



## **TRIPARTY AGREEMENT FOR APPOINTMENT OF KIOSK**

This Agreement is made on this **01** day of **January**, 2016. The Agreement shall be effective from the above mentioned date of agreement.

### **By And Among:**

**District e-Governance Society-** The District e governance society which is responsible for all e-governance tasks and project on district level (Hereinafter called "DeGS" which expression unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) acting through the District Collector; on ONE PART,

**And**

**MPOnline Limited-** a company incorporated under The Companies Act, 1956 and having its Corporate office at **Nirupam Shopping Mall, 2nd floor Hoshangabad Road Ahmedpur Bhopal (M.P) 462026**, (hereinafter called "**MPOnline**" which expression unless repugnant to the context or meaning thereof be deemed to include its successors and permitted assigns) acting through the Chief Operating Officer; on SECOND PART,

**And**

Mr./Mrs. **HEMANT SHRIVASTAVAS**/o Shri **RAM** carrying on business as a Sole Proprietor in the name and style of **1008** having its place of business or Registered Office at **MPONLINE LIMITED BHOPL**, hereafter referred to as "Kiosk" (Service Delivery Point) ,(which expression shall unless repugnant to the context and meaning thereof deem to mean and include its / his / her / their/ respective heirs, executors, administrators and successors / the partner(s) for the time being of the said firm, the survivor(s) of them and the executors, administrators and successors of the surviving partners as the case may be) of the Third PART. Each party individually is referred as a "Party" hereto and collectively the "Parties".

## **WHEREAS**

MPOnline Limited (MPOnline) is a Joint Venture (JV) between Madhya Pradesh State Electronics Development Corporation Ltd (MPSEDC) and Tata Consultancy Services Ltd (TCS). MPOnline has the mandate from Government of Madhya Pradesh (GoMP) for offering various information, interactive and payment services to the general public. MPOnline intends to offer its services through its portal [www.mponline.gov.in](http://www.mponline.gov.in) or any other website as it may so decide in future.

The Kiosk agrees to accept the appointment on the terms and conditions contained herein below:-

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:

### **1. DEFINITIONS**

“Agreement” shall mean this Agreement for Appointment of Kiosk together with the Schedule and Annexure hereto and shall include any modification and alterations hereto, made in writing, after the date of execution of this agreement;

“Services” means the various information, interactive and payment services offered by MPOnline Limited through the website [www.mponline.gov.in](http://www.mponline.gov.in) or any other website;

“Customer” means the person using the Service wherein a ‘person’ means an individual, a corporation, a partnership or any other entity or organization or other body whatsoever;

“Premises” means the place where the KIOSK proposes to conduct its Business in accordance with the terms and conditions as contained herein and as may be mutually agreed upon between KIOSK and MPOnline/DeGS from time to time in writing;

“Collections” means the payments made by the Customer to the KIOSK for utilizing the Services;

“Portal” means the portal/website located at the URL address [www.mponline.gov.in](http://www.mponline.gov.in)

### **2. APPOINTMENT**

MPOnline with the consent of District e-Gov. Society hereby appoints the KIOSK for offering the Services and to do all such acts, deeds and things as described in this Agreement and as instructed from time to time in the City/Village: **Bhopal**, District **Bhopal** of State: Madhya Pradesh and such other areas as MPOnline/DeGS may in its sole discretion permit from time to time in writing upon such terms and conditions. In case the KIOSK wants to change their location they have to obtain permission in writing form MPOnline and District e-Gov. Society.

### **3. TERM**

This Agreement shall remain in effect for a period from **01-April-2017 To 31-March-2018** unless terminated sooner as provided under this Agreement.

The validity of kiosk agreement will get extended for one year if Annual Subscription Fee have been paid by Kiosk owner.

All the agreement done before 1st August 2015 will be null and voided.

#### **4. RENEWAL**

MPOnline shall have the option at its sole discretion to renew this Agreement on such terms and conditions as MPOnline may decide subject to the satisfactory performance of KIOSK and no outstanding amounts are due to MPOnline Ltd as on the date of such renewal. The renewal shall take effect only if the renewal deed is executed by MPOnline in writing.

The Kiosk will be required to pay an Annual Subscription Fee as decided from time to time by MPOnline. The services shall be suspended in case of non-payment of Annual Subscription Fee. The payment of Annual Subscription Fee shall be deemed to be a renewal of this Agreement on the same terms & conditions or as amended during the period of the Agreement.

#### **5. OPERATIONAL PROCEDURE**

The KIOSK shall follow the below mentioned process for offering the Services:

- a) The customer approaches the KIOSK center for availing the Services. The KIOSK offers the Services by utilizing the provisions in the Website/Portal. MPOnline shall provide the necessary rights to the KIOSK for accessing the Website/Portal for offering the Services.
- b) The KIOSK shall place a sum of money with the designated Bank in a manner and quantum that will be indicated separately to the KIOSK.
- c) MPOnline shall provide the KIOSK separately from time to time with a detailed process flow for offering Services.

#### **6. KIOSK'S REPRESENTATIONS AND WARRANTIES**

The KIOSK hereby represents, warrants and confirms to MPOnline and DeGS that the KIOSK.

- 6.1. Has full capacity, power and authority to enter into this Agreement; and during the continuance of this Agreement, will continue to have full capacity, power and authority to act as the KIOSK under this Agreement AND to carry out and perform all its duties and obligations as contemplated herein and has already taken and will continue to take all necessary and further actions (including without limitation the obtaining of all Governmental, statutory, regulatory and other necessary approvals / consents in all applicable Jurisdictions) to authorize the execution, delivery and performance of this Agreement.
- 6.2. Has the necessary skills, knowledge, experience, expertise, capital, net worth, adequate and competent personnel, systems and procedures, infrastructure including adequate office space, two computers, one printer, one scanner, one webcam, one digital camera, broadband internet connection, and other related facilities all under maintenance and proper working condition to duly perform its obligations in accordance with the terms of this Agreement and to the satisfaction of MPOnline and District e-Gov. Society.

- 6.3. Has not and will not violate, breach any covenants, stipulations or conditions of any agreement or deed entered into by the KIOSK with or for the benefit of any third party/parties.
- 6.4. Has complied with all the laws, rules, regulations and authorizations issued by the Central, State and Local authorities and has taken all required permissions for performing under this Agreement.
- 6.5.1 Has complied with all rules, regulations, procedures under applicable laws and enactments.

## **7. OBLIGATIONS OF THE KIOSK**

- 7.1 Ensure that adequate infrastructure and financial resources are available to the KIOSK by way of working capital and otherwise to ensure that the KIOSK is able to fulfill all the obligations herein contained.
- 7.2 Operate the Business strictly in accordance with the terms stipulated in this Agreement and instructions/guidelines/procedures/processes prescribed by MPOnline from time to time and that shall be considered a part of this Agreement. The KIOSK shall not use any additional trade name or symbol nor do or permit anything to be done which is not in accordance with the directions of MPOnline/DeGS without the prior consent in writing of MPOnline.
- 7.3 Strictly adhere to the turn around time guidelines as prescribed by MPOnline/DeGS from time to time for various activities.
- 7.4 Have suitable persons (“the employees/ executives/ personnel”) for the work undertaken by them. The KIOSK undertakes to thoroughly verify the background of the personnel recruited to ensure the integrity and honesty of the personnel.
- 7.5 KIOSK shall not accept part payments of any utility service Bills. KIOSK shall not issue any manual receipts under any circumstances.
- 7.6 Immediately notify MPOnline in writing if any of its employees or any other person engaged by the KIOSK has committed any act amounting to moral turpitude or has been arrested by the police or removed from the employment of the KIOSK or committed any act affecting the integrity of the person.
- 7.7 Ensure courteous service and maintain the customer service standard as laid down by MPOnline.
- 7.8 Ensure that its employees/executives/personnel shall at all times conduct themselves within the parameters of all applicable laws and shall not commit or permit the commission of any offence; and in the event of any offence being committed, the KIOSK and the person committing the offence shall be liable for all consequences thereof; and MPOnline/DeGS shall not be directly or indirectly or vicariously liable.

- 7.9 Obtain all license/permissions /authorizations as required under all the applicable laws and keep the same valid by renewing it from time to time as required under the said applicable laws.
- 7.10 Maintain all the registers and records required to be maintained under the various Laws and enactments.
- 7.11 Use only such letter heads, invoices, signs, display materials, visiting cards, promotional literature, equipment and other items in connection with the Business as shall be approved in writing by MPOnline/DeGS and to immediately desist from the use or display of any signs, materials or objects if MPOnline/DeGS directs. The KIOSK/ its personnel shall display identification cards issued / approved by MPOnline when visiting/ interacting with customers.
- 7.12 KIOSK shall operate its business only and only from the premises as is registered in this agreement.
- 7.13 Operate the business during the term of this Agreement on such days and between such hours, as MPOnline shall specify.
- 7.14 Permit MPOnline/District e-Gov. Society and their representatives to enter the Premises as and when required for the purposes of ascertaining whether the provisions of this Agreement are being complied with or any other purpose.
- 7.15 Comply with procedures/ guidelines as specified by MPOnline from time to time for submission of reports/ information to MPOnline on the website notified to the KIOSK or by such other means/ procedures as may be notified to the KIOSK from time to time.
- 7,14 Keep updated about information/ rules/ guidelines as specified by MPOnline from time to time.
- 7.15 KIOSK agrees and acknowledges that MPOnline/DeGS is not committing itself or promising for provision of any work or specific work for any specific period under this Agreement and that the list of services to be offered by KIOSK are subject to change at any time or from time to time at the sole discretion of MPOnline and that the Service Charges payable to the KIOSK are subject to change from time to time at the sole discretion and authority of MPOnline.

## **8. TRAINING & FACILITIES**

In the event of any requirement for the training of the employees/executives/ personnel, of the KIOSK, MPOnline shall on their own discretion provide such training to the employee/ executives/ personnel at an extra cost to the KIOSK.

MPOnline shall at its sole option and discretion provide additional facilities to the KIOSK depending upon several factors which include without limitation market potentiality of the area of operation of the KIOSK, strategic importance of the area for MPOnline, requirement of the KIOSK, needs of the customers of MPOnline etc.

## **9. ADDITIONAL LIABILITY**

Without prejudice to any other liability or indemnification obligations of KIOSK under this Agreement or under any law, and in addition to them, the KIOSK shall be liable for any and all losses/ damages suffered or caused to be suffered or apprehended to be suffered by MPOnline/DeGS arising directly or indirectly from any dishonest, criminal or fraudulent act of any of the personnel engaged or employed by the KIOSK. With reference to any of such events MPOnline reserves its right to take immediate disciplinary and legal action against KIOSK.

## **10. RESTRICTION ON THE KIOSK**

Unless otherwise agreed to by MPOnline, the KIOSK shall:

- 10.1 Not use the name or Corporate logo of MPOnline or any part thereof except as authorized by MPOnline in writing.
- 10.2 Not do or omit to do any act or thing which may in the sole opinion of MPOnline bring the name of MPOnline or the Corporate logo of MPOnline into disrepute or which may in the sole opinion of MPOnline damage or conflict with the interests of MPOnline.
- 10.3 Not use or publish any advertisements, signs, directory entries or other forms of publicity whether or not relating in whole or in part to the Business or display the same on or at the Premises unless the same shall have first been submitted to and approved by MPOnline.
- 10.4 Not work in a manner which in the opinion of MPOnline may be detrimental to the interest of MPOnline and which may affect the Business.
- 10.5 Not receive money in any form either by way of commission, charges, fees or brokerage from any customer or borrower of MPOnline or from any third party for sourcing business or allow his judgment to be based on any extraneous thing other than the qualitative facts.
- 10.6 Not acquire any rights, title or license to any intellectual property rights owned or licensed by MPOnline even if the KIOSK had used them under permission from MPOnline in relation to conducting the Business and further, all benefits and goodwill resulting from any such usage of trademarks or other intellectual property rights owned or licensed by MPOnline by KIOSK shall inure to the sole benefit of intellectual property rights owned or licensed by MPOnline.

## **11. ADVERTISING**

- 11.1 The KIOSK can undertake with the consent of MPOnline/DeGS the responsibility of advertising in the area of his operation for the purpose of this Agreement.

- 11.2 MPOne may, at its sole discretion, make available to the KIOSK advertising materials including posters, leaflets, displays, flyers, stickers, signs, cards and notices and the KIOSK shall at its own expense prominently display, maintain and distribute the same as the case may be. However if any additional advertising material is required by the KIOSK, MPOne shall supply the same at such price fixed by MPOne.
- 11.3 The KIOSK shall, at the expense of KIOSK, co-operate with MPOne/DeGS and the other KIOSKs of MPOne in any special advertising or sales promotion or other special promotional activity and will engage in such other related activities as MPOne may direct.

## **12. FEES AND PAYMENT**

- 12.1 A onetime non-refundable allotment fee has to be paid by the KIOSK. The amount and the mode of payment as may be prescribed from time to time by MPOne in this regard. Service Charges payable to the KIOSK are subject to change from time to time which will be intimated to the KIOSK whenever there is a change in that regard.
- MPOne shall have the sole discretion and authority in this regard. All Payments to the KIOSK are subject to receipt and realization of corresponding amounts by MPOne from the corresponding Departments.
- 12.2 MPOne shall, without prejudice to any other rights that it may have in this regard, have the right to suspend any payment that is to be made to the KIOSK, without liability or interest, if the KIOSK is, in the opinion of MPOne/DeGS not performing its obligations under this Agreement properly until such time the KIOSK remedies such non-performance to the satisfaction of MPOne.
- 12.3 All payments shall be made to the KIOSK after making the statutory tax deductions at source and any other applicable taxes, if any. MPOne shall also have the right to set off, deduct and recover from the fees or any other amount payable to the KIOSK, any and all amounts which may be or become payable to MPOne or which the KIOSK is liable to pay to MPOne under this Agreement on any other account whatsoever. The KIOSK shall immediately reimburse any amount which has been accidentally paid to the KIOSK in the event of any delay in reimbursing the amount the KIOSK shall be liable to pay interest @ 15% p.a. on the said amount from the date of demanded the payment till the date of full payment. For the purpose of this clause any portion of the month shall be treated as full month.
- 12.4 All payments to KIOSK shall be made at the sole discretion of MPOne and if MPOne shall decide the KIOSK shall not be eligible to receive any payment after termination it shall be binding on the KIOSK.

**13. TERMINATION**

Without prejudice to any other remedies available under this Agreement or under the applicable law, MPOnline with the consent of DeGS may terminate this Agreement with or without cause by giving one month notice to the KIOSK. The KIOSK shall also have the right to terminate this Agreement by giving One month's notice. Either Party may terminate pursuant to Force Majeure. However, KIOSK shall perform its obligations without any fail during the notice period in strict adherence to the terms and conditions of this agreement.

**14. EVENTS FOR TERMINATION FORTHWITH**

On the occurrence of any of the events specified below MPOnline with the consent of DeGS shall be entitled (without prejudice to any other right or remedies which MPOnline may have under these presents or otherwise in law), to terminate this Agreement forthwith at any time after the occurrence of such event.

- i) If the KIOSK fails or neglects to observe or commits or allows to be committed any breach of the terms, conditions, provisions or stipulations of this Agreement on its part to be performed and if such breach is remediable, fails to remedy such breach required to be remedied.
- ii) If any of the representations or warranties made by the KIOSK are found to be false or wrong.
- iii) If the KIOSK does or suffers any act or thing or omits to do or suffers to be done any act, thing, deed or matter whereof in the consequence of which the business of MPOnline may or is likely to suffer.
- iv) If the KIOSK by its act or omission gives to MPOnline reasonable ground to consider that its rights may be prejudiced or jeopardised.
- v) If the KIOSK fails to achieve the targets set out by MPOnline for the duration stipulated.
- vi) If at any time it is found that the KIOSK is acting either directly or indirectly as a KIOSK, agent or representative of any other entity engaged in similar line of business.
- vii) Deterioration in financial strength of the KIOSK.
- viii) If the KIOSK has subsequently become incompetent to contract.
- ix) If the KIOSK or any third party has initiated bankruptcy or insolvency proceedings against the KIOSK in a court of law or with any appropriate authority or the KIOSK (if a company) is unable to pay its debts within the meaning of Section 271 of the Companies Act, 2013.



x) If the KIOSK is prevented by any competent regulatory agency from carrying on the business which is presently being carried on by it.

xi) If an attachment or restraint has been levied on the KIOSK properties or any part thereof or certificate proceedings have been taken or commenced for recovery of any dues from the KIOSK and the KIOSK does not take effective steps to the satisfaction of MPOnline for the cancellation of such attachment, restraint or certificate proceedings.

xii) A receiver or liquidator has been appointed or allowed to be appointed of all or any part of the undertaking of the KIOSK.

xiii) Any key employee or agent or representative of the KIOSK who is involved in performing KIOSK's obligations under this Agreement has been arrested by the police or charged with an offence including but not limited to involving moral turpitude or gross criminal intent or dishonesty or fraud or cheating or misappropriation or any offence under Negotiable Instruments Act.

xiv) If at any time it is found that without the previous written consent of MPOnline, KIOSK has changed its premises or is using the exclusive ID or Key issued to the KIOSK at one or more places other than the place of its appointment.  
Procedure for Termination:

In case of any event likely resulting in termination arising out of any clauses of this Agreement MPOnline shall have the authority to suspend the services being provided to the Kiosk with immediate effect. MPOnline shall issue a show cause notice to the Kiosk. The MPOnline/DeGS representatives shall investigate the complaints/breach of Agreement. After the investigation DeGS shall submit its report/recommendation to MPOnline for further action. MP Online shall also be entitled to investigate the complaints/breach of Agreement. The decision of MP Online as to whether the Kiosk has breached any terms and conditions of this Agreement shall be final and binding on the Kiosk. MPOnline shall have the sole authority to terminate the Agreement and take any action permitted/applicable/desirable under clauses of this Agreement.

## **15. CONSEQUENCES OF TERMINATION**

Upon the termination or expiration of this Agreement for any reason, the KIOSK shall:

15.1 Immediately cease to operate as the KIOSK and not thereafter hold itself out in any way as the KIOSK and refrain from any action that would or may indicate any relationship between it and MPOnline/DeGS. Submit the necessary reports as required by MPOnline regarding the transactions done till the date of termination.

15.2 Immediately cease to use in any manner whatsoever name of MPOnline and the Corporate logo and other marks of MPOnline.

- 15.3 Return to MPOnline forthwith or otherwise dispose of or destroy as MPOnline shall direct all signs, advertising materials, stationery, invoices, forms, specifications, designs, records, data, samples, models, programs and drawings pertaining to or concerning the business of or bearing any of the corporate logos of MPOnline. And if required by MPOnline show the proof of destruction of the said material of MPOnline which is in the possession of KIOSK.
- 15.4 Remove forthwith or permanently cover all signs or advertisements identifiable in any way with MPOnline and in event of failure to do so promptly, to permit the authorized agents of MPOnline to enter the Premises for such purpose.
- 15.5 Do all such acts and things and execute all such documents as MPOnline shall require, in particular but without limitation such notification of cessation of this Agreement.
- 15.6 The expiration or termination of this Agreement shall be without prejudice to the accrued rights of the parties under any provision here of and shall remain in full force and effect and shall be enforceable notwithstanding such expiry or termination.

## **16. PRINCIPAL TO PRINCIPAL**

- 16.1 Nothing contained in this agreement shall be deemed or construed as creating a joint venture or partnership between MPOnline/DeGS and the KIOSK/its personals. It is further made clear that notwithstanding anything contained in any law for the time being in force, the term KIOSK shall have the connotation as implied in this Agreement and it is also clarified that this Agreement is on a principal to principal basis and does not create and shall not be deemed to create any employer-employee relation between MPOnline/DeGS and the KIOSK and/or its Personnel.
- 16.2 The KIOSK and/or its Personnel shall not be entitled to, by act, word, deed or otherwise, make any statement on behalf of MPOnline/DeGS or in any manner bind MPOnline/DeGS or hold out or represent that the KIOSK is representing or acting as agent of MPOnline/DeGS, except as provided and permitted in this Agreement. The activities of the KIOSK and its Personnel shall not be construed to be MPOnline/DeGS activities. Save and except as may be expressly permitted by MPOnline, the KIOSK and its Personnel shall not at any time use the name / logo of MPOnline in any sales or marketing publication or advertisement, or in any other manner without prior written consent of MPOnline.

## **17. NO WARRANTIES WITHOUT AUTHORITY**

- 17.1 The KIOSK shall not make any statement, representation or claim and shall give no warranty to any person in respect of the Services save as may be specifically authorized in writing by MPOnline.

17.2 Any representations or warranties by the KIOSK to any personnel employed or engaged by the KIOSK (whether or not under a contract for service) that they are being engaged or employed by MPOnline/DeGS shall be a breach of this Agreement and entirely without the authority of MPOnline.

## **18. CONFIDENTIALITY OF OPERATION**

18.1 All details, documents, data, applications, software, systems, papers, statements, business/customer information, promotional strategies, marketing plans and MPOnline practices and trade secrets (hereinafter referred to as 'Confidential Information') which may be communicated to the KIOSK and /or its employees shall be treated as absolutely confidential and the KIOSK irrevocably agrees and undertakes and ensures that the KIOSK and its employees, agents, authorized representatives shall keep the same secret and confidential and not disclose the same, in whole or in part to any person without the prior written permission of MPOnline nor shall use or allowed to be used any information than as may be necessary for the due performance of the KIOSK's obligation hereunder. The KIOSK hereby specifically agrees to indemnify and keep MPOnline indemnified safe and harmless at all times against all or any consequences arising out of any breach of this undertaking by the KIOSK and/or its employees agents, authorized representatives and shall immediately reimburse and pay to MPOnline on demand all damages, loss, cost, expenses or any charges including attorney's fees that MPOnline may suffer, incur or pay in connection therewith.

18.2 The KIOSK agrees:

- i) To take all necessary action to protect the confidential information against misuse, loss, destruction, deletion and/or alteration.
  
- ii) Not to misuse or permit misuse directly or indirectly, or exploit the confidential information for economic or other benefit.
  
- iii) Not to make or retain any copies or record of any confidential information submitted by MPOnline other than as may be required for the performance of the KIOSK's obligation under this Agreement.
  
- iv) To notify MPOnline/DeGS promptly of any unauthorized or improper use or disclosure of the information.
  
- v) To return all the information which is in the custody of the KIOSK at the end of the specific assignment.

18.3 All the indemnities shall survive the termination or expiry of this Agreement.

18.4 The KIOSK hereby unconditionally agrees and undertakes that it shall not and that its personnel shall not disclose or publish the terms and conditions of this Agreement or disclose the information submitted by MPOnline under this Agreement to any third party unless such disclosure is required by law or for the purpose of performing of any of the KIOSK's obligations under this Agreement.

**19. EXCLUSIVITY**

The KIOSK shall provide service on an exclusive basis to MPOnline and shall not during the term of this Agreement act either directly or indirectly as a KIOSK or agent or representative of any company, firm or legal entity engaged in a similar line of business as that of MPOnline unless otherwise agreed to by MPOnline in writing.

MPOnline may, however, without being required to inform or take consent of the KIOSK, engage any other person or entity to perform functions same or similar to the one being performed by KIOSK under this Agreement and the KIOSK shall, on request from MPOnline, fully co-operate with such entity or person appointed by MPOnline.

**20. INDEMNITY BY THE KIOSK**

Without prejudice to any other indemnity obligations under this Agreement or in law that the KIOSK is obliged to perform, The KIOSK hereby agrees and undertakes to fully and effectively indemnify and keep indemnified MPOnline/DeGS before as well as after the expiry or termination of this Agreement against:

- i) All loss, misappropriations, misuse or damage of or to the documents or any other security instruments which are in possession of the KIOSK or its personnel or within the control of the KIOSK or its personnel.
- ii) Any or all claims, liabilities, damages, losses, costs, charges, expenses, proceedings and actions of any nature whatsoever made or instituted against MPOnline/DeGS and /or any customer directly or indirectly by reason of –
  - a) any wrongful, incorrect, dishonest, criminal, fraudulent, or negligent work, misfeasance, disregard of duties by the KIOSK or its personnel; and / or
  - b) any theft, robbery, fraud or wrongful act or omission by the KIOSK or its personnel; and/or
  - c) Any breach of any of the provisions of this Agreement by the KIOSK or its personnel; and/or
  - d) Any loss or damage caused to MPOnline/DeGS or its customers for any default or mistake or error or commission any act which is not authorized or done in accordance with the procedures laid down by MPOnline/DeGS; and / or
  - e) Any loss or delay in handing over the amount paid by the customers to MPOnline.
- f) any act or omission of KIOSK or employee or agent or representative of KIOSK, punishable under Negotiable instruments act
- f) any act or omission of the KIOSK, including without limitation any failure or breach by KIOSK to perform any term of this Agreement or those that arise due to fraudulent act or omissions, criminal act or omissions, dishonest act or omission, malicious act or omissions and any other reason that is directly or indirectly attributable to KIOSK's act, omission or contribution.

20.1 MPOnline and/or DeGS shall have no liability whatsoever for any injury to the KIOSK or its personnel in the course of performance of the KIOSK's obligations under this Agreement.

20.2 Notwithstanding anything stated anywhere in this Agreement, the KIOSK shall be liable for any claims, losses, damages, costs, charges, expenses on account of incorrect calculations done by the KIOSK or any of its personnel.

Notwithstanding anything contained in this Agreement or any other documents executed or to be executed between the parties, all indemnities shall survive expiry or termination of this Agreement and the KIOSK shall continue to be liable under the indemnities.

The KIOSK shall ensure that on termination of services of any personnel or in the event of discontinuance of service of any person engaged by the KIOSK, the KIOSK shall withdraw all the authorizations given to such personnel and ensure that on termination or discontinuance of service due caution is exercised to ensure that under no circumstances the ex-personnel represent KIOSK. The KIOSK agrees to indemnify MPOnline and/or DeGS against any loss or damage including attorney's fees suffered by MPOnline and/or DeGS for any act of the ex-personnel.

## **21. THIRD PARTY LIABILITY**

The KIOSK specifically agrees that for any act of the KIOSK, no claim shall lie against MPOnline and/or DeGS from any third party and MPOnline and/or DeGS shall not be held liable in any circumstances for the acts of the KIOSK. All claims of third parties shall be defended by the KIOSK and MPOnline and/or DeGS shall be kept indemnified against all claims, losses, damages, charges including attorney's fees etc.

## **22. ASSIGNMENT AND SUB- CONTRACTING**

The KIOSK shall itself perform its obligation under this Agreement and shall not assign, transfer or sub-contract any of its rights and obligation under this agreement except with prior written permission of MPOnline. However, MPOnline with the consent of DeGS shall be entitled to assign/transfer its rights and benefits under this Agreement.

## **23. CHANGE IN ADDRESS OF PREMISES**

MPOnline/DeGS shall have the sole discretion and authority with regard to permission for change in the address of premises of KIOSK in case KIOSK wishes to relocate to any other premises for any reason. Without limitation such permission shall be subject to all the formalities of survey, document verification etc. Any such permission shall not be construed as renewal of this agreement and the permission shall be given only for the remaining period of agreement.

## **24. LIMITATION OF LIABILITY OF MPONLINE**

- 24.1 Notwithstanding any other term contained herein, the total liability of MPOnline under this Agreement shall not exceed the actual amounts received from the KIOSK in regards to the particular claim in the particular claim period for the reasons solely and specifically attributable to MPOnline and KIOSK has in no way contributed to it by way of its acts or omissions or any event of Force Majeure..

24.2 The liability provisions stated hereinabove shall be valid, provided that (a) KIOSK notifies MPOnline immediately of such claim being brought in and in any case not later than thirty days from the date of the claim, (b) MPOnline/DeGS is granted full and unfettered authority to defend, negotiate, compromise or otherwise settle the said claim at its own cost; (c ) KIOSK does not make any statements or admissions with respect to the claim without obtaining the prior written permission of MPOnline and (d) KIOSK provides MPOnline/DeGS with all reasonable information, and assistance as requested by MPOnline/DeGS in performing its indemnity obligations

24.3 In no event shall be MPOnline and/or DeGS liable to the KIOSK for any direct, indirect, incidental, consequential, special or exemplary damages, nor for any damages as to lost profit, data, goodwill or business, nor for any reliance or cover damages arising out of either the performance or non performance of any terms of this Agreement by MPOnlineand/or DeGS, even if MPOnline and/or DeGS was advised about the possibility of the same.

## **25. NOTICE**

Any notice under this Agreement shall be in writing and shall be addressed to the KIOSK or to MPOnline./District e-Gov. Society at the address mentioned hereinabove and for proving the service it shall be sufficient to show that the envelope containing the notice was properly addressed and posted. Any notice shall be sent by registered post AD to the address of the KIOSK or to MPOnline/DeGS at the address mentioned above.

## **26. INTELLECTUAL PROPERTIES:**

The Intellectual Property Rights (IPR) in all the deliverables and documentation associated therewith and developed hereunder and ownership of tools, processes, utilities, and methodology including any MPOnline proprietary products or components thereof used in the provision of services or development of Deliverables and all new ideas, inventions, innovations, or developments conceived, developed or made by MPOnline or KIOSK or its/theirs Consultants/ Employees / agents/ representatives while providing services hereunder shall remain the absolute property of MPOnline.

## **27. FORCE MAJEURE:**

If either of the two parties is prevented, restricted, delayed or interfered by reason of:

- I. Fire, explosion, cyclone, floods, droughts, earthquakes, epidemics;
- II. War, revolution, acts of public enemies, blockage or embargo, riots and civil commotion;
- III. Any law, order, proclamation, ordinance or requirements of any Government or authority or representative of any such Government, including restrictive trade practices or regulations;
- IV. Strikes, shutdowns or labour disputes which are not instigated for the purpose of avoiding obligations herein; Or
- V. Any other circumstances beyond the control of the party affected; then notwithstanding anything here before contained, the party affected shall be excused from its performance to the extent such performance relates to prevention, restriction, delay or interference and provided the party so affected used its best efforts to remove such cause of non-performances, and when removed the party shall continue performance with the utmost dispatch.

Each of the parties agrees to give written notice to the other party upon becoming aware of an Event of Force Majeure, and mentioning details of the circumstances giving rise to the Event of Force Majeure.

If the Event of Force Majeure continues for more than twenty 20 days either party shall be entitled to forthwith terminate the contract at any time thereafter after giving the other party notice of the same. Neither party shall have any liability to the other party in respect of the termination of this contract as a result of an Event of Force Majeure.

However MPOnline shall be entitled to receive payments for all transactions under this Agreement.

## **28. MODIFICATION :**

Modification of this agreement shall be effective only when agreed in writing and duly signed on behalf of KIOSK by KIOSK's Representative and on behalf of MPOnline and District e-Gov. Society by Representatives of MPOnline and DeGS.

## **29. SEVERABILITY :**

If any term, clause or provision of this Agreement shall be judged to be invalid for any reason whatsoever, such invalidity shall not affect the validity or operation of any other term, clause or provision of this Agreement and such invalid term clause or provision shall be deemed to have been deleted from this Agreement.

## **30. WAIVER :**

No forbearance, indulgence or relaxation's by any Party at any time to require performance of any provision of this Agreement shall in any way affect, diminish or prejudice the right of such party to require performance of that provision and any waiver by any party or any breach of any provisions of this Agreement shall not be construed as a waiver or an amendment of the provisions itself, or a waiver of any right under or arising out of this Agreement.

**31. NON-SOLICITATION:**

Neither Party will, without the consent of the other Party, employ or offer to employ (whether under a contract of service or under a contract for services) any person engaged or previously engaged by the other party in relation to the project or entice or attempt of entice either directly or indirectly any person employed by MPOnline to leave the employment of MPOnline, during the subsistence of this agreement and until a period of 24 months has expired after the termination or expiry of this agreement

**32. JURISDICTION**

It is agreed by and between the parties that the Courts of Bhopal shall have the exclusive jurisdiction in respect of any matter, claim or dispute arising out of or in any way relating to this Agreement. This agreement shall be governed by and construed in accordance with the applicable Laws of India.

**33. ARBITRATION**

In the event of any dispute, differences or controversy between the Parties to this agreement in connection with or arising out of this Agreement, the parties shall first endeavor to co-operate to resolve the dispute or controversy by mutual consultation and agreement. In the event that the dispute or event is not resolved by mutual consultation and agreement, the same shall be referred to the Arbitration according to the Arbitration and Conciliation Act, 1996. The venue of Arbitration shall be Bhopal. Language of the arbitration shall be English.

**34. HEADINGS**

The headings herein are so given for the sake of convenience and easy reference only and they do not in any way govern or interpret the meaning thereof.



**The parties to this Agreement have set their hands on the day mentioned here above.**

SIGNED/SEAL AND DELIVERED  
by the within named party  
i.e **District e-Gov. Society.**, under  
the hand of

Shri \_\_\_\_\_

SIGNED/SEAL AND DELIVERED  
by the within named party  
i.e. **MPOnline .**, under the hand

Shri \_\_\_\_\_  
COO, MPOnline Ltd.

SIGNED AND DELIVERED  
by the KIOSK i.e. Under the hand of

HEMANT SHRIVASTAVA

(KIOSK id K0799990054 )