

**Empanelment of Chartered Accountants for rendering  
professional services**

**To**

**The Ministry of Information and Broadcasting**

**Request For Proposals**

**January 2012**

**MINISTRY OF INFORMATION AND BROADCASTING**

**GOVERNMENT OF INDIA**

**RFP TITLE: Request for proposal for Empanelment of Chartered Accountant Firms in the Ministry of Information and Broadcasting**

TENDER No.	CA/01/2012/FM/TV(I)/DTH
Bid Security	Rs. 25000/-
Contract period	24 months
Reference Number	File No. 406/1/2010-FM/TV(I)/DTH
Date of Issue	23-01-2012
Pre-Proposal Meeting	10-02-2012
Closing Date	17-02-2012

# Content

**Section 1: Letter of Invitation**

**Section 2: Instructions to CA Firms  
(including Data Sheet)**

**Section 3: Financial Proposal**

**Section 4: Terms of Reference**

**Section 5: Standard Form of Contract**

# **SECTION 1 – Letter of Invitation**

## Letter of Invitation

**From**  
**Under Secretary (INSAT)**  
**Ministry of Information & Broadcasting**  
**Room No.116, A Wing**  
**Shastri Bhawan**  
**NEW DELHI - 110 115**

e.mail : [atyanand@nic.in](mailto:atyanand@nic.in)

Telephone: 23386125

**To**  
**[Insert: name and Address of CA Firm]**

.....

Attention: Mr/Ms

1. Ministry of Information and Broadcasting invites proposals from qualified Chartered Accountant firms to provide professional services to this Ministry.
2. The background information and Terms of Reference for the Consulting services are provided in the Request for Proposal (RFP).
3. This RFP is available to all eligible CA firms based in Delhi.
4. A firm will be selected as per the procedure described in this RFP, in accordance with the policies of the Government of India.
5. The RFP includes the following documents:

Section 1 – Letter of invitation

Section 2 – Instructions to CA Firms (including Data Sheet)

Section 3 - Financial Proposal – Standard Forms

Section 4 – Terms of Reference

Section 5 – Standard Contract Document

6. A Pre-proposal meeting has been scheduled for 10-02-2012 at 1100 hours in Room No. 656, Conference Hall, 'A' Wing, Shastri Bhawan, New Delhi where all issues/clarifications could be discussed and finalized.
7. The deadline for receipt of proposals shall be 17-02-2012 upto 1100 hrs.
8. Ministry of Information and Broadcasting reserves the right to accept or reject any or all proposals, and to annul the selection process and reject all proposals at any time prior to the award of contract, without thereby incurring any liability or any obligation in any form to the affected firms on any grounds.

Yours sincerely,

**(Atya Nand)**  
Under Secretary (INSAT)  
Ministry of Information and Broadcasting

## **SECTION 2: Instructions to Chartered Accountants**

## **Section 2: Instructions to Chartered Accountants**

### **1. Introduction**

#### **General**

1.1 Broadcasting Wing in the Ministry of Information and Broadcasting deals with several important subjects including grant of permission to companies for operating TV channels, verification of gross revenue statement of FM Radio and DTH operators to arrive at the correct payable license fee, examination of proposals from Foreign Investment Promotion Board, approval of remittance of foreign exchange proposals and issues relating to merger/demerger and investments in the applicant companies etc.

1.2 Ministry of Information and Broadcasting proposes to appoint a Panel of Chartered Accountant firms to render professional advice to the Ministry of Information and Broadcasting on various issues as detailed above.

1.3 A proposal for the assignment must include the following as stated later in this document.

- (a) Relevant documents in support of immediate eligibility conditions; and
- (b) Financial proposal

1.4 The applicants will be provided inputs and relevant information as necessary. Please note that the cost of preparing the proposal and of negotiating the contract is not reimbursable. The Ministry is not bound to accept any of the proposals submitted.

#### **Conflict of interest**

1.5 The CA firm should not have been engaged in the field of operating TV channels, operating FM Radios, Operating Cable Network, DTH Services, Mobile TV services, Community Radio and any other activity that is directly or indirectly involved in broadcasting.

1.6 Neither any partner of the CA firm, nor any of its Associate(s) should either hold post of managing Director/Whole Time Director or a Part Time Director or undertake similar work of verification or any other job/assignment of any other private organization/company which is in the same line of business as that of the company whose records are required to be verified.

1.7 The CA firm or its associates should not have been black-listed by any PSU/Nationalized Bank/Government Departments in respect of any assignment. (The firm should submit a self-attested affidavit on a Stamp Paper in this regard signed by the Director of the firm).



## **Fraud and corruption**

1.8 The CA firm should not have been held guilty of professional misconduct by the ICAI at any point of time. (The firm should submit a self-attested affidavit on a Stamp Paper in this regard signed by the Director/CEO of the firm).

1.9 The CA firm should not have been held guilty of criminal misconduct at any point of time. (The firm should submit a self-attested affidavit on a Stamp Paper in this regard signed by the Director of the firm).

1.10 The applicants must observe the highest standards of ethics during the selection and execution of such contracts. The Ministry of Information and Broadcasting may reject the proposal at any stage if it is found that the firm recommended for award has indulged in any corrupt or fraudulent activities in bidding for contract in question, and may also declare the firm ineligible, either indefinitely or for a stated period of time, if at any time it is found that the firm has engaged in corrupt or fraudulent practices in bidding for, or in executing the contract.

## **Proposal**

1.11 One CA firm can submit only one proposal.

## **Proposal Validity**

1.12 The Proposal shall be valid for a period of 90 days from the date of opening of Bids.

## **2. Eligibility criteria**

Empanelment shall be based on Quality and Cost Based Selection (QCBS) with following eligibility criteria ;

1. The CA firm must be Delhi based (No joint venture or association is allowed) (Undertaking to be given).
2. The CA Firms should have been in operation in India for at least 5 years after Registration (Documentary proof to be provided).
3. The CA firm must be empanelled with the Comptroller and Auditor General of India for a minimum period of 5 years as on 31<sup>st</sup> March 2011 (Documentary proof to be provided).

4. Average annual turnover of the bidder for the last three financial years ending on March 31st 2011 should be equal to or greater than Rs. 50 lakhs (To provide copies of audited Financial Statements for all the 3 years).
5. The CA firm should have experience of auditing Public Sector Undertakings/Nationalised Banks/Government Departments for at least five years. (Copies of documents detailing the nature and scope of work undertaken should be furnished).
6. The CA firm should have minimum 3 qualified Chartered Accountants each having a minimum of 2 years of experience.

Interested CA Firms may download the complete Request for proposal (RFP) Document on the website of this Ministry at [www.mib.nic.in](http://www.mib.nic.in).

### **3. Pre Bid Conference**

The Pre-bid conference will be held on 10-02-2012 at 1100 hrs. in the Ministry of Information and Broadcasting Conference Hall (Room No.656), A Wing, Shastri Bhawan, New Delhi-110 115

### **4. Clarification and Amendment of RFP Document**

Chartered Accountant firms may request a clarification on any aspect of the RFP document before the proposal submission date. At any time before the submission of proposals, the Ministry of Information and Broadcasting may, for any reason, whether at its own initiative or in response to a communication from any firm, issue a clarification or amend the RFP. These amendments/ clarifications will be placed on the website of the Ministry of Information and Broadcasting along with the RFP.

### **5. Preparation of Proposal**

Chartered Accountant firms are requested to submit relevant documents in support of minimum eligibility conditions, Bid Security and a Financial Proposal as specified in the RFP.

#### **(a) Minimum Eligibility Criteria**

The exact information on various eligibility criteria as mentioned in para 2 above may be furnished in a separate sealed cover with supporting documents and Bid security of

Rs 25,000/-. Bid Security has to be an acceptable form such as Bank Guarantee or Demand Draft from a scheduled Bank for **Rs. 25,000/-**-(Rupees twenty thousand only) drawn in favour of the **Pay & Accounts Officer, Ministry of Information and Broadcasting, Government of India, New Delhi**. Proposals not accompanied by Bid Security shall be rejected as non-responsive. No interest shall be payable by the Ministry of Information and Broadcasting on the sum deposited as Bid Security. The Bid Security of unsuccessful bidders would be returned back within one month of issue of the contract to the successful bidder. Bid Security will be returned to the successful Firm on the signing of contract and receipt of performance guarantee.

The Financial proposals of only those Chartered Accountant firms will be evaluated who meet the minimum eligibility criteria and furnish Bid Security.

### **(b) Financial Proposal**

In preparing the Financial Proposal, Chartered Accountant firms shall quote fixed annual retainer fee for professional team, including all applicable taxes and duties. Taxes and duties should not be quoted separately. Proposals not adhering to this would be rejected.

**The Financial Proposal should be valid for at least 90 days from the last date of submission of proposals.**

**Rate and time line will be as below for following deliverables;**

S.No.	WORK	Rate	Time Limit for the work to be completed by the CA Firms
1.	Verification of Net worth of a company based on Audited Accounts submitted by the company to the Ministry of Information and Broadcasting .	Rs 5000/- per case	7 days from the date of receipt of documents by the CA Firm
2.	Examination of proposals for remittance of foreign exchange to see if they are complying with FEMA Rule 2000	Rs 5000/- per case	do
3.	Examination of proposals received from Foreign Investment Promotion Board in the light of Uplinking/Downlinking Guidelines, DTH Policy	Rs 5000/- per case	do

	Guidelines and FM Radio Guidelines		
4.	Examination of change in Shareholding patterns of companies in the light of Uplinking/Downlinking Guidelines and other relevant Acts and Rules in force.	Rs 5000/- per case	do
5.	Examination of proposals from companies relating to merger/demerger, disinvestment etc., involving transfer of permission of TV channels or FM channels	Rs 10000/- per case	do
6.	Verification/determination of gross revenue of DTH operators based on their audited accounts.	Rs 7500/- per case	do
7.	Verification/determination of gross revenue of FM Radio operators based on their audited accounts.	Rs 7500/- per case	do
8.	Determination of interest on delayed payments in respect of RM Radio.	Rs 5000/- per case	do
9.	Any other related work referred.	Rs 5000/- per case	do

## 6. Payment Schedule of Fee:

6.1 Ministry will send the proposals for examination of the CA firm in a sealed cover. The Firm should examine the proposal in the light of Ministry's guidelines and accounting standards/principals to be provided to the firm by the Ministry at the beginning of the contract. The proposals so examined by the CA firm should be returned to the Ministry in a sealed cover with the remarks/opinion/comments/clarifications of the CA firm within the time frame prescribed.

6.2 Payments to the CA firm will be made on the rates suggested in Para 5(b) above per case. For every case only one payment will be made irrespective of the number of clarifications sought by the CA firms.

6.3 All payments relating to examination of above cases will made to the CA firms quarterly depending upon the number of cases examined by them. The retainer fee will be payable to the CA firm at the end of every financial year.

## 7. Submission, Receipt, and Opening of Proposals

The original proposal (Minimum Eligibility Criteria and Financial Proposal) shall be prepared in indelible ink. It shall contain no interlineations or overwriting, except as necessary to correct errors made by the firm itself. Any such corrections must be authenticated by the persons or person who sign(s) the proposals. The proposals should be submitted as below ;

- A. **Envelope-A:** Eligibility Criteria & Bid Security
- B. **Envelope-B:** Financial Proposal shall be placed in a sealed envelope clearly marked '**Financial Proposal**'.
- C. **Envelope-C:** Both the envelopes (A and B) shall be placed into an outer envelope (C) and sealed. This outer envelope shall bear the submission address and be super scribed '**Proposal for empanelment of chartered accountants**'.

- An authorized representative of the firm should authenticate all pages of the proposal.
- The **completed Minimum Eligibility Criteria and Financial Proposals must be submitted not later than 11:00 hours on 17-02-2012 addressed to**

Under Secretary (INSAT),  
Ministry of Information & Broadcasting,  
Room No. 116, 'A' Wing,  
Shastri Bhavan,  
New Delhi-110 115.

The Ministry of Information and Broadcasting may, at its discretion, extend the deadline for the submission of proposals.

**Any proposal received after the closing time for submission of proposals shall be returned unopened.** The Minimum Eligibility Criteria Document (envelop A) will be opened first on 17-02-2012 at 1500 hours.

The Financial Proposals (Envelope-B) shall remain sealed and will be opened in respect of the firms, which qualify in the Eligibility Criteria on the basis of Minimum Eligibility Criteria fulfilled by the Firm.

The Ministry of Information and Broadcasting may reject any proposal without assigning any reason whatsoever.

## **8. Proposal Evaluation Criteria**

The Ministry of Information and Broadcasting will select a panel of firms from those which submit proposals in accordance with the Quality cum Cost Based System (QCBS) through an evaluation committee constituted by the Ministry.

### **8.1 Financial Evaluation**

- (i) After the evaluation of minimum eligibility criteria the Ministry of Information and Broadcasting shall notify those CA Firms whose proposals did not meet the minimum eligibility criteria, indicating that their Financial Proposals will be returned unopened after completing the selection process.
- (ii) The lowest quoted total amount of Retainership Fee would be taken as the basis for determining L1 Firm for all eligible Chartered Accountant firms, and L2, L3 firms etc. would be asked to match the L1 rates in the ascending order till 5 Chartered Accountants Firms get on the panel.

## **9. Duration of the assignment**

The eligible firms would be appointed on the panel of the Ministry of Information and Broadcasting for a period of 2 years extendable for another 1 year.

## **10. Other important information**

The successful Firm will need to execute a **Performance Guarantee** for 10 % of the amount of retainership money in the form of a Bank Guarantee from a Commercial Bank in an acceptable form or in the form of a Fixed Deposit Receipt pledged to the Ministry of Information & Broadcasting, Government of India. The Performance Guarantee should remain valid for a period of 60 days beyond the completion of the period of contract.

1.9.3. The Ministry of Information and Broadcasting is however not bound to accept any tender or to assign any reason for non-acceptance. The Ministry of Information and Broadcasting reserves its right to accept the tender either in full or in part. **Conditional, erroneous and incomplete Bids will be rejected outright.**

## Section 2: Data Sheet to Instructions to the CA Firms

Paragraph Reference	
	<b>Name of the Client:</b> Ministry of Information and Broadcasting
	Financial Proposal to be submitted: Yes
	There shall be a pre-proposal meeting as under  Date & time: 10-02-2012 at 1100 Hrs Venue: Room No. 656, Conference Hall, Ministry of I&B
	<b>Proposals must remain valid for 90 days after the submission date</b>
	Bid Security : Rs. 25,000/- Bank Guarantee- 10% of the annual retainership money
	Clarification may be requested not later than 10 days before the submission date in writing at the following address: Under Secretary(INSAT) Ministry of Information and Broadcasting Room No.116, A Wing, Shastri Bhawan New Delhi-110 115 Telefax # 2338 61 25

**SECTION 3: Financial Proposal**



### **3 A- Financial Proposal Submission Letter**

[Location, Date]

**To**  
**Under Secretary (INSAT)**  
**Ministry of Information & Broadcasting**  
**Room No.116, A Wing**  
**Shastri Bhawan**  
**NEW DELHI - 110 115**

**email: [atyanand@nic.in](mailto:atyanand@nic.in)**

Dear Sir/Madam,

We, the undersigned, offer to provide the consulting services for empanelment of CA firm in the Ministry of I&B in accordance with your Request for Proposal dated [Insert Date]. Our attached Financial Proposal is for the sum of [Insert amount(s) in words and figures]. This amount is inclusive of the taxes and all other incidental charges.

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. before the date indicated in Clause Reference ..... of the Data Sheet.

No fees, gratuities, rebates, gifts, commissions or other payments have been given or received in connection with this Proposal.

We understand you are not bound to accept any Proposal you receive.

Yours Sincerely,

Authorized Signature [In full and initials]:

Name & Title of Signatory:

Name of Firm:

Address:

### 3B- Summary of Cost

<b>Annual Retainership Fee</b>		
<b>YEAR</b>	<b>In Figures</b>	<b>In Words</b>
1 <sup>st</sup> Year		
2 <sup>nd</sup> Year		
<b>TOTAL</b>		

## **SECTION 4: Terms Of Reference**

## **Section 4: Terms of Reference and Scope of Work**

- (1) Verification of Net worth of a company based on Audited Accounts submitted by the company to the Ministry of Information and Broadcasting .
- (2) Examination of proposals for remittance of foreign exchange to see if they are complying with FEMA and other relevant rules in force.
- (3) Examination of proposals received from Foreign Investment Promotion Board in the light of Uplinking/Downlinking Guidelines, DTH Policy Guidelines and FM Radio Guidelines.
- (4) Examination of change in Shareholding patterns of companies in the light of Uplinking/Downlinking Guidelines and other relevant Acts and Rules in force.
- (5) Examination of proposals from companies relating to merger/demerger, disinvestment etc., involving transfer of permission of TV channels or FM channels.
- (6) Verification/determination of gross revenue of DTH operators based on their audited accounts.
- (7) Verification/determination of gross revenue of FM Radio operators based on their audited accounts.
- (8) Determination of interest on delayed payments in respect of RM Radio.
- (9) Any other related work referred by the Ministry

# **SECTION 5 – Standard Form of Contract**

## **Contents**

- I. Form of Contract
  
- II. General Conditions of Contract
  - 1. General Provisions
  - 2. Commencement, Completion, Modification and Termination of Contract
  - 3. Obligations of the Consultant
  - 4. Consultants' Personnel and Sub-Consultants
  - 5. Obligations of Ministry of Information Broadcasting
  - 6. Payments to the Consultant
  - 7. Fairness and Good Faith
  - 8. Settlement of Disputes
  - 9. Liquidated Damages
  - 10. Conflict of Interest
  - 11. Performance Security
  - 12. Confidentiality
  - 13. Taxes
  - 14. Contract Price
  - 15. Transfer the Contract
  - 16. Consultant's entity
  - 17. Miscellaneous Provisions
  
- III. Appendices
  - Appendix A - Description of Services/ Scope of Work
  - Appendix B – Total cost of Services
  - Appendix C– Schedule with Rates of Payment and Timelines.
  - Appendix D – Model Bank Guarantee format for performance security.

**CONTRACT FOR CONSULTANTS' SERVICES**

**Between**

**Ministry of Information and Broadcasting**

**and**

**[Name of the Firm]**

**Dated: \_\_\_\_\_**

**for**

**“Empanelment of Chartered Accountants for Rendering professional  
Services**

**(On Non-judicial Stamp Paper)**

**I. FORM OF CONTRACT**

This Contract is made at \_\_\_\_\_ (place) on the \_\_\_\_\_ day of the month and year) between \_\_\_\_\_, herein after called 'Firm' which term shall include its successor, administrator and permitted assigns) of the **First Part** and the **Ministry of Information and Broadcasting**, having its offices at Shashtri Bhavan, New Delhi, 110001 employer which term shall include its successor, administrator and permitted assigns) of the **Second Part**.

**WHEREAS**

- (a) The Firm, having represented to Ministry of Information and Broadcasting that it has the required professional skills, personnel and technical resources, has offered to carry out the services in response to the Tender Notice called 'Request for Proposal' dated \_\_\_\_\_ issued by Ministry of Information and Broadcasting;
- (b) Ministry of Information and Broadcasting has accepted the Proposal dated \_\_\_\_\_ submitted by the Firm to provide the services on the terms and conditions set forth in this Contract.

**NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL CONVENANTS HEREIN CONTAINED, IT IS HEREBY AGREED** between the Parties as follows:

- 1) The following Contract documents shall be deemed to form an integral part of this Contract:
  - a. Ministry of Information and Broadcasting General Conditions of Contract;
  - b. The following Appendices:
    - Appendix A - Description of Services/ Scope of Work
    - Appendix B – Total cost of Services
    - Appendix C– Schedule with Rates of Payment and Timelines.
    - Appendix D – Model Bank Guarantee format for performance security.
- 2) The mutual rights and obligations of Ministry of Information and Broadcasting and the Firm shall be as set forth in the Contract, in particular:
  - a. The SCOPE OF WORK will be as per Terms of Reference of Section 2 of RFP.
  - b. The deliverables would be as per Appendix- C.



- c. The Firm shall carry out and complete the Services within the time frame indicated in RFP in accordance with the provisions of the Contract;
- d. The consideration or Contract Price shall be Rs. \_\_\_\_\_ inclusive of all taxes.
- e. Ministry of Information and Broadcasting shall make payments to the Firm in accordance with the provisions of the Contract.
- f. Detailed terms and conditions of the Contract are contained in the Contract Documents mentioned in Para 1 above. The same are to be read harmoniously

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

Signed by -----

In presence of  
and Broadcasting )

1. For and on behalf of [Ministry of Information

(Witnesses)

(i)

(ii)

[Authorized Representative]

2. For and on behalf of [name of Firm]

In presence of

(Witnesses)

(i)

(ii)

[Authorized Representative]

## **II. GENERAL CONDITIONS OF CONTRACT**

### **DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law.
- (b) “Contract” means the Contract signed by the Parties, to which these General Conditions of Contract are attached, together with all the documents listed in Clause 1 of such signed Contract;
- (c) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1;
- (d) “GCC” means these General Conditions of Contract;
- (e) “Government” means the Government of India ;
- (f) “currency” means the Indian National Rupee;
- (g) “Personnel” means persons hired by the Chartered Accountant firms as approved by EMPLOYER as employees and assigned to the performance of the Services or any part thereof.
- (h) “Party” means the Employer or the Chartered Accountant firms, as the case may be, and Parties means both of them;
- (i) “Services” means the work to be performed by the Chartered Accountant firms pursuant to this Contract for the purposes of the Project;
- (j) “Sub-Chartered Accountant firm” means any entity to which the Chartered Accountant firms subcontract any part of the Services in accordance with the provisions of Clause GC 3.7; and
- (k) “Third Party” means any person or entity other than the Government, the Employer, the Chartered Accountant firms or a Sub-Chartered Accountant firm.

#### **1.2 Relation between the Parties**

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Employer and the Chartered Accountant firms. The Chartered Accountant firms, subject to this Contract, 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 Language**

This Contract has been executed in English, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

### **1.5 Heading**

Empanelment of Chartered Accountant Firm

The headings shall not limit, alter or affect the meaning of this Contract.

### **1.6 Notices**

*1.6.1* Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, telegram or facsimile to such

Party at the address as specified in the GC.

*1.6.2* Notice will be deemed to be effective as specified in the GC.

A party may change its address for notice hereunder by giving the other Party notice of such change at the address mentioned as under

#### **Employer :**

#### **Chartered Accountant Firm:**

Under Secretary (INSAT),  
Ministry of Information & Broadcasting,  
Room No. 116, 'A' Wing,  
Shastri Bhavan,  
New Delhi-110 115.

### **1.7 Location**

The Services shall be performed at New Delhi

### **1.8 Authorized Representatives**

Any action required or permitted to be taken, and any document required or permitted to be executed, under this Contract by the Employer or the Chartered Accountant firms may be taken or executed by the authorized representative.

### **1.9 Taxes and Duties**

The Chartered Accountant firms shall pay all such taxes, duties, fees and other impositions as may be levied under the Applicable Law

## **2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT**

### **2.1 Effectiveness of Contract**

This Contract shall come into force and effect on the date on which it is signed. For the due performance of the contract in accordance with the terms and conditions specified in the Letter of Award (LOA) the Firm shall on the day or before signing the Contract which shall not be later than 30 (thirty) days of the issue of the Letter of Award, furnish to Ministry of Information & Broadcasting a performance security in the form of an irrevocable and unconditional Bank Guarantee from a commercial bank in an acceptable form or in the form of a Fixed Deposit Receipt pledged to the Ministry of Information & Broadcasting,

Government of India for an amount equal to 10% of the total value of the contract.

## **2.2 Termination of Contract for Failure to Become Effective**

If this Contract has not become effective within such time period after the date of the Contract signed by The Parties as shall be specified in the SC, either Party may, by not less than two (2) months written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.

## **2.3 Commencement of Services**

The Chartered Accountant firms shall begin carrying out the Services at the end of such time period after the Effective Date.

## **2.4 Expiration of Contract**

The duration of the contract will be two years extendable for a period of one more year. Unless terminated earlier pursuant to Clause GC 2.9 hereof, this Contract shall expire at the end of the contract period and when all payments have been made at the end of such time period.

## **2.5 Entire Agreement**

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

## **2.6 Modification**

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services, may only be made by written agreement between the Parties.

## **2.7 Force Majeure**

### **2.7.1 Definition**

(a) For the purposes of this Contract, "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 Chartered Accountant firms 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 Contract 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 Contract**

The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract 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 Contract.

#### **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 fulfil its obligations hereunder with a minimum of delay.

(b) A party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any event not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible

(c) The Parties shall take all reasonable measures to minimize the event of Force Majeure consequences of any

#### **2.7.4 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, 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 related to force majeure**

Both the parties will have to bear their own cost during the force majeure.

#### **2.7.6 Consultation**

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

#### **2.8 Suspension**

The Employer may, by written notice of suspension to the Chartered Accountant firms, suspend all payments to the Chartered Accountant firms hereunder if the Chartered Accountant firms fail to perform any of their obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Chartered Accountant firms to remedy such failure within a period not exceeding thirty (30) days after receipt by the Chartered Accountant firms of such notice of suspension

### **2.9.1 By the Employer**

The Employer may, by not less than thirty (30) days' written notice of termination to the Chartered Accountant firms (except in the event listed in paragraph (f) below, for which there shall be a written notice of not less than sixty (60) days), such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause 2.9.1, terminate this Contract:

(a) if the Chartered Accountant firms fail to remedy a failure in the performance of their obligations hereunder, as specified in a notice of suspension pursuant to Clause 2.8 hereinabove, within thirty (30) days of receipt of such notice of suspension or within such further period as the Employer may have subsequently approved in writing;

(b) if the Chartered Accountant firms become insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;

(c) if the Chartered Accountant firms fail to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 9 hereof;

(d) if the Chartered Accountant firms submit to the Employer a statement which has a material effect on the rights, obligations or interests of the Employer and which the Chartered Accountant firms know to be false;

(f) if, as the result of Force Majeure, the Chartered Accountant firms are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(g) if the Employer, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.

### **2.9.2 By the Chartered Accountant firms**

The Chartered Accountant firms may, by not less than thirty (30) day's written notice to the Employer, (such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause 2.9.2), terminate this Contract:

(a) if the Employer fails to pay any money due to the Chartered Accountant firms pursuant to this Contract and not subject to dispute pursuant to Clause 8 hereof within forty-five (45) days after receiving written notice from the Chartered Accountant firms that such payment is overdue;

(b) if the Employer is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Chartered Accountant firms may have subsequently approved in writing) following the receipt by the Employer of the Chartered Accountant firms' notice specifying such breach;

(c) if, as the result of Force Majeure, the Chartered Accountant firm are unable to perform a material portion of the Services for a period of not less than sixty (60) days; or

(d) if the Employer 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 Contract pursuant to Clauses 2.2 or 2.9 hereof, or upon expiration of this Contract 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, (ii) the obligation of confidentiality set forth in Clause 3.3 hereof, (iii) the Chartered Accountant firm's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause 3.5 which a Party may have under the Applicable Law

### **2.9.4 Cessation of Services**

Upon termination of this Contract by notice of either Party to the other pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Chartered Accountant firms 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.

### **2.9.5 Payment upon Termination**

Upon termination of this Contract pursuant to Clauses 2.9.1 or 2.9.2 hereof, the Employer shall make the following payments to the Chartered Accountant firms (after offsetting against these payments any amount that may be due from the Chartered Accountant firm to the Employer) in accordance of the contract.

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

If either Party disputes whether an event specified in paragraphs (a) through (e) of Clause 2.9.1 or in Clause 2.9.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 9 hereof, and this Contract shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

## **3. OBLIGATIONS OF THE CHARTERED ACCOUNTANT FIRMS**

### **3.1 General**

#### **3.1.1 Law Governing Services**

The Chartered Accountant firms shall perform the Services in accordance with the Applicable Law and shall take all practicable steps to ensure that any Sub-Chartered Accountant firms, as well as the Personnel and agents of the Chartered Accountant firms and any Sub-Chartered Accountant firms, comply with the Applicable Law. The Employer shall advise the Chartered Accountant firms in writing of relevant local customs and the Chartered Accountant firms shall, after such notifications, respect such customs.

## **3.2 Conflict of Interests**

### **3.2.1 Chartered Accountant firms not to Benefit from Commissions, Discounts, etc.**

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

### **3.2.2 Prohibition of Conflicting Activities**

Neither the Chartered Accountant firms nor their Sub Chartered Accountant firms 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 Contract, any business or professional activities which would conflict with the activities assigned to them under this Contract; or
- (b) after the termination of this Contract, such other activities as may be specified by Employer

## **3.3 Confidentiality**

The Chartered Accountant firms, their Sub-Chartered Accountant firms and the Personnel of either of them shall not, either during the term or within two (2) years after the expiration of this Contract, disclose any proprietary or confidential information relating to the Project, the Services, this Contract or the Employer's business or operations without the prior written consent of the Employer.

## **3.4 Liability of the Chartered Accountant firms**

The Chartered Accountant firms' liability under this Contract shall be as provided by the Applicable Law.

## **3.5 Accounting, Inspection and Auditing**

The Chartered Accountant firms (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, 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 bases thereof (including the bases of the Chartered Accountant firms' costs and charges), and (ii) shall permit the Employer or its designated representative periodically, and up to one year from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Employer.

## **3.6 Reporting Obligations (Blank)**

## **3.7 Documents prepared by the Chartered Accountant firms to be the Property of the Employer**

All reports and other documents prepared by the Chartered Accountant firms in performing the Services shall become and remain the property of the Employer, and the Chartered Accountant firms shall, not later than upon termination or expiration of this Contract, deliver



all such documents to the Employer, together with a detailed inventory thereof. The Chartered Accountant firms may retain a copy of such documents.

#### **4. CHARTERED ACCOUNTANT FIRMS' PERSONNEL**

##### **4.1 General**

The Chartered Accountant firms shall employ and provide such qualified and experienced Personnel as are required to carry out the Services.

#### **5. OBLIGATION OF THE EMPLOYER**

##### **5.1 Assistance and Exemptions**

The Employer shall use its best efforts to ensure that the EMPLOYER shall assist the Chartered Accountant firms, in arranging work permits and such other documents as shall be necessary to enable the Chartered Accountant firms to perform the Services;

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

Ministry of Information and Broadcasting shall bear all financial implication, if, after the date of this Contract, there is any change in the Applicable Law with respect to taxes and duties.

##### **5.3 Services, Facilities and Property of the Employer**

The Employer shall make available to the Chartered Accountant firms and the Personnel, for the purposes of the Services and free of any charge, the services and facilities as mentioned in clause 5.1

##### **5.4 Payment**

In consideration of the Services performed by the Chartered Accountant firms under this Contract, the Employer shall make to the Chartered Accountant firms such payments and in such manner as is provided by Clause 6 of this Contract.

#### **6. PAYMENT TO THE CHARTERED ACCOUNTANT FIRMS**

6.1 (a) The payment as per the Rates and Time line shall be made as per the details given in Appendix C

(b) If the Report on the services rendered is not satisfactory or complete, Firm will need to furnish suitable clarifications/ details as sought for by the Ministry of I & B. For every case only one payment will be made irrespective of the number of clarifications sought by the CA firms.

6.2 The payment shall be made through A/c payee cheque, payable at New Delhi, in Indian Rupees.

### **6.3 Mode of Billing and Payment**

(a) All payments relating to examination of above cases will be made to the CA firms quarterly depending upon the number of cases examined by them. The proportionate retainer fee will be payable to the CA firm at the end of every financial year.

(b) Payment to the CA firm will be made on quarterly basis. April-June, July-Sep., Oct-Dec.& Jan.- March.

(c) The Chartered Accountant firm will submit an invoice ( in triplicate) with details of the work done in each quarter by 10<sup>th</sup> of the month following the Quarter, to the Ministry of I&B for release of payment. The payment will be released within 45 days of submission of the Invoice.

(d) The Chartered Accountant Firm will submit an invoice ( in triplicate) at the end of each year for the proportionate Retainer fee to the Ministry of I & B for release of Payment.

## **7. Responsibility for Accuracy of Project Documents**

### **7.1 General**

7.1.1 The Chartered Accountant firm shall be responsible for accuracy of the data collected, by him directly or procured from other agencies/authorities. He shall indemnify the Authority against any inaccuracy in the work which might surface during implementation of the project. The Chartered Accountant firm will also be responsible for correcting, at his own cost and risk, if required .

## **7.2 ACTION FOR DEFICIENCY IN SERVICES**

### **7.2.1 Chartered Accountant firms liability towards the Employer**

Chartered Accountant firm shall be liable to indemnify the Employer for any direct loss or damage accrued or likely to accrue due to deficiency in service rendered by him

### **7.2.2 Warning / Debarring**

In addition to the penalty as mentioned in Clause 10, warning may be issued to the erring Chartered Accountant firms for minor deficiencies. In the case of major deficiencies in the execution of the assignment involving time and cost overrun and adverse effect on reputation of EMPLOYER, other penal action including debarring for certain period may also be initiated as per policy of EMPLOYER.

## **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 Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

### **8.2 Operation of the Contract**

The Parties recognize that it is impractical in this Contract to provide for every contingency which may arise during the life of the Contract, and the Parties hereby agree that it is their intention that this Contract shall operate fairly as between them, and without detriment to the interest of either of them, and that, if during the term of this Contract either Party believes that this Contract 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 no failure to agree on any action pursuant to this Clause shall 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 Contract or the interpretation thereof.

### **9.2 Dispute Settlement**

Any dispute between the Parties as to matters arising pursuant to this Contract, which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement, may be submitted by either Party for settlement. If the dispute(s) is not resolved amicably then it shall be referred to arbitration and shall be dealt as per the provisions of the arbitration & conciliation Act

## **10 LIQUIDATED DAMAGES**

10.1 The Parties hereby agree that due to negligence of act of any Party, if the other Party suffers losses, the quantification of which may be difficult, and hence the amount specified hereunder shall be construed as reasonable estimate of the damages and the Parties agree to pay such liquidated damages, as defined hereunder as per the provisions of this Contract.

10.2 The amount of liquidated damages for delay by the Firm under this Contract shall not exceed 10 % (Ten Percent) of the total value of the Contract as specified in Appendix B.

10.3 The liquidated damages for delay by Consultant shall be applicable under following circumstances:

(a) If the deliverables are not submitted as per schedule, the Consultant shall be liable to pay 1% (One Percent) of the proportional cost of the services related to that deliverable (as per *Appendix C* – Schedule of payment) for delay of each week or part thereof subject to clause 9.2.

(b) If the deliverables are not acceptable to Ministry of I & B mentioned in Clause 6.1 (b),

and clarifications are not furnished to the satisfaction of Ministry of I & B within 30 (Thirty) days of the receipt of the notice, the Firm shall be liable for Liquidated Damages for an amount equal to 1% (One Percent) of proportional cost of the services related to that deliverable (as per **Appendix C** – Schedule of payment) for every week or part thereof for the delay subject to clause 9.2.

(c) Notwithstanding, anything mentioned above, the consultant shall not be made liable for any delay due to non-availability of timely approval and timely review by Ministry of I & B.

## **11. Performance security**

11.1. For the due performance of the program/ project in accordance with the terms and conditions specified in the Letter of Award (LOA) the Firm shall on the day or before signing the Contract which shall not be later than 30 (thirty) days of the issue of the Letter of Award, furnish to Ministry of Information & Broadcasting a performance security in the form of an irrevocable and unconditional Bank Guarantee from a commercial bank in an acceptable form or in the form of a Fixed Deposit Receipt pledged to the Ministry of Information & Broadcasting, Government of India for an amount equal to 10% of the total value of the contract.

11.2. The Performance Bank Guarantee shall be in favour of the Ministry of Information & Broadcasting by the State Bank of India or any Nationalized or scheduled Indian Bank, approved by the Reserve Bank of India and acceptable to Ministry of I & B. The Bank Guarantee shall be in the proforma acceptable to Ministry of I & B.

11.3. It is expressly understood and agreed that the performance security is intended to secure the performance of entire Contract. It is also expressly understood and agreed that the performance security is not to be construed to cover all the damages detailed / stipulated in various clauses in the Contract document

11.4. The performance Bank Guarantee shall be valid for three months after the expiry of the contract. It will be discharged by Ministry of I & B and returned to the firm not later than 6 (six) months following the date of completion of the Firm's obligations, under the Contract.

11.5. Should the program/ project period, for whatever reason be extended, the Firm, shall at his own cost, get the validity period of Bank Guarantee in respect of performance security furnished by him extended and shall furnish the extended / revised Bank Guarantee to Ministry of I & B before the expiry date of the Bank Guarantee originally furnished

# Retainership Fee

## Appendix C

**Rate and time line for work done will be as below for following deliverables;**

S.No.	WORK	Rate	Time Limit for the work to be completed by the CA Firms
1.	Verification of Net worth of a company based on Audited Accounts submitted by the company to the Ministry of Information and Broadcasting .	Rs 5000/- per case	7 days from the date of receipt of documents by the CA Firm
2.	Examination of proposals for remittance of foreign exchange to see if they are complying with FEMA Rule 2000	Rs 5000/- per case	do
3.	Examination of proposals received from Foreign Investment Promotion Board in the light of Uplinking/Downlinking Guidelines, DTH Policy Guidelines and FM Radio Guidelines	Rs 5000/- per case	do
4.	Examination of change in Shareholding patterns of companies in the light of Uplinking/Downlinking Guidelines and other relevant Acts and Rules in force.	Rs 5000/- per case	do
5.	Examination of proposals from companies relating to merger/demerger, disinvestment etc., involving transfer of permission of TV channels or FM channels	Rs 10000/- per case	do
6.	Verification/determination of gross revenue of DTH operators based on their audited accounts.	Rs 7500/- per case	do
7.	Verification/determination of gross revenue of FM Radio operators based on their audited accounts.	Rs 7500/- per case	do
8.	Determination of interest on delayed payments in respect of RM Radio.	Rs 5000/- per case	do
9.	Any other related work referred.	Rs 5000/-	do

		per case	
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**Payment Schedule of Fee:**

Ministry will send the proposals for examination of the CA firm in a sealed cover. The Firm should examine the proposal in the light of Ministry's guidelines and accounting standards/principals provided to the firm by the Ministry at the beginning of the contract. The proposals so examined by the CA firm should be returned to the Ministry in a sealed cover with the remarks/opinion/comments/clarifications of the CA firm within the time frame prescribed.

Payments to the CA firm will be made on the rates suggested in Para 5(b)....above per case. For every case only one payment will be made irrespective of the number of clarifications sought by the CA firms.

All payments relating to examination of above cases will made to the CA firms quarterly depending upon the number of cases examined by them. The retainer fee as given in Annexure II will be payable to the CA firm at the end of every financial year

**Appendix D- MODEL BANK GUARANTEE FORMAT FOR  
PERFORMANCE SECURITY**

To

The President of India

WHEREAS.....  
(Name and address of the consultant) (hereinafter called “the consultant” has undertaken, in pursuance of contract no..... dated .....to render (description of services) (herein after called “the contract”).

AND WHEREAS it has been stipulate by you in the said contract that the consultant shall furnish you with a bank guarantee by a scheduled commercial recognize by you for the sum specified therein as security for compliance with its obligations in accordance with the contract;

AND WHEREAS we have agreed to give the consultant such a bank guarantee;

NOW THEREFORE we hereby affirm that we are guarantors and responsible to you, on behalf of the consultant, up to a total of ..... (amount of the guarantee in words and figures), and we undertake to pay you, upon your first written demand declaring the consultant to be in default under the contract and without cavil or argument, any sum or sums within the limits of (amount of guarantee) as aforesaid, without your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

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

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

This guarantee shall be valid until the .....day of ....., 20.....

.....  
(Signature of the authorized officer of the Bank)

.....  
Name and designation of the officer  
.....

..... Seal, name &  
address of the Bank and address of the Branch