

**Karnataka Biotechnology & Information Technology  
Services (KBITS )**

2<sup>nd</sup> Floor, UNI Building, Thimmaiah Road, Bangalore – 560 052


**Tender document**

**For Selection of Fund Mobilizers for  
Semiconductor Venture Capital Fund**

**Issued by**

**Technical Consultancy Services Organization of Karnataka  
(TECSOK),**

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## 1. INTRODUCTION

### 1.1 Background

The Karnataka Information Technology Services (KITS) was established during 2000 as a Society under the Karnataka Societies Registration Act to achieve the objectives contained in the Millennium Information Technology Policy. It plays a significant role in the growth and development of knowledge based industries in the State. This organization helps the Department of Information Technology and Biotechnology in facilitating and promoting the Information Technology and Biotech Sectors in the State. KITS has been renamed as **Karnataka Biotechnology and Information Technology Services (KBITS)**.

Government of Karnataka has launched Karnataka Semiconductor Policy 2010 to give impetus to the growth of Semiconductor Industries comprising chip design, chip manufacturing, VLSI design, hardware / board design, embedded software development, wafer fabrication, assembly, testing, marking & packing (ATMP) and manufacture of LCDs, OLEDs, Plasma display panels, storage devices, solar cells, photovoltaic cells, etc..

As per the Policy, Government of Karnataka would provide Rs. 25 crores towards 26% of the corpus of the proposed KITVEN IT fund to assist start up Semiconductor units in the State. The remaining 74% of the corpus is to be raised from other potential investors. Thus, the total corpus of the proposed venture capital fund would be about Rs. 96.15 crores.

KBITS proposes to select a Fund Mobilizer through transparent tender document process for mobilizing balance 74% of the fund from interested investors.

### 1.2 Tender document

Tender document can be downloaded from <https://eproc.karnataka.gov.in>. The Applicant should register in e-procurement portal paying charges as prescribed (one time). Applicants have to pay the tender processing fee as mentioned in the e-procurement portal.

### 1.3 Validity of the Proposal

The Proposal shall be valid for a period of 180 days from the Proposal due date.

#### 1.4 Brief Description of the Selection Process

KBITS has adopted a two-stage e-procurement selection process in evaluating pre-qualification and financial bids. In the first stage, pre-qualification evaluation will be carried out as specified in the document. Based on this pre-qualification evaluation, a list of eligible applicants shall be prepared in the order of merit.

The financial proposals of all the applicants who have been pre-qualified shall be opened in the second stage in the presence of those who choose to remain present. The applicant, who has submitted the **lowest** financial bid (L1), shall be selected as the preferred applicant and shall be called for negotiations.

#### 1.5 Schedule of Selection Process

KBITS would endeavor to adhere to the following schedule:

Sl.No.	Event	Date
1	Last date for receiving queries/clarifications	23.09.2011
2	Pre-proposal Conference	26.09.2011 11:00 hrs.
3	Response to queries	30.09.2011
4	Proposal Submission Due Date (PDD)	21.10.2011 16:00 hrs.
5	Opening of Proposals in presence of bidders	24.10.2011 11:00 hrs.

Any changes in the dates will be intimated to the Consultants in advance.

#### 1.6 Pre-Proposal Conference

A pre-proposal conference will be held on 26.09.2011 at 11 AM in the Meeting Hall of KBITS, Bangalore. Bidders may address their queries, if any, on the tender document on or before 23.09.2011.

#### 1.7 Contact for communication :

CEO & Chief Adviser, TECSOK,

☎ : (080) 2226 6134 / 4151 2382 / 4113 8381

Email : [tecsok1@airtelmail.in](mailto:tecsok1@airtelmail.in) / [ceotecsok@bsnl.in](mailto:ceotecsok@bsnl.in)

#### 1.8 Submission of the Proposal at : <https://eproc.karnataka.gov.in>.

## 2 - INSTRUCTIONS TO APPLICANTS

### A. GENERAL

#### 2.1 Scope of Proposal

2.1.1 Detailed description of the objectives, scope of services, deliverables and other requirements for raising funds are specified in this tender document. In case an applicant possesses the requisite experience and capabilities required for raising funds, he may participate in the selection process individually in response to this invitation. **Application as a consortium of firms is not allowed.** The term 'Applicant' comprises Investment Banker, Merchant Banker, Non Banking Financial Company (NBFC), Fund Mobilizer and Verticals of Financial Institutions engaged in mobilizing funds which have been registered as legal entity in India.

2.1.2 Applicants are advised that the selection of Fund Mobilizer shall be on the basis of an evaluation by KBITS through the Selection Process specified in this tender document. Applicants shall be deemed to have understood and agreed that no explanation or justification for any aspect of the Selection Process will be given and that the KBITS decisions are without any right of appeal whatsoever.

2.1.3 The Applicant shall submit its Proposal in the form and manner specified in this tender document. The Pre-qualification Proposal shall be submitted in the form at Appendix-I and the Financial Proposal shall be submitted in the form at Appendix-II. Upon selection, the Applicant shall be required to enter into an agreement with KBITS in the form specified at Schedule - 2. Schedule - 2 is only a draft format for agreement giving the broad outline. The content of the agreement will be finalized at the time of entering into contract between KBITS and selected Fund Mobilizer.

#### 2.2 Conditions of Eligibility of Applicants

2.2.1 Applicants must read carefully the minimum conditions of eligibility provided herein. Financial Bids of only those Applicants who satisfy the conditions of eligibility and pre-qualified will be considered.

2.2.2 The Applicant shall fulfill the following eligibility:

- Should be a Registered Legal Entity in India
- Should be either Investment Banker or Merchant Banker or Non Banking Financial Company (NBFC) or Fund Mobilizer or Verticals of Financial Institutions engaged in mobilizing funds.
- Should have minimum experience of three years as Fund Mobilizer.
- Must have raised at least Rs. 50 crores for other Ventures / Corporates.

Raising funds for Government related VCFs / Banks & Financial Institutions which sponsored VCFs will be added advantage.

2.2.3 Consortium partners are not allowed.

2.2.4 The Applicant shall submit with its Proposal, proof in support of meeting the eligibility criteria.

2.2.5 The Applicant should submit a Power of Attorney as per the format at Form-3 of Appendix-I, provided, however, that such Power of Attorney would not be required if the Application signed by a partner of the Applicant, in case the Applicant is a partnership firm or limited liability partnership.

2.2.6 Any entity which has been barred by the Central Government, any State Government, a Statutory Authority or a Public Sector Undertaking, as the case may be, from participating in any project and the bar subsists as on the date of Proposal, would not be eligible to submit a Proposal either by itself or through its Associate.

2.2.7 An Applicant or its Associate should have, during the last three years, neither failed to perform on any agreement, as evidenced by imposition of a penalty by an arbitral or judicial authority or a judicial pronouncement or arbitration award against the Applicant or its Associate, nor been expelled from any project or agreement nor have had any agreement terminated for breach by such Applicant or its Associate.

All documents should be scanned and uploaded in the e-procurement portal <https://eproc.karnataka.gov.in>

### 2.3 Conflict of Interest

- 2.3.1 An Applicant shall not have a conflict of interest that may affect the Selection Process or the Consultancy. Any Applicant found to have a Conflict of Interest shall be disqualified. In the event of disqualification, KBITS shall forfeit and appropriate the Bid Security as mutually agreed genuine pre-estimated compensation and damages payable to KBITS for, *inter alia*, the time, cost and effort of KBITS including consideration of such Applicant's Proposal, without prejudice to any other right or remedy that may be available to KBITS hereunder or otherwise.
- 2.3.2 KBITS requires that the selected Fund Mobilizer provides professional, objective, and impartial advice and at all times hold the KBITS 's interests paramount, avoid conflicts with other assignments or its own interests, and act without any consideration for future work. The Consultant shall not accept or engage in any assignment that would be in conflict with its prior or current obligations to other clients, or that may place it in a position of not being able to carry out the assignment in the best interests of the KBITS.
- 2.3.3 Some guiding principles for identifying and addressing Conflicts of Interest have been illustrated in the Guidance Note at Schedule-3.

## **2.4 Number of Proposals**

No Applicant or its Associate shall submit more than one tender document for the assignment.

## **2.5 Cost of Proposal**

The Applicants shall be responsible for all of the costs associated with the preparation of their Proposals and their participation in the Selection Process including subsequent negotiation, visits to the KBITS. KBITS will not be responsible or in any way liable for such costs, regardless of the conduct or outcome of the Selection Process.

## **2.6 Acknowledgement by Applicant**

- 2.6.1 It shall be deemed that by submitting the Proposal, the Applicant has:
- (a) Made a complete and careful examination of the tender document.
  - (b) Received all relevant information requested from KBITS.

- (c) Acknowledged and accepted the risk of inadequacy, error or mistake in the information provided in the tender document or furnished by or on behalf of KBITS.
- (d) Satisfied itself about all matters, things and information, necessary and required for submitting an informed application and performance of all of its obligations there under.
- (e) Acknowledged that it does not have a Conflict of Interest and
- (f) Agreed to be bound by the undertaking provided by it under and in terms hereof.

2.6.2 KBITS shall not be liable for any omission, mistake or error on the part of the Applicant in respect of any of the above or on account of any matter or thing arising out of or concerning or relating to tender document or the Selection Process, including any error or mistake therein or in any information or data given by the KBITS.

## **2.7 Right to reject any or all Proposals**

2.7.1 Notwithstanding anything contained in this tender document, KBITS reserves the right to accept or reject any Proposal and to annul the Selection Process and reject all Proposals, at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof.

2.7.2 Without prejudice to the generality of Clause-2.7.1, KBITS reserves the right to reject any Proposal if:

- (a) At any time, a material misrepresentation is made or discovered, or
- (b) The Applicant does not provide, within the time specified by the KBITS, the supplemental information sought by KBITS for evaluation of the Proposal.

Misrepresentation / improper response by the Applicant may lead to the disqualification of the Applicant. If such disqualification / rejection occurs after the Proposals have been opened and the highest ranking Applicant gets disqualified / rejected, then KBITS reserves the right to consider the next best Applicant, or take any other measure as may be deemed fit in the sole discretion of the KBITS, including annulment of the Selection Process.

**B. DOCUMENTS****2.8 Contents of the tender document**

This tender document comprises the contents as listed below and will additionally include any Addendum / Amendment issued in accordance with Clause-2.10:

**(a) Tender Document**

- 1 Introduction
- 2 Instructions to Applicants
- 3 Criteria for Evaluation
- 4 Fraud and corrupt practices
- 5 Pre-Proposal Conference
- 6 Miscellaneous

**(b) Schedules**

- 1 Terms of Reference
- 2 Draft Agreement

**(c) Appendices****Appendix-I: Pre-qualification Proposal**

- Form 1 : Letter of Proposal
- Form 2 : Particulars of the Applicant
- Form 3 : Power of Attorney
- Form 4 : Proposed Methodology and Work Plan

**Appendix-II: Financial Proposal**

- Form 1 : Financial Proposal

## 2.9 Clarifications

2.9.1 Applicants requiring any clarification on the tender document may send their queries to CEO & Chief Adviser, TECSOK, before the date mentioned in the Schedule of Selection Process at Clause-1.5 at e-mail : [tecsok1@airtelmail.in](mailto:tecsok1@airtelmail.in) or [ceotecok@bsnl.in](mailto:ceotecok@bsnl.in).

KBITS shall endeavor to respond to the queries within the period specified therein. The responses will be sent by fax or e-mail. KBITS will post the reply to all such queries on the Official Website and e-mailed to those who have attended pre-proposal conference without identifying the source of queries.

2.9.2 KBITS reserves the right not to respond to any questions or provide any clarifications, in its sole discretion, and nothing in this Clause-2.9 shall be construed as obliging KBITS to respond to any question or to provide any clarification.

## 2.10 Amendment of Tender Document

2.10.1 At any time prior to the deadline for submission of Proposal, KBITS may, for any reason, whether at its own initiative or in response to clarifications requested by an Applicant, modify the tender document by the issuance of Addendum / Amendment and posting it on the e-Procurement portal (within the tender) and the Official Website of KBITS [www.bangaloreitbt.in](http://www.bangaloreitbt.in)

2.10.2 The amendments will be posted in the e-Procurement portal and on the official website along with the revised tender document containing the amendments and will be binding on all Applicants.

2.10.3 In order to afford the Applicants a reasonable time for taking an amendment into account, or for any other reason, KBITS may, in its sole discretion, extend the Proposal Due Date.

## C. PREPARATION AND SUBMISSION OF PROPOSAL

### 2.11 Language

The Proposal with all accompanying documents and all communications in relation to or concerning the Selection Process shall be in English language and strictly on the forms provided in this tender document.

## 2.12 Format and signing of Proposal

- 2.12.1 The Applicant shall provide all the information sought under this tender document. KBITS would evaluate only those Proposals that are received in the specified forms and complete in all respects.
- 2.12.2 The Applicant shall submit scanned copy of the pre-qualification proposal and financial proposal along with scanned copy of the documents in support of their eligibility.
- 2.12.3 Applicants should note the Proposal Due Date, as specified in Clause-1.8, for submission of Proposals. Except as specifically provided in this tender document, no supplementary material will be entertained by the KBITS, and that evaluation will be carried out only on the basis of Documents received by the closing time of Proposal Due Date as specified in Clause-2.16.1.

## 2.13 Pre-qualification Proposal

- 2.13.1 Applicants shall submit the pre-qualification proposal in the formats at Appendix-I (the “**Pre-qualification Proposal**”).
- 2.13.2 While submitting the Pre-qualification Proposal, the Applicant shall, in particular, ensure that:
- (a) Payment of tender processing fee through any of the 4 modes of e-Payment as mentioned in the e-procurement portal. The details regarding e-payment procedure is available in e-Payment document provided along with this document.
  - (b) Bid Security of Rs. 1,00,000 (Rupees One Lakh Only) through any of the 4 modes of e-Payment as mentioned in the e-procurement portal. The details regarding e-payment procedure is available in e-Payment document provided along with this document.
  - (c) All forms are submitted in the prescribed formats and with signature or digital signature by the prescribed signatories.
  - (e) Power of Attorney, if applicable, is executed as per applicable Laws.

- (f) A commitment letter indicating the minimum amount of fund to be raised on the Company letterhead, duly signed or with digital signature and provide additional performance security for the same.
- (g) The proposal is responsive in terms of Clause-2.20.3.

2.13.3 Failure to comply with the requirements spelt out in this Clause-2.13 shall make the Proposal liable to be rejected.

2.13.4 The Pre-qualification Proposal shall not include any financial information relating to the Financial Proposal.

2.13.5 KBITS reserves the right to verify all statements, information and documents, submitted by the Applicant in response to the tender document. Any such verification or the lack of such verification by KBITS to undertake such verification shall not relieve the Applicant of its obligations or liabilities hereunder nor will it affect any rights of KBITS there under.

2.13.6 In case it is found during the evaluation or at any time before signing of the Agreement or after its execution and during the period of subsistence thereof, that one or more of the eligibility conditions have not been met by the Applicant or the Applicant has made material misrepresentation or has given any materially incorrect or false information, the Applicant shall be disqualified forthwith if not yet appointed as the Consultant either by issue of the LOA or entering into of the Agreement, and if the Selected Applicant has already been issued the LOA or has entered into the Agreement, as the case may be, the same shall, notwithstanding anything to the contrary contained therein or in this tender document, be liable to be terminated, by a communication in writing by KBITS without KBITS being liable in any manner whatsoever to the Applicant or Consultant, as the case may be. In such an event, KBITS shall forfeit and appropriate the Bid Security as mutually agreed pre-estimated compensation and damages payable to KBITS for, *inter alia*, time, cost and effort of the KBITS, without prejudice to any other right or remedy that may be available to the KBITS.

## 2.14 Financial Proposal

2.14.1 Applicants shall submit the financial proposal in the formats at Appendix-II (the “**Financial Proposal**”) clearly indicating the total cost of assignment as a percentage both figures and words, and with signature or digital signature by

the Applicant's Authorized Representative. In the event of any difference between figures and words, the number indicated in words shall prevail.

Applicant shall enter the total cost of assignment as a percentage in the e-Procurement portal also.

In case of discrepancy in the percentage mentioned in the e-Procurement portal with the percentage mentioned in scanned attachment, the lower percentage shall be considered.

2.14.2 While submitting the Financial Proposal, the Applicant shall ensure the following:

- (i) The total amount indicated in the Financial Proposal shall be without any condition attached or subject to any assumption, and shall be final and binding. In case any assumption or condition is indicated in the Financial Proposal, it shall be considered non-responsive and liable to be rejected.
- (ii) The Financial Proposal shall be exclusive of applicable Service Tax and inclusive of all other taxes, levies, fees etc.. All payments shall be subject to deduction of taxes at source as per Applicable Laws.

## **2.15 Submission of Proposal**

2.15.1 The Applicants shall submit the Proposal through e-procurement portal at <https://eproc.karnataka.gov.in>.

2.15.2 Deleted

2.15.3 Applicant shall upload duly filled-up prescribed formats of pre-qualification proposal and financial proposal.

2.15.4 The Appendices as uploaded by Applicants shall be signed or with *digital signature* by the Authorized Representative of the Applicant.

2.15.5 The completed Proposal must be submitted on or before the specified time on Proposal Due Date. Proposals submitted by fax, telex, telegram or e-mail shall not be entertained.

2.15.6 The Proposal shall be made in the Forms specified in this tender document. Any attachment to such Forms must be provided on separate sheets of paper and only information that is directly relevant should be provided. This may include photocopies of the relevant pages of printed documents.

2.15.7 The percentage quoted shall be firm throughout the period of performance of the assignment and discharge of all obligations of the Consultant under the Agreement.

## **2.16 Proposal Due Date**

2.16.1 Proposal should be submitted at or before 16:00 hours on the Proposal Due Date specified at Clause-1.5 at the address provided in Clause-1.8 in the manner and form as detailed in this tender document.

2.16.2 KBITS may, in its sole discretion, extend the Proposal Due Date by issuing an Addendum in accordance with Clause-2.10 uniformly for all Applicants.

## **2.17 Late Proposals**

e-Procurement portal does not allow for late submission of bids. The access to tender gets automatically locked after the submission due date and time.

## **2.18 Modification/ substitution / withdrawal of Proposals**

2.18.1 The Applicant may modify, substitute or withdraw its Proposal after submission, prior to Proposal Due Date. No Proposal shall be modified, substituted or withdrawn by the Applicant on or after the Proposal Due Date.

2.18.2 Deleted

2.18.3 Any alteration / modification in the Proposal or additional information or material supplied subsequent to the Proposal Due Date, unless the same has been expressly sought for by the KBITS, shall be disregarded.

## **2.19 Bid Security**

- 2.19.1 The Applicant shall furnish as part of its Proposal, a bid security of Rs. 1,00,000 (Rupees one lakh only) through e-payment mode of e-procurement portal, returnable not later than 30 (thirty) days from selection of preferred bidder (L1) except in case of second (L2) & third (L3) lowest bidder. In the event bidder quoting the lowest fee (L1) commences the assignment as required in Clause 2.27, L2 and L3 bidder who has been kept in reserve, shall be returned its Bid Security forthwith, but in no case not later than 120 (one hundred and twenty) days from the date of selection of preferred bidder (L1). The selected Applicant's (L1) Bid Security shall be returned, upon the Applicant signing the Agreement.
- 2.19.2 Any Bid without Bid Security and Tender Processing Fee shall be rejected by e-Procurement system during tender opening.
- 2.19.3 KBITS shall not be liable to pay any interest on the Bid Security and the same shall be interest free.
- 2.19.4 The Applicant, by submitting its Application pursuant to this tender document, shall be deemed to have acknowledged that without prejudice to the KBITS 's any other right or remedy hereunder or in law or otherwise, the Bid Security shall be forfeited and appropriated by KBITS as the mutually agreed pre-estimated compensation and damage payable to KBITS for, *inter alia*, the time, cost and effort of KBITS in regard to the tender document including the consideration and evaluation of the Proposal under the following conditions:
- (a) If an Applicant submits a non-responsive Proposal.
  - (b) If an Applicant engages in any of the Prohibited Practices specified in Section-4 of this tender document.
  - (c) If an Applicant withdraws its Proposal during the period of its validity as specified in this tender document and as extended by the Applicant from time to time.
  - (d) In the case of the Selected Applicant, if the Applicant fails to reconfirm its commitments during negotiations as required vide Clause-2.23.1.
  - (e) In the case of a Selected Applicant, if the Applicant fails to sign the Agreement or commence the assignment as specified in Clauses-2.25 and 2.26 respectively or
  - (f) If the Applicant is found to have a Conflict of Interest.

## D. EVALUATION PROCESS

### 2.20 Evaluation of Proposals

- 2.20.1 KBITS shall open the electronic Bid at 11.00 hours on the 24.10.2011 in the Meeting hall of KBITS, in the presence of the Applicants, who choose to attend. The "Pre-qualification Proposal" shall be opened first. The "Financial Proposal" shall be kept for opening at a later date to be informed at the time of opening the pre qualification proposal. Any change in the date of opening, will be intimated to the Applicants in advance.
- 2.20.2 Proposals for which a notice of withdrawal has been submitted in accordance with Clause-2.18 shall not be opened.
- 2.20.3 Prior to evaluation of Proposals, KBITS will determine whether each Proposal is responsive to the requirements of the tender document. KBITS may, in its sole discretion, reject any Proposal that is not responsive hereunder. A Proposal shall be considered responsive only if:
- (a) The Pre-qualification Proposal is received in the form specified at Appendix-I.
  - (b) It is received by the Proposal Due Date including any extension thereof pursuant to Clause-2.16.
  - (c) The Bid Security payment is made as specified in Clause-2.19.1.
  - (d) Documents are submitted as stipulated in Clauses-2.12 and 2.15.
  - (e) It is accompanied by the Power of Attorney as specified in Clause-2.2.5.
  - (f) It contains all the information (complete in all respects) as requested in the tender document.
  - (g) It does not contain any condition or qualification and
  - (h) It is not non-responsive in terms hereof.
- 2.20.4 KBITS reserves the right to reject any Proposal which is non-responsive and no request for alteration, modification, substitution or withdrawal shall be entertained by KBITS in respect of such Proposals.

- 2.20.5 KBITS shall subsequently examine and evaluate Proposals in accordance with the Selection Process specified at Clause-1.4 and the criteria set out in Section-3 of this tender document.
- 2.20.6 After the pre-qualification evaluation, KBITS shall prepare a list of pre-qualified Applicants for opening of their Financial Proposals. A date, time and venue will be notified to all pre-qualified Applicants for opening of Financial Proposals. The opening of Financial Proposals shall be done in presence of respective representatives of Applicants who choose to be present. KBITS will not entertain any query or clarification from Applicants who fail to qualify at any stage of the Selection Process. The financial evaluation and final ranking of the Proposals shall be carried out in terms of Clauses-3.2.
- 2.20.7 Applicants are advised that Selection will be entirely at the discretion of the KBITS. Applicants will be deemed to have understood and agreed that no explanation or justification on any aspect of the Selection Process or Selection will be given.
- 2.20.8 Any information contained in the Proposal shall not in any way be construed as binding on the KBITS, its agents, successors or assigns, but shall be binding against the Applicant if the Consultancy is subsequently awarded to it.

## **2.21 Confidentiality**

Information relating to the examination, clarification, evaluation, and recommendation for the selection of Applicants shall not be disclosed to any person who is not officially concerned with the process or is not a retained professional adviser advising KBITS in relation to matters arising out of, or concerning the Selection Process. KBITS will treat all information, submitted as part of the Proposal, in confidence and will require all those who have access to such material to treat the same in confidence. KBITS may not divulge any such information unless it is directed to do so by any statutory entity that has the power under law to require its disclosure or is to enforce or assert any right or privilege of the statutory entity and/or the KBITS.

## **2.22 Clarifications**

- 2.22.1 To facilitate evaluation of Proposals, KBITS may, at its sole discretion, seek clarifications from any Applicant regarding its Proposal. Such clarification(s)

shall be provided within the time specified by KBITS for this purpose. Any request for clarification(s) and all clarification(s) in response thereto shall be in writing.

- 2.22.2 If an Applicant does not provide clarifications sought under Clause-2.22.1 above within the specified time, its Proposal shall be liable to be rejected. In case the Proposal is not rejected, KBITS may proceed to evaluate the Proposal by construing the particulars requiring clarification to the best of its understanding, and the Applicant shall be barred from subsequently questioning such interpretation of the KBITS.

## **E. APPOINTMENT OF CONSULTANT**

### **2.23 Negotiations**

- 2.23.1 The Selected Applicant may, if necessary, be invited for negotiations. The negotiations shall generally not be for reducing the price of the Proposal, but will be for re-confirming the obligations of the Consultant under this tender document. Issues such as understanding of the tender document, methodology and quality of the work plan shall be discussed during negotiations. In case the Selected Applicant fails to reconfirm its commitment, KBITS reserves the right to designate second lowest (L2) ranked Applicant and invite it for negotiations.

### **2.24 Award of Consultancy**

After selection, a Letter of Award (the "LOA") shall be issued, in duplicate, by KBITS to the Selected Applicant and the Selected Applicant shall, within 7 (seven) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement thereof. In the event the duplicate copy of the LOA duly signed by the Selected Applicant is not received by the stipulated date, KBITS may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such Applicant as mutually agreed genuine pre-estimated loss and damage suffered by KBITS on account of failure of the Selected Applicant to acknowledge the LOA, and the next second lowest Applicant may be considered.

### **2.25 Execution of Agreement**

After acknowledgement of the LOA as aforesaid by the Selected Applicant, it shall execute the Agreement within the date stipulated. The Selected Applicant shall not be entitled to seek any deviation in the Agreement.

## **2.26 Bank Guarantee**

Consultant shall provide bank guarantee of 15% of the negotiated professional fees in favour of KBITS, with a validity period of 12 months. The bank guarantee will be released soon after completion of the assignment. The bank guarantee should be from a Nationalized bank only.

## **2.27 Commencement of assignment**

The Consultant shall commence the services within 7 (seven) days of the date of the Agreement or such other date as may be mutually agreed. If the Consultant fails to either sign the Agreement as specified in Clause-2.25 or commence the assignment as specified herein, KBITS may invite the second lowest (L2) Applicant for negotiations. In such an event, the Bid Security of the lowest (L1) Applicant shall be forfeited and appropriated in accordance with the provisions of Clause-2.19.4.

2.27.1 KBITS has the right to short close the assignment at any stage, for whatsoever reason. In such cases, the Consultant will be compensated for the services rendered till that point of time. The compensation will be based on the independent assessment by a third party nominated by the Government, of the services rendered by the Consultant.

## **2.28 Proprietary data**

Subject to the provisions of Clause-2.21, all documents and other information provided by KBITS or submitted by an Applicant to KBITS shall remain or become the property of the KBITS. Applicants and the Consultant, as the case may be, are to treat all information as strictly confidential. KBITS will not return any Proposal or any information related thereto. All information collected, analyzed, processed or in whatever manner provided by the Consultant to KBITS in relation to the Consultancy shall be the property of the KBITS.

### 3 - CRITERIA FOR EVALUATION

#### 3.1 Evaluation of Pre-qualification Proposals

3.1.1 In the first stage, the Pre-qualification Proposal will be evaluated for their eligibility to participate in the bidding process. All the applicants meeting the eligibility criteria shall be pre-qualified. The applicants who do not meet the eligibility criteria, shall not be pre-qualified and the financial bids will not be opened. The financial bids of rejected applicants will remain encrypted in the e-Procurement system.

3.1.2 The eligibility criteria for applicants to pre-qualify are -

- Should be a Registered Legal Entity in India
- Should be either Investment Banker or Merchant Banker or Non Banking Financial Company (NBFC) or Fund Mobilizer or Verticals of Financial Institutions engaged in mobilizing funds.
- Should have minimum experience of three years as Fund Mobilizer.
- Must have raised at least Rs. 50 crores for other Ventures / Corporates.

#### 3.2 Evaluation of Financial Proposal

3.2.1 In the second stage, the financial evaluation will be carried out as per this Clause-3.2.

3.2.2 KBITS will determine whether the Financial Proposals are complete, unqualified and unconditional. The cost indicated in the Financial Proposal shall be deemed as final and reflecting the total cost of services. Omissions, if any, in costing any item shall not entitle the firm to be compensated and the liability to fulfill its obligations as per the TOR within the total quoted price shall be that of the Consultant.

The financial proposals of all the applicants who have been pre-qualified as per clause 3.1.1 above, shall be opened in the presence of those who choose to

remain present. The applicant, who has submitted the lowest financial bid, shall be selected as the L1 and shall be called for further negotiations.

#### 4 - FRAUD AND CORRUPT PRACTICES

- 4.1 The Applicants and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Selection Process. Notwithstanding anything to the contrary contained in this tender document, KBITS shall reject a Proposal without being liable in any manner whatsoever to the Applicant, if it determines that the Applicant has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice (collectively the “**Prohibited Practices**”) in the Selection Process. In such an event, KBITS shall, without prejudice to its any other rights or remedies, forfeit and appropriate the Bid Security and/or Performance Security, as the case may be, as mutually agreed genuine pre-estimated compensation and damages payable to KBITS for, *inter alia*, time, cost and effort of the KBITS, in regard to the tender document, including consideration and evaluation of such Applicant’s Proposal.
- 4.2 Without prejudice to the rights of KBITS under Clause-4.1 hereinabove and the rights and remedies which KBITS may have under the LOA or the Agreement, if an Applicant or Consultant, as the case may be, is found by KBITS to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Selection Process, or after the issue of the LOA or the execution of the Agreement, such Applicant or Consultant shall not be eligible to participate in any tender document or tender document issued by KBITS during a period of 2 (two) years from the date such Applicant or Consultant, as the case may be, is found by KBITS to have directly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.
- 4.3 For the purposes of this Section, the following terms shall have the meaning hereinafter respectively assigned to them:
- (a) “**corrupt practice**” means (i) the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of any person connected with the Selection Process (for avoidance of doubt, offering of employment to or employing or engaging in any manner whatsoever, directly or indirectly, any official of KBITS who is or has been

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

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

## 5 - PRE-PROPOSAL CONFERENCE

- 5.1 Pre-Proposal Conference of the Applicants will be convened at the designated date, time and place as per Clause-1.5.
- 5.2 During the course of Pre-Proposal Conference, the Applicants will be free to seek clarifications and make suggestions for consideration of the KBITS. KBITS shall endeavor to provide clarifications and such further information as it may, in its sole discretion, consider appropriate for facilitating a fair, transparent and competitive Selection Process.

## 6 - MISCELLANEOUS

- 6.1 The Selection Process shall be governed by, and construed in accordance with, the laws of India and the Courts at Bangalore shall have exclusive jurisdiction over all disputes arising under, pursuant to and/or in connection with the Selection Process.
- 6.2 The KBITS, in its sole discretion and without incurring any obligation or liability, reserves the right, at any time, to:
- (a) Suspend and/or cancel the Selection Process and/or amend and/or supplement the Selection Process or modify the dates or other terms and conditions relating thereto;
  - (b) Consult with any Applicant in order to receive clarification or further information;
  - (c) Retain any information and/or evidence submitted to KBITS by, on behalf of and/or in relation to any Applicant; and/or
  - (d) Independently verify, disqualify, reject and/or accept any and all submissions or other information and/or evidence submitted by or on behalf of any Applicant.
- 6.3 It shall be deemed that by submitting the Proposal, the Applicant agrees and releases the KBITS, its employees, agents and advisers, irrevocably, unconditionally, fully and finally from any and all liability for claims, losses, damages, costs, expenses or liabilities in any way related to or arising from the exercise of any rights and/or performance of any obligations hereunder, pursuant hereto and/or in connection herewith and waives any and all rights and/or claims it may have in this respect, whether actual or contingent, whether present or future.
- 6.4 All documents and other information supplied by KBITS or submitted by an Applicant shall remain or become, as the case may be, the property of the KBITS. KBITS will not return any submissions made hereunder. Applicants are required to treat all such documents and information as strictly confidential.
- 6.5 KBITS reserves the right to make inquiries with any of the clients listed by the Applicants in their previous experience record.

*Schedules*

## Schedule 1 : Terms of Reference (ToR)

### 1. General

The Karnataka Information Technology Services (KITS) was established during 2000 as a Society under the Karnataka Societies Registration Act to achieve the objectives contained in the Millennium Information Technology Policy. It plays a significant role in the growth and development of knowledge based industries in the State. This organization helps the Department of Information Technology and Biotechnology in facilitating and promoting the Information Technology and Biotech Sectors in the State. KITS has been renamed as Karnataka Biotechnology and Information Technology Services (KBITS).

Government of Karnataka has launched Karnataka Semiconductor Policy 2010 to give impetus to the growth of Semiconductor Industries comprising chip design, chip manufacturing, VLSI design, hardware / board design, embedded software development, wafer fabrication, assembly, testing, marking & packing (ATMP) and manufacture of LCDs, OLEDs, Plasma display panels, storage devices, solar cells, photovoltaic cells, etc.. Details of the Policy may be viewed at website [www.bangaloreitbt.in](http://www.bangaloreitbt.in).

As per the Policy, the State Government proposes to create a venture capital fund as follows:

“Govt. of Karnataka would provide additional amount of Rs. 25 Crores, towards 26% contribution to the KITVEN IT Fund for raising funds from the market to assist start up semi-conductor units engaged in design and embedded software”

The remaining 74% of the corpus is to be raised from other potential investors. Thus, the total corpus of the proposed venture capital fund would be about Rs. 96.15 crores. Karnataka Asset Management Company Private Ltd. (KAMCO), the Manager of Karnataka Information Technology Venture Capital (KITVEN) Fund will operate proposed KITVEN IT fund for semiconductor sector.

### 2. Experience in VCFs

KAMCO has successfully managed KITVEN fund and launched KITVEN Fund II. Karnataka Trustee Company Pvt. Ltd. (KATCO) is Trustee Company of KITVEN funds.

Brief particulars of KAMCO are given below:

- Authorized capital – Rs.100 lakhs, Paid up capital – Rs.49.50 lakhs (Rs.16.50 lakhs each – KSIIDC, KSFC & SIDBI)
- As per articles, MD of KSIIDC is the Chairman of the Company
- Major income by way of management fee from KITVEN Funds
- Board of Directors of the company are nominations by the subscribers to the KITVEN Funds in proportion to their combined contribution to the Funds under management
- Company is paying consistent dividend of 10% to shareholders for past 6 years.
- Company getting NIL comments from CAG since inception.

**Brief particulars of KATCO are given below:**

- Authorized capital – Rs.2.00 lakhs, Paid up capital – Rs.1.00 lakh (Rs.50,000/- each – KSIIDC & KSFC)
- As per articles, MD of KSIIDC is the Chairman of the Company
- Shell company, no employees, CEO of KAMCO is holding additional charge as CEO of KATCO on honorary basis
- Company holds investment instruments on behalf of KITVEN Funds (Under provisions of section 153 of Companies Act 1956)
- Board of Directors of the company are nominations by the subscribers to the KITVEN Funds in proportion to their combined contribution to the Funds under management
- Company paying dividend of 10% from FY 2009-10 onwards
- Company getting NIL comments from CAG since inception.

**Overview of KITVEN Fund (First Fund)**

- Corpus of the Fund : Rs.15.00 Crore contributed by KSIIDC (Rs.3.75 Crore), KSFC (Rs.3.75 Crore) and SIDBI (Rs.7.50 Crore)
- SEBI registered, IT specific VC Fund
- Registered as a Trust under the Indian Trust Act

- Trustees of the Fund are Karnataka Trustee Company Pvt. Ltd. (KATCO) – Shareholders are KSIIDC and KSFC equally
- Managers of the Fund are Karnataka Asset Management Company Pvt. Ltd (KAMCO) – Shareholders are KSIIDC, KSFC and SIDBI equally
  
- Disbursement - Rs.17.56 crore for 17 units
- No. of proposals studied - over 650 units
- No. of exits - 13 fully and 1 substantially
- Amt of investment exited – Rs. 13.84 crore
- Amt realized from exits - Rs. 20.82 crore
- Repayment to subscribers - Rs.19.60 crore
- Investment outstanding - Rs.3.71 crore
- Likely value of investment outstanding - Rs. 4 crore to 4.20 crore (tentative)
- Totally the Fund expects to realize about Rs.25 crore

#### **Structure of KITVEN Fund-2**

- Corpus of the Fund - Rs. 26.25 Crore; SEBI registered; 10 year close-ended Fund
- Regional fund – High priority for investment within State of Karnataka
- Managers of the Fund are KAMCO
- Trustees of the Fund are KATCO
- Subscribers to the Fund are KSIIDC (Rs.6.25 Crore, KSFC (Rs.7.50 Crore), SIDBI (Rs. 7.50 Crore) and KBITS (Rs.5.00 Crore)

#### **Salient Features**

- Investment scope – IT, BT, Nano-technology and other knowledge based industries
- Investment size – Rs. 1.00 crore – 2.50 crore per unit
- Investment instruments – equity, preference capital, debentures or combination of any above

- At least 51% of the funds for SME units

### **Progress of KITVEN Fund II**

Already invested in 4 units (Rs. 9.70 crore)

- Rs. 2.50 Crore to a IT unit – Pawaa Software
- Rs. 2.50 Crore to a BT unit – Mitra Biotech
- Rs. 2.50 Crore to a IT unit – Sloka Telecom
- Rs. 2.20 Crore to a IT unit – Vidteq India

Currently appraising one more IT unit for VC assistance for Rs. 2.25 Crore

### **3. Objective of the Assignment**

Prime objective of the assignment is to raise 74% of Rs. 96.15 crore corpus fund from potential / interested investor in the KITVEN IT Venture Capital Fund for semiconductor sector.

### **4. Scope of Assignment**

- \* To arrange fund for the proposed KITVEN IT Fund for semiconductor sector following the Securities & Exchange Board of India (SEBI) regulations for Venture Capital Funds.
- \* To prepare Information Memorandum clearly mentioning details of business modalities, rights of the fund provider, details of the releases, etc., for raising the funds.
- \* To raise 74% of the corpus of Rs. 96.15 crores of proposed KITVEN IT Fund for semiconductor sector from interested / potential investors.
- \* The fund to be raised from each investor should not exceed 25% of the corpus and minimum amount from each investor should be Rs. 5 crores. In the event of over subscription total corpus may be increased with the prior approval of KBITS and SEBI guidelines.
- \* Fund to be raised only from reputed financial institutions / companies / organizations which are acceptable to KBITS.

- \* To prepare agreement to be signed between Fund Manager and Investors in the KITVEN IT fund for semiconductor sector.
- \* To prepare documents for placing before the Board of Fund Manager and KBITS for approving investments offered by the potential / interested investor in the KITVEN IT fund for semiconductor sector.
- \* To prepare necessary report / filling up application form to SEBI to seek approval for launching and operating KITVEN IT fund for semiconductor sector.
- \* To liaison with SEBI for getting approval for launching and operating KITVEN IT fund for semiconductor sector.
- \* Facilitate signing of the agreement between Fund Manager and Investors in the KITVEN IT fund for semiconductor sector.
- \* To facilitate flow of funds as per the letter of offer from Investors after approval from SEBI for launching & operating the KITVEN IT fund for semiconductor sector.

#### 4.1 Other Terms

- \* The tenure of KITVEN IT Fund for semiconductor sector is 10 years and subscriber to fund cannot exit before that period.
- \* Karnataka Asset Management Company Pvt. Ltd. is the Manager of KITVEN Fund who will operate the KITVEN IT Fund for semiconductor sector.
- \* There is no Government guarantee or security for the funds to be raised for venture capital fund.
- \* There is no guaranteed rate of return on the fund raised as funds form venture capital investments, which are high risk and high return.
- \* A commitment letter indicating the minimum amount of fund to be raised on the Company letterhead, duly signed or with digital signature and provide additional performance security for the same.

## 5. Timeframe

Following are the milestones for the assignment :

1	Preparation of Information Memorandum	2 weeks
2	Preparation of Agreement between Fund Manager and Investors in the KITVEN IT fund for semiconductor sector	
3	Obtaining letter of offer from Investors in the fund	12 weeks
4	Documentation for approval of the Board of Fund Manager / KBITS	2 week
5	Report for obtaining approval from SEBI	2 weeks
6	Filling up of application	
7	Signing of agreement between Fund Manager and Investors in the KITVEN IT fund for semiconductor sector.	2 weeks from approval of SEBI
8	Facilitating in availability of the fund from Investors in KITVEN IT fund for semiconductor sector	As per the Agreement

The timeframe will be negotiated, with the preferred organization. This will be part of the agreement between KBITS and preferred organization.

## 6. Mode of Billing & Payment

The professional fees for the assignment as agreed in the contract shall be paid as follows:

- |      |   |   |     |
|------|---|---|-----|
| i)   | Mobilization advance after signing the contract   | : | 10% |
| ii)  | On finalization of Information Memorandum, obtaining Letter of Offer from Investors to invest in the Fund and approval of Board of Fund Manager & KBITS | : | 10% |
| iii) | On obtaining necessary approval of SEBI for launching and operating KITVEN IT fund for semiconductor sector   | : | 10% |
| iv)  | Signing of Agreement between Fund Manager and Investors   | : | 20% |
| v)   | On receiving the entire fund of Rs. 71.15 crores from Investors   | : | 50% |

for semiconductor VCF

The amount of billing for item No. ii) & iii) shall be on pro-rata basis on the total amount of Letter of Offer from Investors.

The amount of billing for item No. iv) shall be on pro-rata basis on the total amount of agreement signed between Fund Manager and Investors.

The amount of billing for item No. v) shall be on pro-rata basis on the total amount received by the Fund Manager from Investors.

Excess payment if any for billing for item No. i) will be deducted in the subsequent payments.

## **7. Meetings**

KBITS may convene periodical meetings at different levels to review the progress of assignment, perusal of outcomes, etc., in Bangalore or in any other place to be decided by KBITS. Consultants shall attend these meetings at their own cost and appraise the progress in the meeting. KBITS will designate a Nodal Officer to co-ordinate with the selected organization.

## **8. Performance Guarantee**

Fund Arranger has to give guarantee for the minimum amount of funds to be raised and provide performance security for the same.

## **9. Completion of Services**

The Reports and other outputs shall remain the property of KBITS and shall not be used for any purpose other than that intended under these Terms of Reference without the permission of the KBITS. KBITS shall issue a completion certificate to the Consultant once the entire assignment is over to the satisfaction of the KBITS.

**Schedule - 2 : Draft Agreement**

*(Only a draft format for agreement giving the broad outline. The content of the agreement to be finalized by KBITS in consultation with the selected Consultant and duly vetted by a Legal Expert)*

**Contents****1. General**

- 1.1 Definitions and Interpretation
- 1.2 Relation between the Parties
- 1.3 Rights and Obligations
- 1.4 Governing law and jurisdiction
- 1.5 Language
- 1.6 Table of contents and headings
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- 1.8 Authorized representatives
- 1.9 Taxes and duties

**2. Commencement, Completion and Termination of Agreement**

- 2.1 Effectiveness of Agreement
- 2.2 Commencement of Services
- 2.3 Termination of Agreement for failure to commence Services
- 2.4 Expiration of Agreement
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- 2.6 Modification of Agreement
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- 3.2 Conflict of Interest
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- 3.4 Liability of the Consultant
- 3.5 Insurance to be taken out by the Consultant
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- 3.7 Consultant's actions requiring the KBITS 's prior approval

- 3.8 Reporting obligations
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- 3.11 Providing access to the Project Office and Personnel
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#### **4. Consultant's Personnel and Sub-Consultant**

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- 6.1 Cost estimates and Agreement Value
- 6.2 Currency of payment
- 6.3 Mode of billing and payment

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- 7.1 Performance Security
- 7.2 Liquidated Damages
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#### **8. Fairness and Good Faith**

- 8.1 Good Faith
- 8.2 Operation of the Agreement

## **9. Settlement of Disputes**

- 9.1 Amicable settlement
- 9.2 Dispute resolution
- 9.3 Conciliation
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- Annexe 1 : Terms of Reference
- Annexe 2 : Financial Proposal
- Annexe 3 : Payment Schedule
- Annexe 4 : Bank Guarantee for Performance Security
- Annexe 5 : Additional Performance Security

## DRAFT AGREEMENT

(Only a draft format for agreement giving the broad outline. The content of the agreement to be finalized by KBITS in consultation with the selected Consultant and duly vetted by a Legal Expert)

AGREEMENT No. \_\_\_\_\_

This AGREEMENT (hereinafter called the "**Agreement**") is made on the \_\_\_\_\_ day of the month of \_\_\_\_\_ between, on the one hand, the Karnataka Biotechnology & Information Technology Services (hereinafter called the "**KBITS** " which expression shall include their respective successors and permitted assigns, unless the context otherwise requires) and, on the other hand, \_\_\_\_\_ (hereinafter called the "**Consultant**" which expression shall include their respective successors and permitted assigns).

### WHEREAS

- (A) KBITS vide its Request for Proposal for Fund Arrangers, Investment Banker or Merchant Banker or Non Banking Financial Company (NBFC) or Fund Mobilizer or Verticals of Financial Institutions and other entities involved in fund mobilization to raise funds to start Biotech Venture Capital Fund (hereinafter called the "**Consultancy**") for raising the funds for K-Bio Ven Fund (Venture Capital) for Biotech sector (hereinafter called the "**Project**");
- (B) The Consultant submitted its proposal for the aforesaid work, whereby the Consultant represented to KBITS that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to KBITS on the terms and conditions as set forth in the tender document and this Agreement; and
- (C) The KBITS, on acceptance of the aforesaid proposals of the Consultant, awarded the Consultancy to the Consultant vide its Letter of Award dated \_\_\_\_\_ (the "**LOA**"); and
- (D) in pursuance of the LOA, the parties have agreed to enter into this Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

## 1. GENERAL

### 1.1 Definitions and Interpretation

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

- (a) **“Additional Costs”** shall have the meaning set forth in Clause-6.1.2.
- (b) **“Agreement”** means this Agreement, together with all the Annexes.
- (c) **“Agreement Value”** shall have the meaning set forth in Clause-6.1.2.
- (d) **“Applicable Laws”** means the laws and any other instruments having the force of law in India as they may be issued and in force from time to time.
- (e) **“Confidential Information”** shall have the meaning set forth in Clause-3.3.
- (f) **“Conflict of Interest”** shall have the meaning set forth in Clause-3.2 read with the provisions of tender document.
- (g) **“Dispute”** shall have the meaning set forth in Clause-9.2.1.
- (h) **“Effective Date”** means the date on which this Agreement comes into force and effect pursuant to Clause-2.1.
- (i) **“Expatriate Personnel”** means such persons who at the time of being so hired had their domicile outside India.
- (j) **“Government”** means the [Government of Karnataka].
- (k) **“INR, Re. or Rs.”** means Indian Rupees.
- (l) **“Member”**, in case the Consultant consists of a joint venture or consortium of more than one entity, means any of these entities, and **“Members”** means all of these entities.
- (m) **“Party”** means KBITS or the Consultant, as the case may be, and **Parties** means both of them.
- (n) **“Personnel”** means persons hired by the Consultant or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof.

- (o) **“Resident Personnel”** means such persons who at the time of being so hired had their domicile inside India.
- (p) **“tender document”** means the Request for Proposal document in response to which the Consultant’s proposal for providing Services was accepted.
- (q) **“Services”** means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto.
- (r) **“Sub-Consultant”** means any entity to which the Consultant subcontracts any part of the Services in accordance with the provisions of Clause-4.7
- (s) **“Third Party”** means any person or entity other than the Government, the KBITS, the Consultant or a Sub-Consultant and
- (t) **“Consultant”** means any Investment Banker, Merchant Banker, Non Banking Financial Company (NBFC), Fund Arranger (Lead Arranger) and Verticals of Financial Institutions to whom Letter of Award (LOA) issued by KBITS.

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

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

- (a) Agreement
- (b) Annexes of Agreement
- (c) Tender document and
- (d) Letter of Award

## 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 KBITS and the Consultant. The Consultant shall, subject to this Agreement, have complete charge of Personnel performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.

### **1.3 Rights and obligations**

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

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

### **1.4 Governing law and jurisdiction**

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

### **1.5 Language**

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

### **1.6 Table of contents and headings**

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

### **1.7 Notices**

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

- (a) in the case of the Consultant, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the Consultant's Representative set out below in Clause-1.8 or to such other person as the Consultant may from time to time designate by notice to the KBITS ; provided that notices or other communications to be given to an address outside Bangalore may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Consultant may from time to time specify by notice to the KBITS;

- (b) in the case of the KBITS, be given by facsimile or e-mail and by letter delivered by hand and be addressed to KBITS with a copy delivered to KBITS Representative set out below in Clause-1.8 or to such other person as KBITS may from time to time designate by notice to the Consultant; provided that if the Consultant does not have an office in [Bangalore] it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working days following the date of its delivery.

**1.8 Authorized Representatives**

1.8.1 Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by KBITS or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause-1.8.

1.8.2 KBITS may, from time to time, designate one of its officials as KBITS Representative. Unless otherwise notified, KBITS Representative shall be:

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Tel: ..... Fax: ..... E-mail: .....

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

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Tel: -----  
Mobile: -----  
Fax: -----

Email: — — — — —

## **1.9 Taxes and duties**

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

## **2. COMMENCEMENT, COMPLETION & TERMINATION OF AGREEMENT**

### **2.1 Effectiveness of Agreement**

This Agreement shall come into force and effect on the date of this Agreement (the “Effective Date”).

### **2.2 Commencement of Services**

The Consultant shall commence the Services within a period of 7 (seven) days from the Effective Date, unless otherwise agreed by the Parties.

### **2.3 Termination of Agreement for failure to commence Services**

If the Consultant does not commence the Services within the period specified in Clause-2.2 above, KBITS may, by not less than 2 (two) weeks’ notice to the Consultant, declare this Agreement to be null and void, and in the event of such a declaration, the Bid Security of the Consultant shall stand forfeited.

### **2.4 Expiration of Agreement**

Unless terminated earlier pursuant to Clauses-2.3 or 2.9 hereof, this Agreement shall, unless extended by the Parties by mutual consent, expire upon the earlier of (i) of a period of 90 (ninety) days after the delivery of the final deliverable to the KBITS; and (ii) the expiry of [1 (one) year] from the Effective Date. Upon Termination, KBITS shall make payments of all amounts due to the Consultant hereunder.

### **2.5 Entire Agreement**

- 2.5.1 This Agreement and the Annexes together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn; provided, however, that the obligations of the Consultant arising out of the provisions of the tender document shall continue to subsist and shall be deemed to form part of this Agreement.
- 2.5.2 Without prejudice to the generality of the provisions of Clause-2.5.1, on matters not covered by this Agreement, the provisions of tender document shall apply.

## 2.6 Modification of Agreement

Modification of the terms and conditions of this Agreement, including any modification of the scope of the Services, may only be made by written agreement between the Parties. Pursuant to Clauses-4.2.3 and 6.1.3 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, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by Government Agencies.
- (b) Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party’s Sub-Consultant

or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement, and (B) avoid or overcome in the carrying out of its obligations hereunder.

- (c) Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

### **2.7.2 No breach of Agreement**

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

### **2.7.3 Measures to be taken**

- (a) A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party's inability to fulfill its obligations hereunder with a minimum of delay.
- (b) A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than 14 (fourteen) 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.

### **2.7.4 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 its inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

### **2.7.6 Consultation**

Not later than 30 (thirty) days after the Consultant has, as the result of an event of Force Majeure, become unable to perform a material portion of the Services, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

## **2.8 Suspension of Agreement**

KBITS may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant shall be in breach of this Agreement or shall fail to perform any of its obligations under this Agreement, including the carrying out of the Services; provided that such notice of suspension (i) shall specify the nature of the breach or failure, and (ii) shall provide an opportunity to the Consultant to remedy such breach or failure within a period not exceeding 30 (thirty) days after receipt by the Consultant of such notice of suspension.

## **2.9 Termination of Agreement**

### **2.9.1 By the KBITS**

KBITS may, by not less than 30 (thirty) days' written notice of termination to the Consultant, such notice to be given after the occurrence of any of the events specified in this Clause-2.9.1, terminate this Agreement if:

- (a) The Consultant fails to remedy any breach hereof or any failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause-2.8 hereinabove, within 30 (thirty) days of receipt of such notice of suspension or within such further period as KBITS may have subsequently granted in writing;

- (b) The Consultant becomes insolvent or bankrupt or enters into any agreement with its creditors for relief of debt or take advantage of any law for the benefit of debtors or goes into liquidation or receivership whether compulsory or voluntary;
- (c) The Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause-9 hereof;
- (d) The Consultant submits to KBITS a statement which has a material effect on the rights, obligations or interests of KBITS and which the Consultant knows to be false;
- (e) Any document, information, data or statement submitted by the Consultant in its Proposals, based on which the Consultant was considered eligible or successful, is found to be false, incorrect or misleading;
- (f) As the result of Force Majeure, the Consultant is unable to perform a material portion of the services for a period of not less than 60 (sixty) days; or
- (g) The KBITS, in its sole discretion and for any reason whatsoever, decides to terminate this Agreement.

### **2.9.2 By the Consultant**

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

- (a) KBITS fails to pay any money due to the Consultant pursuant to this Agreement and not subject to dispute pursuant to Clause-9 hereof within 45 (forty five) days after receiving written notice from the Consultant that such payment is overdue;
- (b) KBITS is in material breach of its obligations pursuant to this Agreement and has not remedied the same within 45 (forty five) days (or such longer period as the Consultant may have subsequently granted in writing) following the receipt by KBITS of the Consultant's notice specifying such breach;

- (c) As the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than 60 (sixty) days; or
- (d) KBITS fails to comply with any final decision reached as a result of arbitration pursuant to Clause-9 hereof.

### **2.9.3 Cessation of rights and obligations**

Upon termination of this Agreement pursuant to Clauses-2.3 or 2.9 hereof, or upon expiration of this Agreement pursuant to Clause-2.4 hereof, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, or which expressly survive such Termination; (ii) the obligation of confidentiality set forth in Clause-3.3 hereof; (iii) the Consultant's obligation to permit inspection, copying and auditing of such of its accounts and records set forth in Clause-3.6, as relate to the Consultant's Services provided under this Agreement; and (iv) any right or remedy which a Party may have under this Agreement or the Applicable Law.

### **2.9.4 Cessation of Services**

Upon termination of this Agreement by notice of either Party to the other pursuant to Clauses-2.9.1 or 2.9.2 hereof, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the KBITS, the Consultant shall proceed as provided respectively by Clauses-3.9 or 3.10 hereof.

### **2.9.5 Payment upon Termination**

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

- (i) Remuneration pursuant to Clause-6 hereof for Services satisfactorily performed prior to the date of termination;

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

### **2.9.6 Disputes about Events of Termination**

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

## **3. OBLIGATIONS OF THE CONSULTANT**

### **3.1 General**

#### **3.1.1 Standards of Performance**

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

#### **3.1.2 Terms of Reference**

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

### **3.1.2 Applicable Laws**

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

### **3.2 Conflict of Interest**

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

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

### **3.2.3 Prohibition of conflicting activities**

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

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

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

The remuneration of the Consultant pursuant to Clause-6 hereof shall constitute the Consultant's sole remuneration in connection with this Agreement or the Services and the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Agreement or to the Services or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Personnel and agents of either of them, similarly shall not receive any such additional remuneration.

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

3.2.6 Without prejudice to the rights of KBIT Sunder Clause-3.2.5 above and the other rights and remedies which KBITS may have under this Agreement, if the Consultant is found by KBITS to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices, during the Selection Process or before or after the execution of this Agreement, the Consultant shall not be

eligible to participate in any tender document or tender document issued during a period of 2 (two) years from the date the Consultant is found by KBITS to have directly or indirectly or through an agent, engaged or indulged in any Prohibited Practices.

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

- (a) “**corrupt practice**” means (i) the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Selection Process; or (ii) engaging in any manner whatsoever, whether during the Selection Process or after the issue of LOA or after the execution of the Agreement, as the case may be, any person in respect of any matter relating to the Project or the LOA or the Agreement, who at any time has been or is a legal, financial or technical adviser KBITS in relation to any matter concerning the Project;
- (b) “**fraudulent practice**” means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Selection Process;
- (c) “**coercive practice**” means impairing or harming, or threatening to impair or harm, directly or indirectly, any person or property to influence any person’s participation or action in the Selection Process or the exercise of its rights or performance of its obligations by KBITS under this Agreement;
- (d) “**undesirable practice**” means (i) establishing contact with any person connected with or employed or engaged by KBITS with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Selection Process; or (ii) having a Conflict of Interest; and
- (e) “**restrictive practice**” means forming a cartel or arriving at any understanding or arrangement among Applicants with the objective of restricting or manipulating a full and fair competition in the Selection Process.

### 3.3 Confidentiality

The Consultant, its Sub-Consultants and the Personnel of either of them shall not, either during the term or within two years after the expiration or

termination of this Agreement disclose any proprietary information, including information relating to reports, data, drawings, design software or other material, whether written or oral, in electronic or magnetic format, and the contents thereof; and any reports, digests or summaries created or derived from any of the foregoing that is provided by KBITS to the Consultant, its Sub-Consultants and the Personnel; any information provided by or relating to the KBITS, its technology, technical processes, business affairs or finances or any information relating to the KBITS 's employees, officers or other professionals or suppliers, customers, or contractors of the KBITS ; and any other information which the Consultant is under an obligation to keep confidential in relation to the Project, the Services or this Agreement ("**Confidential Information**"), without the prior written consent of the KBITS. Notwithstanding the aforesaid, the Consultant, its Sub-Consultants and the Personnel of either of them may disclose Confidential Information to the extent that such Confidential Information:

- i) Was in the public domain prior to its delivery to the Consultant, its Sub-Consultants and the Personnel of either of them or becomes a part of the public knowledge from a source other than the Consultant, its Sub-Consultants and the Personnel of either of them;
- ii) Was obtained from a third party with no known duty to maintain its confidentiality;
- iii) Is required to be disclosed by Applicable Laws or judicial or administrative or arbitral process or by any governmental instrumentalities, provided that for any such disclosure, the Consultant, its Sub-Consultants and the Personnel of either of them shall give the KBITS, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment; and
- iv) Is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Sub-Consultants or Personnel of either of them, as is reasonable under the circumstances, provided, however, that the Consultant or its Sub-Consultants or Personnel of either of them, as the case may be, shall require their professional advisers, agents, auditors or its representatives, to undertake in writing to keep such Confidential Information, confidential and shall use its best efforts to ensure compliance with such undertaking.

### **3.4 Liability of the Consultant**

- 3.4.1 The Consultant's liability under this Agreement shall be determined by the Applicable Laws and the provisions hereof.
- 3.4.2 The Consultant shall, subject to the limitation specified in Clause-3.4.3, be liable to KBITS for any direct loss or damage accrued or likely to accrue due to deficiency in Services rendered by it.
- 3.4.3 The Parties hereto agree that in case of negligence or willful misconduct on the part of the Consultant or on the part of any person or firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused to the KBITS 's property, shall not be liable to the KBITS :
- (i) For any indirect or consequential loss or damage; and
  - (ii) For any direct loss or damage that exceeds (a) the Agreement Value set forth in Clause-6.1.2 of this Agreement, or (b) the proceeds the Consultant may be entitled to receive from any insurance maintained by the Consultant to cover such a liability in accordance with Clause-3.5.2 whichever of (a) or (b) is higher.
- 3.4.4 This limitation of liability specified in Clause-3.4.3 shall not affect the Consultant's liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services subject, however, to a limit equal to the Agreement Value.

### **3.5 Insurance to be taken out by the Consultant**

- 3.5.1 The Consultant shall, for the duration of this Agreement, take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant's, as the case may be) own cost, but on terms and conditions approved by the KBITS, insurance against the risks, and for the coverage, as specified in the Agreement and in accordance with good industry practice.

### **3.6 Accounting, inspection and auditing**

The Consultant shall:

- (a) Keep accurate and systematic accounts and records in respect of the Services provided under this Agreement, in accordance with internationally accepted accounting principles and in such form and detail

as will clearly identify all relevant time charges and cost, and the basis thereof (including the basis of the Consultant's costs and charges); and

- (b) Permit KBITS 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 KBITS.

### **3.7 Consultant's actions requiring the KBITS 's prior approval**

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

- (a) entering into a subcontract for the performance of any part of the Services, it being understood (i) that the selection of the Sub-Consultant and the terms and conditions of the subcontract shall have been approved in writing by KBITS prior to the execution of the subcontract, and (ii) that the Consultant shall remain fully liable for the performance of the Services by the Sub-Consultant and its Personnel pursuant to this Agreement; or
- (b) any other action that is specified in this Agreement.

### **3.8 Reporting obligations**

The Consultant shall submit to KBITS the reports and documents specified in the Agreement, in the form, in the numbers and within the time periods set forth therein.

### **3.9 Documents prepared by the Consultant to be property of the KBITS**

- 3.9.1 All plans, drawings, specifications, designs, reports and other documents (collectively referred to as "**Consultancy Documents**") prepared by the Consultant (or by the Sub-Consultants or any Third Party) in performing the Services shall become and remain the property of the KBITS, and all intellectual property rights in such Consultancy Documents shall vest with the KBITS. Any Consultancy Document, of which the ownership or the intellectual property rights do not vest with KBITS under law, shall automatically stand assigned to KBITS as and when such Consultancy Document is created and the Consultant agrees to execute all papers and to perform such other acts as KBITS may deem necessary to secure its rights herein assigned by the Consultant.

- 3.9.2 The Consultant shall, not later than termination or expiration of this Agreement, deliver all Consultancy Documents to the KBITS, together with a detailed inventory thereof. The Consultant may retain a copy of such Consultancy Documents. The Consultant, its Sub-Consultants or a Third Party shall not use these Consultancy Documents for purposes unrelated to this Agreement without the prior written approval of the KBITS.
- 3.9.3 The Consultant shall hold KBITS harmless and indemnified for any losses, claims, damages, expenses (including all legal expenses), awards, penalties or injuries (collectively referred to as 'claims') which may arise from or due to any unauthorized use of such Consultancy Documents, or due to any breach or failure on part of the Consultant or its Sub-Consultants or a Third Party to perform any of its duties or obligations in relation to securing the aforementioned rights of the KBITS.

### **3.10 Equipment and materials furnished by the KBITS**

Equipment and materials made available to the Consultant by KBITS shall be the property of KBITS and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultant shall furnish forthwith to the KBITS, an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the instructions of the KBITS. While in possession of such equipment and materials, the Consultant shall, unless otherwise instructed by KBITS in writing, insure them in an amount equal to their full replacement value.

### **3.11 Providing access to Project Office and Personnel**

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

### **3.12. Accuracy of Documents**

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

#### **4. CONSULTANT'S PERSONNEL AND SUB-CONSULTANTS**

##### **4.1 General**

The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.

##### **4.2 Deployment of Personnel**

If additional work is required beyond the scope of the Services specified in the Terms of Reference, the estimated periods of engagement of Personnel, set forth in the Annexes of the Agreement may be increased by agreement in writing between KBITS and the Consultant, provided that any such increase shall not, except as otherwise agreed, cause payments under this Agreement to exceed the Agreement Value set forth in Clause-6.1.2.

##### **4.3 Approval of Personnel**

If the Consultant hereafter proposes to engage any person as Professional Personnel, it shall submit to KBITS its proposal along with a CV of such person. KBITS may approve or reject such proposal within 14 (fourteen) days of receipt thereof. In case the proposal is rejected, the Consultant may propose an alternative person for the KBITS 's consideration. In the event KBITS does not reject a proposal within 14 (fourteen) days of the date of receipt thereof under this Clause-4.3, it shall be deemed to have been approved by the KBITS.

##### **4.4 Substitution of Key Personnel**

KBITS expects all the Key Personnel specified in the Proposal to be available during implementation of the Agreement. KBITS will not consider any

substitution of Key Personnel except under compelling circumstances beyond the control of the Consultant and the concerned Key Personnel. Such substitution shall be limited to not more than two Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the KBITS.

#### **4.5 Working hours, overtime, leave, etc.**

The Personnel shall not be entitled to be paid for overtime nor to take paid sick leave or vacation leave except as specified in the Agreement, and the Consultant's remuneration shall be deemed to cover these items. The Consultant shall ensure that any absence on leave will not delay the progress and quality of the Services.

#### **4.6 Resident Team Leader and Project Manager**

The person designated as the Team Leader of the Consultant's Personnel shall be responsible for the coordinated, timely and efficient functioning of the Personnel. In addition, the Consultant shall designate a suitable person as Project Manager (the "**Project Manager**") who shall be responsible for day to day performance of the Services.

### **5. OBLIGATIONS OF THE KBITS**

#### **5.1 Assistance in clearances etc.**

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

- (a) Provide the Consultant, its Sub-Consultants and Personnel with data / documents as may be necessary to enable the Consultant, its Sub-Consultants or Personnel to perform the Services;
- (b) Issue to officials, agents and representatives of the Government all such instructions as may be necessary or appropriate for the prompt and effective implementation of the Services.

#### **5.2 Change in Applicable Law**

If, after the date of this Agreement, there is any change in the Applicable Laws with respect to Service Tax, then the professional fees payable to the Consultant under this Agreement shall be increased or decreased accordingly.

### **5.3 Payment**

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

## **6. PAYMENT TO THE CONSULTANT**

### **6.1 Cost estimates and Agreement Value**

6.1.1 An abstract of the cost of the Services payable to the Consultant is set forth in Annex- 2 of the Agreement.

6.1.2 Except as may be otherwise agreed under Clause 2.6 and subject to Clause-6.1.3, the payments under this Agreement shall not exceed the agreement value specified herein (the "**Agreement Value**"). The Parties agree that the Agreement Value is Rs. .... (Rupees .....), which does not include the Additional Costs (the "**Additional Costs**").

6.1.3 Notwithstanding anything to the contrary contained in Clause-6.1.2, if pursuant to the provisions of Clauses-2.6 and 2.7, the Parties agree that additional payments shall be made to the Consultant in order to cover any additional expenditures not envisaged in the cost estimates referred to in Clause-6.1.1 above, the Agreement Value set forth in Clause-6.1.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.

### **6.2 Currency of payment**

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

### **6.3 Mode of billing and payment**

(a) The Consultant shall be paid for its services as per the Payment Schedule at Annex-3 of this Agreement.

- (b) KBITS shall cause the payment due to the Consultant to be made within 30 (thirty) days after the receipt by KBITS of duly completed bills with necessary particulars.
- (c) The final payment under this Clause shall be made only after the final report and a final statement, identified as such, shall have been submitted by the Consultant and approved as satisfactory by the KBITS. The Services shall be deemed completed and finally accepted by KBITS and the final deliverable shall be deemed approved by KBITS as satisfactory upon expiry of 90 (ninety) days after receipt of the final deliverable by KBITS unless the KBITS, within such 90 (ninety) day period, gives written notice to the Consultant specifying in detail, the deficiencies in the Services. The Consultant shall thereupon promptly make any necessary corrections and/or additions, and upon completion of such corrections or additions, the foregoing process shall be repeated. KBITS shall make the final payment upon acceptance or deemed acceptance of the final deliverable by the KBITS.
- (d) Any amount which KBITS has paid or caused to be paid in excess of the amounts actually payable in accordance with the provisions of this Agreement shall be reimbursed by the Consultant to KBITS within 30 (thirty) days after receipt by the Consultant of notice thereof. Any such claim by KBITS for reimbursement must be made within 1 (one) year after receipt by KBITS of a final report in accordance with Clause 6.3 (d). Any delay by the Consultant in reimbursement by the due date shall attract simple interest @ 10% (ten per cent) per annum.
- (c) 15% (fifteen per cent) of the Agreement Value has been earmarked as Final Payment to be made to the Consultant on approval of the report by the appropriate KBITS. Efforts will be made by KBITS to obtain approval within the reasonable time.
- (d) All payments under this Agreement shall be made to the account of the Consultant as may be notified to KBITS by the Consultant.

## **7. LIQUIDATED DAMAGES AND PENALTIES**

### **7.1 Performance Security (Bank Guarantee)**

7.1.1 KBITS shall retain by way of performance security (the “**Performance Security**”), 15% (fifteen per cent) of all the amounts due and payable to the Consultant, to be appropriated against breach of this Agreement or for recovery of liquidated damages as specified in Clause-7.2 herein. The balance remaining out of the Performance Security shall be returned to the Consultant at the end of 3 (three) months after the expiration of this Agreement pursuant to Clause-2.4 hereof.

7.1.2 The Consultant may, in lieu of retention of the amounts as referred to in Clause-7.1.1 above, furnish a Bank Guarantee substantially in the form specified at Annex-4 of this Agreement.

## **7.2 Liquidated Damages**

### **7.2.1 Liquidated Damages for error/variation**

In case any error or variation is detected in the reports submitted by the Consultant and such error or variation is the result of negligence or lack of due diligence on the part of the Consultant, the consequential damages thereof shall be quantified by KBITS in a reasonable manner and recovered from the Consultant by way of deemed liquidated damages, subject to a maximum of 50% (fifty per cent) of the Agreement Value.

### **7.2.2 Liquidated Damages for delay**

In case of delay in completion of Services, liquidated damages not exceeding an amount equal to 0.2% (zero point two per cent) of the Agreement Value per day, subject to a maximum of 10% (ten per cent) of the Agreement Value will be imposed and shall be recovered by appropriation from the Performance Security or otherwise. However, in case of delay due to reasons beyond the control of the Consultant, suitable extension of time shall be granted.

### **7.2.3 Encashment and appropriation of Performance Security**

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

## **7.3 Penalty for deficiency in Services**

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

## **8. FAIRNESS AND GOOD FAITH**

### **8.1 Good Faith**

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

### **8.2 Operation of the Agreement**

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

## **9. SETTLEMENT OF DISPUTES**

### **9.1 Amicable settlement**

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

### **9.2 Dispute resolution**

9.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation)

between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause-9.3.

- 9.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

### 9.3 Conciliation

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

### 9.4 Arbitration

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

arbitrators, the appointment of sole arbitrator, whose appointment shall be made in accordance with the rules.

- 9.4.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause-9 shall be final and binding on the Parties as from the date it is made, and the Consultant and KBITS agree and undertake to carry out such Award without delay.
- 9.4.4 The Consultant and KBITS agree that an Award may be enforced against the Consultant and/or the KBITS, as the case may be, and their respective assets wherever situated.
- 9.4.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

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

**SIGNED, SEALED AND DELIVERED**

For and on behalf of Consultant

(Signature)

(Name)

(Designation)

(Address)

**SIGNED, SEALED AND DELIVERED**

For and on behalf of KBITS

(Signature)

(Name)

(Designation)

(Address)

In the presence of:

1.

2.

**Schedule - 3: GUIDANCE NOTE ON CONFLICT OF INTEREST**

1. This Note further explains and illustrates the provisions of Clause-2.3 of the tender document and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of Consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between KBITS and a Consultant or between Consultants and present or future concessionaries/contractors. Some of the situations that would involve conflict of interest are identified below:
  - (a) KBITS and Consultants:
    - (i) Potential Consultant should not be privy to information from KBITS which is not available to others; or
    - (ii) Potential Consultant should not have defined the project when earlier working for the KBITS ; or
    - (iii) Potential Consultant should not have recently worked for KBITS overseeing the project.
  - (b) Consultants and concessionaires/contractors:
    - (i) No Consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
    - (ii) No Consultant should be involved in owning or operating entities resulting from the project; or
    - (iii) No Consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of KBITS who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by Consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the KBITS. All conflicts must be declared as and when the Consultants become aware of them.
5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the Consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a Consultant coupled with provision of safeguards to the satisfaction of the KBITS.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if Consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope-creep” arises when Consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of KBITS but which will generate further work for the Consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for Consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to KBITS at the earliest. Officials of KBITS involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

**Schedule - 3: GUIDANCE NOTE ON CONFLICT OF INTEREST**

1. This Note further explains and illustrates the provisions of Clause-2.3 of the tender document and shall be read together therewith in dealing with specific cases.
2. Consultants should be deemed to be in a conflict of interest situation if it can be reasonably concluded that their position in a business or their personal interest could improperly influence their judgment in the exercise of their duties. The process for selection of consultants should avoid both actual and perceived conflict of interest.
3. Conflict of interest may arise between KBITS and a consultant or between consultants and present or future concessionaries/ contractors. Some of the situations that would involve conflict of interest are identified below:
  - (a) KBITS and consultants:
    - (i) Potential consultant should not be privy to information from KBITS which is not available to others; or
    - (ii) Potential consultant should not have defined the project when earlier working for the KBITS; or
    - (iii) Potential consultant should not have recently worked for KBITS overseeing the project.
  - (b) Consultants and concessionaires/contractors:
    - (i) No consultant should have an ownership interest or a continuing business interest or an on-going relationship with a potential concessionaire/ contractor save and except relationships restricted to project-specific and short-term assignments; or
    - (ii) No consultant should be involved in owning or operating entities resulting from the project; or
    - (iii) No consultant should bid for works arising from the project.

The participation of companies that may be involved as investors or consumers and officials of KBITS who have current or recent connections to the companies involved, therefore, needs to be avoided.

4. The normal way to identify conflicts of interest is through self-declaration by consultants. Where a conflict exists, which has not been declared, competing companies are likely to bring this to the notice of the KBITS. All conflicts must be declared as and when the consultants become aware of them.
5. Another approach towards avoiding a conflict of interest is through the use of “Chinese walls” to avoid the flow of commercially sensitive information from one part of the consultant’s company to another. This could help overcome the problem of availability of limited numbers of experts for the project. However, in reality effective operation of “Chinese walls” may be a difficult proposition. As a general rule, larger companies will be more capable of adopting Chinese walls approach than smaller companies. Although, “Chinese walls” have been relatively common for many years, they are an increasingly discredited means of avoiding conflicts of interest and should be considered with caution. As a rule, “Chinese walls” should be considered as unacceptable and may be accepted only in exceptional cases upon full disclosure by a consultant coupled with provision of safeguards to the satisfaction of the KBITS.
6. Another way to avoid conflicts of interest is through the appropriate grouping of tasks. For example, conflicts may arise if consultants drawing up the terms of reference or the proposed documentation are also eligible for the consequent assignment or project.
7. Another form of conflict of interest called “scope-creep” arises when consultants advocate either an unnecessary broadening of the terms of reference or make recommendations which are not in the best interests of KBITS but which will generate further work for the consultants. Some forms of contractual arrangements are more likely to lead to scope-creep. For example, lump-sum contracts provide fewer incentives for this, while time and material contracts provide built in incentives for consultants to extend the length of their assignment.
8. Every project contains potential conflicts of interest. Consultants should not only avoid any conflict of interest, they should report any present/ potential conflict of interest to KBITS at the earliest. Officials of KBITS involved in development of a project shall be responsible for identifying and resolving any conflicts of interest. It should be ensured that safeguards are in place to preserve fair and open competition and measures should be taken to eliminate any conflict of interest arising at any stage in the process.

*Appendices*

**APPENDIX - I****PRE-QUALIFICATION PROPOSAL****Form-1****Letter of Proposal**

(On Applicant's letter head)

(Date and Reference)

To

Managing Director,

Karnataka Biotechnology & Information Technology Services (KBITS ),

2<sup>nd</sup> Floor, UNI Building, Thimmaiah Road,

**Bangalore – 560 052.**

Dear Sir,

**Sub.: Selection of Fund Mobilizers for Semiconductor Venture Capital Fund**

With reference to your tender document dated ....., I/we, having examined all relevant documents and understood their contents, hereby submit our Proposal for selection as Fund Mobilizer for raising the funds for proposed Semiconductor Venture Capital Fund. The proposal is unconditional and unqualified.

1. All information provided in the Proposal and in the Appendices is true and correct and all documents accompanying such Proposal are true copies of their respective originals.
2. This statement is made for the express purpose of appointment as the Consultant for the aforesaid Project.
3. I/We shall make available to KBITS any additional information it may deem necessary or require for supplementing or authenticating the Proposal.
4. I/We acknowledge the right of KBITS to reject our application without assigning any reason or otherwise and hereby waive our right to challenge the same on any account whatsoever.
5. I/We certify that in the last three years, we or any of our Associates have neither failed to perform on any contract, as evidenced by imposition of a penalty by an arbitral or judicial KBITS or a judicial pronouncement or arbitration award against the Applicant, nor been expelled from any project or contract by any public KBITS nor have had any contract terminated by any public KBITS for breach on our part.

6. I/We declare that:
  - (a) I/We have examined and have no reservations to the TENDER Documents, including any Addendum issued by the KBITS ;
  - (b) I/We do not have any conflict of interest in accordance with Clause-2.3 of the tender document;
  - (c) I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as defined in Clause-4.3 of the tender document, in respect of any tender document or request for proposal issued by or any agreement entered into with KBITS or any other public sector enterprise or any government, Central or State; and
  - (d) I/We hereby certify that we have taken steps to ensure that in conformity with the provisions of Section-4 of the tender document, no person acting for us or on our behalf will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice.
7. I/We understand that you may cancel the Selection Process at any time and that you are neither bound to accept any Proposal that you may receive nor to select the Consultant, without incurring any liability to the Applicants in accordance with Clause-2.7 of the Tender Document.
8. I/We certify that in regard to matters other than security and integrity of the country, we or any of our Associates have not been convicted by a Court of Law or indicted or adverse orders passed by a regulatory KBITS which would cast a doubt on our ability to undertake the Consultancy for the Project or which relates to a grave offence that outrages the moral sense of the community.
9. I/We further certify that in regard to matters relating to security and integrity of the country, we have not been charge-sheeted by any agency of the Government or convicted by a Court of Law for any offence committed by us or by any of our Associates.
10. I/We further certify that no investigation by a regulatory KBITS is pending either against us or against our Associates or against our CEO or any of our Directors/Managers/employees.
11. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision

- taken by KBITS in connection with the selection of Consultant or in connection with the Selection Process itself in respect of the above mentioned Project.
12. The Bid Security of Rs. 1,00,000 (Rupees one lakh only) and tender processing fee through e-payment of e-procurement portal has been made.
  13. I/We agree and understand that the proposal is subject to the provisions of the Tender Document. In no case, shall I/we have any claim or right of whatsoever nature if the Consultancy for the Project is not awarded to me/us or our proposal is not opened or rejected.
  14. I/We agree to keep this offer valid for 180 (One hundred eighty) days from the Proposal Due Date specified in the tender document.
  15. A Power of Attorney in favour of the authorized signatory to sign and submit this Proposal and documents is attached herewith in Form-3.
  16. In the event of my/our firm being selected as the Consultant, I/we agree to enter into an Agreement in accordance with broad outlines set out in the form at Schedule-2 of the tender document.
  17. I/We have studied tender document and all other documents carefully. We understand that except to the extent as expressly set forth in the Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by KBITS or in respect of any matter arising out of or concerning or relating to the Selection Process including the award of Consultancy.
  18. Pre-qualification Proposal read with the Financial Proposal shall constitute the Application which shall be binding on us.
  19. I/We agree and undertake to abide by all the terms and conditions of the Tender Document. In witness thereof, I/we submit this Proposal under and in accordance with the terms of the Tender Document.
  20. I/We agree to submit documents in original for the purpose of verification, if sought for the tender.

Yours faithfully,

(Signature, name and designation of the authorized signatory)  
(Name and seal of the Applicant / Lead Member)

**APPENDIX - I****Form - 2****Particulars of the Applicant**

1.1 Name of Company or Firm :  
 Legal status (e.g. incorporated private :  
 company, unincorporated business,  
 partnership etc.)

Country of incorporation :  
 Registered address :  
 Year of Incorporation :  
 Year of commencement of business :  
 Principal place of business :  
 Brief description of the Company :  
 including details of its main lines  
 of business :

1.2 Details of authorized signatory of the Applicant  
 Name  
 Designation  
 Company  
 Address  
 Phone No.  
 Fax No.  
 E-mail address

1.3 Details of Funds raised

Sl. No.	Particulars of Fund and contact address of the client	Nature of the Fund (VC, Mutual fund, etc.)	Year	Amount (Rs. in Crores)	
				Total amount of the fund	Amount raised by the Applicant
1					
2					
3					
4					
5					
...					

(Signature, name and designation of the authorized signatory)

For and on behalf of .....

**APPENDIX - I**  
**Form - 3**  
**Power of Attorney**

Know all men by these presents, we, ..... (name of Firm and address of the registered office) do hereby constitute, nominate, appoint and authorize Mr/Ms..... son/daughter/wife and presently residing at ....., who is presently employed with us and holding the position of ..... as our true and lawful attorney (hereinafter referred to as the "Authorized Representative") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Proposal for and selection of Investment Bankers / Financial Institutions / Consultants (Lead Arrangers) to raise funds to start Semiconductor Venture Capital Fund proposed by the KBITS, Bangalore (the "KBITS ") including but not limited to signing and submission of all applications, proposals and other documents and writings, participating in pre-bid and other conferences and providing information/ responses to the KBITS, representing us in all matters before the KBITS, signing and execution of all contracts and undertakings consequent to acceptance of our proposal and generally dealing with KBITS in all matters in connection with or relating to or arising out of our Proposal for the said Project and/or upon award thereof to us till the entering into of the Agreement with the KBITS.

AND, we do hereby agree to ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Authorized Representative pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Authorized Representative in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, ..... THE ABOVE NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS ..... DAY OF ....., 2011

For .....  
(Signature, name, designation and address)

Witnesses:

- 1.
- 2.

Notarized

Accepted

.....  
(Signature, name, designation and address of the Attorney)

Notes:

*The mode of execution of the Power of Attorney should be in accordance with the Procedure, if any, laid down by the applicable law and the charter documents of the executants(s) and when it is so required the same should be under common seal affixed in accordance with the required procedure. The Power of Attorney should be executed on a non-judicial stamp paper of Rs. 100 (one hundred) and duly notarized by a notary public.*

*Wherever required, the Applicant should submit for verification the extract of the charter documents and other documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Applicant.*

*For a Power of Attorney executed and issued overseas, the document will also have to be legalised by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, Applicants from countries that have signed the Hague Legislation Convention, 1961 need not get their Power of Attorney legalised by the Indian Embassy if it carries a conforming Appostille certificate.*

**APPENDIX-I****Form - 4****Proposed Methodology and Work Plan**

The proposed methodology and work plan shall be described as follows:

**1. Understanding of TOR**

The Applicant shall clearly state its understanding of the TOR and also highlight its important aspects. The Applicant may supplement various requirements of the TOR and also make precise suggestions if it considers this would bring more clarity and assist in achieving the Objectives laid down in the TOR.

**2. Methodology and Work Plan**

The Applicant will submit its methodology for carrying out this assignment, outlining its approach toward achieving the Objectives laid down in the TOR. The Applicant will submit a brief write up on its proposed team and organization of personnel explaining how different areas of expertise needed for this assignment have been fully covered by its proposal. The Applicant should specify the sequence and locations of important activities, and provide a quality assurance plan for carrying out the Consultancy Services.

**APPENDIX - II  
FINANCIAL PROPOSAL**

**Form - 1  
(On Applicant's letter head)**

(Date and Reference)

To :

Managing Director,  
Karnataka Biotechnology & Information Technology Services (KBITS ),  
2<sup>nd</sup> Floor, UNI Building,  
Thimmaiah Road,  
**Bangalore – 560 052.**

Dear Sir,

**Sub.: Selection of Fund Mobilizers for Semiconductor Venture Capital Fund**

We, the undersigned, offer to provide our services as Fund Mobilizer for raising the funds from potential / interested Investor **in Semiconductor Venture Capital Fund** in accordance with your Tender Document and our Proposals (Pre-qualification and Financial).

Our Financial Proposal for the assignment is ... percent (in figure) and ..... percent (in words) of fund mobilized for the Venture Capital Fund.

Our Financial Proposal is **exclusive** of applicable Service Tax and **inclusive** of all other taxes, levies, fees if any.

Our Financial Proposal shall be binding upon us subject to the modifications resulting from contract negotiations, up to expiration of the validity period of the Proposal, i.e., [Date .....].

We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in India namely "Prevention of Corruption Act 1988".

We further understand that KBITS reserves the right to select among Organisations who are pre-qualified and accept financial bids at its discretion. We also understand that KBITS reserves the right to accept / reject any or all of the proposals received without assigning any reasons and are agreeable for the same.

Yours sincerely,

Signature of the Authorized Signatory  
Name and Title of the Signatory  
Name of the Organisation & Address

