eMudhra eSign Service – Application Service Provider Application Form

(Application format version 3.0: Effective for submissions made on or after 01-Apr-2019)

Organization Name: _____

Category of Organization:

[ ] Government Organization

[ ] Legal Entity Registered in India

[ ] Authority constituted under Central Act

[ ] Bank/ Financial Institution/ Telecom Company

[ ] Not for Profit Organization/ Special Purpose Organization
　　of National Importance

CIN (if applicable): _____

Organization PAN (if applicable): _____

Address: _____

City:　_____

District: _____

State:　_____

Pin code:　_____

Fax:　_____

Phone No:　_____

Proposed business scope with respect to eServices: _____

_____

Management point of contact:

Nodal Person Name:　_____

Designation:　_____

Email ID:　_____

Mobile No:　_____

Telephone No:　_____

Technical point of contact:

Nodal Person Name:　_____

Designation:　_____

Email ID:　_____

Mobile No:　_____

Telephone No:　_____

For ASP Organization:

We hereby submit the request to become Application Service Provider under the applicable regulations of Government of India and accept the enclosed standard terms.

Authorized Signatory (Sign & Seal)

Name: _____

Designation: _____

Date: _____

For eMudhra:

e- Sign Application Service Provider | Standard Terms of eSign service

This eSign Terms of Service agreement is made on this day between the applicant organization, hereinafter referred to as "ASP" which expression shall unless repugnant to the context and meaning hereof shall mean and include its assigns and successors) of the one part AND eMudhra Limited (eMudhra), a Company registered under Companies Act 1956, having its Registered and Corporate Office at No 56, Sai Arcade, 3rd Floor, Marathahalli outer ring road, Devarabeesanahalli, Bangalore - 560103 hereinafter referred to as "ESP" which expression shall unless repugnant to the context and meaning hereof shall mean and include its assigns and successors) of the other part.

WHEREAS eMudhra is a Licensed Certifying Authority under the Information Technology Act, 2000 is engaged in the business of issuance of Digital Signature Certificate and other IT and IT enabled services.

WHEREAS ASP has expressed interest to avail e-Sign and related Services offered by eMudhra as more specifically defined in this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE FOREGOING AND MUTUAL COVENANTS AND PROMISES CONTAINED HEREIN AND OTHER GOOD AND VALUABLE CONSIDERATIONS, THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HEREBY COVENANT AND AGREE AND THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. **Definitions**

   (a) **'e-KYC Number'** shall mean the unique identification number maintained by e-KYC provider;

   (b) **'Agreement'** shall mean this agreement executed between the Parties, along with its schedules, annexures and exhibits, if any, and all instruments supplemental to or amending, modifying or confirming this agreement in accordance with the provisions of this agreement, if any, in each case as they may be supplemented or amended from time to time;

   (c) **'Business Day'** shall mean any day other than a Saturday, Sunday or official public holiday in India;

   (d) '**Controller of Certifying Authorities (CCA)**' shall have the same meaning as such term is defined in Information Technology Act, 2000 and rules and regulations made thereunder as amended from time to time.

   (d) '**Digital Signature Certificate (DSC)**' shall have the same meaning as defined under theInformation Technology Act, 2000 and rules and regulations made thereunder as amended from time to time;

   (e) **"e-KYC"** mean the transfer of digitally signed demographic data such as Name, Address, Date of Birth, Gender, Mobile number, Email address, photograph etc of an individual collected and verified by e-KYC provider on successful authentication of same individual

   (f) **"e-KYC provider"** means any e-KYC provider listed in e-Authentication Guidelines

   (g) **"eSign"** shall mean the service defined under e-Authentication guidelines issued by CCA from time to time.

   (i) **"eSign User"** is an Individual requesting for eSign online Electronic Signature Service of eSign Service provider

   (j) **"response code"** is the identification number maintained by e-KYC provider to identify the authentication

   (k) '**Laws**' shall mean all applicable laws, by-laws, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, decrees or other requirements or official directive of any governmental authority or person acting under the authority of any governmental authority, whether in effect or which may come into effect in the future;

   (l) '**OTP**' shall mean one time password sent to the eSign User's cell phone for the purpose of authentication;

   (m) '**Party**' refers individually to ASP and the ESP;

(n) '**Parties**' refer collectively to ASP and ESP;

(o) '**Services**' shall mean the services to be provided by ESP to ASP as agreed in this Agreement;.

(a) '**Successful Transaction**' means the event of dispatch of a DSC to ASP by ESP for a particular Document ;

(p) '**Third Party**' shall mean any party who is not ASP or ESP.

1.2 Interpretations

a. In this Agreement, unless the context requires otherwise:
i. reference to singular includes a reference to the plural and vice versa;
ii. reference to any gender includes a reference to all other genders;
iii. reference to an individual shall include his legal representative, successor, legal heir, executor and administrator;
iv. reference to statutory provisions shall be construed as meaning and including references also to any amendment or re-enactment (whether before or after the date of this Agreement) for the time being in force and to all statutory instruments or orders made pursuant to statutory provisions;
v. references to any statute or regulation made using a commonly used abbreviation, shall be construed as a reference to the title of the statute or regulation;
vi. references to any Article, Clause, Section, Schedule or Annexure, if any, shall be deemed to be a reference to an Article, Clause, Section, Schedule or Annexure of or to this Agreement.
b. Any word or phrase defined in the body of this Agreement shall have the meaning assigned to it in such definition throughout this Agreement unless the contrary is expressly stated or the contrary clearly appears from the context.
c. The rule of construction, if any, that a contract shall be interpreted against the party responsible for the drafting and preparation thereof shall not apply.
d. Reference to days, months or years in this Agreement shall be a reference to calendar days, months or years, as the case may be, unless the contrary is expressly stated or clearly appears from the context.

e. Clause headings in this Agreement are inserted for convenience only and shall not be used in its interpretation.

f. Reference to any agreement, deed, document, instrument, rule, regulation, notification, statute or the like shall mean a reference to the same, as may have been duly amended, modified or replaced. For the avoidance of doubt, a document shall be construed as amended, modified or replaced only if such amendment, modification or replacement is executed in compliance with the provisions of such document(s).

2.   Services and Commercials

eMudhra shall offer e-Sign and its related services to ASP as per the guidelines of Controller of Certifying Authorities of India. ASP can avail these Services by paying the applicable commercials online, or as per the mode of payment applicable. ESP reserves the right to discontinue the services for non-payment of commercials/service charges as agreed between the parties. ESP reserves the right to revise the applicable prices for the eSign services, at any time, for future purchases.

The Parties mutually agree and understand that the services under this Agreement are provided on best effort basis shall be subject to limitations posed by Technology and ESP does not represent and warrant the same to be defect free. Also parties agree that, the deliverables from ESP to ASP are subject to dependencies of ESP with other external service providers, hence there may be delay in providing services or sometimes failure in providing the Services. Such incidents of disruptions, interruptions and deficiency may include events triggered on account of the following reasons :
i) Planned repairs, modifications or maintenance notified to Customer in advance; ii) Unauthorised changes to the System of ASP or failure of ASP to adhering the changes mandated by CCA and/or any other authorities; iii) Suspension of Services; vi) Force Majeure Events; v)Any fault in or damage to the System or Network or Components thereof for reasons beyond the reasonable control of eMudhra.

The parties also mutually agree that the Services rendered under this Agreement are subject to : i) terms and conditions contained in this Agreement; ii) Provisions of Information Technology Act 2000 and its subsequent amendments and allied Rules iii) Any directions or orders issued by Government, Controller of Certifying Authorities,

other relevant authorities, Courts, Judicial forums and other statutory authorities. eMudhra shall not be liable for disruption, discontinuation, deficiency, modification or termination of services provided to Customer; due to cancellation, surrender or modification of license or such directions or orders issued or passed by above mentioned authorities or bodies.

3. Obligations of ESP

3.1 The ESP shall, at the time of rendering services under this Agreement, maintain necessary licenses with CCA as required for issuance of DSC;

3.2 ESP makes no representation or warranty other than those specifically set forth herein and disclaims all other warranties.

4. Obligations of ASP

6.1 ASP, who is seeking to use eSign to enable a specific service/business functions, is solely responsible for the choice of authentication type(s). The choice of the Authentication type shall be the sole decision of the ASP, and no other entity, ESP or eSign user shall have no role in this decision of ASP.

6.2 ASP assumes complete responsibility with regard to its network connectivity with ESP.

6.3 ASP shall establish and maintain necessary eSign related operations, including systems, processes, infrastructure, technology, security, etc., in compliance with standards and specifications, issued by CCA from time to time.

6.4 ASP shall, at all times, comply with the provisions contained in the Information Technology Act, 2000 and the statutory rules framed there under, from time to time, in so far as the same has application to its operations in accordance with this Agreement, and also with all other Laws, rules and regulations, whether already in force or which may be enacted anytime in the future, pertaining to data security and management, data storage, sharing and data protection, as also with the National Identification Authority of India Bill, as and when the same in enacted into a law and comes into force, and shall ensure the same level of compliance .

6.5 ASP shall maintain logs of all eSign related transactions processed by it, capturing the complete details of the eSign requirements. The ASP understands and agrees that the logs maintained by it shall not be shared with any individual or entity, and that the storage of the logs maintained by it shall comply with all the relevant laws, rules and regulations, including, but not limited to, the Information Technology Act, 2000 and the Evidence Act, 1872.

6.6 In case of any investigations around signature related fraud(s) or dispute (s), the ASP shall extend full cooperation to ESP/CCA and/or any agency appointed/authorized by it and/or any other authorized investigation agency, including, but not limited to, providing access to their premises, records, personnel and any other relevant resource / information, etc. of or pertaining to its eSign,

6.7 ASP shall obtain consent from eSign users to use their e-KYC information for eSign for availing eSign Services from ESP for DSC application form, key-generation, certificate issuance , signature creation and key destruction"

4.3 ASP shall ensure that all the backend infrastructures like servers, databases etc., required specifically for the purpose of this Agreement shall be based in the territory of India and these services shall not be, whether directly or indirectly used for purposes that are anti-government, or anti-state or discriminatory or related to money laundering or in contravention of any laws applicable in India.

4.4 ASP shall not share the eSign data with any other agency for whatsoever purposes except and to the extent provided under this Agreement.

4.5 ASP shall adhere to all the audit obligations specified in the Agreement or as intimated to ASP from time to time by parties related to this Agreement.

5. Confidentiality and data protection

5.1 Each Party shall treat all information, which is disclosed to it as a result of the operation of this Agreement, as

Confidential Information, and shall keep the same confidential, maintain secrecy of all such information of confidential nature and shall not, at any time, divulge such or any part thereof to any third party except as may be compelled by any court or agency of competent jurisdiction, or as otherwise required by law, and shall also ensure that same is not disclosed to any person voluntarily, accidentally or by mistake.

5.2 Parties shall use the Confidential Information strictly for the purposes as envisaged in this Agreement and in accordance with this Agreement. Parties shall ensure compliance with all applicable laws and regulations including but not limited to regulations on data protection under the Information Technology Act, 2002 when collecting information for the purpose of this Agreement.

5.3 Parties shall scrutinize the data collected by it, while processing authentication requests, on a periodic basis, and shall preserve such data collected in relation to an authentication request until such time as may be prescribed by CCA or ESP from time to time.

5.4 Parties are prohibited from storing any PID in their data base or in any storage device of any nature whatsoever including Authentication Device or in any machine, device or instrument of any kind whatsoever, removable storage devices or in physical form, at point in time.

5.5 Parties hereby unequivocally agrees to undertake all measures, including security safeguards, to ensure that the information in the possession or control of the Parties, as a result of operation of this Agreement, is secured and protected against any loss or unauthorised access or use or unauthorised disclosure thereof.

5.6 Parties agree that information liable to be disclosed under the Right to Information Act, 2005 shall not be considered as confidential information.

5.7 It is hereby mutually agreed that this Clause 5 shall survive the termination of this Agreement.

6. Audit rights

6.1 The ASP shall ensure that its operations and systems in terms of this Agreement are audited by information systems auditor certified by a recognized body on an annual basis to ensure compliance with ESP and CCA standards and specifications and the audit report should be shared with ESP within 7 days from the date of closure of audit and with CCA upon request. In addition to the above, ESP and/or CCA may choose to, in its/their sole discretion, audit the ASP's operations and systems in terms of this Agreement by itself or through an auditor appointed by ESP/CCA, and the continuation of operations as the ASP shall, at all times, be dependent upon the said audit confirming the compliance by the ASP of the terms and conditions contained in this Agreement, and any failure in compliance of the same, if confirmed in the audit, may entail fine and/or penalties and termination of access to eSign Services. The ASP unequivocally agrees to provide full co-operation to ESP/CCA or any agency approved and/or appointed by ESP/CCA in the audit process, and to provide to ESP/CCA or any agency approved and/or appointed by ESP/CCA, complete access to its procedures, records and information pertaining to services availed. The audit rights of ESP/CCA shall be subject to such confidentiality undertaking as may be reasonably imposed by ASP to protect its confidential information.

7. Term

7.1 This Agreement shall be effective from the date of granting ASP production access ('Effective Date') and valid until termination as per clause 7.2. However, this agreement shall be co-existence and co-terminus with ESP's License or permission with CCA to provide eSign Services. In case of cancellation of ESP's License or permission with CCA, this agreement shall stand automatically terminated with immediate effect.

7.2 Either Party may terminate this Agreement for convenience by giving 30 days prior written notice to the other Party.

7.3 Without prejudice to any other rights available to eMudhra under this Agreement, eMudhra reserves the right to terminate the Agreement, with immediate effect, in case of any misuse of the Services, if any, including but not limited to:

 i) Breach of any of the terms and conditions of this Agreement or any guidelines, regulations or notifications issued by ESP and competent authorities including CCA.

 ii) If required by any Applicable Law or Governmental/ Statutory authority or law enforcing agency.

8. Indemnity and Limitation of Liability

8.1 ASP shall indemnify and keep ESP and CCA harmless at all times, against all actions, claims, demands, costs, charges and expenses arising out of or incurred by reason of breach of obligations mentioned in this Agreement by ASP.

8.2 Notwithstanding anything contrary contained in this Agreement in no event eMudhra shall be liable for any Direct, indirect, consequential, special or incidental damages or losses of any kind whatsoever. It is mutually agreed that this clause shall survive the termination of this Agreement. However, in no event the amount of Indemnity or Liability payable by ESP shall exceed the service fees received by the ESP for a transaction on account of which such indemnity or liability has arouse.

9. Arbitration

9.1 Both parties shall attempt to resolve any controversy, claim, or dispute arising out of or in connection with this Agreement through consultation and negotiation in good faith and a spirit of mutual cooperation. However, if those attempts fail, the parties agree that all such claims or disputes shall be decided by arbitration which shall be conducted upon request by either party, under the provisions of the Arbitration and Conciliation Act, 1996 by one Arbitrator to be mutually agreed upon. The venue of such Arbitration shall be Bangalore and the language shall be English.

10 Miscellaneous

10.1 eMudhra shall have the right to provide copy of this Agreement to Statutory and/or any other regulatory   bodies if demanded by them through proper channel.

10.2 eSign account holders performing eSign transactions are considered as eMudhra eSign customers and eMudhra will have the right to communicate with them, in the form of notifications, etc regarding eSign.

10.3 No waiver of any provisions of this Agreement shall be effective unless made in writing and signed by the ESP. Any waiver of any term or condition of this Agreement shall not be deemed or construed to be a waiver of such term of condition for the future, or any subsequent breach thereof.

10.4 This Agreement shall be governed by the laws of India and the parties hereby submit to the exclusive jurisdiction of the Indian courts in Bangalore.

10.5 Neither party shall be in default of any obligation by reason of any failure to perform or delay in performing due to unforeseen circumstances or to causes beyond such party's reasonable control, including but not limited to acts of God, war, riot, embargoes, acts of civil or military authorities, fire, floods.

10.6 All notices (including address change notices) will be in writing and will be sent to the registered address or such other address as the recipient may designate by notice given in accordance with this clause.

10.7 If any provision or part of this Agreement is found by a court of competent jurisdiction or other competent authority to be illegal or unenforceable, it will be enforced to the maximum extent permissible, and the remainder of this Agreement will remain in full force and effect to the fullest extent permitted by law and the parties hereto agree to replace the illegal or unenforceable provisions with valid provisions which are as close as possible to the illegal or unenforceable provisions in their respective meaning, purpose, and commercial effect.

10.8 The headings in this Agreement are for reference purposes only and will not affect the meaning or construction of the terms of this Agreement.

10.9 This Agreement constitute the sole and exclusive statement of the terms and conditions hereof and   supersede any prior discussions, writings and negotiations thereto.

10.10 ESP reserves the right to change the standard terms of eSign Services.

10.11 ASP may not assign or otherwise transfer this agreement without the prior written consent of eMudhra.

10.12 Each Party agrees that it has reviewed carefully the terms and conditions of this Agreement, has understood the terms and their interpretations and voluntarily agrees to accept each and every provision of this Agreement.

IN WITNESS WHEREOF we agree to these terms and consider to have executed this by the duly authorized officer of the organization.

Signed and Delivered on behalf of ASP

Name: _____

Designation: _____

Organization: _____

Signature: _____