



**OFFICE OF THE CHIEF ELECTORAL OFFICER
JHARKHAND**

**VOLUME II
FORM OF AGREEMENT**

FOR

**SELECTION OF VENDOR FOR PROVIDING MOBILE BASED GPS TRACKING
SYSTEM DURING UPCOMING GENERAL ELECTION AND LEGISLATIVE
ASSEMBLY ELECTION 2019**

Issued by:

**Cabinet (Election) Department,
Sector-2, Dhurwa, Ranchi -834004
Website: - <http://www.jharkhand.gov.in/ceo>
Email- ceo_jharkhand@eci.gov.in
Phone:-0651-2444787/ 2444453/ 2440077
Fax:-0651-2441551/ 2441552
Computer Cell: 0651-2444783**

CONTENT

Draft Agreement 3

General Conditions of Agreement (GC) 5

1. General Provisions..... 5

2. Commencements, Completion, Modification and Termination of Agreement..... 7

3. Obligations of the Agency 12

4. Deleted 15

5. Obligations of the Client..... 15

6. Payments to the Agency 16

7. Penalty..... 17

8. Fairness and Good Faith..... 17

9. Settlement of Disputes..... 17

10. Jurisdiction 19

Appendix: IV-Scope of Services..... 20

Appendix: V: Form of Performance Bank Guarantee 22

(To be executed in Non Judicial Stamp Paper of appropriate value)

DRAFT AGREEMENT

This Agreement is made on this _____ day of _____, 2019 at Ranchi, Jharkhand, India

BETWEEN

The Chief Electoral Officer, Jharkhand, Cabinet (Election) Department, Sector-2, Dhurwa, Ranchi -834004 acting through _____ (hereinafter referred to as the "**Authority**") which expression shall where the context so admits, includes his successors in office and assigns on the one part,

AND

,a _____ registered under the _____ and having its registered office at _____, duly represented through its Authorized Signatory _____ (hereinafter referred to as the "**Agency**") which expression shall where the context so admits, includes his successors in office and assigns on the other part.

WHEREAS

- a. Chief Electoral Officer (CEO), Jharkhand (The Authority), intends to select a Vendor for providing Mobile based GPS Tracking System during upcoming General Election and Legislative Assembly Election 2019 in the state of Jharkhand. To manage the entire process for the conduct of the General Elections and Assembly Election, the Chief Electoral Officer (CEO), Jharkhand envisages implementation of a real time mobile-based location and movement tracking application to track the movement of Sector Magistrates (carrying reserve EVM/VVPAT) and of such other personnel as decided by the Chief Electoral Officer (CEO). They also intended to design and implement a mobile application to track the movement of these parties at district and State level EVM control rooms and by such other stakeholders as may be allowed by the CEO. The overall objective of the project is to connect and monitor the working of the Sector Magistrates and other authorised stakeholders engaged in the conduct of the election.
- b. The Vendor (service provider) should be a well-established and reputed organizations/ agencies/ suppliers (Firm (Sole Proprietor/ Partnership), Company under Company Act 1956/ 2013) who fulfill the eligibility criteria and having

sufficient infrastructure & Manpower and proven track record in the field of Mobile based GPS Tracking System for tracking the location and movement in Parliamentary or/and state Assembly Elections in India. The agency is to be appointed for providing of Mobile based GPS Tracking System during upcoming General Election and Legislative Assembly Election 2019 in the state of Jharkhand in tune with the requirements of the office of CEO, Jharkhand.

- c. The Authority intends to select a Vendor for Providing Mobile based GPS Tracking System during upcoming General Election and Legislative Assembly Election 2019 through an open and competitive bidding process as defined (hereinafter called the “**Project**”)
- d. The Authority has requested the Agency to provide certain services required for the project as defined in the General Conditions of agreement attached to this agreement (hereinafter called the “**Services**”);
- e. The Agency, having represented to the Authority that they have the required professional skills, personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in the Agreement;

NOW THEREFORE the parties hereto hereby agree as follows: -

The following documents attached hereto shall be deemed to form an integral part of this agreement:

- a. The General Conditions of Agreement (hereinafter called “GC”);
- b. Appendices and Schedules:

The mutual rights and obligations of the Authority and the Agency are set forth in the Agreement; in particular:

- a. The Agency shall carry out the services in accordance with the provisions of the Agreement; and
- b. The Authority shall make payments to the Agency in accordance with the provisions of the Agreement.

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

FOR AND ON BEHALF OF

[Name of the Authority]

By

.....

[Authorised Representative]

FOR AND ON BEHALF OF

[Name of the Agency]

By.....

.....

[Authorised Representative]

Witness 1.

2.

1.

2.

GENERAL CONDITIONS OF AGREEMENT (GC)

1. GENERAL PROVISIONS

1.1 Definitions:

Unless the context otherwise requires, the following term whenever used in this Agreement have following meanings:

- a. "Applicable Law" means the laws and any other instruments having the force of law in the India and the State of Jharkhand as they may be issued and in force from time to time;
- b. "Authority" means the Chief Electoral Officer, Jharkhand, Cabinet (Election) Department, Sector-2, Dhurwa, Ranchi -834004. The Authority shall be the Employer who may delegate any or all functions to a person or body nominated by him for specified functions.
- c. "Agreement" means the Agreement signed by the Parties, together with all documents/Appendices attached hereto and includes all modifications made in term of the Provisions of Clause 2.6 hereof;
- d. "Authorised Representatives" is the person named in Clause 1.8 of GC to execute the agreement and administer the contract.
- e. "Bank" means any Scheduled or Institutional bank so designated by the Authority for their banking transactions relating to this agreement.
- f. "Agency" means and includes sub- Agency and their Personnel engaged for carrying out of services under this agreement;
- g. "Nodal Officer" means an Officer designated as Chief Executive Officer of the Cabinet Election Department; [other key officers may be defined as applicable].
- h. "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1 hereof;
- i. "Party" means the Authority or the Agency, as the case may be, and Parties means both of them;
- j. "Project" means "Selection of Vendor for Providing Mobile based GPS Tracking System during upcoming General Election and Legislative Assembly Election 2019".
- k. "Services" means the work to be performed by the Agency pursuant to this Agreement for the purposes of the project as per Clause 1.3 of this document.
- l. "Starting Date" means the date referred to in Clause 2.3 hereof;
- m. "Sub-Agency" means any entity to which the Agency sub-contracts any part of the services in accordance with the provisions of Clause 3.8 hereof, and;
- n. "Third Party" means any person or entity other than the Government, the Authority, or the Agency.

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 Authority and the Agency. The Agency, subject to this Agreement, has complete charge of Personnel and

Sub-Agency, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

1.3 Scope of the Services: Refer Appendix IV of Draft Agreement.

1.4 Law Governing the Agreement:

This Agreement, its meaning and interpretation, and the Applicable Law shall govern the relations between the Parties.

1.5 Language & Headings:

This Agreement has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this agreement. The Headings shall not limit, alter or affect the meaning of this Agreement.

1.6 Notices:

1.6.1 Any notice, request or consent required or permitted to be given or made pursuant to this Agreement shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, speed post, telegram or facsimile to such Party at the addresses specified hereunder: -

Authority:

Name and Address to be given

Phone:

E-mail:

Fax:

Agency:

Attention: _____

Phone:

E-mail:

Fax:

[Note: Fill in the blanks]

1.6.2 Notice will be deemed to be effective as follows:

The notice shall be deemed to be effective in the manner and at time as specified as follows:

- a. In the case of personal delivery, speed post or registered mail, on delivery;

In the case of telegrams and facsimiles, 24 hours following confirmed transmission.

1.7 Location:

The services shall be performed at various locations in the State of Jharkhand by the Selected Agency and as decided by the CEO, Jharkhand office.

1.8 Authorised Representatives:

Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement by the Authority or the Agency may be taken or executed by the officials as under:

For the Authority: _____

Phone _____

Or, on his behalf of the concerned officer.

For the Agency:

Phone _____

[Fill in the blanks]

1.9 Taxes and Duties:

The Agency and the personnel shall pay the taxes, duties; fees, levies and other impositions levied under the existing, amended or enacted laws during life of this agreement and the Client shall perform such duties in regard to the deduction of such tax as may be lawfully imposed.

2. COMMENCEMENTS, COMPLETION, MODIFICATION AND TERMINATION OF AGREEMENT

2.1 Effectiveness of Agreement:

This agreement shall come into force and become effective on the date (the "Effective Date") of the Client's notice to the Agency instructing them to begin carrying out of the services.

2.2 Termination of Agreement for Failure to Become Effective:

If this Agreement has not become effective within 15 (Fifteen) days or earlier as communicated by its client/authority, after the agreement signed by the Parties, either party may, by not less than 7 days written notice to the other Party, declare this Agreement to be null and void, and in the event of such a declaration by either party, neither Party shall have any claim against the other party with respect hereto.

2.3 Commencement of Services:

General Election-

The Agency shall begin carrying out the Services within 15 days after the signing of the agreement or such date as may be mutually agreed.

Assembly Election-

Upon receipt of instruction to the agency from the authority to commence the services.

2.4 Expiration of Agreement:

Unless terminated earlier pursuant to Clause 2.9 hereof, the Agreement shall expire when services have been completed and all payments have been made after the completion of the service. The Authority can at its discretion may extend the contract for a period it deems fit.

2.5 Liability of Parties:

This agreement contains all covenants, stipulations and provisions agreed by the parties. No agent or representative of either Party has authority to make, and the Parties shall not bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

2.6 Modification:

Modifications 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. Pursuant to Clause 8.2 of this agreement hereof, however, 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, war, riot, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action which are not 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 any event, which is caused by the negligence or intentional action of a Party or such Party’s Sub-Agency or agent or employees or,
- (c) Force Majeure shall not include any event, which a diligent Party could reasonably have been expected to :
 - (i) Take into account at the time of the conclusion of this Agreement and/or;
 - (ii) Avoid or overcome in the carrying out of its obligations hereunder.
- (d) 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 and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this agreement.

- 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 fourteen (14) 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 minimize the consequences of any event of Force Majeure.

2.7.3 Consultation:

Not later than thirty (30) days after the Agency, as the result of an event of Force Majeure, have 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.

2.7.4 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 Payments:

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Agency shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by them during such period for the purposes of services and in reactivating the Services after the end of such period.

2.8 Suspension:

The Authority, by written notice of suspension to the Agency, may suspend all payments to the Agency hereunder, if the Agency fail to perform any of their obligations under this Agreement, including the carrying out of the Services provided that such notice of suspension (i) shall specify the nature of the failure and (ii) shall request the Agency to remedy such failure within a period not exceeding fifteen (15) days after receipt by the Agency of such notice of suspension.

The Authority, for any reasons beyond his reasonable control, may ask the Agency to suspend whole or part of the work/services for such time till the reasons are removed or settled. The extra time period of such duration shall be granted as time extension on the original terms and conditions.

2.9 Termination

2.9.1 By the Authority:

The Authority, may by not less than fifteen (15) days written notice of termination to the Agency, such notice to be given after the occurrence of any of the events specified in paragraphs (a) to (g) of this Clause, terminate this Agreement:

- a) If the Agency fail to remedy the failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 of this agreement hereinabove, within fifteen (15) days of receipt of such notice of suspension or within such further period as the Authority may have subsequently approved in writing;
- b) If the Agency become insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- c) If the Agency fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 of this agreement hereof;
- d) If the Agency submit to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Agency know to be false;

- e) If as the result of Force Majeure, the Agency are unable to perform a material portion of the Services for a period of not less than sixty (60) days;
- f) If the Authority, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement;
- g) If the Agency, in the judgment of the Authority, was engaged in any activity falling under Conflict of Interests category as defined in Clause 3.2 hereof.

2.9.2 Cessation of Rights and Obligations:

Upon termination of this Agreement pursuant to Clauses 2.2 or 2.9.1 hereof, or upon expiration of this Agreement pursuant to Clause 2.4 of this agreement hereof, all rights and obligations of the Parties hereunder shall cease, except:

- (a) Such rights and obligations as may have accrued on the date of termination or expiration;
- (b) The obligation of confidentiality set forth in Clause 3.3 of this agreement hereof;
- (c) The Agency's obligation to permit inspection, copying and auditing of their accounts and record set forth in Clause 3.7 of this agreement hereof;
- (d) The Agency's obligations regarding default in performance of the services in accordance of the provisions of the agreement and for any loss suffered by the Authority, whereof, as a result of such default; and
- (e) Any right, which a party may have under the Applicable Law.

2.9.3 Cessation of Services:

Upon termination of this agreement by notice of either to the other pursuant to Clauses 2.9.1 of this agreement hereof, the Agency 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 Agency and equipment and materials furnished by the Authority, the Agency shall proceed as provided, respectively, by Clauses 3.9 or 3.10 of this agreement hereof.

2.9.4 Payment upon Termination:

Upon termination of this agreement pursuant to Clauses 2.9.1 of this agreement hereof, the Client shall make the payment pursuant to clause 6 of this agreement hereof for services satisfactorily performed prior to the effective date of termination, subject to other conditions of this agreement, to the Agency (after offsetting against these payments any amount that may be due from the Agency to the Authority):

2.9.5 Disputes about Events of Termination:

If either Party disputes whether an event specified in paragraphs (a) to (c) Clause 2.9.1 of this agreement hereof has occurred, such party may, within forty-five (45)

days after receipt of notice of termination from the other party, refer the matter to arbitration pursuant to Clause 9 of this agreement hereof.

3. OBLIGATIONS OF THE AGENCY

3.1 General

3.1.1 Standard of Performance:

The Agency shall perform the services and carry out their 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 Agency shall always act, in respect of any matter relating to this Agreement or to the Services, as faithful advisers to the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Sub-Agency or Third Parties.

3.1.2 Law Governing Services:

The Agency shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Agency, as well as any personnel of the Agency and/or Sub-Agency and agents, comply with the Applicable Law time being in force.

3.1.3 Service Level Requirements for both General & Assembly Election:

The following outer dateline on major head has been fixed for the project delivery. The detailed component wise date will be worked out before signing the contract with in the outer dateline indicated below.

T0 = Date of Signing of the agreement

T0 +10 days= Live demonstration of product to the Authority

Failing to deadline, Performance Bank Guarantee may be forfeited.

The bidder has to ensure the Uptime of the Mobile Application up to 99.9%

3.2 Conflict of Interests

3.2.1 Agency not to benefit from Commissions, discounts etc.:

The remuneration of the Agency pursuant to Clause 6 of this agreement hereof shall constitute the Agency's sole remuneration in connection with this agreement or the services and subject to Clause 3.2.2 of this agreement hereof, the Agency shall not accept for their 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 their obligations hereunder, and the Agency shall use their best efforts to ensure that any of the Personnel and agents, or either of them, similarly shall not receive any such additional remuneration.

3.2.2 Procurement Rules of Funding Agencies:

If the Agency, as part of the Services, have the responsibility of advising the Authority on the procurement of goods, works or services, the Agency shall comply with any applicable procurement guidelines applicable in the state of Jharkhand and shall at all times perform such responsibility in the best interest of the Authority. Any discounts or commissions obtained by the Agency in the exercise of such procurement responsibility shall be for the account of the Authority.

3.2.3 Agency and Affiliates not to engage in certain activities:

The Agency agree that, during the term of this agreement and after its termination, the Agency and any entity affiliated with the Agency, as well as any Sub-Agency and any entity affiliated with such Sub-Agency, shall be disqualified from providing goods, works or services (other than the services and any continuation thereof) for any Project resulting to the Services.

3.2.4 Prohibition of Conflicting Activities:

The Agency shall not engage and shall cause their personnel as well as Sub-Agency and their Personnel not to engage, either directly or indirectly in any business or professional activities in the State of Jharkhand, which would conflict, with the activities assigned to them under this Agreement.

3.3 Confidentiality:

The Agency, their Sub-Agency and the personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Agreement, disclose any proprietary or confidential information relating to the project, the services, this agreement or the Authority's business or operations without the prior written consent of the Authority.

3.4 Limitations of the Agency's liability towards Authority:

- (a) Except in case of gross negligence or willful misconduct on the part of the Agency or on the part of any person or firm acting on behalf of the Agency in carrying out of the services, the Agency, with respect to the damage caused by the Agency to the Authority's property, shall not be liable to Authority:
 - (i) For any indirect or consequential loss or damage, and
 - (ii) For any direct loss or damage that exceeds: (A) the total payments for services made and expected to be made to the Agency hereunder; or (B) the proceeds Agency may be entitled to receive from any insurance maintained by the Agency to cover such a liability, whichever of (A) or (B) is higher.
- (b) The limitation of liability shall not affect the Agency's liability, if any, for damage to third parties caused by the Agency or person or firm acting on behalf of the Agency in carrying out the services.

3.5 Insurance to be taken out by the Agency:

The Agency shall:

- (i) Take out and maintain, and shall cause any Sub-Agency to take out and maintain at their (or the Sub-Agency, as the case may be) own cost but on terms and conditions approved by the Authority, insurance against the risks, and for the coverage's, as specified below; and
 - (ii) At the Authority's request, provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid.
- (a) Third party motor vehicle liability insurance as required under Motor Vehicles Act 1988 in respect of motor vehicles operated in India by the Agency or their personnel or any sub Agency or their personnel for the period of the Consultancy; and
 - (b) Employer's liability and worker's compensation insurance in respect of the personnel of the Agency and of any Sub Agency, in accordance with relevant provisions of the applicable law, as well as, with respect to such personnel, any such life, health, accident, travel or other insurance as may be appropriate.

3.6 Performance Security:

The Agency shall be required to submit acceptable Bank Guarantee/DD for an amount equal to 10% of the accepted consultancy cost towards Performance Security 21 days from the issuance of LOI and in any case prior to the signing of the agreement. The Bank Guarantee will remain valid from the Effective Date till the period falling two (2) months after the completion of Services hereunder. The Bank Guarantee(s) shall be in the format as given in Appendix V. The Bank Guarantee(s) shall be released after expiry of 2 (two) months from the satisfactory completion of the Services. If performance of Services by the Consultant is not found satisfactory as per terms hereof, Authority shall be entitled to forfeit this Performance Security or part thereof as genuine pre-estimated losses for damages suffered by the Client. In addition, the Consultant shall be liable for action under other clauses of this Agreement.

3.7 Accounting, Inspection and Auditing:

The Agency shall:

- (i) Keep accurate and systematic accounts and records in respect of the Services, hereunder, in accordance with accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof; and
- (ii) Permit the Authority 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 Authority.

3.8 Agency's Actions requiring Client's prior Approval:

The Agency shall obtain the Authority's prior approval in writing before taking any of the following actions:

- (a) Appointing such members of the Personnel as are listed in Clause 4.1 of this document merely by title but not by name;
- (b) Entering into a subcontract for the performance of any part of the Services, it being understood that:
 - (i) The selection of the Sub-Agency and the terms of conditions of the Sub-Contract shall have been approved in writing by the Authority prior to the execution of the Sub-Contract; and
 - (ii) That the Agency shall remain fully liable for the performance of the Services by the Sub-Agency and its personnel pursuant to this agreement;

3.9 Documents Prepared by the Agency to be the Property of the Client:

All reports, MIS report, implementation Plan, strategy, and any other documents prepared by the Agency for the Authority under this agreement shall become and remain the property of the Authority. The Agency shall, not later than upon termination or expiration of this Agreement, deliver all such documents etc. to the Authority, together with a detailed inventory thereof. The Agency may retain a copy of such documents. The Agency shall not use these documents for purposes unrelated to this agreement without the prior approval of the Authority.

3.10 Equipment and Materials furnished by the Authority:

Equipment and materials made available to the Agency by the Authority or purchased by the Agency with funds provided by the Authority shall be the property of the Authority and shall be marked accordingly. Upon termination or expiration of this agreement, the Agency shall make available to the Authority an inventory of such equipments and material and shall dispose of such equipments and materials in accordance with the Authority's instruction. Equipments and materials, the Agency, unless otherwise instructed by the Authority in writing, shall insure them at the expense of the Authority in an amount equal to their replacement value.

4. Deleted

5. OBLIGATIONS OF THE CLIENT

5.1 Assistance and Exemptions:

The Authority will assist to Agency in grant of following from Government:

- (a) Provide the Agency, the Sub-Agency and Personnel with work permits and such other documents as shall be necessary to enable the Agency, Sub-Agency and Personnel to perform the Services;

- (b) Assist the Agency, sub-Agency and the Personnel employed by them for the Services from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity according to the Applicable Law;
- (c) Grant to the Agency, any sub- Agency and the Personnel of either of them the privilege, pursuant to the Applicable Law, of bringing into State of Jharkhand reasonable amount of currency for the purposes of the Services or use of the personnel and their dependants and of withdrawing any such amounts as may be earned therein by the Personnel in the execution of the Services.

5.2 Access to Land:

The Authority warrants that the Agency shall have free of charge unimpeded access to all land in the State of Jharkhand in respect of which access is required for the performance of the Services.

5.3 Payment:

In consideration of the Services performed by the Agency under this agreement, the Authority shall make to the Agency such payments and in such manner as is provided by GC Clause 6 of this agreement.

6. PAYMENTS TO THE AGENCY

6.1 Release of Payment :

- (a) The payment to the vendor shall be made by the CEO Jharkhand based on the services provided by vendor as per the Scope of Work under this Tender and the Contract signed between vendor and the authority.
- (b) All payments will be made in Indian Rupee Only.
- (c) The Authority shall pay to the Agency as per the following table (for both General & Assembly Election) within 15 days of bill raised by the Agency along with applicable GST, if any:

Month	Number of users	Amount/ Rate Quoted	Fee
1st Month			
2nd Month			

- (d) The Authority shall pay only for the months for which the services have been provided by the agency.
- (e) The requisite payment will be released by the authority upon acceptance of the deliverables and work satisfaction report issued by CEO, Jharkhand

6.2 Currency of Payment

Except as may be otherwise agreed between the Client and the Agency all payments under this agreement shall be made in Indian Rupees only. The payments shall be made by Cheques.

6.3 Recovery:

Any sum falling due or any loss caused due to this agreement shall be recoverable by the Authority from the Agency as if it were arrears of land revenue.

7. PENALTY

Service provider is expected to meet the time lines in the normal course of carrying out the activities out the activities as per the detailed scope of work.

Service Availability of application	Deduction from total cost
99.9% to 100%	0%
98% to 99.8%	10%
95% to 97.9%	25%
90% and below	50%

The bidder has to submit attested server logs to show the proof of the above criteria.

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 on failure to agree on any action pursuant to this Clause shall give rise to a dispute subject to arbitration in accordance with GC Clause 9 thereof.

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 Settlement:

Any dispute between the Parties as to matters arising pursuant to this agreement, which cannot be settled amicably within thirty (30) days after receipt, by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions specified in Clause 9.3 hereof

9.3 If any dispute or difference of any kind whatsoever shall arise in connection with or out of this Contract and which is not amicably settled between Agency and the Authority as per provisions of Clause 9.2 of the agreement the same shall be referred for settlement to the Adjudicator in the person of the **Chief Electoral Officer, Jharkhand, Cabinet (Election) Department** within 14 days of arising of such disputes. The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of dispute. Performance under the Contract shall continue notwithstanding the reference to the Adjudicator.

9.4 Any Party not satisfied with the decision of the Adjudicator shall be free to refer the case for arbitration under the provisions of The Arbitration and Reconciliation Act 1996 within 30 days. If neither Party prefers the dispute to Arbitration within the above 30 days, the Adjudicator's decision shall be final and binding.

9.5 Except where the decision has become final, binding and conclusive in terms of sub Clause 9.4 above, the disputes or difference shall be referred for Adjudication through arbitration by a sole Arbitrator appointed by the Authority with mutual consent.

9.6 It is the term of this contract that the Party invoking arbitration shall give a list of disputes with amounts claimed in respect of each such dispute along with notice for the appointment of Arbitrator and giving reference to the rejection by the Adjudicator.

9.7 The cost and expenses of arbitration proceedings shall be paid as determined by the arbitrator.

9.8 Miscellaneous:

In any arbitration proceeding hereunder:

- (a) Proceedings shall, unless otherwise agreed by the Parties, be held in the State Capital.
- (b) The English language shall be the official language for all purposes; and
- (c) The decision of the arbitrator shall be final and shall be enforceable in any court of competent jurisdiction, and the Parties hereby waive any objections to or claims of immunity in respect of such enforcement.

10. JURISDICTION

The contract has been entered into the State of Jharkhand and its validity, construction, Interpretation and legal effect shall be to the exclusive jurisdiction of the courts in Ranchi. No other jurisdiction shall be applicable.

Appendix: IV-Scope of Services

I. Scope of Services:

As a broad scope the selected bidder will perform the following primary tasks-

- a. Providing Android Based Mobile Application for tracking of the user movements (Live Location Monitoring), Details of which will be provided by the Authority for about 10 days prior to the start of elections.
- b. GEO tagging/GEO Fencing of the users for particular pockets/area.
- c. Digitize any kind of paperwork on the field with digital forms.
- d. Provide User Manual, training and service support throughout the period of service.

The Application shall have the following features:

- 1) 24x7 track of authorized personnel of CEO/ DEO during General & Assembly Election.
- 2) View exact location of the user through their GPS enabled-mobile device.
- 3) The mobile application will have the feature of updating and report incidents along with the photographs. Application should allow users to captures Images with exact Latitude & Longitude.
- 4) Application should have Admin Console with Live View, Dashboards, adhoc reporting access.
- 5) Application should view breadcrumb trail of previous travel history of all the users.
- 6) Application should allow individual users to clock in, take break and lunches, clock out and submit timesheets.
- 7) Route Deviation/Excess Stoppage Alerts- In case of deviation of user from pre-defined routes or excess stoppage of user beyond specified time duration, alert should be given through SMS on about 4 to 5 relevant mobile nos or as suggested by the authority.
- 8) Providing support during uploading of Apps in the mobile of the Authorised persons/users.
- 9) The System should have the provision to add/ update the details of the Polling station(s) along with their GPS Coordinates.
- 10) The system should have provision of tagging the officers with the Polling station(s).
- 11) Real time report of the movement of the GPS enabled mobile applications on the map to the users based on their privileges. The bidder shall maintain a dynamic reporting system. The bidder is also required to provide following customized MIS report as per requirements of Cabinet Election Department, Jharkhand and the District Officers
 - a) Live location of the Users through open street map.
 - b) Detailed Activity reports

- c) The trail of the route traversed by the mobile app user as and when required.
- 12) The mobile application will run in the Background unless until the user will not stop the application process.
- 13) The mobile application will have the functionality of sending the live locations to Admin Console in the Control room. The agency is required to provide Admin console rights to the authority with user id and password so that the authority can monitor the live location of the target in the state and all 24 district control room.

Note

- The space and infrastructure like Monitoring Displays and the Internet connectivity will be provided by the Cabinet Election Department, Jharkhand for the Operations of mobile application.
- The Master Data such as details of Polling station and other details will be entered/provided by the Cabinet Election Department, Jharkhand. Bidder has to provide the technical Support for using the system.

Appendix: V: Form of Performance Bank Guarantee

To: _____
[name of Employer]

[address of Employer]

Dear Sir(s)

WHEREAS _____ [name and address of Agency] (hereinafter called "the Agency") has undertaken, in pursuance of Contract No. _____ dated _____ to provide **Services for Providing Mobile based GPS Tracking System during upcoming General Election and Legislative Assembly Election 2019**". [Project ID No and brief description of Works] (hereinafter called "the Contract")

AND WHEREAS it has been stipulated by you in the said Contract that the Agency shall furnish you with a Bank Guarantee by Scheduled or Institutional Bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Agency such a Bank Guarantee;

NOW THEREFORE we hereby affirm that we are the Guarantor and responsible to you, on behalf of the Agency, up to a total of Rs. _____ [amount of guarantee] (*) _____ [in words], and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of _____ [amount of guarantee] (*) as aforesaid, without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said amount from the Agency before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Consultancy Services to be performed thereunder or of any of the Contract documents which may be made between you and the Agency, shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until (i.e.) 2 months from the date of completion of Services.

Signature and Seal _____

Name _____ of _____ Bank/Financial
Institution_____

Address

Date

The Guarantor shall insert an amount representing the Contract Price specified in the Contract and as specified in clause 3.6

Note 1: The stamp papers of appropriate value shall be purchased in the name of bank that issues the "Bank Guarantee".

Note 2: The bank guarantee shall be from a Scheduled or Institutional Bank.

* An amount shall be inserted by the bank representing the amount of the Advance Payment.