

AGREEMENT FOR CONSULTANCY SERVICES

Between

.....
[Uttarakhand Sanskrit Academy]

and

.....
[name of Consultant]

AGREEMENT FOR
Development of Satellite Sanskrit TV Channel

This AGREEMENT (hereinafter referred to as the "Agreement") is made on the _____ day of the month of _____ 2015 between Uttarakhand Sanskrit Academy, on the one hand, the (Uttarakhand Sanskrit Academy) having its registered office at _____ (hereinafter referred to as the "the Authority" which expression shall include their respective successors, unless the context otherwise requires) and,

_____ (name of the consultant) on the other hand, having its registered office at _____ - (hereinafter referred to as the "Consultant" or "Consultant") which expression shall include their respective successors and permitted assigns.

- A. The Authority vide its Letter No. _____ invited financial proposals from the Consultancy Agency who fulfill the pre qualification criteria in the RFP document (hereinafter referred to as the "Consultant/Applicant") for Development of Satellite Sanskrit TV Channel in Uttarakhand (hereinafter referred to as the "Project").
- B. The Consultant submitted its proposals for the aforesaid work, whereby the Consultant represented to the Authority that it had the required professional skills, and in the said proposals the Consultant also agreed to provide the Services to the Authority on the terms and conditions as set forth in this Agreement; and
- C. The Authority, 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 7.2.
- b) "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;
- c) "Agreement" means this Agreement, together with all the Annexure;
- d) "Agreement Value" shall have the meaning set forth in Clause 7.2.
- 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 RFP;
- g) "Effective Date" means the date on which this Agreement comes into force and effect pursuant to Clause 2.1;
- h) "Expatriate Personnel" means such persons who at the time of being so hired had their domicile outside India;
- i) "Government" means the Government of Uttarakhand
- j) "INR, Re. Or Rs." means Indian Rupees;
- k) "Personnel" means persons hired by the Consultant or technical experts as employees and assigned to the performance of the Services or any part thereof;
- l) "Party" means the Authority or the Consultant, as the case may be, and Parties means both of them;
- m) "Resident Personnel" means such persons who at the time of being so hired had their domicile inside India;
- n) "Services" means the work to be performed by the Consultant pursuant to this Agreement, as described in the Terms of Reference hereto;
- o) "Terms of Reference" means the work to be performed by Consultant as mentioned in Annexure-A to this Agreement;

p) "Third Party" means any persons or entity other than the Government, the Authority, the Consultant.

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

- (a) Agreement;
- (b) Annexure of Agreement;
- (c) RFP; and
- (d) Letter of Award

1.1.3. Relation between the Parties

Nothing contained herein shall be construed as establishing a relation of master and servant or of agent and principal as between the Authority and the 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.

1.2. Rights and Obligations

The mutual rights and obligations of the Authority 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) the Authority shall make payments to the Consultant in accordance with the provisions of the Agreement.

1.3. 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 Dehradun shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

1.4. 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.

1.5. Table of contents and headings

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

1.6. 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 letter delivered by hand/registered post to the address given and marked for attention of the Consultant's Representative set out below in Clause 1.9 or to such other person as the Consultant may from time to time designate by notice to the Authority provided that if the Consultant does not have an office in Dehradun it may send such notice by registered post.

1.7. Location

The Services shall be performed at the site required to accomplish the Terms of Reference (TOR) task of the project in accordance with the provisions of this Agreement and at such locations as are incidental thereto, including the offices of the Consultant.

1.8. Authority of Member-in-charge

In case the Consultant consists of a consortium of more than one entity, the Parties agree that the Lead Member shall act on behalf of the Members in exercising all the Consultant's rights and obligations towards the Authority under this Agreement, including without limitation the receiving of instructions from the Authority and payment for Consultancy assignment. All communications/ correspondence/ commitments/ instructions for consulting whatsoever nature issued/received to/from Lead member will be on behalf of Consortium. Authority will not deal with other members of consortium except the Lead Member.

1.9. Authorized representatives

1.9.1. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Authority or the Consultant, as the case may be, may be taken or executed by the officials specified in this Clause 1. 9.

1.9.2. The Authority may, from time to time, designate one of its officials as the Authority Representative, Unless otherwise notified, the Authority Representative shall be;

_____ (name and designation of the officer)

_____ (address of office)

Dehradun

Tel: _____ Fax: _____

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

Tel:

Fax

1.10. 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 the Authority shall perform such duties in regard to the deduction of such taxes as may be lawfully imposed on it.

2. COMMENCEMENT, COMPLETION AND TERMINATION OF AGREEMENT

2.1. Effectiveness of Agreement

This Agreement shall come into force and effect on the date of execution 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, the Authority 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 Performance Security of the Consultant shall stand forfeited.

2.4. Expiration of Agreement

Unless terminated earlier pursuant to Clause 2.9 hereof, this Agreement shall expire when the Services have been completed and a period of 90 (ninety) days has elapsed after all payments due under this Agreement, have been made.

2.5. Entire Agreement

2.5.1. This Agreement and the Annexure together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modifications 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.

2.5.2. Without prejudice to the generality of the provisions of Clause 2.5.1, on matters not covered by this Agreement, and Guidelines issued by GoUK for selection of Consultant /Advisor, Developers for PPP Projects & Private Partners for Disinvestment in Uttarakhand as amended from time to time issued by Uttarakhand Sanskrit Academy, shall apply.

2.6. Modifications of Agreement

Modification of the terms and conditions of this Agreement may only be made by written agreement between the Parties. However, each Party shall

give due consideration to any proposals for modifications 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 agents employees there of, 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.
- d) The Director, Uttarakhand Sanskrit Academy will decide the eventuality of Force Majeure which will be binding on both the parties.

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 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 minimise 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. Such expenses will be approved by Uttarakhand Sanskrit Academy. The Consultant will have to provide proper justification and certificate from their auditors for such expenses on the format as may be decided by Uttarakhand Sanskrit Academy.

2.7.6. Consultation

Not later than thirty (30) 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

The Authority may, by written notice of suspension to the Consultant, without any obligation (financial or otherwise) suspends all the 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 thirty (30) days after receipt by the Consultant of such notice of suspension. The above action will be taken by Authority after approval of Director, Uttarakhand Sanskrit Academy.

2.9. Termination of Agreement

2.9.1. By the Authority

The Authority may, by not less than thirty (30) 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 herein above, within thirty (30) days of receipt of such notice of suspension or within such further period as the Authority 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) if the Consultant fails to comply decision of Director, Uttarakhand Sanskrit Academy.
- e) the Consultant submits to the Authority a statement which has a material effect on the rights, obligations or interests of the Authority and which the Consultant knows to be false;
- f) 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; or
- g) 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 sixty (60) days.

2.9.2. By the Consultant

The Consultant may, by not less than thirty (30) days' written notice to the Authority, 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) the Authority is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently agreed in

writing) following the receipt by the Authority of the Consultant's notice specifying such breach;

- b) 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 sixty (60) days; or
- c) the Authority 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, 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 Consultant's obligation to permit inspection, copying and auditing of its accounts and records set forth in Clause 3.6.

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 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 Authority, the Consultant shall proceed as provided respectively by Clauses 3.9 or 3.10.

2.9.5. Dispute Resolution

a) 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. In the event a dispute, differences or claim arises in connection with the interpretation or implementation of this agreement, the aggrieved party shall issue a written notice setting out the Dispute/differences or claim to the other party, parties shall first attempt to resolve such dispute through mutual consultation. If the dispute is not resolved as aforesaid within 15 days from the date of receipt of written notice, the matter will be referred to Director, Uttarakhand Sanskrit Academy, who will take decision within 30 days after such reference. If the dispute is still not resolved the matter will be referred for Arbitration.

b) Arbitration:

In case the dispute is not resolved as indicated in Clause 2.9.5 (a), any party may issue a notice of reference, invoking resolution of disputes through arbitration in accordance with the provisions of the Arbitration Conciliation Act, 1996. The arbitral proceedings shall be conducted by a sole arbitrator that may be appointed with the consent of Parties to such dispute. If there is no agreement among the parties to the identity or appointment of such sole arbitrator within 30 days of issue of notice of reference, then the arbitral proceedings will be conducted by a panel of three arbitrators, one arbitrator to be appointed by Authority and other appointed by Consultant and the third arbitrator to be mutually appointed by the other two arbitrators in accordance with provisions of Arbitration and Conciliation Act, 1996. Arbitration proceedings shall be conducted in and the award shall be made in English language. Arbitration proceedings shall be conducted at Dehradun and following are agreed :

The arbitration award shall be final and binding on the Parties, and the Parties agree to be bound thereby and to act accordingly.

The arbitrator may award to the Party that substantially prevails on merit, its costs and reasonable expenses (including reasonable fees for counsel)

When any dispute is under arbitration, except for matters under dispute, the Parties shall continue to exercise their remaining respective rights and fulfill their remaining respective obligations under this Agreement.

2.9.6. Drop Dead Fees

- a) Drop Dead Fee shall be payable to the Consultant by the Authority if the project is dropped/abandoned or put on hold by the Government for more than one year from the date of last agreed milestones.
- b) The amount of "Drop Dead Fee" shall be 10% of the remaining consultancy fee as compensation, after the Consultant has been paid for the work done upto start of drop dead period.

2.9.7. Termination Payment

- a) Upon Termination of this Agreement by the Consultant as per Clause 2.9.2, the Consultant shall be entitled to revoke the Performance Security, if subsisting, and receive from Uttarakhand Sanskrit Academy, termination payment equal to the value of work done till the date of notice given under Clause 2.9.2.
- b) Upon Termination of this Agreement by the Authority as per Clause 2.9.1. (a) to (g), shall be entitled to appropriate the Performance Security.

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 the Authority, and shall at all times support and safeguard the Authority's legitimate interests in any dealings with Third Parties.

3.1.2. Terms of Reference

The scope of Services to be performed by the Consultant are specified in the Terms of Reference (the "TOR") at Annexure-A of this Agreement. The Consultant shall provide the deliverables specified therein in conformity with the time schedule stated therein.

3.1.3. Applicable Laws

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

3.2. Conflict of Interest

The Consultant shall not receive any remuneration in connection with the assignment except as provided in this Agreement. The Consultant and its affiliates shall not engage in consulting activities that conflict with the interest of the Uttarakhand Sanskrit Academy under the contract and shall be excluded from downstream supply of goods or construction of works or purchase of any asset or provision of any other service related to the assignment other than a continuation of the Services" under the ongoing contract. It should be the requirement of the consultancy contract that the Consultant should provide professional, objective and impartial advice and at all times hold the Uttarakhand Sanskrit Academy interests' paramount, without any consideration for future work, and that in providing advice they avoid conflicts with other assignments and their own corporate interests. Consultant shall not be hired for any assignment that would be in conflict with their prior or current obligations to other Uttarakhand Sanskrit Academy, or that may place them in a position of being unable to carry out the assignment in the best interest of the Authority. Without limitation on the generality of the foregoing, Consultant shall not be hired, under the circumstances set forth below:-

- i. Conflict between Consulting activities and procurement of goods, works or services: A Consultant/ Consultancy concern that have been engaged to provide goods, works, or services for a project, and each of its affiliates, shall be disqualified from providing consulting services related to those

goods, works or services. Conversely, a Consultant/ Consultancy concern hired to provide consulting services for the preparation or implementation of a project, and each of its affiliates, shall be disqualified from subsequently providing goods, works or services for such preparation or implementation.

- ii. Conflict among consulting assignments: neither Consultant (including their personnel) nor any of their affiliates shall be hired for any assignment that, by its nature, may be in conflict with another assignment of the Consultant. As an example, Consultant hired to prepare engineering design for an infrastructure project shall not be engaged to prepare an independent environmental assessment for the same project, and Consultant assisting Uttarakhand Sanskrit Academy in the privatization on public assets shall neither purchase nor advice purchasers of, such assets. Similarly, Consultant hired to prepare Terms of Reference (TOR) for an assignment shall not be hired for the assignment in question.
- iii. Relationship with Employer's staff: Consultant (including their personnel) that have a business or family relationship with such member(s) of the Employer's staff or with the staff of the project implementing agency, who are directly or indirectly involved in any part of ; (i) the preparation of the TOR of the contract, (ii) the selection process for such contract, or (iii) supervision of such contract; may not be awarded a contract unless it is established to the complete satisfaction of the employing authority, for the reason to be recorded in writing, that such relationship would not affect the aspects of fairness and transparency in the selection process and monitoring of consultant's work.

3.3. Confidentiality

The Consultant and its Personnel 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 the Authority to the Consultant, and a Personnel of Consultant any information provided by or relating to the Authority, its technology, technical processes, business affairs or finances or any information relating to the Authority's employees, officers or other professionals or suppliers, customers, or contractors of the Authority; 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 Authority.

Notwithstanding the aforesaid, the Consultant, and its Personnel may disclose Confidential Information to the extent that such confidential Information:

- i. was in the public domain prior to its delivery to the Consultant and its Personnel or becomes a part of the public knowledge from a source other than the Consultant, and the its Personnel;
- ii. was obtained from a third party with no known duty to maintain its on Confidentiality;
- iii. is required to be disclosed by Law or judicial or administrative or arbitral process or by any Governmental Instrumentalities, provided that for any such disclosure, the Consultant, and its Personnel shall give the Authority, prompt written notice, and use reasonable efforts to ensure that such disclosure is accorded confidential treatment;
- iv. is provided to the professional advisers, agents, auditors or representatives of the Consultant or its Personnel, as is reasonable under the circumstances; provided, however, that the Consultant or its Personnel, 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 Consultant's liability towards the Authority

The Consultant shall, subject to the limitation specified in Clause 3.4.3, be liable to the Authority 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 Authority's property, shall be not liable to the Authority:

- (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 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 whichever of (a) or (b) is higher.

The Liability of Consultant would be limited to 125% of the total fee for the all the parts, even if at the time of establishing the liability, the subsequent

part has not been commenced or previous part has not been approved by Uttarakhand Sanskrit Academy.

This limitation of liability 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.

3.5. Insurance to be taken out by the Consultant

The Consultant (i) shall take out and maintain, own cost, insurance against the risks, and for the coverage, as and (ii) at the Authority's request, shall provide evidence to the Authority showing that such insurance has been taken out and maintained and that the current premiums thereof have been paid. The global insurance policy, if any, taken by the Consultant would be considered as valid.

3.6. Accounting, inspection and auditing

The Consultant shall:

- a) 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 basis thereof (including the basis of the Consultant's costs and charges);
- b) permit the Authority or its designated representative periodically, and up to one year from the expiration or termination of this Agreement, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the Authority.

3.7. Consultant's actions requiring the Authority's prior approval

The Consultant shall obtain the Authority's prior approval in writing before appointing any other personnel than mentioned in Annexure -B, i.e. Key Personnel.

3.8. Reporting obligations

The Consultant shall submit to the Authority the reports and documents in such numbers and within the time periods set forth in the TOR.

3.9. Documents prepared by the Consultant to be property of the Authority

- 3.9.1. All plans, drawings, specifications, designs, reports and other documents prepared by the Consultant in performing the Services shall become and remain the property of the Authority, and the Consultant shall, not later

than termination or expiration of this Agreement, deliver all such documents to the Authority, together with a detailed inventory thereof. The Consultant may retain a copy of such documents. Restrictions about the future use of these documents shall be as specified in the Agreement.

- 3.9.2. The Consultant shall not use these documents for purposes unrelated to this Agreement without the prior written approval of the Authority.

3.10. 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 the Authority 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

- 4.1. The Consultant shall employ and provide such qualified and experienced Personnel as may be required to carry out the Services.
- 4.2. The Consultant shall employ such qualified and experienced Personnel to carry out the services as given in TOR and the Consultant shall not change any person whose Curriculum Vitae (CV) has been submitted, without prior permission of Authority. Without written permission of Authority any such action shall be deemed as breach of contract.
- 4.3. The Authority will not normally consider any request of the Consultant for substitution of Key Personnel. Substitution, will, however be permitted if the Key Personnel is not available for reasons of any incapacity or due to health, subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.
- 4.4. The Authority expects all the Key Personnel to be available during Implementation of the Agreement. The Authority will not consider substitution of Key Personnel except for reasons of any incapacity or due to health. Such substitution shall ordinarily be limited to one Key Personnel subject to equally or better qualified and experienced personnel being provided to the satisfaction of the Authority.

5. Services and Facilities to be provided by the Uttarakhand Sanskrit Academy

The Uttarakhand Sanskrit Academy shall not provide any services and/or facilities to the appointed Consultant during the studies and submission of stipulated documents. The Consultant will have to arrange for all facilities/services required to carry out the assigned work on this project at their cost. However, introductory/recommendation letter and other facilitation, as deemed fit shall be provided to the Consultant on request for obtaining desired services and facilities from concerned authority for which the Consultant shall make payment to the concerned authorities directly.

6. Uttarakhand Sanskrit Academy shall :

- 6.1.1. Review Part 1 and Part 2 of the work performed as per TOR by Transaction Advisor. The deliverables submitted by Transaction Advisor shall be reviewed and approved by Uttarakhand Sanskrit Academy. In case any deliverables submitted by Transaction Advisor is not in accordance with TOR, Uttarakhand Sanskrit Academy shall ask the Transaction Advisor to complete the same.
- 6.1.2. Approve work submitted by Transaction Advisor for release of payment on achievement of respective Project Milestones mentioned in TOR.
- 6.1.3. Ensure that the work is carried on as per timelines.

7. Payment to the Consultant

- 7.1. In consideration of the Services performed by the Consultant under this Contract, the Consultant will be entitled for total fees consideration as per Financial Proposal annexed at Annexure D of this Agreement. The Consultant undertakes to fulfill the commitment as indicated in the this Agreement.
- 7.2. Except as may be otherwise agreed under Clause 2.6, 6.1.4 and subject to Clause 7.1.3, the payments under this Agreement shall not exceed the value specified herein (the "Agreement Value"). The Parties agree that the Agreement Value is Rs. _____ (Rupees _____), which does not include the Additional Costs specified in Annexure D of this Agreement (the "Additional Costs")
- 7.3. Notwithstanding anything to the contrary contained in Clause 7.2, if pursuant to the provisions of Clause 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 7.1 above, the Agreement Value set forth in Clause 7.2 above shall be increased by the amount or amounts, as the case may be, of any such additional payments.
- 7.4. In consideration of the Services performed by the Consultant, the Consultant will be entitled for payment of fees consideration as per following payment schedule :

A pre-receipted bill in triplicate in the name of _____, Uttarakhand Sanskrit Academy, shall be submitted after submission of deliverables.

Sl. No.	Stage of Payment	Percentage of Payment of total Financial Proposal Payable
A.	Part 1 of the Assignment	
1.	Mobilization Advance	10%
2.	Preliminary Development Layout Design	10%
3.	Preliminary Report	10%
4.	Final Report	20%
5.	On approval of Final Report	50%
B.	Part 2 of the Assignment	
1.	Channel Approvals	10%
2.	Approval of Project Works Details, Specifications, Procurement Bid Documents & Contract Documents	5%
3.	Approval of Project Equipments Details, Specifications, Procurement Bid Documents & Contract Documents	5%
4.	Completion of all work contracts	10%
5.	On final Installation & Commissioning of all equipments	10%
6.	Completion of hiring process for the Key Personnel of the channel	10%
7.	On completion of first official broadcasting	20%
8.	Signing of at least 2 contracts for the channel distribution	10%
9.	Signing of at least 2 long term advertising contracts for the channel	10%
10	After Successful completion of 2 months of official broadcasting	10%
Total (Part1 + Part2)		

The payments would be disbursed subject to acceptance of deliverables by Expert Committee or any other Committee set up by Uttarakhand Sanskrit Academy for the Project.

7.5. Midterm Review

Uttarakhand Sanskrit Academy may appoint an Expert Committee to review the work completed and its quality by the Consultant periodically. The Transaction Advisor would attend the meetings convened to review the work and would provide all information, clarifications and justifications on the

reports submitted. Any deviation from the desired results would be discussed and corrective actions would be advised. The Consultant would take appropriate measures to implement such corrective actions.

8. Currency of Payment

All payments shall be made in Indian Rupees.

9. Severability

9.1. If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction that shall not affect or impair :

- a) The legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or
- b) The legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Memorandum.

9.2. This Agreement may be altered or modified by mutual consent of the Parties for purposes of safeguarding the proper implementation of the scope of work.

9.3. The parties agree to furnish/execute such further or other documents/papers for giving fullest effect to the Scope of Work as may be required by the Authority/GoUK

10. Jurisdiction of Courts :

All disputes arising out of this Agreement shall be subject to the jurisdiction of the Courts at Dehradun only

11. Performance Security

Upon receipt of Letter of Award (LOA) from the Uttarakhand Sanskrit Academy, the successful Applicant shall furnish the Performance Security of an amount equal to 5% of cost of consultancy services/ financial proposal or Rs. 10.00 lakhs (Rupees Ten Lakhs) only whichever is higher, by way of Bank Guarantee for the due performance of the Contract in the format of Performance Security Form given at Annexure-C. The Performance Security shall be furnished by the selected Consultant within the time specified in LOA but prior to execution of Agreement. The validity period of Bank Guarantee of Performance Security shall be 365 days from the date of LOA and the Consultant shall have to provide the extended Bank Guarantee, before the expiry of 365 days, if required, which shall be valid for the period of six months beyond the date of completion of assignment..

11.1. Encashment and appropriation of Performance Security

The Authority 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 accordance with the provisions of clause 2.9.7 (b) or in the event of breach of this Agreement or for recovery of penalty specified in Clause 12.2.

12. Penalty for delay:

12.1. Penalty for Delay

If progress of the assignment is not as per the agreed milestones/ deliverables, as referred in Schedule-1 'Terms of Reference', the Consultancy Agency shall be liable to pay penalty unless, on its written request, the delay is condoned by Consultancy Agency Evaluation Committee, constituted by GoUK, on the justified and valid grounds. For delay upto four weeks beyond the milestone/ deliverables fixed (as per the deliverables and time frame indicated in TOR), a penalty equal to 0.25% of the agreed financial proposal, beyond four weeks upto eight weeks 0.50% of fees shall be payable to Uttarakhand Sanskrit Academy. In case of delay beyond 8 weeks, the matter will be referred to Consultancy Agency Evaluation Committee whose decision will be final and binding, however, the maximum penalty for delay will not exceed 10% of the agreed financial proposal.

12.2. Penalty for deficiency in Services

In addition to the penalty specified in clause 12.1 and 12.2 above, warnings 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 Authority, other penal action including debarring for a specified period may also be initiated as per policy of the Authority.

13. Indemnity

The Consultant will indemnify the Uttarakhand Sanskrit Academy for any direct loss or damage that is caused due to deficiency in services.

14. The Consultant and their associates will not be permitted to bid for selection of Developer, Project Management Consultant, Independent Engineer and Safety Engineer etc. for the project.

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

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of Consultant:

For and on behalf of Authority:

(Signature of Authorized Representative)
(Name)
(Designation)
(Address)
(Phone, Fax Nos.)

(Signature of Authorized Representative)
(Name)
(Designation)
(Address)
(Phone, Fax Nos.)

Witnesses:

1. Signature
Name
Address
2. Signature
Name
Address

LIST OF ANNEXURE

Annexure A - Scope of Work

Annexure C - Form of Bank Guarantee for Performance Security

ANNEXURE D - Attach Financial Proposal submitted by the Consultant to the Authority

DESCRIPTION OF THE SERVICES (AS PER TOR)

Terms of Reference (TOR)

TERMS OF REFERENCE (TOR) FOR CONSULTANCY SERVICES

1. Scope of Services of Consultancy Agency

The scope of services of the selected Consultancy Agency is as under:

- I. **Part 1 : Preparation of Detailed Project Report**
 - II. **Part 2 : Approval of the Channel & Project Management**
2. The selected Applicant could outsource any part of activity mentioned above to a technical expert. However the selected Applicant shall at all times remain responsible for the work carried out by technical expert appointed. The Applicant shall disclose the name of technical expert and name of Key Personnel along with their CV's at the time of submission of the Financial Proposal.
 3. The Uttarakhand Sanskrit Academy and the Consultancy Service Evaluation Committee appointed for the Project shall review Part 1 of the work undertaken by Applicant.
 4. On the completion of Part-1, the Authority shall seek approval of funds from Government of Uttarakhand (GoUK) for the project. Based on the approval of the GoUK, the Authority may or may not proceed with the Part 2 of the assignement
 5. In the event of Uttarakhand Sanskrit Academy decides not to commence Part-2 study, the whole study shall be concluded on final report of Part-1. In such event the clause 2.28 "Drop Dead Fee" shall not be applicable.

Part 1 : Preparation of Detailed Project Report (DPR)

1. PROJECT CONCEPT

The Applicant shall prepare detailed project background, rationale for developing the project, scope of project; identify need for Development of Sanskrit Channel in Uttarakhand and approach & methodology adopted for preparation of the DPR.

2. PROJECT COMPONENTS

The Applicant shall identify various project components which could be included in the Project.

a. Essential Components

The preliminary project components identified by the Authority is as under:

- i. Construction of Building (if required)
 - ii. Studio(s)
 - iii. Production Control Room
 - iv. Master Control Room
 - v. Central Apparatus Room
 - vi. Graphics and Editing Room
 - vii. Playout Automation
 - viii. News Room Control System
 - ix. Integration Items
 - x. Broadcasting/Uplink systems
 - xi. Human Resource Plan
 - xii. Content Development Plan
 - xiii. Marketing Plan
- b. The DPR shall :
- i. provide a comprehensive report on roadmap for Development of Sanskrit Channel. The report should be based on the assessment made through critical studies, survey of viewers and other relevant analysis.
 - ii. Provide details of DTH operators, Cable System operators, MSOs, IPTV operators, Terrestrial Transmitters Network operators with their areas of coverage, subscribers' base, subscription details, and other related details, with a view to organize the distribution of Sanskrit Channel through various modes
 - iii. Provide all procedural and regulatory assistance for down-linking and Development of Sanskrit channel
 - iv. Provide input on the strategy to be adopted by the channel and give assistance in finding the best possible and cost-effective solution for Development of the channel; and
- c. The following shall be provided by the Applicant:
- i. Site preparation Details
 - ii. Furniture Details & Specifications
 - iii. Air Conditioning Details & Specifications
 - iv. All electrical connections & UPS Details & Specifications
 - v. Details & Specifications of all necessary equipment required for the project
- d. The Applicant shall prepare preliminary drawings, layout for the aforesaid project components and submit them to the Authority for their approval. The final drawings, layouts shall be prepared and finalised in consultation with Authority.

3. FINANCIAL

The Applicant shall be responsible for preparation of financial model based on the results of the market surveys, designs prepared by its technical team and private sector inputs. The assumptions relating to Capital expenditure (CAPEX), Operation & maintenance (O&M) expenditure, projected revenues etc should be clearly mentioned in its Financial Feasibility study.

The financial analysis should cover the following points in detail:

- i. Assessment of the financial viability of the projects based on detailed cash flow projections, detailed cost analysis
- ii. Detailed cash flow projections for the project
- iii. Financial structuring
- iv. Financial analysis - return on investment, DSCR etc
- v. Cost-Benefit analysis for the authority
- vi. Assessment of project sustainability

The applicant shall also be required to suggest possible financing options for the project.

4. Assessment of Risk and mitigation plan

The Applicant would identify and explain the various categories of risk that are envisaged in the project. The Applicant would suggest the method to evaluate the overall chances of potential loss and the consequences. The Applicant would propose a plan to control & monitor the risks and plan for contingencies to risks, which occur.

5. Legal Aspects

The Applicant would list out & detail all issues related to the project from legal and regulatory aspects. The details shall include the process & procedures required to be completed for the Sanskrit Channel. Applicant shall also point out the available schemes & exception allowed for government agencies.

6. Environmental Safeguards

The Applicant would list out environmental safeguards to be followed for the Project and environmental clearances if any required for the Project.

7. Time Frame:-

The Applicant shall adhere to the timelines given below. The effort would be to minimize the time as Government's aim is to start actual work on ground at the earliest. Time schedule for the consultancy work will be as follows:

<i>Sl.No.</i>	<i>Activity</i>	<i>Elapsed Time from the Date of Signing of the Agreement</i>
1.	Preliminary DPR	06 weeks
2.	Final DPR	02 weeks post approval of preliminary DPR

Note:

- i. Applicant shall be required to complete the job, to the satisfaction of the Uttarakhand Sanskrit Academy within the prescribed time frame.
- ii. Any other activity not specifically mentioned but that may be required for the successful project shall have to be undertaken by the Applicant.

Part 2 : Approval for the Channel & Project Management

1. Based on approval of the Part 1 of the project, the Authority shall give clearance for the Part 2 of the assignment. The Part A & Part B of the Part 2 of the project could be conducted simultaneously or in sequential manner, as per the decision of the authority.

A. Approval of the Channel

License and other clearances of channel

The Applicant shall assist the Authority in applying for channel license in Ministry of Information & Broadcasting Ministry. The applicant shall also assist in getting all other clearances required for new channel, including but not limited to :

- a) Financial Clearances
- b) MHA Clearances
- c) Approval of channel from Ministry
- d) WPC clearance

The applicant shall ensure that all legal & regulatory compliances are obtained for starting the channel within 1 Year from the commencement of the activity or by the time of trial broadcasting of the channel, whichever is earlier.

B. Project Management for Development of the channel

The applicant shall be required to provide assistance to the authority for the following tasks for Development of Channel:

- Procurement of all necessary equipments
- Procurement of works from the relevant contractors
- Project Management & supervision for all the works from contractors
- Project Management & supervision of all equipment installation & commissioning.
- Assist in recruitment of Key Personnel for Channel
- Assist in finalizing agreements with Key distribution networks (Cable, DTH etc.) for the broadcasting of the channel
- Assisting in finalizing advertisement contracts for the channel
- Assist the authority till 2 months after the first official broadcast by the channel, in all related matters.

2. Deliverables & Time Frame:-

Deliverables :

1. Channel Approvals
2. Project Works Details, Specifications, Procurement Bid Documents &

Contract Documents

3. Project Equipments Details, Specifications, Procurement Bid Documents & Contract Documents
4. Completion of all works
5. Detailed Job Descriptions for Key Personnel for the channel
6. Completion of hiring process for the Key Personnel of the channel
7. Installation & Commissioning of all equipments
8. Official Start of Broadcasting by the channel
9. Signing of at least 2 contracts for the channel distribution
10. Signing of at least 2 long term advertising contracts for the channel

The Applicant shall be given maximum 1 year's time for the completion of Part 2 of the assignment. The timeline for each activity shall be highlighted by the applicant in its detailed proposal. The final timelines shall be firmed up by the Authority at the beginning of Part 2 of the assignment.

Note:

- i. Applicant shall be required to complete the job, to the satisfaction of the Uttarakhand Sanskrit Academy within the prescribed time frame.*
- ii. Any other activity not specifically mentioned but that may be required for the successful project development and selection of developer(s) shall have to be undertaken by the Applicant.*

COMPOSITION OF THE TEAM AND TASK (S) OF KEY PERSONNELS

ANNEXURE- C

FORM OF PERFORMANCE SECURITY
(PERFORMAMANCE BANK GUARANTEE)

To

Dehradun
Phone : +91-
Fax: +-91-
Email:

In consideration of ***** acting on behalf of the [Uttarakhand Sanskrit Academy,] (hereinafter referred as the "Authority", which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having awarded to M/s, having its office at (hereinafter referred as the "Consultant" which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns), vide the Authority's Agreement no. Dated valued at Rs. (Rupees), hereinafter referred to as the "Agreement") Consultancy Services for Development Satellite Sanskrit TV Channel Uttarakhand, and the Consultant having agreed to furnish a Bank Guarantee amounting to Rs. (Rupees) to the Authority for performance of the said Agreement.

1. We, (hereinafter referred to as the "Bank") at the request of the Consultant do hereby undertake to pay to the Authority an amount not exceeding Rs. (Rupees) against any loss or damage caused to or suffered or would be caused to or suffered by the Authority by reason of any breach by the said Consultant of any of the terms or conditions contained in the said Agreement.
2. We, (indicate the name of the Bank) do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Authority stating that the amount/claimed is due by way of loss or damage caused to or would be caused to or suffered by the Authority by reason of breach by the said Consultant of any of the terms or conditions contained in the said Agreement or by reason of the Consultant's failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding Rs. (Rupees).
3. We, (indicate the name of Bank) undertake to pay to the Authority any money so demanded notwithstanding any dispute or disputes raised by the Consultant

in any suit or proceeding pending before any court or tribunal relating thereto, our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be a valid discharge of our liability for payment thereunder and the Consultant shall have no claim against us for making such payment.

4. We, (indicate the name of Bank) further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Authority under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till the Authority certifies that the terms and conditions of the said Agreement have been fully and properly carried out by the said Consultant and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before a period of one year from the date of this Guarantee, we shall be discharged from all liability under this Guarantee thereafter.
5. We, (indicate the name of Bank) further agree with the Authority that the Authority shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Consultant from time to time or to postpone for any time or from time to time any of the powers exercisable by the Authority against the said Consultant and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Consultant or for any forbearance, act or omission on the part of the Authority or any indulgence by the Authority to the said Consultant or any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so relieving us.
6. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Consultant(s).
7. We, (indicate the name of Bank) lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Authority in writing.
8. For the avoidance of doubt, the Bank's liability under this Guarantee shall be restricted to Rs. ***** (Rupees *****). The Bank shall be liable to pay the said amount or any part thereof only if the Authority serves a written claim on the Bank in accordance with paragraph 2 hereof.
9. This guarantee shall be valid until 365 days from the date LOA and shall be extended, before the expiry of 365 days, if required, for a period upto 6 months form the date of completion of assignment by the Consultant.

Name of the Bank

Seal of the Bank:

Dated, the day of, 20

(Signature, name and designation of the authorised signatory)

NOTES:

- (i) The Bank Guarantee should contain the name, designation and code number of the officer(s) signing the Guarantee.
- (ii) The address, telephone no. and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

ANNEXURE- D

Attach Financial Proposal submitted by the Consultant to the Authority