

**Format for Tripartite Agreement among Special Purpose Vehicle (SPV), Local Body Institution and State Government under SS-CDP**

This agreement is made at ..... on this the .....th day of ..... 20.... between (1) the President of India, acting through and represented by Director of Industries & Commerce, Government of Kerala (hereinafter referred to as the 'GoK'), (2) Secretary Local Body Department, Government of Kerala of ..... acting through and represented by Secretary (Local Self Government Institution)(herein after referred to as the 'LSG') and (3).....Special Purpose Vehicle (SPV) having its registered office at..... represented by its Managing Director/Chief Executive Officer (hereinafter referred to as the 'SPV').

**WHEREAS** the GoK has introduced a scheme named as "State Sponsored- Cluster Development Programme (SS-CDP)" with the objective of capacity building of nano and micro enterprises (including nano and micro scale service and business entities) and their collectives in the state;

AND WHEREAS the SPV has been created and constituted as a partnership firm/trust/ society/co-operative society/company, *inter alia*, to create, establish, run and maintain a Common Facility Centre at .....(the CFC) for the use and benefit of its members and of other units engaged or coming up in the same industry, trade or vocation in the .....of .....(the Cluster);

AND WHEREAS the SPV has submitted a project for approval of the GoK under the SS-CDP;

AND WHEREAS the GoK has approved the project submitted by the SPV subject to the conditions mentioned in the sanction letter no..... dated ..... (or to be issued) which shall be deemed to be a part of this Agreement and the LSG has also agreed to contribute towards the cost of establishment of the CFC;

AND WHEREAS for binding the Parties to their respective obligations and to ensure long term use of the CFC by the enterprises in the Cluster, the Parties are desirous to enter into an agreement;

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-**

1. The SPV shall set up the CFC at..... on a piece of land to be provided by it free of all encumbrances and charges.
2. The SPV shall contribute to the cost of establishment of the CFC from its resources to the extent and in the form as laid down in the Sanction Letter.
3. The GoK and the LSG shall, on satisfactory proof of the contribution by the SPV, make their respective contributions towards the cost of establishment of the CFC, at such time, in such manner and to such extent as laid down in the Sanction Letter.
4. The establishment of the CFC, including civil works, if any, shall be completed by the SPV within one year of the receipt of the Sanction Letter, or such extended time as the GoI may, on its satisfaction as to the reasons of delay, grant.
5. The SPV shall be exclusively responsible for the day-to-day running of the CFC. The aim of running the CFC shall be to provide common services to the enterprises in the Cluster at affordable cost as well as to generate enough income to meet all its running expenditure,

depreciation and provision for replacement/expansion of capital assets. However, any shortfall or excess of income over expenses shall be kept or borne by the SPV only.

6. The disbursement of funds by the GoK will be made only after the upfront contribution to be made by the SPV, the LSG or the beneficiaries.
7. Further, the SPV/implementing agency will ensure that necessary infrastructure like provisioning of land and building including water and power supply for CFC is completed before they approach GoI for release of its share.
8. Pending utilization of GoK grant, the funds will be parked in a separate dedicated account created for this purpose. Interest accrued, if any, on unutilized fund shall be adjusted against future disbursement under the scheme.
9. GoK will reserve the right to carry out physical verification of the assets acquired with the funds or initiate any other enquiry as it may deem fit to satisfy the competent authority with regard to the proper utilization of the funds released.
10. The SPV shall furnish utilization certificates for amounts released as grant in-aid duly verified by the statutory auditors.
11. The GoK will act as a facilitator to supervise and evaluate the progress of the project separately. The LSG will also inform the GoK about the status of the establishment or running of CFC and shall also report to the GoK for any discrepancies in its management or otherwise.
12. All plant, machinery, fixtures or equipment procured for the purpose of the CFC out of or with the support of the GoK or LSG grant shall be the exclusive property of the GoK, though in the custody and use of the SPV.
13. The SPV shall, at its own cost, insure and keep insured all the plant, machinery, fixtures and equipment of the CFC for a minimum period of 15 years. In case of loss of or damage to such plant, machinery, fixtures and equipment, etc., the insurance monies shall be payable to the GoK.
14. The SPV shall observe all the conditions and stipulations of the Sanction Letter.
15. The management of the SPV and the operation of the CFC shall be in accordance with the GoK Guidelines dated ....., which shall be deemed to be a part of this Agreement.
16. The SPV shall keep all monies not immediately required in interest bearing deposits with any Scheduled Bank in India.
17. In the event of any liquidation or bankruptcy proceedings or any threatened distress action against the SPV or any of its assets all plant, machinery, fixtures and equipment procured for the purpose of the CFC out of or with the support of the GoK or LSG grant shall be outside such proceedings and the GoK may assume the control and management of the SPV and appoint any of its officer or officer of the LSG or any semi-government or nongovernment body to run the CFC.
18. The SPV represents and warrants:
  - A. That it has been duly constituted under the law as applicable and has full authority to enter into this Agreement.
  - B. That this agreement is binding upon it in all its provisions.
  - C. That it shall work on mutual co-operation basis on sound managerial and business principles and no managerial changes shall be made which may adversely affect the smooth functioning of the CFC.

- D. That it shall keep all the plant, machinery, fixtures and equipment in good working order and shall undertake all preventive and remedial maintenance and upkeep and maintain insurance.
  - E. That the plant, machinery, fixtures and equipment procured out of or with support of the GoK and LSG grant, is the property of GoK and the SPV shall not sell, hypothecate, mortgage, charge or create any encumbrances against the said plant, machinery, fixtures and equipment or any part of it in favour of any person, for any reason or transaction.
  - F. That the SPV shall follow the directions of the GoK and LSG, as may be issued from time to time for better management of the SPV or the better running of the CFC.
  - G. That the SPV acknowledges that the SS-CDP provides for only one time grant towards capital cost of establishing the CFC and no subsidy/grant/assistance is envisaged for the recurring expenses or for replacement, renovation or expansion of the capital assets.
  - H. In the event it is found that the SPV has not utilized the amount of grant, or any part of it, for the setting up of the CFC or has subsequently sold or otherwise disposed of any of the assets of the CFC acquired out of the grant, the GoK, without prejudice to any other rights, shall be entitled to recover the amount of loss as arrears of land revenue from the SPV and /or persons connected with its management jointly and severally.
- 19. In case of any disputes or differences arising from, in relation to or in connection with this Agreement and not otherwise provided for in the succeeding clause, shall be settled by arbitration through reference to a sole arbitrator nominated by the Secretary, Department of Law, Government of Kerala, Thiruvananthapuram (the Law Secretary). The provisions of the Arbitration and Conciliation Act, 1996 shall apply to the arbitration proceedings. Courts in Thiruvananthapuram shall have exclusive jurisdiction in all the matters.
  - 20. In case of violation of the stipulated conditions or non observance of the Sanction Letter or the GoK Guidelines by the SPV which is not cured within 15 days of issue of notice by the GoK, the GoK in consultation with the LSG, may, for such time as it may think proper, assume the management of the SPV or delegate the same to the LSG, or a semi-government or non-government body, to assure proper functioning of the CFC. The decision of GoK in this regard will be final. In such event the SPV shall have no claims for any investment made in the CFC or its management.
  - 21. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions, which shall remain in full force.
  - 22. Failure or delay on the part of GoK in insisting upon strict performance by the SPV or in taking action against the SPV, or grant of time or any other indulgence by the GoK, shall not be deemed to be waiver of any breach nor waiver on any occasion of breach shall be deemed to be a waiver for other occasions or other breaches.
  - 23. No amendment to this agreement shall be valid unless expressed in writing and duly signed by all the Parties.
  - 24. This agreement does not constitute any partnership of the GoK or the LSG with the SPV and the GoK and the LSG shall not be responsible for any act, omission, negligence, etc. of the SPV or its employees, agents or contractors or any injury suffered or claim made by any person in respect of the working of the CFC.

1) Government of Kerala, Represented by Shri.....

2) Local Self Government Institution, Represented by Shri.....

3) Special Purpose Vehicle Represented by Shri.....