

CONTRACT FOR PROVISION OF PROGRAM MANAGEMENT SERVICES FOR NATIONAL PMU FOR SCHEME FOR ROLLOUT OF E-DISTRICT MMP

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AGREEMENT

SELECTION OF CONSULTANCY AGENCY FOR PROVISION OF PROGRAM MANAGEMENT SERVICES FOR NATIONAL PMU FOR SCHEME FOR ROLLOUT OF E-DISTRICT MMP

AGREEMENT No. 3(16) / 2011 – EG – II dated

This AGREEMENT (hereinafter called the “Agreement”) is made on the day of the month of 2011, between, on the one hand, the [President of India acting through Director E-governance Department of Information Technology (hereinafter called the “DIT” which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand,

..... (hereinafter called the “Consultant” which expression shall include their respective successors and permitted assigns).

WHEREAS

- (A) The DIT released its Request for Proposal for selection of a Consultancy Agency for provision of Program Management Services for National PMU for Scheme for National Rollout for e-District MMP (hereinafter called the “Project”);
- (B) the Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the DIT that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the DIT on the terms and conditions as set forth in the RFP and this Agreement; and
- (C) DIT, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated (the “LOA”); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement. NOW, THEREFORE, the parties hereto hereby agree as follows:

1 GENERAL

1.1 Definitions and Interpretation

- 1.1.1 The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning hereinafter respectively assigned to them:

- (a) "Agreement" means this Agreement, together with all the Annexes;
- (b) "Agreement Value" shall have the meaning set forth in Clause 6.1.2;
- (c) "Applicable Laws" means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time;
- (d) "Confidential Information" shall have the meaning set forth in Clause 3.3;
- (e) "Conflict of Interest" shall have the meaning set forth in Clause 3.2 read with the provisions of RFP;
- (f) "Dispute" shall have the meaning set forth in Clause 9.2.1;
- (g) "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- (h) "Government" means the Government of India ;
- (i) "INR, Re. or Rs." means Indian Rupees;
- (j) "Party" means the DIT or the Consultant, as the case may be, and Parties means both of them;
- (k) "Personnel" means persons hired by the Consultant as employees and assigned to the performance of the Services or any part thereof;
- (l) "RFP" means the Request for Proposal document in response to which the Consultant's proposal for providing Services was accepted;
- (m) "Services" means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- (n) "Third Party" means any person or entity other than the Government, the DIT, or the Consultant

All terms and words not defined herein shall, unless the context otherwise requires, have the meaning assigned to them in the RFP.

1.1.2 The following documents along with all addenda issued thereto shall be deemed to form and be read and construed as integral part of this Agreement and in case of any contradiction between or among them the priority in which a document would prevail over another would be as laid down below beginning from the highest priority to the lowest priority:

- (a) Agreement;
- (b) Annexes of Agreement;

- (c) RFP; and
- (d) Letter of Award
- (e) Technical Proposal submitted by the Consultant

1.2 Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the DIT and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Rights and obligations

The mutual rights and obligations of the DIT and the Consultant shall be as set forth in the Agreement, in particular:

- (a) the Consultant shall carry out the Services in accordance with the provisions of the Agreement; and
- (b) the DIT shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.4 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at New Delhi shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.5 Language

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

1.6 Table of contents and headings

The table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

1.7 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Consultant, be given by facsimile or e-mail and by registered acknowledgement due letter to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the DIT;
- (b) in the case of the DIT, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the DIT with a copy delivered to the DIT Representative set out below in Clause 1.9 or to such other person as the DIT may from time to time designate by notice to the Consultant;
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or email, it shall be deemed to have been delivered on the working day following the date of its delivery.

1.8 Location

1.8.1 The Services shall be performed at the various locations in accordance with section 3.14 of the RFP and at such locations as are incidental thereto, including the offices of the Consultant.

1.9 Authorised Representatives

1.9.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the DIT or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1.9.

1.9.2 The DIT may, from time to time, designate one of its officials as the DIT Representative. Unless otherwise notified, the DIT Representative shall be:

Abhishek Singh

Director DIT

Tel: ***** Fax: ***** email: *****

1.9.3 The Consultant may designate one of its employees as Consultant's Representative. Unless otherwise notified, the Consultant's Representative shall be:

Tel: ***** Mobile: ***** Fax: *****

E-mail: *****

1.10 Taxes and duties

Unless otherwise specified in the Agreement, the Consultant shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Laws and the DIT shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2 COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement

This Agreement shall come into force and effect on the date of issue of Letter of Award by DIT to the Consultant (the "Effective Date").

2.2 Commencement of Services

The Consultant shall commence the Services within a period of 30 (thirty) days from the Effective Date, unless otherwise agreed by the Parties.

2.3 Termination of Agreement for failure to commence Services

If the Consultant does not commence the Services within the period specified in Clause 2.2 above, the DIT may, by not less than 1 (one) weeks' notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, this Agreement shall stand terminated and the Consultant shall be deemed to have accepted such termination.

2.4 Expiration of Agreement

Unless terminated earlier pursuant to Clauses 2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) expiry of a period of 60 (sixty) days after the delivery of the final Deliverable to the DIT; and (ii) the expiry of [4 (four) years] from the Effective Date subject to delivery of all deliverables by the consultant

to DIT under this contract. (iii) the expiry of 6 (six) years from the Effective Date. Upon Termination, the DIT shall make payments of all amounts due to the Consultant hereunder.

2.5 Entire Agreement

2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement 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 such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the RFP and the technical proposal submitted by the consultant shall continue to subsist and shall be deemed to form part of this Agreement.

2.5.2 Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, the provisions of RFP and the technical proposal submitted by the consultant shall apply.

2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Each Party shall give due consideration to any proposals for modification made by the other Party.

2.7 Force Majeure

2.7.1 Definition

- (a) For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.

- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's agents, vendors or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.
- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

2.7.2 No breach of Agreement

The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

2.7.3 Measures to be taken

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 7 (seven) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
- (c) The Parties shall take all reasonable measures to minimise the consequences of any event of Force Majeure.

2.7.4 Extension of time

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

2.7.5 Consultation

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall

consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

2.8 Suspension of Agreement

The DIT may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 15 (fifteen) days after receipt by the Consultant of such notice of suspension.

2.9 Termination of Agreement

2.9.1 By the DIT

The DIT may, by not less than 15 (fifteen) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.1, terminate this Agreement if:

- (a) the Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within 15 (fifteen) days of receipt of such notice of suspension or within such further period as the DIT may have subsequently granted in writing;
- (b) the Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;
- (d) the Consultant submits to the DIT a statement which has a material effect on the rights, obligations or interests of the DIT and which the Consultant knows to be false;
- (e) any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or

2.9.2 By the Consultant

The Consultant may, by not less than 30 (thirty) days' written notice to the DIT, such notice to be given after the occurrence of any of the events specified in this Clause 2.9.2, terminate this Agreement if:

- (a) the DIT fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause 9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) the DIT is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty-five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by the DIT of the Consultant's notice specifying such breach;
- (c) as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) the DIT fails to comply with any final decision reached as a result of arbitration pursuant to Clause 9 hereof.

2.9.3 Cessation of rights and obligations

Upon termination of this Agreement pursuant to Clauses 2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survives such Termination; (ii) the obligation of confidentiality set forth in Clause 3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause 3.5, as relate to the Consultant's Services provided under this Agreement, and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Laws.

2.9.4 Cessation of Services

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and materials furnished by the DIT, the Consultant shall proceed as provided respectively by Clauses 3.8 or 3.9 hereof.

2.9.5 Payment upon Termination

Upon termination of this Agreement pursuant to Clauses 2.9.1 or 2.9.2 hereof, the DIT shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the DIT):

- (i) remuneration pursuant to Clause 6 hereof for Services satisfactorily performed prior to the date of termination;
- (ii) reimbursable expenditures pursuant to Clause 6 hereof for expenditures actually incurred prior to the date of termination; and
- (iii) except in the case of termination pursuant to Sub-clauses (a) through (e) of Clause 2.9.1 hereof, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement including the cost of the return travel of the Consultant's personnel.

2.9.6 Disputes about Events of Termination

If either Party disputes whether an event specified in Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within 30 (thirty) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

3 OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standards of Performance

The Consultant shall perform the Services and carry out its obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and employ appropriate advanced technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Agreement or to the Services, as a faithful adviser to the DIT, and shall at all times support and safeguard the DIT's legitimate interests in any dealings with Third Parties.

3.1.2 Terms of Reference

The scope of Services to be performed by the Consultant is specified in the Terms of Reference (the "TOR") at Annex-1 of this Agreement. The Consultant shall provide the Deliverables specified therein in conformity with the time schedule stated therein.

3.1.3 Applicable Laws

The Consultant shall perform the Services in accordance with the Applicable Laws and shall take all practicable steps to ensure that the Personnel and agents of the Consultant comply with the Applicable Laws.

3.2 Conflict of Interest

3.2.1 The Consultant shall not have a Conflict of Interest and any breach hereof shall constitute a breach of the Agreement.

3.2.2 Consultant and Affiliates not to be otherwise interested in the Project

The Consultant agrees that, during the term of this Agreement and after its termination, the Consultant shall be disqualified from providing goods, works, services, loans or equity for any project resulting from or closely related to the Services and any breach of this obligation shall amount to a Conflict of Interest; provided that the restriction herein shall not apply after a period of two years from the completion of this assignment or to consulting assignments granted by banks/ lenders at any time; provided further that this restriction shall not apply to consultancy/ advisory services provided to the DIT in continuation of this Consultancy or to any subsequent consultancy/ advisory services provided to the Authority in accordance with the rules of the DIT. For the avoidance of doubt, an entity affiliated with the Consultant shall include a partner in the firm of the Consultant or a person who holds more than 5% (five per cent) of the subscribed and paid up share capital of the Consultant, as the case may be, and any Associate thereof.

3.2.3 Prohibition of conflicting activities

Neither the Consultant nor its Personnel shall engage, either directly or indirectly, in any of the following activities:

- (a) during the term of this Agreement, any business or professional activities which would conflict with the activities assigned to them under this Agreement;
- (b) after the termination of this Agreement, such other activities as may be specified in the Agreement; or
- (c) at any time, such other activities as have been specified in the RFP as Conflict of Interest.

3.2.4 Consultant not to benefit from commissions, discounts, etc.

The remuneration of the Consultant pursuant to Clause 6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the

Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any, as well as its Personnel and agents, similarly shall not receive any such additional remuneration.

3.2.5 The Consultant and its Personnel shall observe the highest standards of ethics and not have engaged in and shall not hereafter engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “Prohibited Practices”). Notwithstanding anything to the contrary contained in this Agreement, the DIT shall be entitled to terminate this Agreement forthwith by a communication in writing to the Consultant, without being liable in any manner whatsoever to the Consultant, if it determines that the Consultant has, directly or indirectly or through an agent, engaged in any Prohibited Practices in the Selection Process or before or after entering into of this Agreement. In such an event, the DIT shall forfeit and appropriate the Performance Security, if any, as mutually agreed genuine pre-estimated compensation and damages payable to the DIT towards, inter alia, time, cost and effort of the DIT, without prejudice to the DIT’s any other rights or remedy hereunder or in law.

3.2.6 Without prejudice to the rights of the DIT under Clause 3.2.5 above and the other rights and remedies which the DIT may have under this Agreement, if the Consultant is found by the DIT to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be eligible to participate in any tender or RFP issued during a period of 2 (two) years from the date the Consultant is found by the DIT to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

3.2.7 For the purposes of Clauses 3.2.5 and 3.2.6, the following terms shall have the meaning hereinafter respectively assigned to them:

- (a) **“corrupt practice”** means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process (for removal of doubt, offering of employment or employing or engaging in any manner whatsoever, directly or indirectly, any official of the DIT who is or has been associated in any manner, directly or indirectly with Selection Process or LOA or dealing with matters concerning the Agreement before or after the

execution thereof, at any time prior to the expiry of one year from the date such official resigns or retires from or otherwise ceases to be in the service of the DIT, shall be deemed to constitute influencing the actions of a person connected with the Selection Process); or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser the DIT in relation to any matter concerning the Project;

- (b) **“fraudulent practice”** means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) **“coercive practice”** means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by the Authority under this Agreement;
- (d) **“undesirable practice”** means (i) establishing contact with any person connected with or employed or engaged by the DIT with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) **“restrictive practice”** means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

3.3 Confidentiality

The Consultant, and its Personnel shall not, either during the term or within two years after the expiration or termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by the DIT to the Consultant, and its Personnel; any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the DIT’s employees, officers or other professionals or suppliers, customers, or contractors of the DIT; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement (“Confidential Information”), without the prior written consent of the DIT.

Notwithstanding the aforesaid, the Consultant and its Personnel may disclose Confidential Information to the extent that such Confidential Information:

- (i) was in the public domain prior to its delivery to the Consultant, and its Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, and its Personnel;
- (ii) was obtained from a third party with no known duty to maintain its confidentiality;
- (iii) is required to be disclosed by Applicable Laws or judicial or administrative
- (iv) or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, and its Personnel shall give the DIT, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and

3.4 Liability of the Consultant

3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.

3.4.2 The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to DIT for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.

3.4.3 The Parties hereto agree that in case of negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the DIT's property, shall not be liable to the DIT:

- (i) for any indirect or consequential loss or damage; and
- (ii) for any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause 6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability, whichever of (a) or (b) is higher.

3.4.4 This limitation of liability specified in Clause 3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to 3 (three) times the Agreement Value.

3.5 Accounting, inspection and auditing

The Consultant shall:

- (a) keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and standards such as Indian Accounting Standards, GAAP, etc and in such form and detail as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and
- (b) permit the DIT or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the DIT.

3.6 Reporting obligations

- 3.6.1 The Consultant shall submit to the DIT the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.
- 3.6.2 The Consultant shall electronically and by mail, submit fortnightly time reports of each of the Personnel, to the DIT. Such time reports shall be submitted on the 15th and the last day of each calendar month by end of the business day and shall include a brief description of work performed during that fortnight by each of the Personnel.

3.7 Documents prepared by the Consultant to be property of the DIT

- 3.7.1 All reports and other documents (collectively referred to as "Consultancy Documents") prepared by the Consultant (or any Third Party) in performing the Services shall become and remain the property of the DIT, and all intellectual property rights in such Consultancy Documents shall vest with the DIT. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with the DIT under law, shall automatically stand assigned to the DIT as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as the DIT may deem necessary to secure its rights herein assigned by the Consultant.
- 3.7.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the DIT, together with a detailed inventory

thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the DIT.

- 3.7.3 The Consultant shall hold the DIT harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as "Claims") which may arise from or due to any unauthorised use of such Consultancy Documents, or due to any breach or failure on part of the Consultant to perform any of its duties or obligations in relation to securing the aforementioned rights of the DIT.

3.8 Materials furnished by the DIT

Materials made available to the Consultant by the DIT shall be the property of the DIT and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the DIT, an inventory of such materials and shall dispose of such materials in accordance with the instructions of the DIT.

3.9 Providing access to Project Office and Personnel

The Consultant shall ensure that DIT, and officials of DIT having authorisation from the DIT, are provided unrestricted access to the office of the Consultant and to all Personnel during office hours. The DIT's official, who has been authorised by the Authority in this behalf, shall have the right to inspect the Services in progress, interact with Personnel of the Consultant and verify the records relating to the Services for his satisfaction.

3.10 Accuracy of Documents

The Consultant shall be responsible for accuracy of the documents drafted and/ or vetted and data collected by it directly or procured from other agencies/authorities, estimates and all other details prepared by it as part of these services. Subject to the provisions of Clause 3.4, it shall indemnify the DIT against any inaccuracy in its work which might surface during implementation of the Project, if such inaccuracy is the result of any negligence or inadequate due diligence on part of the Consultant or arises out of its failure to conform to good industry practice. The Consultant shall also be responsible for promptly correcting, at its own cost and risk, the documents including any re-survey / investigations.

4 CONSULTANT'S PERSONNEL

4.1 General

The Consultant shall employ and provide such qualified and experienced Personnel as per section 3.14 of the RFP and as per the Technical proposal as may be required to carry out the Services.

4.2 Deployment of Personnel

4.2.1 The designations, names and other particulars of each of the Consultant's Personnel required in carrying out the Services are described in Annex-2 of this Agreement.

4.3 Approval of Personnel

4.3.1 The Personnel listed in Annex-2 of the Agreement are hereby approved by DIT. No other Personnel shall be engaged without prior approval of the DIT.

4.3.2 If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to the DIT its proposal along with a CV of such person in the form provided at section 8.5 Annexure 5 of the RFP of the RFP and DIT may approve or reject such proposal. In case the proposal is rejected, the Consultant may propose an alternative person for the DIT's consideration.

4.4 Substitution of Personnel

The DIT expects all the Personnel specified in the Proposal to be available during implementation of the Agreement. The DIT will not consider any substitution of Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Personnel. Such substitution shall be limited to not more than two Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the DIT.

4.5 Working hours, overtime, leave, etc.

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. Any taking of leave by any Personnel for a period exceeding 7 days shall be subject to the prior approval of the DIT, and the Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

4.6 Project Manager

The person designated as the Project Manager (the “Project Manager”) shall be responsible for the coordinated, timely and efficient functioning of the Personnel and for day to day performance of the Services.

5 OBLIGATIONS OF THE DIT

5.1 Assistance in clearances etc.

Unless otherwise specified in the Agreement, the DIT shall make best efforts to ensure that the Government shall:

- (a) provide the Consultant, and Personnel with work permits and such other documents as may be necessary to enable the Consultant or Personnel to perform the Services;
- (b) issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

5.2 Access to land and property

The DIT warrants that the Consultant shall have, free of charge, unimpeded access to the site of the project in respect of which access is required for the performance of Services; provided that if such access shall not be made available to the Consultant as and when so required, the Parties shall agree on (i) the time extension, as may be appropriate, for the performance of Services, if any, to be made to the Consultant.

5.3 Payment

In consideration of the Services performed by the Consultant under this Agreement, the DIT shall make to the Consultant such payments and in such manner as is provided in Clause 6 of this Agreement.

6 PAYMENT TO THE CONSULTANT

6.1 Cost estimates and Agreement Value

- 6.1.1 The cost of the Services payable to the Consultant is set forth in Annex-3 of the Agreement.

6.1.2 The payments under this Agreement shall not exceed the agreement value specified herein (the “Agreement Value”) as set forth in Annex-3 of the Agreement. The Parties agree that the Agreement Value is Rs. (Rs.),

6.2 Currency of payment

All payments shall be made in Indian Rupees. The Consultant shall be free to convert Rupees into any foreign currency as per Applicable Laws.

6.3 Mode of billing and payment

Billing and payments in respect of the Services shall be made as follows:-

- a) The Consultant shall be paid for its services as per the Payment Schedule at Annex-6 of this Agreement, and Section 5 of the RFP
- b) The DIT shall pay to the Consultant, only the undisputed amount.
- c) The DIT shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by the DIT of duly completed bills with necessary particulars (the “Due Date”).
- d) Any amount which the DIT has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to the DIT within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by the DIT for reimbursement must be made within 1 (one) year of such payment. Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- e) All payments under this Agreement shall be made to the account of the Consultant as may be notified to the DIT by the Consultant.

7 LIQUIDATED DAMAGES AND PENALTIES

7.1 Performance Security

- 7.1.1 For the purposes of this Agreement, performance security shall be deemed to be an amount equal to 10% (ten per cent) of the Agreement Value (the “Performance Security”);
- 7.1.2 The Consultant will furnish a Bank Guarantee substantially in the form specified at Annex-5 of this Agreement as performance security towards this contract.

- 7.1.3 The Successful bidder shall at his own expense, deposit with DIT, within seven (15) working days of the date of notice of award of the contract or prior to signing of the contract, whichever is earlier, an unconditional and irrevocable Performance Bank Guarantee (PBG) from a Scheduled Bank acceptable to DIT, payable on demand, for the due performance and fulfilment of the contract by the bidder.
- 7.1.4 This Performance Bank Guarantee will be for an amount equivalent to 10% of contract value. All charges whatsoever such as premium, commission, etc. with respect to the Performance Bank Guarantee shall be borne by the bidder.
- 7.1.5 The performance bank guarantee shall be valid till the Expiration of Agreement plus six months, subject to annual renewals
- 7.1.6 The Performance Bank Guarantee may be discharged/ returned by DIT upon being satisfied that there has been due performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee.
- 7.1.7 In the event of the Bidder being unable to service the contract for whatever reason, DIT would evoke the PBG. Notwithstanding and without prejudice to any rights whatsoever of DIT under the Contract in the matter, the proceeds of the PBG shall be payable to DIT as compensation for any loss resulting from the Bidder's failure to complete its obligations under the Contract. DIT shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Bidder is in default.
- 7.1.8 DIT shall also be entitled to make recoveries from the Bidder's bills, performance bank guarantee, or from any other amount due to him, the equivalent value of any payment made to him due to inadvertence, error, collusion, misconstruction or misstatement.

7.2 Liquidated Damages

7.2.1 Liquidated Damages for error/variation

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by the DIT in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of the Agreement Value.

7.2.2 Encashment and appropriation of Performance Security

The DIT shall have the right to invoke and appropriate the proceeds of the Performance Security, in whole or in part, without notice to the Consultant in the event of breach of this Agreement or for recovery of liquidated damages specified in this Clause 7.2.

7.3 Penalty for deficiency in Services

In addition to the liquidated damages not amounting to penalty, as specified in Clause 7.2, warning may be issued to the Consultant for minor deficiencies on its part. In the case of significant deficiencies in Services causing adverse effect on the Project or on the reputation of the DIT, other penal action including debarring for a specified period may also be initiated as per policy of the DIT.

8 FAIRNESS AND GOOD FAITH

8.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Agreement and to adopt all reasonable measures to ensure the realization of the objectives of this Agreement.

8.2 Operation of the Agreement

The Parties recognize that it is impractical in this Agreement to provide for every contingency which may arise during the life of the Agreement, and the Parties hereby agree that it is their intention that this Agreement shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Agreement either Party believes that this Agreement is operating unfairly, the Parties will use their best efforts to agree on such action as may be necessary to remove the cause or causes of such unfairness, but failure to agree on any action pursuant to this Clause 8.2 shall not give rise to a dispute subject to arbitration in accordance with Clause 9 hereof.

9 SETTLEMENT OF DISPUTES

9.1 Amicable settlement

The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or the interpretation thereof.

9.2 Dispute resolution

- 9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “Dispute”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 9.3.
- 9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

9.3 Conciliation

In the event of any Dispute between the Parties, either Party may call upon [Secretary, ***** Ministry] and the Managing Partner/ Chairman of the Board of Directors of the Consultant or a substitute thereof for amicable settlement, and upon such reference, the said persons shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 9.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 9.4.

9.4 Arbitration

- 9.4.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 9.3, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance with Clause 9.4.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The venue of such arbitration shall be New Delhi and the language of arbitration proceedings shall be English.
- 9.4.2 There shall be an Arbitral Tribunal of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so

selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

9.4.3 The arbitrators shall make a reasoned award (the "Award"). Any Award made in any arbitration held pursuant to this Clause 9 shall be final and binding on the Parties as from the date it is made, and the Consultant and the DIT agree and undertake to carry out such Award without delay.

9.4.4 The Consultant and the DIT agree that an Award may be enforced against the Consultant and/or the DIT, as the case may be, and their respective assets wherever situated.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed in their respective names as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

For and on behalf of

Consultant:

(Signature)

(Name)

(Designation) ` `

(Address) `

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of

DIT

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of:

2.

10 Annex-1 Terms of Reference or Scope of Work of the Consultant

(Refer Clause 3.1.2)

(Reproduce Section 3 of the RFP)

11 Annex-2 Deployment of Personnel

(Refer Clause 4.2)

(Reproduce as per Annexure 4 : Form Tech 2: Team Composition of the RFP)

12 Annex-3 Cost of Services

(Refer Clause 6.1)

(Reproduce as per Section 7.6 Annexure 6 of RFP, Financial Proposal Submission Form)

13 Annex-4 Payment Schedule

(Refer Clause 6.3) Reproduce 5.1 of the RFP

14 Annexure 5 - Proforma for Bank Guarantee towards Performance Security

From a Public Sector Bank only

This Deed of Guarantee executed on this ____ day of _____, 2011 at ____ by _____ (Public Sector Bank only), having its Head Office/Registered Office at _____ and inter-alia a Branch Office at _____ (hereinafter referred to as the Bank. or 'the Guarantor', which expression shall unless it be repugnant to the subject or context hereof be deemed to include its successors and assigns)

In favor of

The Department of Information Technology, Ministry of Communications & Information Technology, Government of India, Electronics Niketan, 6, CGO Complex, Lodhi Road, New Delhi-110003 (hereinafter referred to as "DIT")

WHEREAS

A. [.....], a company within the meaning of the Companies Act, 1956 and having its Registered Office at [_____] (herein after referred to as "the Consultant", which expression unless repugnant to the subject or context includes its successors, legal representatives and permitted assigns) has been awarded the contract for preparation of "Model Requests for Proposals (RFPs), Toolkit and Guidance Notes for preparation of RFPs for e-Governance Projects" vide Agreement dated _____;

B. In terms of clause ____ of the said Agreement, the Consultant has to provide a Performance Guarantee for an amount equivalent to 10 (ten) per cent of the Bid Price in the format specified;

C. At the request of the Consultant, the Guarantor has agreed to provide this guarantee, being these presents, guaranteeing the due and punctual performance/discharge by the Vendor of its obligations under the said contract during the implementation period.

NOW THEREFORE THIS DEED WITNESSETH AS FOLLOWS

A. The Guarantor hereby irrevocably guarantees the due and punctual performance by the Consultant of all its obligation under the said Agreement during the implementation period;

B. The Guarantor shall, without demur, pay to DIT sums not exceeding in aggregate Rs. _____ (Rupees _____) within five (5) calendar days of receipt of a written demand therefor from DIT stating that the Contractor has failed to meet its performance obligations under the said contract during the implementation period. The Guarantor shall have not to go into the

veracity of any breach or failure on the part of the Consultant or validity of the demand so made by DIT and shall pay the amount specified in the demand notwithstanding any direction to the contrary given or any dispute whatsoever raised by the Vendor or any other person. The Guarantor's obligations hereunder shall subsist until all such demands are duly met and discharged in accordance with the provisions hereof;

C. In the event of delay on the part of the Guarantor to pay on demand, the Guarantor shall be liable to pay interest at the rate of fifteen (15) per cent, compounding quarterly, to DIT. There shall not be any delay in payment of the guaranteed amount and payment of interest shall not be an excuse for delaying the payment of guarantee amount. Time is the essence of this Performance Guarantee;

D. The Guarantor shall also indemnify and keep DIT indemnified against all losses, damages, costs, charges claims and expenses whatsoever which DIT may suffer, pay or incur by reason of or in connection with any default on the part of the Vendor, including legal proceedings taken against the said Consultant and/or the Guarantor for the recovery of the monies referred to above;

E. The Guarantor hereby agrees that without the concurrence of the Guarantor, DIT and the Consultant shall be at liberty to vary, alter or modify the terms and conditions of the contract executed by the DIT with the Consultant, and in particular to defer, postpone or revise the payment schedule under the contract, modify the work at site and payment of interest or other monies under the contract on such terms and conditions as maybe considered necessary by DIT;

F. The Guarantor agrees that its liability under this guarantee shall in no manner be affected by any such variation, alteration, modification, waiver dispensation with or release of security and that no further consent of the Guarantor is required for giving effect to any such variation, alteration, modification, waiver dispensation with or release of security;

G. This Guarantee shall be enforceable against the Guarantor notwithstanding that any security or securities comprised in any instrument executed or to be executed by the Consultant in favor of DIT may at the time when the proceedings are taken against the Guarantor of this guarantee be outstanding or unrealized or lost. In order to give effect to this Guarantee, DIT shall be entitled to treat the Guarantor as the principal debtor;

H. This Guarantee shall be irrevocable and shall remain in full force and effect until _____ unless discharged/released earlier by DIT in accordance with the provisions of the said contract. The Guarantor's liability in aggregate shall be limited to a sum of Rs. _____ (Rupees _____ only);

I. This Guarantee shall not be affected by any change in the constitution or winding up of the Consultant/the Guarantor or any absorption, merger or amalgamation of the Consultant/the Guarantor with any other person;

J. The Guarantor has power to issue this Guarantee and discharge the obligations contemplated herein, and the undersigned is duly authorized to execute this Guarantee pursuant to the power granted under _____.

All future correspondence with reference to this Guarantee shall be made to(Bank Name and Address).

The jurisdiction in relation to this Guarantee shall be the Courts at New Delhi and Indian Law shall be applicable.

IN WITNESS WHEREOF THE GUARANTOR HAS SET ITS HANDS HEREUNTO ON
THE DAY, MONTH AND YEAR FIRST HEREINABOVE WRITTEN.

SIGNED AND DELIVERED by _____ Bank by the hand of _____, its
_____ and authorized official.

15 Annex-5 Technical Proposal

Reproduce Technical proposal of the successful bidder

16 Annex-6 Request for Proposal

Reproduce Request for Proposal (RFP) No. and Date 3(16)/2011-EG-II dated 12th August 2011 for Selection of Consultancy Agency for providing Program Management Services for the National Program Management Unit for Scheme for National Rollout of e-District MMP