



## **1. Overview**

- (a) Manufacturing has been recognized as the main engine for growth of the economy. In order to achieve a GDP growth of 9%, the manufacturing sector has to grow at 12%. The Micro, Small and Medium Enterprises (MSME) sector, comprising of 114 lakh units has been a significant contributor to the manufacturing by accounting for nearly 40% of total industrial production.
- (b) To achieve a sustained rate of growth, the manufacturing sector needs to build and maintain competitiveness needed to face the challenges posed by globalisation.
- (c) Tooling has been recognized as the backbone of the manufacturing sector and enhancement of tooling facilities will give a fillip to the sector especially the MSME sector which lacks the capacity to set up these facilities in-house.
- (d) With this view, Government of India has established 10 state of the art Tool Room & Training Centres. The Government also assisted State Governments to set up Mini Tool Rooms on a cost-sharing basis. These Tool Rooms are highly proficient in tool & die making technologies and promote precision as well as quality in the development and manufacture of sophisticated tools, moulds and the like.
- (e) However the facilities are not enough to cope up with the ever increasing demand for tooling as well as skilled manpower; hence National Manufacturing Competitiveness Programme, initiated by National Manufacturing Competitiveness Commission aims to extend support to the private sector to set up Mini Tool Rooms and training centres,

which is expected to result in improved competitiveness of the sector.

- (f) It is in this context that this Scheme is being launched.

## **2. The Scheme**

- (a) The Scheme termed as 'Setting up of New Mini Tool Rooms (MTRs) under Public Private Partnership (PPP) Mode' is a Central Sector Scheme and would be implemented during 11<sup>th</sup> Five year plan.
- (b) The Scheme will be implemented on a Public Private Partnership mode and Government would provide funds to meet a part of the Project cost, the extent of which would be determined through a competitive bidding process. Towards this purpose, the Government will invite proposals for specific Projects, based on needs and identified through a survey in that regard.

## **3. Objectives**

- (a) To improve the competitiveness of the MSMEs engaged in manufacturing activity by creating capacities in the private sector for designing and manufacturing quality tools.
- (b) To bridge the gap between the demand and the supply of trained manpower in the industry.
- (c) To encourage research and development, and optimization of cost and quality of delivery, leading to enhanced competitiveness of the manufacturing sector.

## **4. Implementation**

The scheme will be implemented in the following three models in order of preference.

**(i) Model-I (Centre PPP Model):**

Projects to be set up and operated by Private Partner (individual, company, association, NGO/society). The financial assistance will be given to meet the viability gap on a case-to-case basis and it will be restricted to 40% of the project cost (not exceeding Rs. 9 crore). The remaining resources will be required to be arranged by the Project Sponsor through equity, borrowings from Banks / Financial Institutions and other sources.

**(ii) Model-II (State PPP Model):**

Projects to be set up by State Governments in cooperation with NGOs (SPVs) who will run the projects on mutually agreed terms. The financial assistance will be equal to 90% of the cost of machinery, restricted to Rs. 9 crore. However, in order to retain a say in the management, atleast 26% of the share should be with State Government. The remaining cost of machinery, land & building, recurring cost, any other cost etc will be borne by the SPV. **This Model would be resorted to only when it is not viable to establish a Mini Tool Room under Model-I.**

**(iii) Model-III (Centre State Model):**

Projects to be set up and managed by State Government/ State Government Agencies. The financial assistance will be equal to 90% of the cost of machinery, restricted to Rs. 9 crore for setting up new Mini Tool Rooms. The financial assistance equal to 75% of the cost of the machinery, restricted to Rs. 7.50 crore, can also be sanctioned for

upgradation of an existing State Tool Room. The remaining cost of machinery, land & building, recurring cost, any other cost etc will be borne by the State Government/ State Government Agency. **This model would be resorted to only where both the Model-I and Model-II fail.**

In view of decision of Government of India to prefer Model I vis-à-vis Model II & III, the present guidelines have been framed for Model I. For Model II & III the procedure/ guidelines followed for earlier Mini Tool Room scheme will be followed.

## **5. Coverage and Eligibility**

- (a) The Scheme is intended to maximise the availability of tooling services and training facilities to enhance competitiveness of MSMEs. Accordingly the Government will encourage a group of MSMEs to come together to set up MTR. Individual service providers can also qualify for assistance.
- (b) Setting up of Mini Tool Room or training centre for captive consumption will not be eligible for funding assistance.
- (c) Assistance under the Scheme will be available to a Special Purpose Vehicle termed as 'Project Company' for the purpose of the Scheme, established for the purpose of setting up a Mini Tool Room and constituted as a distinct legal entity by private sector sponsors. The Project Company may be a distinct legal entity formed by any of the following:
  - i. Individual enterprises
  - ii. Consortium of enterprises
  - iii. Industry Association
  - iv. Enterprise(s)/ Industry Association jointly with the State Government.
- (d) At the time of bidding, the applicant may be a person/ group of persons as described under this clause. However, upon

selection as a successful bidder, the applicant must form a Project Company as described under (e) below.

- (e) The Project Company will ordinarily be a privately sponsored and controlled Company registered under Companies act 1956, with at least 51% of the subscribed and paid up equity brought in by entities from the private sector. Any other structure will be subject to the approval by the Project Monitoring Committee (PMC).
- (f) The Project Sponsors constituting the Project Company should preferably be from the manufacturing value chain and should be able to demonstrate experience in the tool room and related industry.
- (g) The assistance under the Scheme will be available for a Project, to be established for development of MSMEs in general, covering the following two sets of interventions:
  - i. Tool Room facilities
  - ii. Tool room related training facilities
- (h) Subject to the approval of PMC, the tool room may meet any of the other felt needs of the cluster enterprises it wishes to cater to, that will enable the cluster enterprises in improving their competitiveness such as designing, research & development, consultancy services etc.
- (i) The Projects proposed to be taken up under the Scheme will benefit a significant number of enterprises, primarily MSMEs in the cluster.

## **6. Financial Assistance**

- (a) Each of the Projects to be considered for assistance under the Scheme will be eligible for grant funding upto a maximum of 40% of the Project cost not exceeding Rs.9.00 crore.
- (b) The actual extent of assistance within the overall limits will be determined based on lowest grant support i.e. minimum percentage of project cost requested by the private entity/s sponsoring the Project, in response to Request for Proposal to be floated by the Government in this regard.
- (c) Project cost for the purpose of the Scheme will mean the cost of land; civil works; plant & machinery; and preliminary and pre-operative expenses. However the aggregate cost of land and civil works shall not exceed 25% of the Project cost.
- (d) In determining the Project cost, the following guidelines will be applied:
- (i) If the land is provided by the State Government or its agencies, corporate or otherwise, the value of land to be considered for arriving at the cost of the Project for determining grant assistance will be the circle rate as per Government records.
  - (ii) If the land is brought in by the Project Company (whether acquired in the past, or currently), the actual transaction value or Government circle rate, whichever is less, will be considered in the Project cost.
  - (iii) If the building is provided by the Government free of cost or at subsidised value, in arriving at the Project cost, the

actual cost paid by the promoter to the Government will be considered.

- (iv) If the Project avails of any capital grant/ subsidy of the Government under any other Scheme, the same will be added to the amount of grant, in evaluation of bids.
- (e) The Project Company shall meet escalations, if any in the Project cost from its own sources. No additional grant from Government of India would be made available.

## **7. Sources of Funds**

- (a) Project Sponsor's contribution should be at least 15% of the overall Project cost.
- (b) The Project Company may raise financial resources for the Project from various commercial sources. These may be equity, subordinated debt, preference capital, term loans etc.

## **8. Implementation & Approval Process**

- (a) Tool room industry is expected to cater to diverse needs of a range of user groups. Hence the capital investment needs could vary significantly from a level as low as Rs. 1 Crore to about Rs. 50-100 Crore for large scale high technology facility.

Therefore, an intensive market scan will be undertaken by DC (MSME) by utilizing the expertise available in the existing MSME Tool Rooms to identify the potential locations for setting up the Mini Tool Rooms. Detailed Project Report defining detailed contours of the identified Mini Tool Rooms will also be prepared by the concerned MSME Tool Rooms.

- (b) The Government will follow a transparent and competitive bidding process to select the Project Sponsor/ Project Company who will set up the identified Mini Tool Room.
- (c) A Request for Proposal (RFP) will be floated based on the predefined contours of Detailed Project Report for the project/identified Mini Tool Room, inviting technical and financial proposals, pursuant to which interested entities from the private sector will submit their proposals for setting up of Mini Tool Room. The proposals will be evaluated on technical and financial parameters. The criteria for technical evaluation will be determined by the Government with assistance from the Transaction Adviser (TA), MSME Tool Room concerned and the same shall be clearly spelt out in the RFP.
- (d) Financial proposals of only those bidders who qualify technically will be evaluated for selection of successful Project Company.
- (e) The technically qualified bidder, who asks for lowest grant assistance i.e. minimum percentage of project cost will be selected for assistance under the Scheme.
- (f) After evaluating the financial offers of technically qualified bidders, TA will submit its recommendations to the PMC.
- (g) The Project Monitoring Committee (PMC) constituted by the Government will have the authority to decide on the proposals

- received, which are not in conformity with the framework of the Scheme or the RFP document.
- (h) PMC will, after evaluation, present its recommendations before the EFC/ SFC. Approval for a Project will be accorded by the EFC/SFC based on the recommendations of PMC and due diligence by TA. Such approval will be valid for a period of 6 months from the date of approval, and it is expected that the Project will be ready for release of first tranche of grant within 6 months, failing which, the approval will automatically lapse, unless it is specifically extended by the PMC.
- (i) A Letter of Acceptance (LoA) will be issued to the successful bidder stating his selection and invitation to sign an Memorandum of Agreement (MoA) (placed at Annexure I) with GoI, clearly specifying the responsibilities of each of the parties, to implement the Project subject to demonstration of technical and financial capability as stated in the response to RFP.

## **9. Time Frame**

The timeframe for implementation of the Project is 2 years from the date of approval.

## **10. Release of Funds**

- I. The following schedule will be adopted for release of Government of India share to the Project Company:

**(i) 20% as Ist Instalment**

20% of the Grant will be released on possession of Project Site by the Project Company, achievement of

Financial Close and infusion of at least matching contribution of the Project Company's share. The expenditure incurred by the Project Company for acquisition of Project Site will be considered as part of the matching contribution,

**(ii) 35% as IInd Instalment**

35% of the Grant will be released after the utilisation of at least 60% of the 1st instalment of Grant and the matching contribution brought in by the Project Company under Clause (i) as above and infusion of at least matching contribution of the Project Company's share,

**(iii) 35% as IIIrd Instalment**

35% of the Grant will be released after the utilisation of the 1st instalment of Grant and the matching contribution brought in by the Project Company under Clause (i) and 60% of the 2<sup>nd</sup> instalment of Grant and matching contribution brought in by the Project Company under Clause (ii) as above and infusion of at least matching contribution of the Project Company's share,

**(iv) 10% as IVth Instalment**

Balance 10% of the Grant, being the final instalment of Grant will be paid a) upon utilisation of 2<sup>nd</sup> and 3<sup>rd</sup> instalments of Grant and the matching contribution under Clause (ii) and (iii) above, b) infusion and utilisation of the balance 10% of the share of Project Company and c) on commissioning of the Project and commencement of operations and furnishing of Completion Certificate.

II. The Project Company will submit the Utilisation Certificate (UC) for the amounts utilized as per the format in accordance to GFR 19A (**Annexure III**); A separate no-lien account will be maintained by Project Company for the funds released by GOI and Accounts pertaining to the Project will be subject to audit by the Comptroller & Auditor General of India.

**11. O&M of Assets**

- (a)** The Project Company will be responsible for O&M of assets created under the Scheme.
- (b)** There will be one nominee of the Development Commissioner (MSME) on the Board of Directors of the Project Company till 5 years after the completion of the Project.
- (c)** In case of dissolution of Project Company within 7 years from the date of sanction of assistance by the Government under the Scheme or 5 years from the date of completion of the project, whichever is later, the asset created within the Project Company will be vested with the Government.
- (d)** The Project Company will not abandon the operations of the Project, nor transfer any or all of the Project assets including assets acquired for the Project out of resources other than GoI grant.
- (e)** In case the Project Sponsor desires to withdraw from the Project through transfer/ sale of the Project assets, an application to the effect will be made to PMC. PMC will consider the merits of such a request and take necessary steps for transfer of Project assets through transparent bidding process, or take over the assets, or undertake such other steps to meet the objectives of the Scheme.

(f) In situation as described under (e) above, the consideration, if any, payable to Project Company / Project Sponsors will be determined following fair and transparent procedures.

## **12. Implementation framework**

### **(a) Project Monitoring Committee (PMC)**

- i The Office of Development Commissioner (MSME), GoI will be the coordinating Department providing overall policy, coordination and management support to the Scheme. A Project Monitoring Committee (PMC) will be constituted under the Chairmanship of Additional Secretary and Development Commissioner (MSME). The constitution of the committee is detailed in **Annexure II**.
- ii The PMC may induct representatives of industry associations, Research & Development/ Technical institutions and other private/public sector expert organisations as members or special invitees.
- iii In carrying out its roles and responsibilities, the PMC, will take account of synergies of this Scheme with other Schemes of the Department in general.
- iv Upon recommendations of PMC based on the evaluation of bids, the EFC/ SFC will accord approvals to the Projects.
- v PMC will ensure smooth implementation of the Scheme by undertaking monitoring and periodic reviews of the approved Projects including compliance with the conditions mentioned under the MoA.

### **(b) Transaction Advisor (TA)**

- i Recognising the need to undertake extensive pre Project activities, GoI will engage the services of a professional agency that has experience in execution of projects based on competitive bidding; implementation of similar PPP based Schemes. TA will assist the Government in speedy implementation of the Projects in a transparent manner.
  
- ii The TA will report directly to PMC and will assist the Office of DC (MSME) in the discharge of the following responsibilities:
  - 1. Formulation of a suitable strategy for implementation of the Scheme.
  - 2. Sensitisation of the potential stakeholders about the Scheme at pre identified major industry concentrations/ locations.
  - 3. Preparation of RFP (Request for Proposal documents) for bidding out projects based on broad contours of the Detailed Project Reports of the Projects (prepared by MSME Tool Rooms) and customized MOA (prepared by TA) to be signed between the GoI and Project Sponsor.
  - 4. Formulating criteria for selection of bidders.
  - 5. Releasing advertisements for RFP for inviting proposals/ bids from private parties.
  - 6. Responding to requests for clarification and providing required information to bidders.
  - 7. Evaluation of Project proposals and bids and its submission with recommendations to PMC for further action.
  - 8. Device various formats for monitoring of projects during implementation and also during operation.

9. Periodical monitoring of the progress of the Projects, and disbursement of funds to the Project Company and their utilization.
- iii. TA will be paid a fee by the Government; commensurate with the envisaged responsibilities and such fee will be separate from the grant-in-aid being given to the Project Company.

**(c) Project Company**

- i. The Scheme will be implemented on a PPP format through Project Company, specially established for the purpose.
- ii. The private sector member enterprise/s having the majority stake in the Project Company will all be legally independent entities without any related party relationship with each other, as described under Accounting Standard (AS) 18 the Companies (Accounting Standard) Rules, 2006.
- iii. The Project Company will undertake the following responsibilities:
  1. Prepare the Detailed Project Report (DPR) covering the technical, financial, institutional and O&M aspects of the projects based on the Project contours provided in the RFP.
  2. Tie up all financial resources to meet the Project cost (balance of Government of India assistance) through debt/ equity, other forms of non-Government funds.

3. Enter into a Memorandum of Agreement with GoI as provided in the Scheme.
4. Obtain any statutory approvals/ clearances required for the Project including release of funds.
5. Recruit suitable functional professionals including technical staff in order to ensure that the Project is executed smoothly and operated efficiently to provide state- of-art tooling and training services based on global benchmarks.
6. Implement various interventions as outlined and in the DPR submitted to the Government.
7. O&M of assets created under the Project.
8. Furnish periodic progress reports regularly to Development Commissioner (MSME) in the prescribed formats.
9. Perform all the obligations undertaken pursuant to the MoA with the GoI (placed at Annexure I).
10. Submit the Utilisation Certificate (UC) for the amounts utilized as per the format in accordance to GFR 19A (**Annexure III**).
11. Maintain a separate no-lien account for the funds released by GOI and accounts pertaining to the Project will be subject to audit by the Comptroller & Auditor General of India.
12. Meet escalations, if any in the Project cost from its own sources.

13. Ensure at its own cost and expense, that the Grant is utilized only for the purposes approved in the DPR
14. Obtain completion certificate from an independent engineering consultant approved by the PMC confirming that the setting up of the Project is completed in accordance with Project Requirements ("Completion Certificate") and furnish a copy of the same to GOI.

**(d) Promotional role of State Governments**

Pro-active involvement of the State Governments in the Project implementation is envisaged, which would give an impetus to the Project, however the same is not mandatory. The State Government may extend support to the Project in the following areas:

1. Providing requisite land to the project, wherever needed; in appropriate mode, to the Project; however this is not a pre-requisite under the Scheme.
2. Providing necessary external infrastructure to the Project such as power, water supply, roads etc, wherever needed.
3. Providing necessary Project related clearances expeditiously.
4. Dovetailing assistance available under related State Government schemes for overall effectiveness and viability of the Projects.
5. Extending incentives available under related industrial promotional policies.

**ANNEXURE-I**

**AGREEMENT**

**BETWEEN**

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

**AND**

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**(Project Company)**

**FOR**

# MINI TOOL ROOM AND TRAINING CENTRE PROJECT

Dated \_\_\_\_\_

## AGREEMENT

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_  
at \_\_\_\_\_ between ("**Agreement**"):

**1. President of Union of India** acting through Ministry of Micro, Small and Medium Enterprises, Government of India represented by \_\_\_\_\_ (hereinafter referred to as "**GOI**", which expression shall unless repugnant to the context thereof, include its successors, assigns) and having its Office at \_\_\_\_\_, New Delhi, of the FIRST 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 assigns) of the OTHER PART;

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

## WHEREAS:

- A. Government of India, Ministry of Micro, Small and Medium Enterprises (MSME) with a view to improve the competencies of the Micro, Small and Medium Enterprises by making available, increased and enhanced tool rooms and related training services in public private sector partnership mode 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 Mini Tool Rooms and Training Centres') for designing and manufacturing quality tools and tool room training facilities, which would be co-terminus with the 11<sup>th</sup> Five year plan (Herein after to as the "**Scheme**");
- B. After intensive market studies through Transaction Advisor (TA) on behalf of GOI, GOI identified potential locations where Mini Tool Rooms and training centres in terms of the Scheme could be set up;

- C. GOI vide Request for Proposal No. \_\_\_\_\_ dated \_\_\_\_\_ (“RFP”) invited competitive proposals from eligible entities for implementing the Project (as defined herein after) under the Scheme, through competitive bidding route and in response thereto, GOI received proposals from various eligible entities for implementing the Project;
- D. GOI, after evaluating the aforesaid RFPs by Transaction Advisor appointed by GOI, accepted the proposal submitted by the Project Company and issued Letter of Acceptance dated \_\_\_\_\_ (“Letter of Acceptance”) to the Project Company / Consortium, a copy whereof is hereto annexed as Schedule “A”;<sup>1</sup>
- E. In accordance with the Scheme, RFP and Letter of Acceptance, the Parties have agreed to enter into this Agreement setting out their respective rights and obligations;

NOW THIS AGREEMENT WITNESSETH 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 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 judgements, decrees, injunctions, writs

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<sup>1</sup> In case Acceptance Letter is issued to a consortium and the developer is a SPV constiuted by consortium, please modify the recital suitably.

or orders of any court of record, as may be in force and effect during the subsistence of this Agreement.

**"Applicable Permits"** means all clearances, permits, authorisations, 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.

**"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.

**"COD"** means the commercial operations date of the Project which shall be the date on which Transaction Advisor 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 Transaction Advisor certifying completion of construction of the Project by the Project Company in accordance with the Project Requirements.

**"Contractor"** means any Person with whom the Project Company may enter into any of the Project Agreements.

**"DPR"** means the Detailed Project Report 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.

**"Event of Default"** shall have the meaning ascribed thereto in Article 13.1.

**"Financial Close"** means the date on which the Financing Documents have become effective and the Project Company has access to the funds/financial assistance committed thereunder.

**"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 (i) 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. \_\_\_\_\_ , being the lowest funding assistance quoted in response to RFP.

**"Implementation Period"** means the period beginning from the Commencement Date and ending on the COD.

**"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.

**"Material Adverse Effect"** means material adverse effect on (a) the ability of the Project Company 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"** shall have the meaning ascribed thereto in Project Requirements

**"Parties"** means the parties to this Agreement collectively and

**"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 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 estimated Project cost of Rs.\_\_\_\_\_ Crores.

**"Project Facilities"** means Mini Tool Room facility and Training Centre facility set out in Schedule B to be designed, constructed, operated, maintained or provided by the Project Company on the Project Site, in accordance with the Project Requirements.

**"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 the design, construction and operation requirements as to Project Facilities comprising Mini Tool Room and Training Centre set forth in 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

**"Project Company"** means [\_\_\_\_\_]<sup>2</sup>, to whom Letter of Acceptance is issued by GOI.

**"RFP"** shall have the meaning ascribed thereto in Recital C

**"Rs." or "Rupees"** refers to the lawful currency of the Republic of India.

**"Scheduled Project Completion Date,"** means \_\_\_\_\_.<sup>3</sup>

**"Tax"** means and includes all taxes, fees, cesses, levies that may be payable by the Project Company under any Applicable Law.

**"Termination"** means early 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.

**"Termination Notice"** means the notice of Termination by GOI in accordance with the applicable provisions of this Agreement.

**"Training Centre"** shall have the meaning assigned thereto in Project Requirements.

**"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,

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

<sup>3</sup> 30 months from the date of Agreement i.e. 6 months for Financial Closure and 24 months for construction period.

- (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 natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organisations 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, authorisation, 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**

### **OWNERSHIP OF PROJECT AND GRANT**

#### **2.1 Ownership**

The Project Company hereby agrees and undertakes to construct, 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 and the Scheme. 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 Clause 11.1 of this Agreement

## **2.2 Grant**

In consideration of the Project Company agreeing to develop the Project in accordance with Project Requirements, the Scheme and this Agreement, GOI agrees to sanction and make payment of Grant through Ministry of MSME for the Project as under:

- i. 20% of the Grant will be released on a) possession of Project Site by the Project Company and b) upon, achievement of Financial Close and c) infusion of at least matching contribution of the Project Company's share. The expenditure incurred by the Project Company for acquisition of Project Site shall be considered as part of the matching contribution;
- ii. 35% of the Grant will be released after the utilisation of at least 60% of the 1st instalment of Grant and the matching contribution brought in by the Project Company under Clause (i) as above and infusion of at least matching contribution of the Project Company's share;
- iii. 35% of the Grant will be released after the utilisation of the 1st instalment of Grant and the matching contribution brought in by the Project Company under Clause (i) and 60% of the 2<sup>nd</sup> instalment of Grant and matching contribution brought in by the Project Company under Clause (ii) as above and infusion of at least matching contribution of the Project Company's share;
- iv. Balance 10% of the Grant, being the final instalment of Grant will be paid a) upon utilisation of 2<sup>nd</sup> and 3<sup>rd</sup> instalments of Grant and the matching contribution under Clause (ii) and (iii) above, b) infusion and utilisation of the balance 10% of the share of Project Company and c) on achievement of COD and commissioning of the Project and furnishing of Completion Certificate;
- v. The Project Company shall submit the Utilisation Certificate (UC) for the amounts utilized as per the format in accordance to GFR 19A (**Annexure III**);
- vi. Project related accounts of the Project Company shall be subject to audit by the Comptroller & Auditor General of India;
- vii. On the happening of Project Company's Event of Default, GOI shall be entitled to suspend the release of Grant.

## **ARTICLE 3**

### **PROJECT SITE**

#### **3.1 Project Site**

It shall be the responsibility of the Project Company to acquire the Project Site by way of purchase or long lease. The Project Site shall be free hold or lease hold immovable property. In case of lease, the lease shall be at least for a period of 10 years. The Project Company shall be in physical possession of the Project Site, in its own right, free from Encumbrance together with the necessary rights for the purpose of implementing the Project.

## **ARTICLE 4**

### **COMPLETION CERTIFICATE**

#### **4.1 Completion Certificate**

During Implementation Period the Transaction Advisor shall supervise and monitor the progress of the Project. Upon completion of the Project in accordance with the Agreement, the Project Company shall obtain completion certificate from an independent engineering consultant approved by the PMC confirming that the setting up of the Project is completed in accordance with Project Requirements ("Completion Certificate") and furnish a copy of the same to GOI and the Transaction Advisor.

## **ARTICLE 5**

### **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:

#### **5.1 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 and other obligations under this Agreement, in a timely manner.
- (b) The Project Company shall achieve Financial Close within 6 months from Commencement Date or within such time as may be agreed to in writing by GOI.

- (c) The Project Company shall meet escalations, if any in the Project cost from its own sources without seeking additional grant from GoI

## **5.2 Project Implementation**

The Project Company shall adhere to the Project Requirements and achieve COD on or before the Scheduled Project Completion Date.

## **5.3 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 to meet 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 GOI (Notice to Remedy), GOI 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 GOI on account of such repair and maintenance with interest @State Bank of India Prime Lender Rate per annum within 7 days of receipt of GOI's claim therefore.

### **(c) Material Breach of Project Requirements**

The Project Company shall be deemed to be in Material Breach of Project Requirements if the Transaction Advisor 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;

### **(a) GOI's Rights**

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

### **5.4 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.

### **5.5 Shareholding**

- (a) The Project Company shall ensure that the Project Sponsor/s shall in aggregate hold not less than 51% of the paid up equity capital of the Project Company till COD and 5 years thereafter.
- (b) The Project Company shall, through consortium members or promoters or otherwise, contribute to at least 15% of the overall Project Cost.

### **5.6 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) construct, 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-art tooling and training services based on global benchmarks
- (e) Implement various interventions as outlined and approved in DPR
- (f) Ensure that the Grant is utilized only for the purposes approved in the DPR

- (g) Furnish periodic progress reports on quarterly basis regularly to GoI / PMC, in the prescribed formats
- (h) maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement;
- (i) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Laws and Applicable Permits;
- (j) be responsible for quality, soundness, durability, safety and the overall Project Requirements;
- (k) afford access to the Project Facilities to the authorised representatives of GOI, 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.
- (l) There shall be one nominee of the GoI on the Board of Directors of the Project Company till completion of the Project;
- (m) The Project Company shall not abandon the operations of the Project, nor transfer any or all of the Project assets including assets acquired for the Project out of Grant without prior written consent of GOI;
- (n) In case the Project Company desires to withdraw from the Project through transfer/ sale of the Project assets, an application to the effect shall be made to Development Commissioner (MSME). DC(MSME) shall consider the merits of such a request and take necessary steps for transfer of Project assets through transparent bidding process, or take over the assets, or undertake such other steps to meet the objectives of the Scheme;
- (o) Make available the tooling facility to MSMEs in accordance with the estimated projections made in response to RFP
- (p) Provide training facility related to the tooling in accordance with the estimated projections made in response to RFP
- (q) Hire technical consultants as may required for the purposes of implementation of the Project
- (r) Perform all the obligations undertaken pursuant to this Agreement with the GOI

## **5.7 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

## **ARTICLE 6**

### **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:

## **6.1 Specific obligations**

GOI shall release Grant in accordance with Clause 2.1 provided that the Project Company is not in Material Breach of this Agreement and no Project Company's Event of Default has occurred.

## **6.2 General obligations**

(a) GOI shall either by itself or through State Government shall on best effort basis provide the following (but shall not be obligated to) if so required by the Project Company:

- i. Provide necessary external infrastructure to the Project such as power, water supply, roads etc, wherever needed;
- ii. Provide necessary Project related clearances, Applicable Permits on expeditious basis
- iii. Dovetail assistance available under related State Government schemes for overall effectiveness and viability of the projects
- iv. Extend incentives available under related industrial promotional policies

b. observe and comply with all its obligations set forth in this Agreement.

## **ARTICLE 7**

### **EVENTS OF DEFAULT AND TERMINATION**

#### **7.1 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.

##### **(a) 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") unless such event has occurred as a result of one or more reasons set out in Article 5.7;

- (i) The Project Company has failed to achieve Financial Close within 6 months 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, such failure is likely to delay achievement of COD beyond 120 days of the Schedule Project Completion Date.
- (iii) The Project Company has failed to achieve COD within 120 days from the Scheduled Project Completion Date.
- (iv) The Project Company has committed Material Breach of this Agreement or the Scheme.
- (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 Article 5.5.
- (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 cater to the minimum number of MSMEs or fails to train minimum number of persons as stated in RFP.

**(b) GOI Event of Default**

Any of the following events shall constitute an event of default by GOI ("GOI Event of Default"), unless caused by a Project Company Event of Default or a Force Majeure Event:

- (i) GOI is in breach of any of its obligations under this Agreement except those for which specific remedy has been provided elsewhere, and has failed to cure such breach within 30 (thirty) days of receipt of notice thereof issued by the Project Company.
- (ii) GOI has repudiated this Agreement or otherwise expressed its intention not to be bound by this Agreement or withdraws the Scheme.
- (iii) GOI has delayed payment of Grant that has fallen due in terms of this Agreement and the same has Material Adverse Effect.
- (iv) Any representation made or warranties given by the GOI under this Agreement has been found to be false or misleading.

**7.2 Termination due to Events of Default**

**(a) 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 issuing 30 days Termination Notice.

**(b) Termination for GOI Event of Default**

- (i) Without prejudice to any other right or remedy which the Project Company may have in respect thereof under this

Agreement, upon the occurrence of GOI Event of Default, the Project Company shall be entitled to terminate this Agreement by issuing 30 days Termination Notice.

**(c) Termination Notice**

If a 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.

**(d) Withdrawal of Termination Notice**

Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice 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.

**7.3 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 installments of Grant.;
- (b) If the Agreement is terminated due to Project Company Event of Default within 7 years from the date of sanction of Grant assistance by the Government under the Scheme, the Project assets created shall at the sole discretion of GOI be vested with the GOI. Entire Grant assistance extended by GOI shall be refunded by the Project Company within 3 months from the date of termination of this Agreement. In the event of take over of Project and the Project assets, the consideration, if any, payable to the Project Company shall be determined following fair and transparent procedures after determining the fair value thereof by an independent consultant to be appointed by GOI. The consideration payable to the Project Company, after adjusting the moneys payable to GOI, will be credited to the no lien account / trust and retention account of the Project Company and shall be first applied towards repayment of the Lenders'

dues,if any, and thereafter the balance shall be paid to the Project Company.

- (c) Upon termination of this Agreement for GOI Event of Default resulting in Material Adverse Effect, GOI shall be liable to pay compensation as determined by independent consultant

#### **7.4 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 8**

#### **MODE OF PAYMENT BY GOI**

##### **8.1 Mode of Payment**

The Project Company hereby expressly authorises GOI to pay Grant 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 / Lenders to the Project.

### **ARTICLE 9**

#### **DISPUTE RESOLUTION**

##### **9.1 Arbitration**

###### **(a) Procedure**

Any dispute, which is not resolved amicably, shall be finally settled by binding arbitration under the Arbitration and conciliation Act, 1996. The arbitration shall be by a sole arbitrator acceptable to both the Parties, failing which by a panel of three arbitrators, one to be appointed by each Party and the third to be appointed by the two arbitrators appointed by the Parties. The Party requiring arbitration shall appoint an arbitrator in writing, inform the other Party about such

appointment and call upon the other Party to appoint its arbitrator. If within 15 days of receipt of such intimation the other Party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration and Conciliation Act, 1996.

**(b) Place of Arbitration**

The place of arbitration shall ordinarily be New Delhi but by agreement of the Parties, the arbitration hearings, if required, may be held elsewhere.

**(c) English Language**

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings take place, English shall be the language to be used in the hearings.

**(d) Enforcement of Award**

The Parties agree that the decision or award resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the Provision of the Arbitration Act.

**(e) Performance during Arbitration**

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 10**

**REPRESENTATIONS AND WARRANTIES, DISCLAIMER**

**10.1 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 authorise 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.
- (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.

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.

## **10.2 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.

## **10.3 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 11 MISCELLANEOUS**

## **11.1 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) mortgages/pledges/hypothecation of goods/ Project assets (including Grant), as security for indebtedness, in favour of the Lenders and working capital providers 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.

## **11.2 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.

### **11.3 Governing Law and Jurisdiction**

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

### **11.4 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.

### **11.5 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.

### **11.6 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.

### **11.7 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.

### **11.8 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.

### **11.9 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.

**11.10 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.

**11.11 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.

**11.12 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 GOI by

(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**

**Enclosed**

**SCHEDULE B**

**PROJECT FACILITIES**

**A. MINI TOOL ROOM FACILITY**

**(PI give full description, Location etc)**

**B. Training Centre Facility**

**(PI give full description, Location etc)**

## **SCHEDULE C**

### **PROJECT REQUIREMENTS**

#### **A. MINI TOOL ROOM FACILITY**

- 1. Design Requirements: PI specify**
- 2. Machinery requirements: PI Specify**
- 3. Construction Requirements: PI specify**
- 4. Performance Standards: PI specify**
- 5. Operation and Maintenance Requirements: PI specify**

#### **B. TRAINING CENTRE FACILITY**

- 1. Design Requirements: PI specify**
- 2. Construction Requirements: PI specify**
- 3. Performance Standards: PI specify**
- 4. Operation and Maintenance Requirements: PI specify**

## **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

Note: Chairperson may co-opt any other member or invitee as may be felt necessary.

### **ANNEXURE-III**

#### **FORM GFR 19-A**

[See Rule 212(1)]

### Form of Utilization Certificate

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.....