



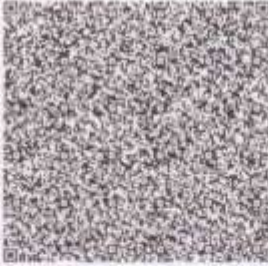
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Stamp Duty Paid By : NATIONAL INSTITUTE FOR SMART GOVERNMENT  
Stamp Duty Amount(Rs.) : 100  
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**Agreement between NISG and MCA for the  
Project Monitoring Unit for MCA21 Project for the period  
01-May-2013 to 31-October-2019**



**Statutory Alert:**

1. The authenticity of this Stamp Certificate should be verified at "www.shcliestamp.com". Any discrepancy in the details on this Certificate and as available on the website renders it invalid.
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**Agreement between NISG and MCA for the  
Project Monitoring Unit for MCA21 Project for the period  
01-May-2013 to 31-October-2019**

This agreement is made on the 5<sup>th</sup> day of February, 2014

Between

The President of India, acting through Under Secretary, Ministry of Company Affairs having its Office at 5<sup>th</sup> Floor, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi (hereinafter referred to as "MCA"), which term or expression unless excluded by or repugnant to the subject or context shall mean and include its successors in office and assigns, of the first part,

And

National Institute for Smart Government, a not-for-profit Company registered under Section 25 of the Companies Act, 1956 having its Registered Office at, YSR Bhavan, Financial District, Nanakramguda, Rajendranagar, Hyderabad, Andhra Pradesh - 500032 (hereinafter referred to as "NISG"), which expression unless excluded by or repugnant to the subject or context shall mean and include its successors, administrators and permitted assigns, represented through its Chief Executive Officer, of the other part.

**Recitals**

- (a) Whereas MCA has launched a pioneering e-Governance initiative called MCA21 that aims at providing speed and certainty in the delivery of MCA services to its stakeholders;
- (b) Whereas the project is being implemented through a Public-Private partnership model, where the Infosys Limited. (hereinafter referred to as "**Operator**") was selected through an open competitive bid process for continuation of the operation & maintenance of the systems for a period of six and a half years (6.5) years;
- (c) Whereas the payment to the Operator has to be made in accordance with the clearly established service levels (herein after referred to as 'Service Level Agreements' or '**SLA**'), and, it would, therefore, be necessary to measure the adherence to these service levels;
- (d) Whereas the Project Monitoring Unit (hereinafter referred to as "PMU") has been envisaged as the institutional mechanism to carry out the task of assessing the Operator's conformance to the service levels as described in Volume I, section 12 and annexure 7.5 & 7.6;
- (e) Whereas the NISG has been selected as the PMU agency;



- (f) Whereas MCA has formally awarded this assignment to NISG vide letter No. 'HQ/154/2012 – Computerisation' dated 16<sup>th</sup> July, 2013 and No. 'HQ/ 154/ 2012 – Computerisation' dated 24<sup>th</sup> September, 2013 for a period of 6.5 years from 1<sup>st</sup> May, 2013 to 31<sup>st</sup> October 2019. NISG has confirmed to provide PMU Services vide its letter dated 12<sup>th</sup> August, 2013;
- (g) Whereas the NISG in pursuance of its bid to undertake this engagement, within ten (10) working days from the date of signing of this agreement, shall furnish the Performance Guarantee as defined in this Agreement.

Now therefore, for the mutual promises and consideration set out herein, the MCA and the NISG (each individually a Party hereto and collectively the Parties) have agreed to enter into this Agreement to govern the way in which NISG will establish, operate and manage the delivery of services related to the PMU for the MCA21 project.

## 1.1 Definitions

For the purposes of this Agreement unless the subject or context otherwise requires the following terms expressed in initial capital letters shall mean as under:

- 1.1.1 **Agreement** shall mean this Agreement together with all its appendices, annexures and any amendments thereto made in accordance with the provisions herein and revised techno-commercial proposal dated submitted to the Ministry.
- 1.1.2 **Agreement period** shall mean the period of 6 years and 6 months from the Effective Date as specified in this agreement or till the date of commencement of business by an alternative mechanism planned by the Ministry for managing the project, whichever is earlier.
- 1.1.3 **Effective Date** means the May 1, 2013.
- 1.1.4 **Force Majeure** shall mean an event that is unforeseeable, beyond the control of either party and not involving the affected party's willful fault or negligence and materially affecting its capacity to perform its obligations. Such events may include the acts of the concerned State Government/ Government of India, war, civil war, insurrection, riots, revolutions, fire, floods, epidemics, quarantine restrictions, radioactivity and earthquakes.
- 1.1.5 **Implementation agency or Operator** refers to and means the Infosys Limited or any of their successors engaged for implementation and the operations of the MCA21 e-Governance Project.
- 1.1.6 **Material Breach** shall mean:



- i) Not submitting any of the periodic deliverables (as mentioned in the "Deliverables" section) for three consecutive periods without prior intimation and suitable explanation to MCA; or
- ii) Not submitting the other deliverables (as mentioned in the "Deliverables" section) as required and not rectifying the default within 30 days of being notified of the default.

1.1.7 **MCA21** shall mean the MCA21 Project, an e-Governance project conceptualized and being implemented by MCA, for providing services to the business, citizens and other stakeholders, adopting the best practices in the sector, whether in the present form or in a modified form and shall include any other name that MCA may choose to assign to this initiative in future during the currency of this Agreement.

1.1.8 **Month** shall mean English calendar month

1.1.9 **RFP** shall mean 'Request for Proposals' issued for selection of Implementing & Operations Agency.

1.1.10 **Performance Guarantee** shall mean the guarantee to MCA provided by a Nationalized Bank for the NISG for an amount equal to 5% of the total contract value, annually. The annual Performance Guarantee shall be renewed 30 days before the expiry every year and the last one will be valid for six months beyond the Agreement Period.

1.1.11 Other terms used in the Agreement but not defined under this Agreement shall have the same meaning as assigned to such terms under the Information Technology Act, 2000 and the Companies Act, 1956, as the case may be, as amended from time to time.

## 1.2 Term and Termination

1.2.1 Unless otherwise terminated earlier, the term of this agreement shall be for a period of Six (6 years) and six (6) months from the Effective Date. Upon successful completion of the term to the satisfaction of the MCA the Parties to this agreement may mutually agree in writing to extend the term of this agreement for a further period of up to two (2) years.

1.2.2 MCA may serve a written notice on the NISG at any time to terminate this Agreement with immediate effect in the event of an apprehension of bankruptcy of the NISG.

1.2.3 MCA may serve a written notice on the NISG at any time to terminate this Agreement with no further liability to MCA, within a specified period not exceeding three (3) months, if there is Material Breach by the NISG and such breach not having been cured by the NISG within a period of thirty (30) days after the first communication.

1.2.4 MCA may terminate this agreement without assigning any reason by giving a written notice of not less than ninety (90) days to the NISG.



### 1.3 Fraudulent practices, bribery and corruption of Government Servants

NISG represents and undertakes that it has not given, offered or promised to give, directly or indirectly any amount, gift, consideration, reward, commission, fees, brokerage or inducement to any person in service of the Government in procuring the Contract or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of the Contract or obtaining a contract or showing or forbearing to show favour or disfavour to any person in relation to the Contract. Any breach of the aforesaid undertaking by NISG or any one employed by it or acting on its behalf or for its benefit (whether with or without its knowledge) or the commission of any offence by NISG or anyone employed by it or acting on its behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act, 1947 or any other Act enacted for the prevention of corruption shall, without prejudice to any other legal action, entitle the MCA to cancel the Contract either wholly or in part, and all or any other contracts with NISG and recover from NISG such amount or the monetary value thereof and the amount of any loss arising from such cancellation without any entitlement or compensation to NISG. The MCA

*shall be final and binding on NISG.*

### 1.4 Scope of PMU Services

Scope of the Core PMU team is detailed below:

#### 1.4.1 Overall Program Management

- i. Establish a framework for reliable and accurate monitoring of the Operator's performance and service delivery;
- ii. Provide inputs for the SLA measurement methodology and deployment of tools for SLA measurement;
- iii. Monitor implementation & compliance of business processes in production environment;
- iv. Monitoring of the implementation of enhancements (application, user interface, training, client side infrastructure, DC and DRC infrastructure, network connectivity) proposed for MCA21 v2;
- v. Monitoring the adherence to the applicable e-Governance Standards;



- vi. Establish a procedure for monitoring GSR & Monitor that the data is transferred to Government Secure Repository (GSR) as per the agreed guidelines, and to ensure that exceptions, if any, are handled as per documented GSR Monitoring Procedures;
- vii. Monitor the quarterly DC-DR drills;
- viii. Facilitate and monitor all upgrades/ replacement to solution components, including infrastructure;
- ix. Tracking of the progress on the proposed and under-implementation change requests;
- x. Escalate the issues to the Operator/ MCA and monitor resolution thereof as may be appropriate;
- xi. Identify issues that require additional investigation and carry out the investigation with prior intimation to MCA;
- xii. Provide periodic reports as per the "Deliverables" to the MCA in the agreed upon format;
- xiii. Provide support to any other item resulting out of the evolution that is within the reasonable scope of management / monitoring of the project.

#### 1.4.2 Monitoring of Operations

With respect to monitoring of operations, the PMU is responsible for:

- i. Working with the Service Provider to identify the ITIL v3 processes that will be implemented for MCA21 to provide seamless delivery of services to MCA;
- ii. Monitoring the implemented service desk solution and implementation of critical ITIL v3 processes such as below, to assess that the software engineering and the management processes adopted by operator are in alignment with the project requirements and generally accepted industry practices:
  - a. Deliberations in preparedness of peak filing – filing projections, strategic formulation, infrastructure suggestions (sizing, augmentation, optimization) and any other activities as required to maintain delivery of the services during failures, spikes in demand, or other spontaneous events through staggering or reducing authorized users' service requests;



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- b. Monitor on a daily basis, the Service Provider's performance in relation to the SLA parameters as agreed upon through collation and review of performance & SLA data and exception reports generated by the implemented EMS solutions and associated scripts;
- c. Assess performance of key solution components such as the infrastructure and software in the Data Center, Disaster Recovery Center, Front Offices and MCA offices through collation and analysis of such project performance-related data submitted by the Service Provider:
  - i. Maintain an understanding of the Capacity and utilization of each of the IT Components that the SP manages, including hardware, Software licenses, and network through collection of the data and information from the Service Provider:
    - 1. Business data (for example, number of transactions completed);
    - 2. Service data (for example, transaction response times or batch job execution times);
    - 3. Technical data (for example, the maximum level of CPU utilization or the physical capacity of a particular hard disk);
    - 4. Utilization data (for example, CPU utilization, paging rates, or bandwidth utilization).
  - ii. Trend current system and resource utilization, and estimate future utilization;
  - iii. Investigate and research threshold breaches and near misses to determine what remedial action should be taken;
  - iv. In case the performance parameters are not found to be conforming to the required levels, the PMU shall proactively inform the Service Provider and suggest appropriate measures so as to facilitate the Service Provider in taking such corrective measures, as the Service Provider may deem appropriate and necessary.
- d. Maintaining a list of all outages and security incidents, as reported by the Service Provider, linked to an incident, including the date and time



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the Outage commenced, its duration, and the affected infrastructure and Applications Availability Management;

- e. Assessing Change Management implementation, through the solutions & tools deployed by the Service Provider, to ensure that changes are carried out / deployed in a controlled way, such that they are evaluated, tested, implemented after prior approval of MCA and documented:
  - i. Review the reports generated by the tools to verify data integrity and consistency between the forms and database;
  - ii. Monitoring the operations of the implemented solutions and collation and analysis of operational / exception reports generated by the centralized identity and access control and audit trail solutions;
  - iii. Monitoring the details of the batch processes and scripts deployed in the DC and DRC;
  - iv. Summarize the changes made each week, as reported by the Service Provider, and report the information to MCA on a fortnightly basis;
  - v. Review the audit trail all changes to the services, submitted by the Service Provider, in order to determine the change made and the authorization to make the Change.
- f. Provide a monthly report on configuration changes, as reported by the Service Provider, made to the infrastructure, Equipment, and Software. The report shall also include shall also include information about Incidents, Problems, Known Errors, Changes and Releases;
- g. Maintain the list of all assets including software licenses, infrastructure along with the configuration details, deployed in the DC, DRC, and other MCA office locations. Maintain a standard current level of Software along with the details of the latest releases available from the OEMs;
- h. Oversee the version control of software and its controlled deployment in the production environment; PMU must own the deployment process: plan/schedule with operator, be part of go/no go decision, do post implementation validation cum monitoring & submit a report for large changes to MCA/Operator;



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- i. Monitor the implementation of document and source control tools and verify at regular intervals about the availability of latest versions of the deliverables along with the revision history of various project artefacts, including source code, submitted by the Service Provider;
  - j. Analyze ticket for quality of resolution & repeat issues conduct root cause analyses for tickets.
- iii. Identify the service reports to be generated and submitted to MCA by the Service Provider on a regular basis;
  - iv. Collate and analyse the service reports submitted by the Service Provider to identify any exceptions or issues that need to be brought up to the notice of MCA / Operator;
  - v. Assist MCA or a third party agency in audits (MCA21 Audit Requirements, ISO 27001 Audit, and Operational Audits) & user surveys (audits and user surveys are carried out by third party agencies) as may be reasonably aligned with the objectives of the PMU;
  - vi. Maintain the list of key personnel and the team details (structure, numbers) of the Service Provider mapped to the roles and responsibilities in the project;
  - vii. Recommend to the Operator and MCA, suitable changes in infrastructure, software and operational processes / procedures / guidelines to keep up with evolving needs and technologies.

#### 1.4.3 Continuous Improvement

- i. Obtain and provide to MCA / Operator, feedback from users of the system – both MCA-internal and external – on a regular basis;
- ii. Recommend improvements to the Program and service quality based on analysis of data that has been gathered;
- iii. Study MCA 21 processes in consultation with MCA & the operator and suggest approach to improve MCA 21 system;
- iv. Analysis of the registered events, incidents, problems to suggest improvements to the MCA21;
- v. Review of SLAs annually as per the contract between MCA & Service Provider;
- vi. Review of SLA & SLA measurement methodology, annually as per the contract between MCA and the Service Provider.



#### 1.4.4 Contract Management

- i. Facilitate issue resolution and change management processes, limited to items covered within the scope of the solution, including assistance in validation to the changes carried out;
- ii. Validate the performance of Service Provider with respect to the critical obligations as per the Agreement including SLAs;
- iii. Monitor Operator's engagement/ agreement/ contract with other third parties as may be reasonably required to meet with SLA requirements;
- iv. Maintain and examine all the third party agreements as submitted by the Service Provider and provide any exception reports to the MCA on gaps, if any;
- v. Ensuring the implementation of all the scope as provided in the RFP;
- vi. Recommend to MCA for award of payments (including incentives and penalties) based on Operator performance;
- vii. Ensure measurement of the SLAs as per the agreed model and shall, at all times, ensure the reliability and accuracy of such measurements. PMU will formally record these measurements and their observations in support of the award of incentives and/ or penalties to the Operator. Based on these measurements and conclusions drawn thereon, the PMU will recommend payments to the operator;
- viii. Ensure that ATS for all the licensed software and AMC for hardware should be valid for a period of at least one year at the time of expiry of the contract;
- ix. In case any of the hardware is reaching end of life and the SP is not able to procure the AMC services, ensure that such hardware shall be replaced with the then current infrastructure to meet the above requirement;
- x. Assess adequacy of licenses so as to meet requirements of RFP subject to the volatility of licensing policies by OEMs.

#### 1.4.5 Support MCA during the User Acceptance Testing for application release

The PMU team is responsible for validating the test plans, test scripts, scenarios and test data submitted by the Service Provider and ensuring the regression testing, as required, of the solution. The PMU team will:

- i. facilitate setting up of testing environment accessible to PMU/MCA;



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- ii. Conduct preliminary UAT prior to the UAT by MCA;
- iii. Support MCA in the UAT before the final release of the application into production;
- iv. Validate post production components for compliance with approved requirements.

**1.4.6 Support in transition to a replacement Service Provider as required during the exit management phase either on expiry of the contract or a mid-way termination**

- i. Annual preparation of the exit management plan taking into consideration the plan maintained by the operator & ensure that it is clear comprehensive and current at all times;
- ii. On advice of MCA, act as EMMU (Exit Management Monitoring Unit), and oversee the exit management at the end of the Contract or premature termination;
- iii. Monitor the transition from incumbent operator to the new operator, enlist exceptions if any;
- iv. Facilitate the transition of the Operator including transfer of assets to MCA as specified in the contract in the event of a normal or a pre-mature exit.

**1.4.7 Additional facilitations.**

Condition Precedent: Service Provider has to implement the requisite tools to enable PMU to deliver the following services:

- i. Facilitate control and ownership of data for MCA;
- ii. Facilitate control over security and integrity of data, applications, and infrastructure;
- iii. Facilitate taking over the systems with ease whenever required due to exit /replacement of the service provider.

**1.4.8 Deliverables**

**Weekly reports**

- a. SLA Report
- b. RD & ROC Pendency Report
- c. Pending Tickets/Complaints report



### Monthly Reports

- a. GSR Data Transfer Report
- b. PMU Activity Report Monthly / quarterly

### Quarterly reports

- a. SLA Report
- b. PMU Activity Report
- c. System Capacity and Performance Report
- d. DC-DR Drill/Switch Over Report
- e. Change Control Report
- f. Ticket Resolution Feedback analysis report
- g. Configuration report

### Half yearly

- a. Source Code Control Report & Source Code CD

### Annual Reports

- a. SLA's Review Report
- b. SLA Measurement Methodology Report
- c. Review Report of Software & Hardware
- d. Asset Report
- e. Exit Management Plan
- f. Annual Action Plan including FO/BO process improvements if any
- g. Process Document for ITIL3 Compliance
- h. NDAs of employees/such contractors.

### On Demand Report

- a. Peak Filing Report
- b. UAT Report
- c. Review Report of CR
- d. Incidence Report
- e. Change Management Process Document
- f. Change Control Report



#### 1.4.9 Delivery of PMU Services

- i) NISG shall deliver the Services in (a) a state-of-the-art professional manner commensurate with accepted industry practices and technical standards which are generally in effect for such projects and (b) in a manner that is consistent and aligned with the objectives of the MCA21 project;
- ii) NISG will institute process in compliance to ISO 9001 for MCA-PMU operations subject to review/audit of these processes by MCA/External Auditors;
- iii) NISG shall establish a formal organization structure and staff PMU with competent resources to provide effective service delivery. The organization structure will be tuned to align with the service delivery approach and in a manner that is best suited to meet with the scope of the PMU objectives;
- iv) The PMU shall be headed by a senior officer from the NISG and supported by Senior Consultants and Consultants at various levels. The staffing levels shall be commensurate with the actual and anticipated work requirements and the same shall be periodically reviewed and decided by the NISG in consultation with the MCA;
- v) Subject to endorsement by the MCA, the PMU shall arrive at a complete understanding with the Operator on the interpretation and approach to the measurement of the SLA at the initial stage itself. *Any changes or adjustments to the SLAs*, threshold levels or measurement thereof, as determined with prior concurrence from the MCA shall also be similarly dealt with;
- vi) PMU will also establish the structure and frequency of reporting to MCA, and the norms for assessment of incentives and penalties in conformity with the agreed SLAs;
- vii) PMU shall ensure measurement of the SLAs as per the agreed model and shall, at all times, ensure the reliability and accuracy of such measurements. The PMU shall formally record these measurements and their observations in support of the award of incentives and/ or penalties to the Operator. Based on these measurements and conclusions drawn thereon, the PMU shall recommend payments to the operator;
- viii) In case the performance parameters are not found to be conforming to the required levels, the PMU shall proactively inform the Operator and suggest appropriate measures so as to facilitate the Operator in taking such corrective measures, as the Operator may deem appropriate and necessary;



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- ix) All decisions in governing the establishment and operation of the PMU shall be the responsibility of the NISG;
- x) As part of the scope of services, NISG will plan for the services of experts to meet specialized needs of the project as may be required from time to time with an agreement from MCA; cost if any has to be borne by MCA.

## 1.5 Fees and Payments

- 1.5.1 In consideration of the Services and subject to the provisions of this Agreement, the MCA shall pay to the NISG an amount of Rs. 17,23,70,000/- (Rupees seventeen crores twenty three lacks and seventy thousand) for the PMU services rendered in pursuance to this agreement. This amount excludes service tax or any other tax, which needs to be paid separately, as may be applicable from time to time. Payment schedule is as per **Annexure-II 'Schedule of Payments'**.
- 1.5.2 Neither MCA nor any of its nominees shall be required to make any payments in respect of the Services under this Agreement other than the aforesaid amount of Fees nor otherwise than in accordance with Annexure -II. For the avoidance of any doubt, the Payments shall be deemed to include all ancillary and incidental costs and charges arising in the course of delivery of the Services including consultancy charges, sub-contractor charges, specialist fees and all other related costs including all taxes.
- 1.5.3 In respect of its remuneration for the Services, the NISG shall submit periodic reports as described in Section 1.4.8 of this agreement to the satisfaction of the MCA.
- 1.5.4 For payment of its remuneration due for the Services, the NISG shall submit an invoice on or after each date mentioned in Annexure – II.
- 1.5.5 The NISG shall pay all its sub-contractors and other third parties engaged in provision of PMU services in a timely fashion and in accordance with a mechanism, which will not prejudice the objectives of the PMU and the MCA shall not be liable in any manner for payment to any sub-contractor or third party. The NISG agrees to indemnify MCA against any third party claims on this account.
- 1.5.6 MCA shall make deduction for withholding taxes from the amounts due and payable to the NISG wherever applicable under the law. The NISG shall pay for all other taxes in connection with this Agreement.
- 1.5.7 In case of a bonafide dispute as to any invoice the MCA shall be entitled to delay or withhold payment of the invoice or part of it delivered by the NISG. However, the withheld amount shall be limited to the extent of the disputed amount. The disputed amount shall be settled in accordance with the dispute resolution procedure as set out in this Agreement. Any exercise by MCA



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under this Article shall not entitle the NISG to delay or withhold provision of the Services.

## 1.6 Penalty

MCA reserves the right to levy penalty, if NISG fails to perform its responsibilities as defined in this contract. Such penalty, if any, on a cumulative basis, will be limited to maximum of 5% of the value of the contract over the contract period. Provided that NISG will be given sufficient opportunity to explain any such failure before decision on the imposition of penalty is taken.

## 1.7 PMU Resources

NISG will staff the PMU with its own resources (see Annexure I: MCA21 PMU resources). However, in order to meet the requirements of the PMU and to enable optimal utilization of resources, NISG may induct the required staff of high calibre that are available in the industry through engagement competent individuals and third party agencies. In such an event NISG shall ensure:

- a) a minimum number of its own personnel constituting the core team of the PMU so as to ensure that all significant decisions related to the strategy and decisions of the PMU are made and owned by NISG;
- b) that such individuals and third parties are not engaged directly or indirectly with the Operator, their subsidiaries, group companies or their consortium partners so as to lead to any possible conflict of interest;
- c) That appointment and changes of all key PMU personnel shall be done with prior consent of the MCA.

## 1.8 Effects of Termination

1.8.1 In the event of a pre-mature termination of this agreement by MCA, the compensation payable to NISG will be decided in accordance with the Terms of Payment Schedule on a *quantum merit* basis.

1.8.2 Upon issuance of a notice for termination of this Agreement by MCA, the Parties shall mutually agree upon a transition plan and comply with such a plan. The NISG agrees to extend full cooperation in supporting the transition process and provide such information and support for smooth transition of the monitoring tasks either to MCA or to its nominated agency.

## 1.9 Verification and Audit of Documents

1.9.1 All records pertaining to the measurement of performance and assessment of awards to the Operator shall be securely maintained by the PMU. The same shall be made available to the MCA and its authorized agents upon request for verification and/or audit during the engagement period. In any case all



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such documents and records shall be made available to the MCA on termination/expiry of this agreement.

- 1.9.2 The NISG shall also provide access to all documentation/ records pertaining to arrangements with employees, sub-contractors and third party agencies as may be reasonably required within the purview of this Agreement. MCA shall give reasonable notice, not exceeding two weeks, to the NISG for providing any such documents.

## 1.10 COORDINATION

1.10.1 Within one month following the Agreement Date, the MCA and the NISG shall each appoint a Project Manager and provide information to that effect to each other. In the event that either Party wishes to substitute its Project Manager, it will do so in manner in which the original appointment is made and notify the other Party of such substitution as soon as reasonably practicable but at the latest within fourteen days of the substitution. The substitute so appointed should have the requisite qualifications and experience commensurate with the role requirement. The Project Managers shall be responsible for maintaining the interface and communication between the Parties.

1.10.2 The NISG Project Manager will report formally to MCA Project Manager on a monthly basis, or at shorter intervals if required, at a time and location to be agreed between them. These meetings will cover, as a minimum, the following items:

- (i) Periodic Performance of Operator;
- (ii) matters arising out of the Change Requests
- (iii) problem resolution status of reported problems
- (iv) issues escalated or needing escalation
- (v) Any other matter that is relevant and needs to be brought to the notice of MCA in the context of the Operator and/or the PMU.

## 1.11 Co-operation

1.11.1 To enable the NISG carry out its obligations under this agreement, MCA shall provide timely and convenient access to data that is in the possession of the Operator and other agencies. NISG shall also be permitted to gather and collate such data that are in, but not limited to, computer systems, other storage devices, paper documents and reports.

1.11.2 MCA shall, grant or procure necessary consents, approvals, authorizations, clearances related to interaction and communication with external agencies as may be required from time to time for the monitoring of the Project.

1.11.3 MCA shall provide feedback within an agreed timeframe, on all requests and queries submitted to it by NISG to carry out its obligations under this agreement.



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## 1.12 Confidentiality

- 1.12.1 MCA shall allow the NISG to come into possession of records involving a high degree of confidentiality and the NISG and its agents who gain access to such records shall exercise professionally reasonable care to maintain the required confidentiality and privacy with regard thereto.
- 1.12.2 Additionally, the NISG shall maintain the confidentiality of all the details and information with regard to the Project, including systems, facilities, operations, management and maintenance of the systems/ facilities and the associated metrics.
- 1.12.3 NISG agrees to secure the interests of MCA against any unauthorized use or disclosure of the information, data, method, procedure, etc. to which it would have access during the course of this agreement by any individual or third party associated with it. To that effect, the NISG shall also ensure that all its employees, agents and sub-contractors execute individual non-disclosure agreements, which have been duly approved by the MCA with respect to this Project.
- 1.12.4 The aforesaid provisions shall not apply to the following information:
- i) already in the public domain;
  - ii) which has been developed independently;
  - iii) which has been received from a third party who had the right to disclose the aforesaid information; and
  - iv) Directed to be disclosed to the public by a court order immediately brought to the notice of the MCA and either approved to be disclosed by the MCA or not directed by the MCA to be challenged/recalled/revoked.

## 1.13 Intellectual Property

- 1.13.1 MCA shall retain exclusive intellectual property rights to the forms and the MCA21 project artefacts to which MCA has sovereign rights or by virtue of a formalized agreement with another party. Nothing herein shall or will be construed or deemed to grant to the NISG any right, title, licence, sub-licence, proprietary right or other claim against or interest in, to or under (whether by estoppel, by implication or otherwise) to the aforesaid MCA's rights.
- 1.13.2 Any invention, process, method, tool or data including written designs and copyrights, moral rights, rights in database and software arising out of this Agreement will be the sole property of MCA.

## 1.14 Indemnity

The NISG shall indemnify, defend and hold MCA and their officers, employees, successors and assigns harmless from and against any and all losses arising from personal injury or claims by third parties pursuant to this Agreement, including but not limited to any equipment, software, information,



methods of operation or other intellectual property (or the access, use or other rights thereto) provided by the NISG or its sub-contractors or its associated agencies or any act, default or omission of any of them in relation to this Agreement.

#### 1.15 Representations and Warranties

NISG represents and warrants to and covenants with MCA that:

- 1) it has been duly incorporated and is validly subsisting and in good standing under the laws of India;
- 2) it has the corporate power and authority to enter into and perform its obligations under this Agreement;
- 3) all internal procedures and formalities to execute this Agreement have been complied with;
- 4) The executant Shri Sanjiv Mital is the Chief Executive Officer of NISG and has been authorized to enter into, execute and deliver this Agreement on its behalf vide resolution No.23 Dt:31.03.2010;
- 5) this agreement has been duly authorized, executed and delivered by it and constitutes a valid and binding obligation enforceable against it in accordance with its terms;
- 6) It has examined and satisfied itself about the Project, services expected to be provided by it and its rights, duties and obligations, actual and contingent, and the risks whether industrial, commercial or otherwise, involved and undertaken and shall not have any cause of complaint in this regard on any account whatsoever.

#### 1.16 Force Majeure

1.16.1 Neither Party to this Agreement shall be liable to the other for delay or default in performance of its obligations or any loss or damage which may be suffered by the other directly due to a Force Majeure event provided that the affected Party notifies the other Party of such event and its likely effects and duration as soon as possible and takes all reasonable steps to mitigate the losses/disruption.

1.16.2 No failure, delay or other default of any contractor or sub-contractor to either Party shall entitle such Party to claim Force Majeure under this Article unless that failure, delay or default is itself caused directly by a Force Majeure event.

#### 1.17 Notice

Any notice under this agreement shall be in writing and shall either be delivered in person or sent by registered post, speed post, facsimile transmission, courier or other secure electronic means. The addresses and members for service of notice shall be given to the Parties at their respective addresses set forth below:



*Sanjiv Mital*



*13/2*

**The Chief Executive Officer**  
**National Institute for Smart Government**  
1st Floor residential Block,  
Mahanagar Door Sanchar Sadan,  
9, CGO Complex, New Delhi -110003.

**The Joint Secretary to Government of India**  
**Ministry of Company Affairs**  
Room No. 505, 'A' Wing, 5<sup>th</sup> Floor,  
Shastri Bhawan, Dr. Rajendra Prasad Road  
New Delhi – 110 001.

#### **1.18 Waiver**

No delay or failure by either party to exercise any of its powers, rights or remedies under this agreement nor any time or other indulgence granted by a Party will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies or grant of time etc. would be treated as waiver for other or subsequent defaults by the other Party. Any waiver, to be effective, must be in writing.

#### **1.19 Dispute Resolution**

1.19.1 Any dispute or difference, whatsoever, arising between the parties to this agreement arising out of or in relation to this Agreement shall be resolved by the Parties through mutual consultation, in good faith and using their best endeavours. To this end, the parties agree to provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate discussions between them/ their representatives or officers.

1.19.2 Parties, on mutual consent, may refer a dispute to a competent individual or body or institution or a committee of experts appointed for such purpose.

#### **1.20 Arbitration**

If a dispute is not resolved amicably in accordance with Clause 1.18 within 60 days or such extended period as the Parties may mutually agree, the parties or either of them may refer the dispute to a sole Arbitrator to be appointed by the mutual consent of both the parties herein. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other for reference to arbitration of such dispute, then the Arbitrator shall be nominated by the Secretary, Department of Legal Affairs, and Ministry of Law & Justice. The provisions of the Arbitration and Conciliation Act, 1996 will be applicable to arbitration and the



award made thereunder shall be final and binding upon the parties hereto, subject to legal remedies available under the law. The Arbitration proceedings will be held in English at New Delhi or at such other place as the Arbitrator may determine.

**1.21 Jurisdiction**

The Courts at Delhi alone shall have jurisdiction.

**1.22 No assignment**

The Agreement shall not be assigned by the NISG to any person, save and except with the prior consent in writing of the MCA, which consent the MCA shall be entitled to decline without assigning any reason.

**1.23 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties hereof. All prior written or oral understanding, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

**1.24 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is so declared by any court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

**1.25 No Partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party save as expressly provided herein.

**1.26 Survival of terms**

The provisions of Articles 1.8, 1.11, 1.12 and 1.13 of this Agreement shall survive the expiry or termination of this Agreement.

IN WITNESS WHEREOF the Parties aforesaid have put their respective hands and seals on the date and year first above written in presence of the following witnesses.



*[Handwritten signature]*



For and on behalf of NISG

NISG

*[Signature]*  
SANDHU MITAL

Date: 05/02/2014

Place: New Delhi

For and on behalf of MCA

MCA

*[Signature]*  
(G. P. SARKAR)

Date: 05/02/2014

Place: New Delhi



Witnessed by

1. *[Signature]*  
5/2/2014

2. *[Signature]*  
5/2/14



Witnessed by

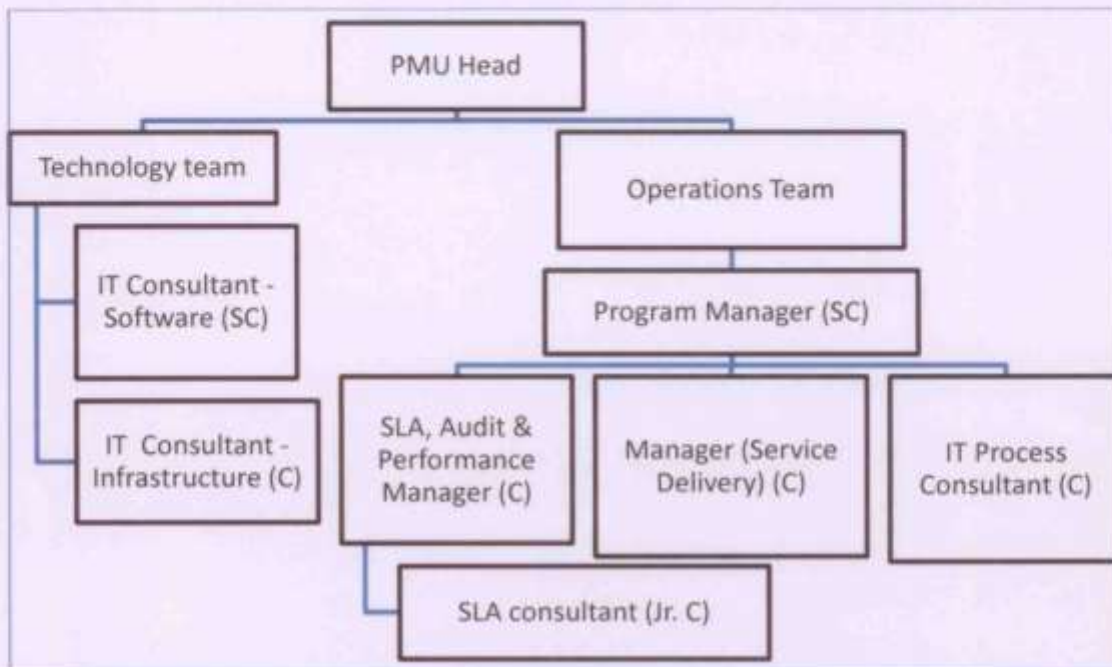
1. *[Signature]*  
5/2/2014

2. *[Signature]*  
5/2/14



Annexure I:

PMU Organisation



*[Handwritten signature]*



*[Handwritten signature]*

## Annexure II:

## Schedule of payments

S.No.	Description	Due date	Amount (Rs)
1	1st End-of-Quarter Payment	31-Jul-2013	66,29,615.00
2	2nd End-of-Quarter Payment	31-Oct-2013	66,29,615.00
3	3rd End-of-Quarter Payment	31-Jan-2014	66,29,615.00
4	4th End-of-Quarter Payment	30-Apr-2014	66,29,615.00
5	5th End-of-Quarter Payment	31-Jul-2014	66,29,615.00
6	6th End-of-Quarter Payment	31-Oct-2014	66,29,615.00
7	7th End-of-Quarter Payment	31-Jan-2015	66,29,615.00
8	8th End-of-Quarter Payment	30-Apr-2015	66,29,615.00
9	9th End-of-Quarter Payment	31-Jul-2015	66,29,615.00
10	10th End-of-Quarter Payment	31-Oct-2015	66,29,615.00
11	11th End-of-Quarter Payment	31-Jan-2016	66,29,615.00
12	12th End-of-Quarter Payment	30-Apr-2016	66,29,615.00
13	13th End-of-Quarter Payment	31-Jul-2016	66,29,615.00
14	14th End-of-Quarter Payment	31-Oct-2016	66,29,615.00



*[Handwritten signature]*



*[Handwritten signature]*

15	15th End-of-Quarter Payment	31-Jan-2017	66,29,615.00
16	16th End-of-Quarter Payment	30-Apr-2017	66,29,615.00
17	17th End-of-Quarter Payment	31-Jul-2017	66,29,615.00
18	18th End-of-Quarter Payment	31-Oct-2017	66,29,615.00
19	19th End-of-Quarter Payment	31-Jan-2018	66,29,615.00
20	20th End-of-Quarter Payment	30-Apr-2018	66,29,615.00
21	21st th End-of-Quarter Payment	31-Jul-2018	66,29,615.00
22	22nd End-of-Quarter Payment	31-Oct-2018	66,29,615.00
23	23rd End-of-Quarter Payment	31-Jan-2019	66,29,615.00
24	24th End-of-Quarter Payment	30-Apr-2019	66,29,615.00
25	25th End-of-Quarter Payment	31-Jul-2019	66,29,615.00
26	26th End-of-Quarter Payment	31-Oct-2019	66,29,625.00
	Total (exclusive of applicable taxes)		17,23,70,000



*[Handwritten Signature]*



*[Handwritten Signature]*