminate this Agreement by following the procedure set forth hereinafter:
 - a. The Authority shall be entitled to issue a Termination Notice to the Project Company. The Termination Notice shall grant the Project Company 30 (thirty) days (the "**Termination Period**") to make a representation, and if, during the Termination Period the Project Company takes suitable steps to remedy the default/ situation, the Authority shall be entitled to withdraw the Termination Notice.
- (ii) The Authority shall be entitled to terminate this Agreement with no liability to the Project Company or the Lender.

10.2.2 Termination for GOI Event of Default

Upon occurrence of GOI Event of Default, the Project Company shall be required to issue a Termination Notice to the GOI. The Termination Notice shall grant the GOI 30 (thirty) days to remedy the default. If the GOI remedies the default within the period specified herein, the Project Company shall be required to withdraw the Termination Notice. If however, the GOI fails to remedy the default within this period, the Project Company shall be entitled to terminate this Agreement with no liability to the GOI.

10.2.3 Termination Notice

If either Party having become entitled to do so decides to terminate this Agreement pursuant to the preceding sub article (a) or (b), it shall issue Termination Notice setting out:

- (i) in sufficient detail the underlying Event of Default;

- (ii) the Termination Date which shall be a date occurring not earlier than 30 days from the date of Termination Notice; and
- (iii) any other relevant information.

10.2.4 Withdrawal of Termination Notice

Notwithstanding anything inconsistent contained in this Agreement, if the Party having defaulted cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.

10.3 Consequences of Termination

- (a) Upon Termination of this Agreement for Project Company's Event of Default, GOI shall be entitled to suspend the release of future instalments of Grant Support and the project assets specified in the Schedule C, shall be transferred to the Authority. It is being clarified here that the Authority shall, firstly, recover the amount due to it, by selling through auction or through private contracts adopting some other suitable/ equivalent method. On settlement of Authority's due, the balance amount (if any) shall be provided to the Lenders, for repayment of its dues and thereafter, to the Project Company.
- (b) Upon Termination of this Agreement on account of Project Company Event of Default, prior to the COD, the Project Company shall be required to make following payments, within 3 (three) months from the date of termination of this Agreement, to the Authority:

Payments by Project Company = Grant Support Amount $\times (1+R)^{m+1}$

Where,

Grant Support Amount = Grant Support released till date of Termination

R = Repo Rate + 10 %

m = Number of completed years since Appointed Date

In addition, Authority shall also be entitled to forfeit and retain the Performance Security for Implementation Period.

- (c) Upon Termination of this Agreement on account of Project Company Event of Default, after COD and during operation & maintenance of the Project, the Project Company shall be required to make the following payments to the Authority:

Payments by Project Company = Grant Support Amount $\times [(10-n)/10] \times (1+R)^{m+1}$

Where,

Grant Support Amount = Grant Support released till date of Termination

R = Repo Rate + 10 %

n = Number of completed years since COD

m = Number of completed years since Appointed Date

- (d) Upon Termination of this Agreement for GOI Event of Default, GOI shall forfeit any rights towards the Grant Support amount already disbursed and neither party shall be liable to receive any amount from the other party.

10.4 Rights of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of the provisions of this Agreement shall be without prejudice to accrued rights of either Party.

ARTICLE 11**INDEPENDENT ENGINEER****11.1 Appointment of Independent Engineer**

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-J, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-J to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

11.2 Duties and functions

11.2.1 The Independent Engineer shall discharge the duties and functions as specified in Schedule-I.

11.2.2 The Independent Engineer shall submit regular periodic reports, at least once every two months during Implementation Period and at least one every three months during the operations period, to the Authority in respect of its duties and functions set forth in Schedule-I.

11.3 Remuneration

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

11.4 Termination of appointment

11.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 11.1.

11.4.2 If the Project Company has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Project Company and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Project Company remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 11.1.

11.5 Authorised signatories

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

11.6 Dispute resolution

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

ARTICLE 12**DISPUTE RESOLUTION****12.1 Dispute resolution**

- 12.1.1 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 12.2.
- 12.1.2 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.

12.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Development Commissioner, Ministry of MSME, GOI and the Chairman of the Board of Directors of the Project Company 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 12.1.1 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 12.3.

12.3 Arbitration

- 12.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 12.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 12.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be New Delhi, and the language of arbitration proceedings shall be English.
- 12.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

12.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 12 shall be final and binding on the Parties as from the date it is made, and the Project Company and the GOI agree and undertake to carry out such Award without delay.

12.3.4 The Project Company and the GOI agree that an Award may be enforced against the Project Company and/or the GOI, as the case may be, and their respective assets wherever situated.

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

12.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Project Company and the GOI, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 12.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

12.5 Performance during Dispute Resolution

Pending the submission of and/or decision on a dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES, DISCLAIMER

13.1 Representations and Warranties of the Project Company

The Project Company represents and warrants to GOI that:

- (a) it is duly organised, validly existing and in good standing under the laws of India;
- (b) it is a special purpose company set up solely for the purpose of implementing and operating the Project/Project Facilities in accordance with the terms of this Agreement;
- (c) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (d) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (e) it has the financial standing and capacity to undertake the Project;
- (f) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (g) it is subject to civil and commercial laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (h) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Project Company's Memorandum and Articles of Association or of any member of the Consortium or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (i) there are no actions, suits, proceedings or investigations pending or to the Project Company's knowledge threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute Project Company Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- (j) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- (k) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;

- (l) subject to receipt by the Project Company from GOI of the Termination Payment and any other amount due under any of the provisions of this Agreement, in the manner and to the extent provided for under the applicable provisions of this Agreement all rights and interests of the Project Company in and to the Project / Project Facilities shall pass to and vest in GOI on the Termination Date free and clear of all Encumbrances without any further act or deed on the part of the Project Company or GOI;
 - (m) no representation or warranty by the Project Company contained herein or in any other document furnished by it to GOI or to any Government Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
 - (n) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Project Company to any Person to procure the Grant Support.
 - (o) Without prejudice to any express provision contained in this Agreement, the Project Company acknowledges that prior to the execution of this Agreement, the Project Company has after a complete and careful examination made an independent evaluation of the Project Requirements and the information provided by GOI, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the Project Company in the course of performance of its obligations hereunder.
- 13.1.1 The Project Company also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that GOI shall not be liable for the same in any manner whatsoever to the Project Company.

13.2 Representations and Warranties of GOI

GOI represents and warrants to the Project Company that:

- (a) GOI has full power and authority to execute, deliver and perform the Agreement;
- (b) This Agreement constitutes GOI's legal, valid and binding obligation enforceable against it in accordance with the terms hereof.

13.3 Obligation to notify change

In the event that any of the representations or warranties made/given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same.

ARTICLE 14**MISCELLANEOUS****14.1 Assignment and Charges**

- (a) Subject to sub-articles (b) and (c) herein below, neither Party shall assign this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the other Party.
- (b) Except as provided in sub-article (c) herein below, the Project Company shall not create nor permit to subsist any Encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement except with prior consent in writing of GOI, which consent GOI shall be entitled to decline without assigning any reason whatsoever.
- (c) Restraint set forth in sub-articles (a) and (b) above shall not apply to:
 - (i) liens/encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project Company;
 - (ii) lien/ encumbrances on the Project Site as security for indebtedness, in favour of the Lenders for the Project;
 - (iii) assignment of Project Company's rights and benefits under this Agreement or Project Agreements in favour of the Lenders / security trustee appointed by the Lenders as security for financial assistance provided by them.
- (d) All payments due to GOI from the Project Company, including any penalty and termination payment, shall be a charge on all existing and future project assets and the Project Company hereby charges the said assets with the payment of any liability towards GOI. It is agreed between the parties that in the event of failure of the Project Company to pay any dues to GOI within the time specified in the Agreement, GOI shall be entitled to enforce the charge by selling the said assets and to recover the amount due out of the sale proceeds thereof.
- (e) Notwithstanding anything to the contrary contained herein, it is clarified that GOI shall hold first charge on all existing and future project assets.
- (f) The Project Company shall not, during the currency of this agreement, create in favour of any other person any charge on the project assets without written consent of GOI.

14.2 Penalty due to Shortfall of Operational Requirements

If Project Company fails to provide service to the minimum number of MSMEs in the Mini Tool Room or fails to train minimum number of training days in the Training Centre Facility, as stated in Schedule E, a penalty, as given by the below formula, shall be imposed on the Project Company:

$$\text{Penalty Amount} = P \times 0.5 \times \text{Grant Support Amount} \times R \times \{(1+R)^n\}$$

Where,

Penalty Amount = Amount of Penalty imposed on Project Company

Grant Support Amount = Grant Support released till before the date of non-performance

R = Repo Rate + 10 %

n = Number of completed years since COD

P = 0.75 , when the Project Company meets 50% or less of the Operational Requirements for Mini Tool Room Facility or Training Centre Facility as per Schedule E

P = 0.50, when the Project Company meets more than 50% but less than 75% of the Operational Requirements for Mini Tool Room Facility or Training Centre Facility as per Schedule E

P = 0.25, when the Project Company meets more than 75% but less than 100% of the Operational Requirements for Mini Tool Room Facility or Training Centre Facility as per Schedule E

If both operational requirements of the Mini Tool Room Facility and Training Centre Facility, as stated in Schedule E remain unfulfilled, the above penalty shall be doubled.

The amount of such Penalty shall be determined by the Independent Engineer based on the formula provided in this Clause 14.2. Shortfall on Operational requirements shall be determined for each operational year. Upon receipt of the annual O&M report from the Independent Engineer, GOI shall issue a notice to the Project Company mentioning the amount of Penalty that is to be paid to GOI by the Project Company for the preceding operational year. The Project Company hereby agrees to pay to GOI, the full amount of such penalty within 30 (thirty) days from the issuance of such notice by GOI.

14.3 Liability and Indemnity

(a) General Indemnity

- (i) The Project Company shall indemnify, defend and hold GOI harmless against any and all proceedings, actions and third party claims arising out of a breach by Project Company of any of its obligations under this Agreement except to the extent that any such claim has arisen due to breach by GOI of any of its obligations under this Agreement or a Force Majeure Event.
- (ii) GOI will, indemnify, defend and hold harmless the Project Company against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of breach by GOI, its officers, servants and agents of any obligations of GOI under this Agreement except to the extent that any such claim has arisen due to breach by the Project Company of any of its obligations under this Agreement or a Force Majeure Event.

14.4 Mode of Payment

The Project Company hereby expressly authorizes GOI to pay Grant Support amounts, which becomes due and payable by GOI to the Project Company under this Agreement directly to the credit of no lien Account with a Bank, as may be intimated by the Project Company.

14.5 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India, subject to the powers of Article 12, the Courts at New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

14.6 Waiver

- (a) Waiver by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and
 - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (b) 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

14.7 Survival

Termination of this Agreement:

- (a) shall not relieve the Project Company or GOI of any obligations already incurred hereunder which expressly or by implication survives Termination hereof, and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

14.5.1 All obligations surviving Termination shall only survive for a period of 3 (three) years following the date of such Termination

14.8 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

14.9 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognised international courier, mail, telex or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below :

If to GOI:

Fax No. _____

If to the Project Company

Managing Director,
_____ Limited,
_____,

Fax No. _____

Or such address, telex number, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognised international courier or by mail (registered, return receipt requested) at that address and (ii) in the case of any communication made by telex or facsimile, when transmitted properly addressed to such telex number or facsimile number.

14.10 Severability

If for any reason whatsoever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties shall 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 subject to dispute resolution under this Agreement or otherwise.

14.11 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

14.12 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

14.13 Exclusion of Implied Warranties etc.

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

14.14 Counterparts

This Agreement may be executed in two counterparts, each of which when executed and delivered shall constitute an original of this Agreement but shall together constitute one and only the Agreement.

IN WITNESS WHEREOF THE, PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

SIGNED SEALED AND DELIVERED

For and on behalf of President of India

(Signature)

(Name).....

(Designation).....

SIGNED, SEALED AND DELIVERED

For and on behalf of Project Company by:

(Signature)

(Name).....

(Designation).....

In the presence of:

1).....

2).....

SCHEDULE A**LETTER OF ACCEPTANCE**

Ref.No. _____

Dated _____

Registered AD/ Speed Post AD

M/s _____,

_____,

_____,

KIND ATTN: _____

Subject: Setting up of New Mini Tool Room at Chennai under Public Private Partnership (PPP) mode

Letter of Acceptance

- 1) We refer to your Proposal dated _____, 20__ including the financial proposal in response to our Request for Proposal (RFP) document dated _____20__ and your subsequent letter dated _____20__, revising the financial proposal earlier submitted by you.

The capitalized terms used herein shall have the same meaning as set forth in the draft Agreement to be executed in pursuance of the RFP document and this Letter of Acceptance.

- 2) We are pleased to inform you that your Proposal dated _____, 20__, has been accepted by the Ministry of MSME and you are being issued this Letter of Acceptance subject to the following terms and conditions:
- a) As per your letter dated _____ 20__, the amount of grant required for the Project is Rs _____ (Rupees _____ only) and the aforesaid grant amount shall be payable in accordance with the provisions of the RFP document.
 - b) You shall provide the following within three weeks of the receipt of this “*Letter of Acceptance*”:-
 - i. Performance Security of **Rs. 80 lakhs** (Rupees eighty lakhs only) in the form of an Unconditional and Irrevocable Bank Guarantee in local currency issued by a scheduled bank and payable at New Delhi. The Performance Security shall be in favour of “Ministry of Micro, Small and Medium Enterprises, Government of India”. The format, in which the Bank Guarantee is to be submitted, is enclosed herewith.

- c) You/ PC shall sign the Agreement with the Ministry of MSME in accordance with the terms and conditions of the RFP document dated _____ 20__.
- d) You/ PC shall comply with all the terms and conditions of the RFP document dated _____ 20__.

It may also be noted that in the event you fail to comply with any one or more of the terms and conditions mentioned in the RFP document and in the manner prescribed therein, we, in addition to all other rights and remedies that may be available to us under the provisions of the RFP document and the applicable laws, shall be at absolute liberty and freedom to treat your Proposal as rejected and deal with the captioned Project as we may deem fit in our absolute discretion.

As per the requirement of Clause 3.3.5 of the RFP document, you are requested to convey in writing, your acceptance of this Letter of Acceptance within seven days from the date of its receipt.

We look forward to an early compliance of the above mentioned requirements by you and commencement of the work on the project site.

Dated _____

Development Commissioner
for Ministry of Micro, Small and Medium Enterprises, GOI

SCHEDULE B

PROJECT FACILITIES

The following should be provided by the Project Company as Project Facilities:

- **Tool design & production**

Facilities for design and production of plastic moulds, press tools, jigs & fixtures, gauges, extrusion dies, die casting dies and other sophisticated tools preferably to Micro, Small and Medium Enterprises.

- **Manpower training**

Facilities for training manpower through various long, medium and short term training programmes in the field of tool making & other allied engineering trades both for the fresh entrants and for personnel already engaged in the field

Facilities include machinery, equipments, building area, utilities, support infrastructure and hostels, if any, required for tool design production and manpower training.

SCHEDULE C**PROJECT REQUIREMENTS**

Project Requirements include the design, construction, operation and maintenance requirements so as to create Project Facilities comprising Mini Tool Room as set out below:

1. Design & Machinery Requirements

The Project shall have the following minimum machinery and support infrastructure:

A. ESSENTIAL MACHINES/EQUIPMENT WITH SUGGESTED QUANTITIES					
S. No.	Name of the Machines with approximate specification				Quantity
1.	Centre Lathe	Height of centre	200mm		2
		Distance between centre	1000 mm		
2.	Centre Lathe	Height of centre	175mm		5
		Distance between centre	650 mm		
3.	Vertical Milling M/c. (knee type)	Table size	900x225mm		3
		Traverse	X	550mm	
			Y	250 mm	
			Z	350 mm	
4.	Horizontal Milling Machine	Table size	900x250mm		1
		Traverse	X	550mm	
			Y	250 mm	
			Z	350 mm	
5.	Vertical Milling Machine (Ram type)	Table size	900x225mm		3
		Traverse	X	600mm	
			Y	250mm	
			Z	400 mm	
		Ram swiveling	180 degrees (Min.)		
		Tilting of Head	45 degrees (min.)		
6.	Universal Milling Machine	Table size	1000x300mm		2
		Traverse	X	800mm	
			Y	250mm	
			Z	400 mm	
7.	Cylindrical Grinding machine	Longitudinal traverse of table	500 mm		3
		Cross travel of table	225 mm		
		Height of spindle centre from the table surface	150 mm		

8.	Radial Drill Machine	Drilling dia in steel	50 mm		1
		Drilling head traverse	700 mm		
		Vertical traverse of Arm	450 mm		
9.	Bench Drill machine	Drilling Dia in steel	12 mm		3
		Spindle speed	500-2000 rpm		
10.	Pedestal Drilling machine	Drilling dia in steel	20 mm		3
		Spindle speed	400-1200 rpm		
11.	Surface Grinding Machine		X	500 mm	4
			Y	250 mm	
12.	Hydraulic power Saw machine	Dia of job to be cut	300 mm		2
		Motor power	1.5 KW		
13	pedestal Grinding machine	O.D.of Grinding wheel	200mm		3
		Motor power	2 H.P.		
14.	CNC Lathe	Turning Dia	200 mm		4
		Distance between Centres	350 mm		
		Positioning Accuracy	+0.005 mm		
		Repeatability	+0.003 mm		
15.	Vertical CNC Milling Machine (Capable for Cutting steel)	Traverse	X	400 mm	2
			Y	300 mm	
			Z	300 mm	
		Positioning accuracy	0.010 mm		
		Repeatability	0.005 mm		
		Table	700 x 350 mm		
16.	CNC vertical Machining Centre	Traverse	X	800 mm	1
			Y	500 mm	
			Z	500 mm	
		Positioning accuracy	0.005 mm		
		Repeatability	0.003 mm		
		Table	1200 x 450 mm		
17.	CNC Table Top Lathe for Training with unlimited seats	Swing over bed	130 mm		2
		Distance between centres	215 mm		
		Resolution	0.00125		
		Positioning variation X,Z axis	0.01 mm		
18.	CNC Table Top Milling machine for Training with unlimited seats	Traverse	X	180 mm	2
			Y	125 mm	
			Z	115 mm	
		Positioning accuracy	0.010 mm		
		Repeatability	0.005 mm		

		Table	420x120 mm		
19.	CNC EDM Machine	Axis Movement	X	400 mm	1
			Y	300 mm	
			Z	250 mm	
		Work Tank Internal Dimension	1000x500x300 mm (WxDxH)		
		Positioning accuracy	0.005 mm		
		Repeatability	0.003 mm		
		Table	1200 x 450 mm		
20.	CNC Wire Cut EDM Machine	Traverse	X	400 mm	1
			Y	300 mm	
			Z	75 mm	
		Tank capacity	500 ltrs.		
		Positioning Accuracy	+0.005 mm -		
		Repeatability	+0.003 mm -		
21.	Electrical Sub-station		400KVA		1

Note: All high value machines for accuracies shall have conformance with International standards viz., VDI/DGQ 3441, VDI/D/VDE 2617 etc.

B. LIST OF CAD/CAM SOFTWARE/COMPUTER HARDWARE				
S. No.	Name of the Machines with approximate specification			Quantity
22.	Computer software	Pro-E		Edu. set
		MasterCAM		3
		DelCAM		Edu.set
		AutoCAD		20
		AutoDesk Education Solution set for Mechanical Engineering		10
		Analysis		5 user Edu.set
23.	Computer Hardware	Pentium 4 (different capacity) - LAN connection for 20 computers		32
		Workstations		6
		Printer		2
		Plotter		1
		UPS		42
		Server		1

C. LIST OF MACHINE ACCESSORIES/TRAINING AIDS/OFFICE EQUIPMENT				
S. No.	Name of the Machines with approximate specification			Quantity
24.	Air condition unit	Capacity	2 Ton	18
		Type	Split	
25.	Air compressor + Air dryer +filter	Free Air delivery	12--1pm	2
		Air Pressure	12 Kg/Cm2	
26.	Voltage stabilizer + Ultra Isolation Transformer			9
27.	Photo copier	Plain paper	A3 & A 4 size	1
		Transparency	A4	
		Reduction & Enlargement facilities		
28.	Fax machine			1
29.	OverHead Projector for A4 transparencies			2
30.	White board	1M x 1.5M (Approx.)		3
31.	Projection Screen	1.5 x 1.5 M		2
32.	Granite surface table	1000x1000x100/ 150mm		3
33.	Tool Makers Microscope	Magnification	10,50,100	1
		Table traverse	X 25 mm	
			Y 25 mm	
34.	Profile Projector	Magnification	5,20,50	1
		Screen Size	300 mm	
35.	Hardness Testing Machine –Rockwell			1
36.	Spirit level	Resolution	0.001	2
37.	Box parallel	Size	300x200x150mm	1
		Flatness	0.001 mm	
38.	Sine centre		200 mm	1
39.	Set of Plastic material/component testing equipment like MFI, Hardness, Tensile, Impact etc.,			Complete set
40.	Height Master with Digmatic output	Output	0-300 mm	1
		Lease count	0.0001 mm	
41.	Comparator	Output	0-150 mm	2
		Least count	0.001 mm	
42.	Injection Moulding Plant of different capacity i.e. 50T, 120T, 250T & 350T			4
43.	Equipment for Industrial Automation	i) Hydraulic & Pneumatic System		1 set
44.		ii) PLC System		1 set
45.	Floor Type Over Arm Crane	Capacity	1T	1
46.	Material Handling Equipment	Capacity	0.5 T	3

D. INSTRUMENTS/TOOLS/EQUIPMENT				
S. no.	Name of the Instruments with approximate specification			Quantity
1.	Outside Micrometers	Range	0-25 mm	7
		Least count	0.01 mm	
		Range	25-50 mm	6
		Least count	0.01 mm	
		Range	50-75 mm	3
		Least count	0.01 mm	
		Range	75-100 mm	3
		Least count	0.01 mm	
		Range	0-25 mm	2
		Least count	0.001 mm	
		Range	25-50 mm	3
		Least count	0.001 mm	
2.	Digimatic Disc Micrometer	Range	0-25 mm	2
		Least count	0.001 mm	
3.	Micrometer stand			5
4.	Screw Thread Micrometer	Range	0-25 mm	1
		Least count	0.01 mm	
		Thread Standard	60 degrees	
5.	Vernier Calipers	Range	0-150 mm	27
		Least Count	0.02 mm	
		Range	0-300 mm	7
		Least Count	0.02 mm	
6.	Digimatic Vernier Caliper	Range	0-150 mm	1
		Least Count	0.01 mm	
7.	Vernier Height Gauge	Range	0-150 mm	2
		Least Count	0.01 mm	
		Range	0-300 mm	2
		Least Count	0.01 mm	
8.	Depth Micrometer	Range	0-25 mm	1
		Least Count	0.01 mm	
9.	Dial Depth Gauge	Range	0-200 mm	1
		Least Count	0.01 mm	
10.	Digimatic Dial Indicator	Range	0-12 mm	2
		Least Count	0.001 mm	
11.	Dial Indicator (Plunger type)	Range	0-10 mm	7
		Least Count	0.01 mm	
12.	Dail Indicator (lever type)	Range	0-08 mm	6
		Least Count	0.01 mm	
13.	Magnetic Base Dial Stand	Total Height	235 mm	6
14.	Vernier Bevel protector	Least Count	5'	2

15.	Dial Bore Gauges	Range	0-08 mm	3
		Least Count	0.01 mm	
		Range	6-10 mm	3
		Least Count	0.01 mm	
		Range	10-18 mm	3
		Least Count	0.01 mm	
		Range	18-35 mm	3
		Least Count	0.01 mm	
		Range	35-60 mm	2
		Least Count	0.01 mm	
		Range	100-160 mm	2
		Least Count	0.01 mm	
		Range	160-250 mm	2
		Least Count	0.01 mm	
16.	Straight Edges		50 mm	2
			100 mm	2
			200 mm	1
17.	Slip table	Size	100 mm	1
18.	Slip Gauge set	Accuracy grade	1 (DIN 861)	2
		Quantity in a set	87 pcs.	
19.	Feeler Gauge set	Length of Blade	100 mm	2
		Thickness of Blades	0.03,0.04,0.05 0.06,0.07,0.08 0.09,0.1,0.15, 0.20,0.25 & 0.30 mm	
20.	Screw Pitch Gauge set for 60 degrees ISO Metric Thread -0.5 to 6 mm pitch			4
21.	Centre gauge for 60 degrees thread			5
22.	Fitting Bench -Table size:720x1600x900 mm			16
23.	Angle plate - size: 200 x200 x 200 mm			2
24.	Bench vice	Jaws	125 x 80 mm	16
		Opening	200 mm	
25.	"V" Block with clamp	Size	55x55x40 mm	10
		Clamping capacity	Dia 60 mm	
26.	Parallel Blocks	Size	5x15x100 mm	10
		Size	10x20x150mm	10
		Size	15x35x200mm	10
27.	Machine Vice	Jaws	120 x 45 mm	4
		Opening	90 mm	
28.	Drill Chuck with Key - capacity: upto Dia 13mm drill			5

29.	Reduction Sleeve		MT 2-1	5
			MT 3-1	5
			MT 4-1	5
			MT 3-2	5
			MT 4-2	5
			M 4-3	5
30.	Drift		150 mm	10
31.	"C" Clamp	Max. opening	50 mm	5
		Max. opening	150 mm	5
		Max. opening	250 mm	5
32.	Machine Clamp (Goose neck type)	Size	20x40x100 mm	20
33.	Oil Can		250 ml.	10
34.	Grease Gun			8
35.	Star dresser		Dia 50 mm	1
36.	Diamond Dressers		1/4 carat	3
			1 carat	3
			1.1/2 carat	3
				13
37.	Safety goggles			
38.	Dog carrier	Size	10 x50 mm	8
39.	Laminated Magnetic Block pairs	Size	30 x 60 x75 mm	8
40.	Magnetic "V" Block pairs	Size	60 x 80 x100 mm	6
41.	De-magnetizer			1
42.	Tool Maker's clamps	Size	15 x 15 x 100 mm	8
		Capacity	50 mm	
43.	Letter Punch Set			2
44.	Number punch set			2
45.	Black board	Size	1 x 1.5 mm	4
46.	Wheel balancing stand for		Dia 200 mm wheel	1
			Dia 300 mm wheel	1
47.	Scriber block	Height	200 mm	5
48.	Magnetic vice	Max. opening	150 mm	4
49.	Drawing Board	Size	400 x 600 mm	1
50	Open End wrench set	Size	6x8,8x10,9x11,12x13,14x15,16x17,18x19,20 x22 & 24 x27 mm	6

51.	Ring wrench set	Size	8x9,10 x11,12x13, 14 x15, 16x17, 18x19, 20x22 & 24 x 27 mm	2
52.	Adjustable wrench set	Length	100,200 & 300 mm	4
53.	Pipe wrench set	Dia	6-50mm	1
54.	Allen key set	Size	2,3,4,5,6,7,8, 9, & 10 mm	7
55.	Circlip pliers set	Capacity	upto 60 mm dia	4
56.	Flast nose Pliers	Length	135 mm	3
57.	Ball pen Hammer	Capacity	750 gm	8
58.	Screw Driver set	Length & Dia of Blade	100 x4, 125x6, 150x8,200x1 0 mm	
59.	Phillip Screw Driver set	Size	1,2,3 & 4	
60.	Engineers files	Flat- 300mm-Bastard		32
		Flat- 200mm-Second Cut		32
		Flat- 200mm-Smooth		17
		Half round- 250 mm -Bastard		7
		Half round - 200 mm-Second Cut		7
		Round - 250 mm –Bastard		7
		Round - 200 mm-Second Cut		7
		Triangular - 200 mm-Second Cut		7
61.	Needle file set - 12 files of different chapters	Length	140 mm	5
62.	File card brush	Length	225 mm	5
63.	Tap wrench	Capacity	1.5 mm to 25 mm square	6
64.	Die stock set to suit Dies of outside Dia from 20 to 38 mm			6
65.	Steel rulers	Size	150 mm	5
66.	Steel rulers	Size	300 mm	5
67.	Oil Stone			30
68.	Soft hammer- 250 gm			15
69.	Engineers square	Length of Blade	150 mm	5
70.	Cutting Tools			Lot.
71.	Grinding Wheels			Lot.
72.	Cutting Fluid			Lot.
73.	Consumables			Lot.
74.	Hacksaw Frame	Capacity	250 to 300 mm	12
75.	Flat chisel	Size	16 x 20 mm	5
		Length	175 mm	
76.	Centre Punch	Dia	11 mm	10
		Length	125 mm	

77.	Flat Scraper	Length of Blade	200 mm	4
78.	Steel Almirah- Big for tools & equipment			10
79.	Baby steel Almirah for tools & equipment			14
80.	Pigeon Hole Almirah for tools & equipment			20
81.	Chairs (Different types)			40
82.	Table (Different Types)			25
83.	Class Room Bench			30
84.	Steel racks for tools & equipment			15
85.	Machine cupboard			40
86.	Tool Storage cabinet			5
87.	Tool Trolley			4
88.	Computer Table			40
89.	Computer Chair			40
90.	Table for Microscope			1
91.	Table for Profile Projector			1
92.	Conference room table			1
93.	Conference Room Chair			20

2. Construction Requirements

The following are the minimum space requirements of the Project:

i) Space for machines/equipment/raw material/cutting tools

S.No.	Type of machine/ equipment	No.	Unit space in dimension (approx.)	Total
1.	Conventional machines (large)	24	3mx2m	144m ²
2.	CNC machines	09	3mx3m	81m ²
3	Conventional machines (small)	11	1mx1m	11m ²
4	CNC Desktop machines	04	2mx2m	16m ²
5	Additional Space for Expansion	01	5mx10m	50m ²
6	For stores i) Cutting tools ii) Raw material iii) Finished components	01 01 01	4mx4m 4mx4m 2mx2m	16m ² 16m ² 4m ²
7	Inspection room	01	4mx4m	16m ²
TOTAL				354m²

Including passages : 400m²

ii) Space for class rooms

i. For 2 big lecture halls : 2x10mx20m : 400m²

ii. For 2 small lecture halls: 2x5mx10m : 100m²

iii) Office space : 200m²

TOTAL MINIMUM SPACE REQUIRED : 1100m²

Project Company shall be required to strictly adhere to the FAR regulations, Ground Coverage regulations, Development Control Rules, FSI Limits, structural safety and fire safety requirements, minimum parking requirements, and other statutory norms / rules / regulations / bylaws as applicable from time to time. The Project shall be constructed as per National Building Code of India & other relevant IS Codes and the principles of Good Industry Practices.

3. Performance Standards

Project Company shall have to provide services of tool design & production to MSMEs and conduct manpower training as per the conditions in Schedule E – Operational Requirements.

4. Operation & Maintenance Requirements

Project Company, within the first year of operations of the Project, shall have to initiate necessary action so as to obtain certification of ISO 9001, or any updated standard at the time of certification, as defined by International Organisation of Standardisation (ISO). The process of obtaining the certification shall have to be completed by the Project Company within a reasonable period of time, as estimated by the Independent Engineer.

SCHEDULE D

FORM GFR 19-A

[See Rule 212(1)]

FORM OF UTILIZATION CERTIFICATE

(Refer Clause 2.2 (v))

Sl. No.	Letter No. and date	Amount
	Total	

Certified that out of Rs..... of grants-in-aid sanctioned during the year.....in favour of..... under DC(MSME) Letter No. given in the margin and Rs.....on account of unspent balance of the previous year, a sum of Rs.....has been utilised for the purpose of.....for which it was sanctioned and that the balance of Rs..... remaining unutilised at the end of the year has been surrendered to Government (*vide* No....., dated.....)/will be adjusted towards the grants-in-aid/equity payable during the next year.....

2. Certified that I have satisfied myself that the conditions on which the grants-in-aid/equity was sanctioned have been duly fulfilled/are being fulfilled and that I have exercised the following checks to see that the money was actually utilised for the purpose for which it was sanctioned.

Kinds of checks exercised

- 1.
- 2.
- 3.

Signature.....
Designation.....

Date.....

SCHEDULE E**OPERATIONAL REQUIREMENTS**

(Refer Clause 8.6 (m) and 8.6 (n))

The Project Company shall have to meet the following obligations as per the Clause 8.6 (m) and 8.6 (n) every year during the Agreement Period:

MINI TOOL ROOM FACILITY		
	Category / Nature of Work	Minimum number of jobs done by Mini Tool Room for MSMEs
1	Large or medium sized mould/casting dies and press tools	35% of total jobs
2	Critical jobs (Elements of jigs & fixtures, gauges, precision components) and semi critical jobs (machining of components)	50% of total jobs
3	Petty Jobs (Other jobs)	65% of total jobs

TRAINING CENTRE FACILITY				
Year of operation of the Project	1 st	2 nd	3 rd	4 th Onwards
Minimum number of training days training is provided by the Mini Tool Room every year	32,256	48,384	64,512	80,640

SCHEDULE F**VALUE OF PERFORMANCE SECURITY**

The value of Performance Security for the various phases of the Project shall be as set out in this Schedule.

Type of Security	Value of Security	Instrument	Duration From	Duration To
Performance Security	Rs. 80,00,000/- (Rs Eighty Lakhs only)	Bank Guarantee in the format as provided in Schedule- G	Before signing of the Agreement	6 (six) months beyond the Scheduled Project Completion Date

SCHEDULE G**FORMAT OF PERFORMANCE SECURITY****(BANK GUARANTEE)³**

Bank Guarantee No.: _____

Dated: _____

Issuer of Bank Guarantee:_____
(Name of the Bank)_____
(hereinafter referred to as the “Bank”)**Beneficiary of Bank Guarantee:**

Ministry of Micro, Small and Medium Enterprises, Government of India

Nature of Bank Guarantee:

Unconditional and irrevocable Bank Guarantee.

Context of Bank Guarantee

Performance during Implementation Period in respect of Agreement (hereinafter referred to as the “Agreement”) to be entered between the Ministry of Micro, Small and Medium Enterprises, Government of India (hereinafter referred to as the “Authority”), _____ (hereinafter referred to as the “Project Company”) for the _____ (hereinafter referred to as the “Project”), provided however, such context of the Bank Guarantee or reference to the Agreement in this Bank Guarantee shall in no manner be relied upon at any stage to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The title of this Guarantee i.e. “Performance Security” shall in no manner and at no stage be relied upon to adversely affect or dilute the unconditional and irrevocable nature of this Bank Guarantee. The Contract of Bank Guarantee is an independent Contract between the Bank and Authority and is not dependent upon execution or performance of any Agreement between Authority and _____ (name of the Project Company).

Operative part of the Bank Guarantee:

1. At the request of the Project Company, we _____, _____ (name and address of the bank), hereinafter referred to as the “Bank”, do hereby unconditionally and irrevocably affirm and undertake that we are the Guarantor and are responsible to the Authority i.e. the beneficiary on behalf of the Project Company, upto a total sum of Rs. _____ Crores (Rupees _____ Crores Only), such sum being payable by us to Authority immediately upon receipt of first written demand from the Authority.
2. We unconditionally and irrevocably undertake to pay to the Authority on an immediate basis, upon receipt of first written demand from the Authority and without any cavil or argument or delaying tactics or reference by us to Project Company and without any need for the Authority to convey to us any reasons for invocation of the Guarantee or to prove the failure to perform on the part of the Project Company or to show grounds or reasons for the demand or the sum specified

³ To be issued by a Scheduled Bank in India

- therein, the entire sum or sums within the limits of Rs. _____ Crores (Rupees _____ Crores Only).
3. We hereby waive the necessity of the Authority demanding the said amount from Project Company prior to serving the Demand Notice upon us.
 4. We further agree and affirm that no change or addition to or other modification to the terms of the Agreement, shall in any way release us from any liability under this unconditional and irrevocable Guarantee and we hereby waive notice of any such change, addition or modification. We further agree with the Authority that the Authority shall be the sole and the exclusive judge to determine that whether or not any sum or sums are due and payable to him by Project Company, which are recoverable by the Authority by invocation of this Guarantee.
 5. This Guarantee will not be discharged due to the change in constitution of the Bank or the Project Company. We undertake not to withdraw or revoke this Guarantee during its currency / validity period, except with the previous written consent of the Authority.
 6. We unconditionally and irrevocably undertake to pay to the Authority, any amount so demanded not exceeding Rs. _____ Crores (Rupees _____ Crores Only) notwithstanding any dispute or disputes raised by Project Company or anyone else in any suit or proceedings before any dispute review expert, arbitrator, court, tribunal or other authority, our liability under this Guarantee being absolute, unconditional and unequivocal. The payment so made by us under this Guarantee to the Authority, shall be a valid discharge of our liability for payment under this Guarantee and the Project Company shall have no claim against us for making such payment.
 7. This unconditional and irrevocable Guarantee shall remain in full force and effect and shall remain valid until _____

Notwithstanding anything contained herein:

1. Our liability under this Bank Guarantee shall not exceed Indian Rs. _____ Crores (Rupees _____ Crores Only).
2. This unconditional and irrevocable Bank Guarantee shall be valid w.e.f. _____ to _____.
3. We are liable to pay the guaranteed amount or any part thereof under this unconditional and irrevocable Bank Guarantee only and only if the Authority serves upon us a written claim or demand on or before _____.

Authorized Signatory

For Bank

SCHEDULE H**CONSTITUTION OF PROJECT MONITORING COMMITTEE (PMC)**

1.	AS & DC (MSME)	Chairperson
2.	Addl. Secretary & F.A.	Member
3.	Divisional Head, Tool Rooms, Office of DC MSME	Member
4.	Transaction Advisor	Member
5.	CEO of MSME Tool Room Involved in DPR	Member
6.	Secretary (Industry) of the State	By Invitation
7.	Independent Engineer	Member

Note:

- (i) Chairperson may co-opt any other member or invitee as may be felt necessary.
- (ii) Authority shall change the Constitution of Project Monitoring Committee at any time during the Agreement Period.

SCHEDULE I**TERMS OF REFERENCE FOR INDEPENDENT ENGINEER****1 Scope**

- 1.1 These Terms of Reference for the Independent Engineer (the "**TOR**") are being specified pursuant to the Agreement dated *** (the "Agreement"), which has been entered into between the Authority and **** (the "Project Company") for Setting up of Mini Tool Room at Chennai on build, own and operate (BOO) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Project.

2 Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review, inspection and monitoring of construction and installation of plant & machinery of the Project;
 - (ii) conducting tests on completion of construction/installation and issuing Completion Certificate;
 - (iv) review, inspection and monitoring of operation and maintenance;
 - (vi) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (vii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (viii) assisting the Parties in resolution of disputes; and
 - (ix) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Implementation Period

- 4.1 The Independent Engineer shall review the specifications of machinery, tools and equipments being procured by the Project Company before such procurement order is placed and send its comments thereon to the GOI and the Project Company within 7 (seven) days of such review.
- 4.2 At every stage of release of grant support amounts to the Project Company, the Independent Engineer shall be required to certify that all grant support amounts received, if any, till date of such certification is not more than 40% of the actual cost incurred by the Project Company till date of such certification.
- 4.3 The Independent Engineer shall review the Progress Report furnished by the Project Company and send its comments thereon to the GOI and the Project Company within 7 (seven) days of receipt of such report.
- 4.4 The Independent Engineer shall inspect the construction and installation of the Project Facilities once every two months, after receipt of the Progress Report from the Project Company, but before the 20th (twentieth) day of the month (/of such inspection) in any case, and make out a report of such inspection (the "**Inspection Report**") setting forth an overview of the status, progress, quality and safety of construction/installations, including the work methodology adopted, the equipments installed and their sources, and conformity of construction with the Scope of the Project and the Project Requirements as per Schedule C of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Project Company within 7 (seven) days of the inspection.
- 4.5 The Independent Engineer may inspect the Project more than once in every two months if any lapses, defects or deficiencies require such inspections.
- 4.6 For determining that the plant & machinery conform to Project Requirements as per Schedule C, the Independent Engineer shall require the Project Company to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Project Company for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 4.7 The tests shall be undertaken on a random sample basis and shall be in addition to, and

independent of, the tests that may be carried out by the Project Company for its own quality assurance in accordance with Good Industry Practice.

- 4.8 In the event that the Project Company carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Project Company to carry out, or cause to be carried out, tests to determine that such remedial works have brought the plant & machinery into conformity with the Project Requirements.
- 4.9 The Independent Engineer shall carry out, or cause to be carried out, all the tests as per Good Industry Practice and issue a Completion Certificate, as the case may be.
- 4.10 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services and certify the reasonableness of such costs for payment by the Authority to the Project Company.

5 Operation Period

- 5.1 During the period starting from COD till the end of the Agreement Period, the Independent Engineer shall review the report submitted by Project Company in order to determine the conformity of the Project with the Operational requirements as per Schedule E and shall report to the Authority if it is found that the Operational requirements have not been fulfilled.
- 5.2 After receiving of the report submitted the Project Company, Independent Engineer shall be required to assess if there has been Captive Consumption in the Project during the financial year for which the report has been submitted. In case, Captive Consumption is found, it shall be the duty of Independent Engineer to inform GOI and PMC about the assessment. The Independent Engineer shall also inform Project Company about the assessment.
- 5.3 The Independent Engineer shall be required to visit the Project Site at least once every three months starting from COD during the entire Agreement Period, in order to collect information on the condition of the Project Facility, equipments and machinery. The information shall have to be presented by Independent Engineer to PMC.
- 5.4 Upon request by PMC or GOI, Independent Engineer may be required to conduct investigations on matters relating to this Agreement which shall include visits to the Project Site, examining the accounts and financial reports of the Project Company, conducting tests on equipments, machinery installed as a part of Project Assets.

6 Termination

- 6.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 10 (ten) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Project Company, inspect the Project for determining condition of the Project, equipments and assets, and submit an assessment report to the Authority.

7 Determination of costs and time

- 7.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8 Assistance in Dispute resolution

- 8.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 8.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9 Other duties and functions

- 9.1 The Independent Engineer shall perform all other duties and functions specified in the Agreement.

10 Miscellaneous

- 10.1 The Independent Engineer shall notify its programme of inspection to the Authority and to the Project Company, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 10.2 The Independent Engineer shall obtain, and the Project Company shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Project Company to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.
- 10.3 A copy of all communications, comments, instructions, documents sent by the Independent Engineer to the Project Company pursuant to this TOR, and a copy of all the test results with

- comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the GOI forthwith.
- 10.4 The Independent Engineer shall retain at least one copy each of all documents received by it, and keep them in its safe custody.
- 10.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all documents, results of tests and other relevant records, and hand them over to the GOI or such other person as the GOI may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the GOI.

SCHEDULE J**SELECTION OF INDEPENDENT ENGINEER****1 Selection of Independent Engineer**

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-I and thereupon shortlist 10 (ten) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Project Company for scrutiny and comments, if any. The Project Company shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 10 (ten) firms (the "**Panel of Firms**") and convey its decision to the Project Company.
- 1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective financial offers. All the financial bids so received shall be opened and the work shall be awarded to the firm with the lowest financial offer.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Implementation Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed 2% (two per cent) of the Project Cost. Payments not exceeding such 2% (two per cent) shall be borne equally by the Authority and the Project Company in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Project Company.

3 Constitution of fresh panel

Not later than three years from the date of this Agreement, and every three years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-J; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Project Company.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided that a government-owned entity which is owned or controlled by GOI shall not be eligible for appointment as Independent Engineer.