

TRIPARTITE MEMORANDUM OF UNDERSTANDING
AMONGST

Special Purpose Vehicle (Implementing Agency)

AND

_____ (Public Agency)

AND

Kerala Infrastructure Investment Fund Board

For _____

This TRIPARTITE MEMORANDUM OF UNDERSTANDING (hereinafter referred to
as the "Tripartite MoU") is made this ___ day of _____ 2016

BY AND AMONGST

Special Purpose Vehicle (hereinafter referred to as "SPV") which expression shall
unless it be repugnant to the subject or context thereof, include its successors and
assigns, of the FIRST PART;

AND

Public Agency which expression shall unless it be repugnant to the subject or
context thereof, include its successors and assigns, of the SECOND PART

AND

Chief Executive Officer, Kerala Infrastructure Investment Fund Board
(hereinafter referred to as "KIIFB") which expression shall unless it be repugnant to
the subject or context thereof, includes its successors and assigns, of the THIRD
PART.

The SPV, the Public Agency and KIIFB is hereinafter also referred to collectively as
the "Parties" and individually as the "Party".

WHEREAS the **State Government** has accorded administrative sanction for
_____ (hereinafter referred to as "THE PROJECT") vide

Order _____ dated _____ and had directed that the said project shall be implemented through public sector mode/public-private partnership mode(*score off whichever is not applicable*).

Here Enter [Details of the project in Brief]

WHEREAS SECOND PART seeks financial assistance from THIRD PART for THE PROJECT to be implemented through FIRST PART;

AND WHEREAS FIRST PART has entered into contract (hereinafter referred to as "CONTRACT") with CONTRACTOR(S) for implementing THE PROJECT.

NOW, THEREFORE, IT IS HEREBY AGREED between the Parties as follows:

1. This **Tripartite MoU** signed between (a) KIIFB, (b) the Public Agency and (c) SPV for THE PROJECT shall be implemented by the Parties in letter and spirit.
2. This **Tripartite MoU** shall be read in accordance with the provisions of KIIF Scheme issued under the KIIF Act including any further amendments, notifications etc. thereto and on the Terms and Conditions herein set out. The said Scheme shall form an integral part of this **Tripartite MoU** as if fully set forth hereunder and all the terms and conditions set out in the said Scheme shall be binding on the Parties hereto.
3. The CONTRACTOR(S) shall implement THE PROJECT as per the terms and conditions of the CONTRACT entered between them and the SPV for the implementation of THE PROJECT.
4. In cases where financial assistance is sought from THIRD PART for implementing revenue generating projects or in cases where SECOND PART is able to generate savings on account of implementation of the project for which financial assistance is provided by THIRD PART, the FIRST PART and SECOND PART shall repay the financial assistance provided by Third Part as set out in the REPAYMENT AGREEMENT which shall be entered into between the FIRST PART, SECOND PART and THIRD PART before the

commencement of THE PROJECT or release of the first instalment of the financial assistance, whichever is earlier.

5. All bills raised by the CONTRACTOR(S) towards the implementation of THE PROJECT as per the CONTRACT shall be scrutinised, passed and recommended for payment to KIIFB by the SPV.
6. The SPV shall be ultimately responsible for monitoring the progress of THE PROJECT, physical verification of THE PROJECT and ensuring the quality and timely completion of implementation as stipulated in the CONTRACT.
7. The responsibility for the operation and maintenance of THE PROJECT on the completion of its implementation shall be agreed upon between FIRST PART and SECOND PART, the terms of which shall be appended as a Schedule-I to this **Tripartite MoU**.
8. The FIRST PART shall ensure that all the obligations of the CONTRACTOR(S) arising out of this **Tripartite MoU** including those specified in Schedule-II to this **Tripartite MoU** are also suitably incorporated in the CONTRACT entered into between FIRST PART and the CONTRACTOR(S).
9. The SPV shall furnish to THIRD PART a monthly progress report of THE PROJECT in the prescribed format and mode. THIRD PART shall provide the necessary online project management software platform for the SPV to enter the detailed project tasks and timelines for execution and completion of THE PROJECT. The SPV shall specifically identify, demarcate and inform the THIRD PART, deviations, if any, from these tasks and timelines as well as from the terms and conditions of the CONTRACT.
10. The SPV shall ensure that the CONTRACTOR(S) provides safe and healthy working environment for the workers engaged in the implementation of THE PROJECT.
11. The SPV and the CONTRACTOR(S) shall jointly and severally undertake to indemnify THIRD PART for any loss suffered on account of breach of any provision of this **Tripartite MoU** or the CONTRACT.
12. Responsibility of THIRD PART shall be limited to providing financial assistance and release of payment for bills submitted by the CONTRACTOR(S) which have been certified by the SPV.
13. KIIFB shall be empowered to monitor and review implementation of THE PROJECT. For this purpose, the Inspection Authority constituted under

Section 17A of the Kerala Infrastructure Investment Fund Act, 1999 as amended by Kerala Infrastructure Investment Fund (Amendment) Act, 2016, shall be competent to inspect THE PROJECT or documents pertaining to THE PROJECT.

14. The SPV shall identify those tasks or activities in the Project Management Software provided by KIIFB as milestones for release of payment to the CONTRACTOR(S). These milestones that have to be completed satisfactorily for payment to the CONTRACTOR(S) shall be part of the conditions that the CONTRACTOR(S) will have to fulfil as part of the CONTRACT between the SPV and the CONTRACTOR(S). The SPV shall ensure that these milestones identified for release of payment are made an integral part of the CONTRACT between the SPV and the CONTRACTOR(S). KIIFB shall release the instalments of funds to the CONTRACTOR(S) based on the payment milestones so agreed on at the time of signing the CONTRACT between the SPV and the CONTRACTOR(S). Any subsequent changes or deviations from the milestones for payments recorded in the CONTRACT between the SPV and the CONTRACTOR(S) shall be only with the consent of KIIFB. KIIFB shall give such consent only after satisfying itself that such changes or deviations in the payment milestones are reasonable and expedient to the completion of THE PROJECT.
15. FIRST PART shall submit through SECOND PART a half-yearly report of the progress in respect of the implementation of THE PROJECT.
16. FIRST PART shall submit through SECOND PART a COMPLETION REPORT to THIRD PART on the completion of implementation of THE PROJECT;
17. In the event of requirement of additional funds due to unforeseen circumstances or cost over-run, ordinarily the SECOND PART through FIRST PART will ensure that THE PROJECT is completed within stipulated period without raising any additional demand for funding to THIRD PART. However, in cases where the THIRD PART forms a view that the requirement of additional funds is justified and not due to any lapses on the part of the CONTRACTOR(S) or First PART, the THIRD PART may with the approval of the SECOND PART provide the additional funds or part thereof.

18. That the Parties to the **Tripartite MoU** further covenant that in case of a dispute between the parties the matter will be resolved through mutual discussion. First Part shall also ensure that the CONTRACT provides for resolution of disputes through arbitration or a court of law, as deemed appropriate by FIRST PART, in the event disputes are not resolvable through mutual discussions.
19. THIRD PART's obligations will be over on the release of payment of the last bill raised by the CONTRACTOR(S) duly approved by FIRST PART. However, THIRD PART shall retain the right to inspect THE PROJECT and the obligations of the FIRST PART and the CONTRACTOR(S) shall survive till the extinguishment of the Defect Liability Period or as otherwise specified in the CONTRACT, whichever is later.
20. That in case of any breach regarding the terms and conditions of the CONTRACT or this **Tripartite MoU**, THIRD PART shall be entitled to withhold further financial assistance and shall further be entitled to jointly and severally recover from FIRST PART and the CONTRACTOR(S), the financial assistance, if any, already provided or any amount as determined in consultation with SECOND PART.

IN WITNESS HEREOF all the Parties have put their hands on these presents of the **Tripartite MoU** in the presence of witnesses.

SIGNATORIES:

1. For SPV _____ (FIRST PART)
2. For Public Agency _____ (SECOND PART)
3. For _____ (KIIFB) (THIRD PART)

WITNESS:

1.
2.

Schedule I

[See clause 7]

**Terms of operation and maintenance of THE PROJECT on the completion of its
implementation**

Schedule II

[See clause 8]

Obligation arising out of this Tripartite MoU which shall be incorporated in

THE CONTRACT

1. Detailed project tasks and timelines for execution and completion of the Project as per the approved Work Breakdown Structure(WBS)
2. Milestones identified by the SPV for release of payment to the Contractor.
3. Mechanism for resolution of disputes.
4. Provision for Defect Liability Period as prescribed by the Government prevailing at the time of entering into the CONTRACT.
5. The clause indemnifying KIIFB for any loss suffered on account of breach of any provisions of this **Tripartite MoU** or the Contract by the SPV or Contractor.