

# **TENDER DOCUMENT**

**FOR**

**BIDDING OF VACANT CHANNELS OF  
FM RADIO BROADCASTING PHASE II  
THROUGH PRIVATE AGENCIES**

**8<sup>th</sup> JUNE, 2007**

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**MINISTRY OF INFORMATION & BROADCASTING  
GOVERNMENT OF INDIA  
SHASTRI BHAWAN  
NEW DELHI**

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## DEFINITIONS

In this Tender Document, unless the context otherwise requires, the terms described below have the following meaning:

Annual Fee	As defined under Clause 3.1.
Balance Bid	As defined under Clause 2.10.1.
Bid Pack	As defined under Clause 1.8.
Bidding Process	Shall mean the process of bidding divided into Stage I and Stage II for the grant of Permission under the Tender.
Financial Bid	The amount offered to be paid by a QIP as stated under cover of a sealed envelope
Financial Bid Deposit Amount	As defined under Clause 1.3.2(ii).
Grant of Permission Agreement	Shall mean the agreement whereby the Successful Bidder would be granted in writing the Permission to commence radio broadcasting on the allotted frequency and Channel.
Gross Revenue	Gross Revenue as defined in clause 3.1.2.
LoI	Letter of Intent shall mean the letter issued by the Ministry of I&B, Government of India to the Successful Bidder upon satisfaction of certain obligations as specified in further detail.
OTEF	One Time Entry Fee shall mean and refer to the one time fee offered by each of the bidders to the Tender Document.
PBG I	As defined under Clause 1.3.2(iii).
PBG II	As defined under Clause 2.10.3.
Phase I	Grant of licenses by the Ministry of I&B, Government of India in the year 2000.
Phase II	Grant of permission by the Ministry of I&B, Government of India in the year 2005.
QIP	Qualified Interested Participants shall mean the applicants who are found to qualify all the eligibility criteria laid out for Stage I of the Bidding Process

Region	<p>Region shall mean North or East or South or West region, comprising states/UT s as under:</p> <p><u>North Region:</u> J&amp;K, <sup>1</sup>[***], Himachal Pradesh, Rajasthan, Delhi, Uttar Pradesh &amp; Uttaranchal.</p> <p><u>East Region:</u> Arunachal Pradesh, Bihar, Jharkhand, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Sikkim, Tripura, Andaman &amp; Nicobar Islands.</p> <p><u>South Region:</u> Andhra Pradesh, Karnataka, Tamil Nadu, and Pondicherry.</p> <p><u>West Region:</u> Chattisgarh, Goa, Gujarat, Maharashtra, Daman &amp; Diu.</p>
Reserve OTEF	Shall mean and refer to 25% of the highest successful valid Financial Bid for each city.
Stage I	Shall mean the first stage of the Bidding Process, defined in detail under Clause 1.3.1.
Stage II	Shall mean the second stage of the Bidding Process, defined in detail under Clause 1.3.2.
Successful Bidders	Shall mean those QIPs who have been selected on the basis of Financial Bids.
Tender Document	This document issued by the Ministry of I&B, Government of India.
Waiting List	Shall mean the list of those QIPs other than the Successful Bidders who have valid Financial Bids and have elected to keep their Performance Bank Guarantee (PBG-I) deposited with the Ministry of I&B, Government of India for possible future selection in case of failure on the part of successful bidders to comply with the terms and conditions laid out by the Ministry of I&B, Government of India.

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<sup>1</sup> The State of Punjab was inadvertently mentioned. There was no vacant channel in Punjab. Hence deleted. (Corrected on 9.6.2007)

## SECTION – 1

### INTRODUCTION & BIDDING PROCESS

#### 1.1 INTRODUCTION

- 1.1.1 The Ministry of I&B, Govt. of India notified a new policy of expansion of FM Radio Broadcasting through private agencies (Phase II) on 13.7.2005, with the objectives of attracting private agencies to supplement and complement the efforts of All India Radio by operationalizing radio stations that provide programmes with local content and relevance, improve the quality of fidelity in reception and generation, encouraging local talent and generating employment. Consequently, 337 channels were put on bid out of which 280 channels were successfully bid. After scrutiny, Letter of intent was issued for operationalisation of 245 channels. The issue of bidding of remaining vacant channels has been considered by the Govt. and it has been decided to bid the remaining vacant channels.
- 1.1.2 The applicants should carefully examine this Tender Document before formally submitting their bids.

#### 1.2 CITIES, NUMBER OF CHANNELS AND RESTRICTIONS ON NUMBER OF APPLICATIONS

- 1.2.1 A total of 97 channels in 48 cities across the country are being made available for bidding by Indian private companies at this stage. The list of cities, where FM broadcasting to private participation is planned, is given at Schedule I hereto. The Government reserves the right to vary the number of channels for any city as well as the number of cities at any stage.
- 1.2.2 Every applicant and its related entities as defined in clause 2.4.1, shall be allowed to bid for only one Channel per city provided that the total number of Channels allocated to an applicant and its related entities shall not exceed the overall limit of 15% of the total Channels allocated in India. In the event an applicant and its related entities are allotted such number of Channels as exceed the aforesaid overall limit, the applicant shall at its own discretion select and surrender such number of Channels as would enable it to comply with the overall limit and shall be entitled to a refund of the financial bid(s) amount paid to the Ministry of I&B, Government of India. The applicant shall do such selection and surrender of channels within one week of the opening of Financial Bid. The option for surrender of channels is available only in the case of 97 channels for which bids have been invited and no channel for which GOPA has been signed under Phase I & Phase II schemes (including migration GOPA) will be allowed to surrender.

### 1.3. BIDDING PROCESS

#### 1.3.1 Stage I

Any company incorporated under the Companies Act, 1956 satisfying the eligibility criteria as specified in section 2 hereinafter, may choose to apply under the Bidding Process. All interested parties shall refer to this Tender Document and submit the details of their eligibility as per the formats specified in Appendix A & B hereto, all other necessary documents in accordance with Bid Pack for Stage I and a demand draft for an amount of Rs. 15,000/- (Rupees Fifteen thousands only) drawn in favour of the Pay & Accounts Officer, Ministry of I&B, Government of India towards processing fee. All applicants found meeting the eligibility criteria as specified in section 2 shall be invited to participate in Stage II of the Bidding Process. All such eligible applicants would be referred to as Qualified Interested Parties (“QIPs”).

#### 1.3.2 Stage II

A QIP desirous of participating in the Bidding Process shall submit its financial bid for the grant of Permission for operation of a Channel as per the Bid Pack for Stage II, comprising:

(i) the Financial Bid, (i.e. the one time entry fee to be paid by the QIP) in the format specified in Appendix C hereto;

(ii) deposit of an amount equivalent to 50% of its Financial Bid (“Financial Bid Deposit Amount”) through an A/c Payee Demand Draft, not exceeding four in number, drawn on any scheduled bank and in favour of Pay & Accounts Officer, Ministry of I&B, New Delhi payable at Delhi; and

(iii) an irrevocable, unconditional and confirmed Performance Bank Guarantee in favour of the Ministry of I&B, Government of India, equivalent to 50% of the Financial Bid (“PBG I”) in the prescribed format(Appendix D). PBG I shall be for not less than one year and shall be kept valid for a period of two years from the date of opening of Financial Bids.

### 1.4 IMPORTANT NOTICE

1.4.1 Government of India is entitled to and, reserves the right to, for reasons to be recorded, reject all or any of the Bid(s), if it considers necessary to do so, and / or to withdraw from this Bidding Process or any part of the process or to vary any of its terms at any time or invite fresh bids for all or any channel.

1.4.2 The applicants and QIPs have the sole responsibility and shall pay for all costs, expenses and liabilities incurred by it in connection with the Bidding Process, including (without limitation) in connection with the preparation and / or submission of any Financial Bid, entering into the Grant of Permission Agreement and other documentation for implementing such Financial Bid and completing the transaction.

- 1.4.3 The invitation by Government of India for participating in the bidding process or receipt by Government of India of Bids will not constitute an understanding or commitment, representation, warranty, guarantee or undertaking and shall not be deemed to create or confer any rights or expectations whatsoever to enter into any agreement, undertaking or covenant with an applicant or a QIP.
- 1.4.4 All applicants and QIPs and their representatives agree and maintain that all acts, deeds and things done pursuant to the terms and conditions hereof have and shall be done on a good faith basis.
- 1.4.5 No QIPs shall have the right to demand nor shall Government of India or any of its advisors be obliged to provide any of the documents or information submitted by other applicants and/or QIPs.

## 1.5 QUESTIONS/ CLARIFICATIONS

- 1.5.1 Government has endeavored to provide all relevant information in sufficient detail to the public to enable them to apply for Stage I of the Bidding Process. On being pre-qualified, all QIPs will be provided with additional information and documentation necessary for enabling them to prepare their Financial Bids. However, enquiries made or clarifications sought by prospective applicants and/or QIPs may be responded to facilitate submission of applications/bids. For administrative convenience, each prospective applicant/QIP is required to identify a single point of contact through whom all communications will be exchanged, who will submit their enquiries etc. in writing to Shri. M.V. Vijayan, Under Secretary, Ministry of I&B, Government of India, A Wing Shastri Bhavan, New Delhi 110001.
- 1.5.2 Government of India reserves the right not to respond to or provide clarifications on questions raised by the applicants/ QIPs, or defer answering any questions, in its sole discretion. Nothing in this Section shall be taken or read as compelling or requiring Government of India to respond to any question or to provide any clarification. All applicants and/or QIPs acknowledge that Government of India is not obliged to respond to questions or provide clarifications.
- 1.5.3 In the case of questions of a general nature, copies of answers/ clarifications may, at Government of India's sole discretion, be provided to all applicants/QIPs without disclosing the source of the questions. No extension of any deadline referred to in this Tender Document will be granted on the ground that Government of India have not responded to any query or provided any clarification.

## 1.6 COMPLIANCE

- 1.6.1 Clause-by-clause compliance in respect of all Sections of the Tender Document must be submitted. In case clause-by-clause compliance report is not enclosed with the bid, the bid may not be considered.

- 1.6.2 A comment against specific clause (where compliance is asked for), “Noted or Understood” is not acceptable. An affirmative reply including “We comply” against each clause is necessary. Any document annexed supporting compliance may also be indicated therein.

## 1.7 AMENDMENT OF BID DOCUMENTS

- 1.7.1 At any time, prior to the last date for submission of Bid Pack for Stage I, the Ministry of I&B, Government of India may, for reasons to be recorded, whether at its own initiative or in response to a clarification requested by prospective applicants, modify the requirements under the Bid Pack for Stage I.
- 1.7.2 The amendments will be notified to the public in the same manner as the original Tender Document and these amendments will be binding on them and compliance to the same shall have to be submitted by the applicants.
- 1.7.3 In order to provide prospective applicants reasonable time in which to take the amendments into account in preparing their bids, the Ministry of I&B, Government of India may at its discretion, suitably extend the deadline for the submission of bids.

## 1.8 BID PACK

### 1.8.1 Pre-Qualification (Stage I)

Bid Pack shall comprise the following:

- (a) Application form (pre-qualification bid) duly filled in as per Appendix A along with requisite enclosures;
- (b) Certificates/ Undertakings as per Appendix B duly authenticated.
- (c) Demand Draft payable on a scheduled bank at par at New Delhi for Rs. 15000/- (Rupees Fifteen Thousand) towards processing fee in favour of Pay & Accounts Officer, Ministry of I&B, New Delhi.

### 1.8.2 After Qualification (Stage II)

Bid Pack for the QIPs, shall comprise the following:

- (a) Financial Bid as per format in Appendix C;
- (b) Demand Draft (not exceeding four in number) payable on a scheduled bank at par at New Delhi for an amount equal to 50% of the Financial Bid Amount; in favour of Pay & Accounts Officer, Ministry of I&B, New Delhi.
- (c) Performance Bank Guarantee on a scheduled bank, as per Appendix-D, for an amount equal to 50% of Financial Bid Amount.



1.9 SUBMISSION OF BIDS

- 1.9.1 Stage I – Three copies of the Bid Pack for Stage I complete in all respects must be submitted in sealed covers and marked as under:

Bid Pack for Vacant Channels of FM Radio Broadcasting Phase II – STAGE I  
(Name & Address of Tenderer)

Each page of the Bid Pack for Stage I should be numbered and also the total number of pages of the document to be indicated on the first page. One copy of the Bid Pack for Stage I should be marked as 'ORIGINAL' and shall be signed in ink on each page by the applicant and other two copies shall be marked as 'COPY'.

The sealed covers shall be sent by Registered Post/Courier or delivered in person to Shri M.V. Vijayan, Under Secretary, Ministry of I&B, Government of India, A Wing, Shastri Bhawan, New Delhi 110 001 or deposited with the facilitation counter, Ministry of I&B, Government of India, Shastri Bhawan, New Delhi 110 001. In their own interest, the applicants should direct the courier to deliver the sealed cover(s) at the facilitation counter of the Ministry and obtain a receipt. The Government of India shall not be responsible for any loss in transit or delay in receipt of bid pack by post/courier.

- 1.9.2 Stage II – The Bid Pack for Stage II (Financial Bid, Financial Bid Deposit Amount and PBG I) complete in all respects must be submitted in sealed covers separately for each city and marked as under:

Tender for Vacant Channels of FM Radio Broadcasting Phase II –  
STAGE II  
(Name of the City for which tendered)  
(Name & Address of Tenderer)

The authorised representatives of all applicant companies shall personally deliver the sealed covers for Bid Packs for Stage II during the time and place indicated for such submission for all the cities in each region as per columns 2 in the table in clause 1.12.1 below, to the authorised representatives of the Government of India present at the venue indicated in column 4. The Government of India shall not accept any Bid Packs for Stage II in any other manner.

1.10. DEADLINE FOR SUBMISSION OF BIDS

- 1.10.1 The Bid Pack for Stage I should be delivered/sent by all applicants at the address specified in clause 1.9.1 above, as per instructions contained therein, not later than 1:00 PM on 23rd July 2007.

1.10.2 The Bid Pack for Stage II should be delivered by all QIPs as per instructions contained in clause 1.9.2 above, at the address and the date and time specified in clause 1.12.1 below.

1.10.3 Ministry of I&B, Government of India may, at its discretion, extend these deadlines for the submission of applications/bids.

#### 1.11 LATE BIDS

1.11.1 Any bid received after the deadline for submission of bids prescribed, whatever be the reason for delay, will be rejected and returned unopened to the applicant.

#### 1.12 OPENING OF FINANCIAL BIDS

1.12.1 Unless intimated otherwise, the Financial Bids shall be opened region wise/ category wise by the Ministry of Information & Broadcasting, Government of India at time and venue and on the dates shown below:

Region/ Category of cities	Date and Time of submission of bids [10:00 AM to 1:00 PM]	Date and Time for opening of bids [3:00 PM onwards]	Venue for submission and opening of bids
A+ & A Category of cities	<i>12.11.2007</i>	<i>12.11.2007</i>	*Press Information Bureau Conference Hall, Ground Floor, Shastri Bhavan, New Delhi.
North (Excluding A+ and A Category cities)	<i>12.11.2007</i>	<i>12.11.2007</i>	*Press Information Bureau Conference Hall, Ground Floor, Shastri Bhavan, New Delhi.
South (Excluding A+ and A Category cities)	<i>12.11.2007</i>	<i>12.11.2007</i>	*Press Information Bureau Conference Hall, Ground Floor, Shastri Bhavan, New Delhi.

East (Excluding A+ and A Category cities)	<i>26.11.2007</i>	<i>26.11.2007</i>	*Press Information Bureau Conference Hall, Ground Floor, Shastri Bhavan, New Delhi.
West (Excluding A+ and A Category cities)	<i>26.11.2007</i>	<i>26.11.2007</i>	*Press Information Bureau Conference Hall, Ground Floor, Shastri Bhavan, New Delhi.

\* subject to availability

1.12.2 For Stage II, nominee(s) of the Ministry of I&B, Government of India will open the bids, in the presence of authorized representatives of QIP's who choose to attend the proceedings. Each QIP shall nominate one person as an Authorised Representative who shall be entitled to remain present at the time of opening of bids. The authorized representative shall submit a letter of authority, which shall have the seal of the QIP affixed thereon and shall sign the attendance register. No person other than the authorised representative shall be permitted to enter the venue.

1.12.3 Incomplete bids shall be summarily rejected. However, the Government of India in its discretion may ignore minor deficiencies in the bids, which shall not materially change the financial bid amount or its validity, and/or may grant time for making up such deficiencies.

### 1.13 JURISDICTION

1.13.1 The laws of India shall govern all matters relating to the Tender Document and the Bidding Process. Only Courts at New Delhi (with exclusion of all other Courts) shall have jurisdiction to decide or adjudicate on any matter, which may arise.

### 1.14 WEB SITE

1.14.1 The Government of India has also put this Tender Document on its web site [www.mib.nic.in](http://www.mib.nic.in) and will use this web site as the principal means of giving general clarifications, if any, or intimation about the changes, if any, in the Tender conditions or bidding process etc. Similarly, all relevant documents such as the draft LOI/GOPA/Agreement with Prasar Bharti/BECIL, various Formats and Appendices etc. will be posted on this web site from time to time. All prospective applicants and QIPs are, therefore, strongly advised to visit the web site as frequently as possible to remain fully apprised of the latest developments in respect of the implementation of FM Radio Broadcasting Phase II Policy.

## SECTION – 2

### ELIGIBILITY CONDITIONS, EVALUATION PROCESS AND GRANT OF PERMISSION

#### 2.1 ELIGIBILITY FOR APPLICANTS

2.1.1 Only companies registered in India under The Companies Act, 1956 satisfying the eligibility criteria specified below in this section are eligible to apply.

#### 2.2 DISQUALIFICATIONS

2.2.1 The following types of companies shall not be eligible to apply:

- (a) Companies not incorporated in India.
- (b) Any company controlled by a person convicted of an offence involving moral turpitude or declared as insolvent or applied for being declared insolvent;
- (c) A company which is an associate of or controlled by a Trust, Society or Non Profit Organization;
- (d) A company controlled by or associated with a religious body;
- (e) A company controlled by or associated with a political body;
- (f) Any company which is functioning as an advertising agency or is an associate of an advertising agency or is controlled by an advertising agency or person associated with an advertising agency;
- (g) Subsidiary company of any applicant in the same City;
- (h) Holding company of any applicant in the same City;
- (i) Companies with the Same Management within a City;
- (j) More than one Inter-Connected Undertaking at the same City.
- (k) A company that has been debarred from taking part in the bidding process or its associate company with the same management.
- (l) The defaulters of conditions under Phase-I & Phase-II, who have contested the revocation of their Letters of Intent/License Agreements, thereby continue to be debarred from participating in any future bidding process.

Note 1: For the purpose of sub clause (d) above a religious body shall be:

- i. A body whose objectives are wholly or mainly of a religious nature;

- ii. A body, which is controlled by a religious body or an associate of religious body

Note 2: For the purpose of sub clause (e) above a political body shall be:

- i. A body whose objects are wholly or mainly of a political nature;
- ii. A body affiliated to a political body;
- iii. A body corporate, which is an associate of a body corporate controlled, held by, operating in association or controlling a body of political nature as referred above.

Note 3: For the purposes of clause (f) an “Advertising Agency” shall mean an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent and any reference to an advertising agency includes a reference to an individual who-

- (i) Is a director or officer of any body corporate which carries on such a business, or
- (ii) Is employed by any person who carries on such a business.

Note 4: For the purposes of clauses (g), (h) & (i) the terms “Same Management”, ‘Subsidiary Company’ and ‘Holding Company’ shall have the same meaning as assigned to them under Section 4 of the Companies Act, 1956;

Note 5: For the purposes of clause (j) the term “Inter Connected Undertakings” shall have the same meaning as assigned to it in the Monopolies and Restrictive Trade Practices Act, 1969;

Note 6: If the applicant and the subsidiary company/holding company/company with the same management/Inter-Connected Undertaking submit more than one bid for the same City, only the highest valid bid shall be taken into account for evaluation.

## 2.3 FOREIGN INVESTMENT

2.3.1 In the applicant company, total foreign investment, including FDI by OCBs/NRIs/PIOs etc., portfolio investments by FIIs (within limits prescribed by RBI) and borrowings, if these carry conversion options, shall not exceed 20% of the paid up equity in the entity, subject to the following conditions:

- i One Indian individual or company owns more than 50% of the paid up equity in the applicant entity excluding the equity held by scheduled banks and other public financial institutions.

- ii The majority shareholder exercises management control over the applicant entity.
- iii The applicant entity has only resident Indians as directors on the Board.
- iv All key executive officers of the applicant entity are resident Indians.

Clarification:

[A] The term “One Indian Individual or Company” used herein above will include any or a combination of the following:

(1) In the case of an individual shareholder,

- (a) The individual shareholder.
- (b) A relative of the shareholder within the meaning of Section 6 of the Companies Act, 1956.
- (c) A company/ group of companies in which the individual shareholder/ HUF, to which he belongs has management and controlling interest.

(2) In the case of an Indian Company,

- (a) The Indian Company
- (b) A group of Indian Companies under the same management and ownership control.

For the purpose of this clause, “Indian Company” shall be a company, which must have a resident Indian or an Indian relative, as defined under Section 6 of the Companies Act, 1956/ HUF, either singly or in combination holding at least 51% the shares.

Provided that in case of a combination of all or any of the entities mentioned in sub clause (1) and (2) above, each of the parties shall have entered into a legally binding agreement to act as a single unit in managing the matters of the applicant company.

[B] While calculating 20% foreign investment in the equity of the applicant company, FDI/FII investments in the applicant company, as at the end of each quarter of the financial year, shall be taken into account. In addition, the foreign direct holding component, if any, in the equity of the Promoters and Majority shareholding companies of the applicant company, as defined above, as well as FII investments in them as on 31<sup>st</sup> March of every year, will be duly reckoned on pro rata basis so as to arrive at the total foreign holding in the applicant company.]

## 2.4. FINANCIAL ELIGIBILITY

2.4.1 The applicants will be eligible to participate in bidding for Vacant Channels in all the four regions. However each applicant company shall be eligible to hold LOI/Permission for no more than 15% of all the channels allotted/proposed to be allotted in the country.

[Note: (1) The channels allotted to the following categories of companies would be reckoned together for the purpose of calculating the total channels allocated to a company:

- (a) Subsidiary company of any applicant/ allottee;
- (b) Holding company of any applicant / allottee;
- (c) Companies with the Same Management as that of applicant/ allottee;
- (d) More than one Inter-Connected Undertaking with regard to the applicant/ allottee.

Note: (2) In respect of existing license/permission/LOI holders, the license(s)/permission(s)/LOI(s) already held by them shall also be taken into consideration for calculating the 15% limit.

2.4.2 The financial eligibility of each applicant company shall be assessed on the basis of the following criteria:

Minimum Net Worth required for one Channel per City in each region:

D category Cities:	Rs. 50 Lakhs.
C category Cities:	Rs. 1 Crore.
B category Cities:	Rs. 2 Crore.
A category Cities:	Rs. 3 Crore.
A+ category Cities	Rs. 3 Crore.
All categories of Cities in all regions:	Rs. 10 Crore.

[Note: 'Net worth' means the excess of the book value of assets (other than fictitious assets) of an enterprise over its liabilities. It would be calculated as sum of the paid up equity and free reserves minus accumulated losses, if any, in the company.]

*Illustration: For two or more C category cities in the same region, Net Worth of Rs. 1 crore is required. If the two C category cities are in two different regions, Net Worth of Rs. 2 crore is required.*

2.4.3 Each applicant shall indicate the category or categories of cities and the region (s) in the application form (as given in Appendix A) it desires to bid for and its eligibility shall be determined accordingly. In case the applicant wishes to have the option to take part in any or all categories in all the regions, the applicant company must have the minimum net worth of Rs.10 Crore.

2.4.4 The applicant company shall furnish annual reports and audited final accounts for the last three years, or from the date of incorporation, whichever is later, till 31<sup>st</sup> March, 2007, along with its net worth as on 31<sup>st</sup> March, 2007 or any date subsequent thereto up to the date of

submission of the bid, certified by the statutory auditors, to support its claim of financial competence.

- 2.4.5 An applicant company registered after 31<sup>st</sup> March, 2007 shall only have to demonstrate its net worth as on 30<sup>th</sup> June, 2007 or any date subsequent thereto up to the date of submission of the bid through its paid up equity supported by requisite documents including a certificate from the statutory auditor or, if a statutory auditor has not been appointed, from a chartered accountant.

## 2.5. MANAGERIAL COMPETENCE

- 2.5.1 The applicant company shall be required to furnish the following information:

1. Names of Directors with evidence of their commercial or managerial competence.
2. Directorship or other executive positions held by the Directors in other companies/organizations with details of such companies/organizations with documentary evidence to support their claim
3. Names of the key executives, i.e. chief executive officer, and heads of finance, marketing and creative departments, if any in position, with evidence of their professional qualifications and managerial competence.

## 2.6 PHASE –I/PHASE II DEFAULTERS AND LICENSE HOLDERS

- 2.6.1 The defaulters of terms and conditions under Phase-I, whose Letters of Intent / License Agreements have been revoked and who have not contested such revocation and have exercised their options to participate in Phase-II, shall be eligible to participate in this bidding process, subject to their being eligible as per the prescribed eligibility criteria. Similarly the defaulters of terms and conditions under Phase-II, whose Letters of Intent/License Agreements have been revoked and who have not contested such revocation shall be eligible to participate in this bidding process, subject to their being eligible as per the prescribed eligibility criteria.

- 2.6.2 License Holders of Phase I who have operationalised their stations shall also be eligible to participate in the bidding process for other channels, subject to their being eligible as per the prescribed eligibility criteria. However a License Holder of Phase I, or any company related to it as defined in clause 2.4.1 above, shall not be eligible to apply for a channel in a city where it already holds a license under Phase I. Similarly, Permission/LOI holders of Phase-II shall not be eligible to apply for a channel in a city where they already hold a permission/LOI.

- 2.6.3. Phase-II LOI holders whose LOI were cancelled, shall not be eligible to apply for a channel in the cities for which LOI were cancelled.

## 2.7 VALIDITY

- 2.7.1 The Successful Bidders shall have to comply with the eligibility criteria for the entire period of Permission granted by the Government of India/until the expiry or termination of the Grant of Permission Agreement.



## 2.8. EVALUATION PROCESS

### 2.8.1 Evaluation of Stage I (Eligibility criteria)

The applications submitted by the applicants through bid pack for Stage I will be evaluated on the basis of the eligibility conditions specified above. Incomplete applications or applications without all relevant prescribed documents, more specifically (i) bio data of Directors in prescribed format; (ii) Net Worth certificate in prescribed format; and (iii) Clause-by-clause compliance, shall be summarily rejected and the bid pack for stage I returned through registered post, after forfeiting the processing fee. In case there is still time for submission of applications, fresh application may be filed in accordance with the terms and conditions of the Tender Document. The Ministry of I&B will undertake the process of evaluation on the basis of documents submitted by the applicant companies, in consultation with other Ministries, wherever required. The Ministry of I&B will inform each applicant of the result of such evaluation, and the reasons thereof, in writing through registered post. In the event of being pre-qualified, the Government of India shall also intimate details of other relevant documents such as the drafts of the proposed Letters of Intent/Grant of Permission Agreements/Lease Agreements with Prasar Bharti/Service Agreements with BECIL etc. that each QIP may need to take into account to finalize its Financial Bid for each city.

### 2.8.2 Evaluation of Stage II (Financial Bids)

On the basis of the Financial Bids received by the Government of India for each City, the Government of India shall determine the Reserve One Time Entry Fees for such City ("Reserve OTEF"), which shall be an amount equivalent to 25% of the highest Financial Bid submitted for the particular City. Only such Financial Bids as are for an amount equal to or above the Reserve OTEF shall qualify and be regarded as valid Financial Bids for the purpose of this Bidding Process. The amount indicated in the Financial Bid submitted by the QIPs will be the sole criteria for selection of the Successful Bidders.

Note: However in the event of an unreasonably low highest bid for a city, the Government of India reserves the right to reject all the bids. In case, the highest bid for a city is lower than the average of the Reserve OTEF in the same category of cities in (i) a region in the case of B, C & D categories and (ii) the entire country in the case of A+ and A categories, it will be termed as unreasonably low bid and all bids for that city shall be rejected.

## 2.9 SELECTION PROCESS

2.9.1 Upon submission and evaluation by the Government of India of the Financial Bids received in satisfaction of the other eligibility conditions as specified, the QIPs with the highest valid Financial Bids equal to the number of available channels for the respective City shall be selected as the Successful Bidders.

2.9.2 In the event of the Government of India receiving such number of valid Financial Bids being more than the number of frequencies available in the City, the QIPs who submit

unsuccessful but valid Financial Bids shall have the option whereby with their consent the Government of India may retain the PBG-I, maintained in descending order of the value of their Financial Bids in a waiting list (“Waiting List”) for a period of two years from the date of opening of bids. Such consent once exercised shall be final and binding. Each bidder should indicate in the financial bid whether or not it consents to remain in the waiting list. However, an unsuccessful QIP may withdraw its consent at any time, after six months of the declaration of the successful bidders. The respective demand drafts for the Financial Bid Deposit Amounts of all unsuccessful QIPs if not otherwise forfeited by the Government of India, and the PBGs I of those who do not wish to be in the waiting list, shall be returned to them upon the announcement of the Successful Bidders in respect of various cities.

## 2.10 PAYMENT OF BID AMOUNT AND ISSUE OF LETTER OF INTENT

- 2.10.1 The Successful Bidders, shall pay to the Government of India, the balance 50% of their respective Financial Bids within a period of seven days from date of announcement of Successful Bidders by the Government of India (“Balance Bid”); failing which the Financial Bid Deposit Amount shall be forfeited and such defaulting Successful Bidder shall automatically stand disqualified from participating in any fresh bidding process for FM radio in India up to a period of five (5) years.
- 2.10.2 Upon deposit by the Successful Bidders of the balance 50% of their respective Financial Bids within a period of seven days from date of announcement of Successful Bidders by the Government of India and on fulfillment of other eligibility conditions within the prescribed period, the Successful Bidders will be issued a Letter of Intent (“LOI”) in the prescribed format(Appendix-E), along with return of the PBG-I.
- 2.10.3 The purpose and objective of issuing the Letter of Intent would be to enable the Successful Bidder to obtain frequency allocation, SACFA clearance, achieve financial closure, appoint all key executives, enter into agreements with Prasar Bharati (DD/AIR) /BECIL, deposit the requisite amounts towards land/tower lease rent, common transmission infrastructure etc., furnish an irrevocable, unconditional and confirmed performance bank guarantee (“PBG II”) in the prescribed format in favour of the Government of India for an amount equivalent to 10% of the Reserve OTEF and comply with the requisite conditions of eligibility for signing the formal document for the grant of Permission. PBG-II shall be initially valid for a period of two years and shall be renewed at least one month prior to the expiry of each two years’ term till the expiry of the permission period i.e. 10 years. At the 10<sup>th</sup> year the permission holder should keep alive the PBG-II till the Defect Liability Certificate issued by the Govt. (within 28 days after the expiry of the permission period).
- 2.10.4 Each successful bidder shall enter into an agreement with Prasar Bharati (DD/AIR) for land/tower lease as referred above in the prescribed format within 60 days of the issue of LOI and agreement with BECIL within 30 days thereafter for Common Transmission Infrastructure on the prescribed format.

- 2.10.5 Upon issue of the Letter of Intent, the Successful Bidder shall be liable to comply with all necessary eligibility conditions as specified by the Government of India in writing and shall be liable to execute the Grant of Permission Agreement within a period of nine months from the date of issue of the Letter of Intent and comply with such other written instructions as received from the Government of India. The grant of permission agreement shall be in the prescribed format.
- 2.10.6 In the event of failure of a Successful Bidder/ Letter of Intent holder to comply with the conditions for the Grant of Permission Agreement or failure to execute the Grant of Permission Agreement within the time period prescribed by the Government of India, the entire amount of the Financial Bid deposited by such Successful Bidder shall, without any further notice, be forfeited forthwith by the Government of India, and the Letter of Intent and allocation of frequency, if any, shall stand cancelled immediately.
- 2.10.7 On surrender of channels in excess of 15% limit or on failure of a successful bidder to comply with any of the formalities for completion of the transaction or on cancellation of LOI for default in completing any of the formalities mentioned above or on failure of the Permission Holder in operationalisation of the channel within the stipulated/extended time limit, the channel(s) thus becoming available shall be allocated to the next highest QIP from the waiting list, without any impact on Reserve OTEF for that city.
- 2.10.8 On being offered a channel as per Wait List status, the unsuccessful QIP shall be treated as a successful bidder and PBG-I submitted by it shall be encashed on the day the offer is made. Further, it would be required to deposit balance 50% amount of OTEF within seven days of the offer being issued, failing which the amount realized through encashing PBG-I shall be forfeited and it shall automatically stand disqualified from participating in any fresh bidding process for FM Radio in India for a period of 5 (five) years.
- 2.10.9 Notwithstanding anything to the contrary contained in this Tender Document, Government of India has the right, exercisable at its sole discretion, to reject any Bid or withdraw any LOI, for reasons of national security or public interest. Government of India shall not be obligated to any QIP to disclose the basis for its decision in relation to the selection of Successful Bidders.

## 2.11 GRANT OF PERMISSION

- 2.11.1 The permission holder shall be liable to install the radio station and take action to obtain WOL and operationalise the channel within a period of one year from the date of execution of the Grant of Permission Agreement(GOPA). The period of Permission shall be reckoned from the date of operationalisation or one year from the date of signing of the Grant of Permission Agreement, whichever is earlier.

- 2.11.2 In the event of the failure/inability of a Permission Holder to operationalise the channel within the prescribed time period, the Government of India shall be entitled to recover the Annual Fee for the first year from such Permission Holder, and in the event of his default, by invoking the PBG II. Further, the Permission Holder shall also be liable to furnish a fresh PBG for the succeeding year's Annual Fee. In the event of default in operationalisation of a channel being attributable to delay beyond reasonable period by BECIL/Prasar Bharati/Wireless Planning & Coordination Wing, Ministry of Communications & IT, the prescribed time limit for operationalisation may, at the request of the Permission Holder, be extended by such period of delay by the Secretary, Ministry of Information & Broadcasting, whose decision shall be final and binding on both the parties.
- 2.11.3 In case of further failure by the Permission Holder to operationalise the Channel within the extended time period not exceeding eighteen months, including any extension under clause 2.11.2, from the date of signing the Grant of Permission Agreement, or failure to furnish a fresh performance bank guarantee for the succeeding year's Annual Fee as aforesaid within a period of three months from the date of invocation of PBG II by the Government of India, whichever is earlier, the Government of India shall have the right to revoke the Grant of Permission Agreement. Further, the Permission Holder shall be debarred from bidding for the same city for a period of five years from the date of such revocation of Permission.
- 2.11.4 In the event of failure of the Permission Holder to pay any installment of Annual Fee by the due date, and encashment of the PBG-II either in full or part thereof, the permission holder shall furnish a fresh PBG-II for the amount recovered through PBG-II, within 15 days of such encashment.
- 2.11.5 The Successful Bidder shall not be entitled to any interest on the amounts deposited by it as per the requirements of the Bidding Process herein.

## SECTION – 3

### CONDITIONS FOR PERMISSION FOR OPERATING FM RADIO BROADCASTING SERVICE BY PRIVATE AGENCIES

#### 3.1 FEES AND DURATION

- 3.1.1 The Permission Holder shall be liable to pay an Annual Fee to the Government of India charged @ 4% of Gross Revenue for each year or @ 10% of the Reserve OTEF limit for the concerned city, whichever is higher. Annual Fee shall be paid on quarterly basis in four equal instalments. For this purpose, four quarters shall be tri-monthly periods ending 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December and 31<sup>st</sup> March respectively.
- 3.1.2 Gross Revenue for this purpose would be the gross inflow of cash, receivables or other consideration arising in the course of ordinary activities of the FM Radio Broadcasting enterprise from rendering of services and from the use by others of the enterprise resources yielding rent, interest, dividend, royalties, commissions etc. Gross Revenue shall, therefore, be calculated, without deduction of taxes and agency commission, on the basis of billing rates, net of discounts to advertisers. Barter advertising contracts shall also be included in the gross revenues on the basis of relevant billing rates. In the case of a permission holder providing or receiving goods and services from other companies that are owned or controlled by the owners of the permission holder, all such transactions shall be valued at normal commercial rates and included in the profit and loss account of the permission holder to calculate its gross revenue.
- 3.1.3 The first year from the date of signing the Grant of Permission Agreement shall be reckoned as the commissioning period. The first year's fee shall become payable with effect from the date of operationalisation of the Channel or expiry of one year from the date of signing the Grant of Permission Agreement, whichever is earlier. The Permission Holder shall be required to initially pay within 15 days of the commissioning period the first advance quarterly installment on the basis of the Reserve OTEF formula and thereafter within 15 days of each subsequent quarter till the end of the financial year.
- 3.1.4 Once the final fee for the financial year is determined on the basis of Gross Revenue share formula, and is found to be higher than the Reserve OTEF formula, the Permission Holder shall pay the balance due in one lump sum within a period of one month from the date of such determination, in any case not later than 30<sup>th</sup> September of the following year.
- 3.1.5 From the second year onwards, the Permission Holder shall pay advance Annual Fee @4% of gross revenue of the previous year or 10% of reserve OTEF, whichever is higher, within the first fortnight of each quarter, and balance due of final annual fee by 30<sup>th</sup> September each year.

- 3.1.6 Every Permission Holder shall furnish a bank guarantee for the amount of annual fee calculated on the basis of Reserve OTEF formula, and maintain its validity throughout the currency of the Permission. Any default in payment of determined annual fee shall be recovered from the bank guarantee and if the amounts due are more, the Permission holder shall be asked to furnish additional bank guarantees to cover the balance, within 15 days of being called upon to do so.
- 3.1.7 Every Permission Holder shall maintain separate financial accounts for the Channel, which shall be audited by the Statutory Auditors. At the end of each financial year, the company shall provide the statement of gross revenue forming part of the final accounts of the Permission Holder as per the format (Appendix F), duly certified by the Statutory Auditors. It may be noted that the income heads specified in Appendix F are only indicative and illustrative and the Auditor would include all the relevant heads qualifying for gross revenue whether or not specifically included in the said format. In addition, the income from the Related Parties shall have to tally with the Related Parties schedule as per Accounting Standards no. 18. Besides, the company shall disclose the following information at the end of each financial year, duly certified by the Statutory Auditor:
- (i) Total trade and other discounts.
  - (ii) Total agency commission.
  - (iii) Total Related Party Transactions.
- 3.1.8 So as to verify that the Gross Revenue is correctly disclosed to it, the Government of India shall have the right to get the accounts of any Permission Holder audited by CAG or any other professional auditors at its discretion. In case of difference between the Gross Revenue determined by the Statutory Auditors and the government appointed auditors, the views of the government appointed auditor, subject to opportunity of hearing to the Permission Holder shall prevail and the expenses on such audit shall be borne by the Permission Holder.
- 3.1.9 Every Permission under Phase II shall be valid for a period of ten years. There shall be no extension and it shall automatically lapse at the end of the period and the Permission Holder shall have no rights whatsoever to continue to operate the Channel after the date of expiry.
- 3.1.10 The Permission shall be for free to air broadcasts of audio on main carrier and data on sub-carriers, both excluding News and Current Affairs;

## 3.2 RESTRICTIONS

- 3.2.1 No entity and its related entities shall hold Permission for more than 15% of all channels allotted in the country as per clause 2.4.1.
- 3.2.2 No Permission Holder shall outsource, through any long-term production or procurement arrangement, more than 50% of its total content, of which not more than 25% of its total content shall be outsourced to a single content-provider. ( 'Long term means' any period exceeding 11 months, and shall include repeated renewals.)

- 3.2.3 No Permission Holder shall hire or lease more than 50% of broadcast equipment on long-term basis. ('Long Term' means any period exceeding eleven months by the end of the period the permission holder becomes the owner of the assets and shall include repeated renewals/ extensions of lease from the same party or its associates.)
- 3.2.4 No Permission Holder shall enter into any borrowing or lending arrangement with other Permission holders or entities other than recognized financial institutions and its related entities as prescribed in clause 2.4.1, which may restrict its management or creative discretion to procure or broadcast content or its marketing rights.

Note: Each Permission Holder shall submit a certificate of the Statutory Auditors for compliance of Clause 3.2 along with the audited accounts as per prescribed format.

### 3.3 CROSS MEDIA OWNERSHIP

- 3.3.1 If during the currency of the Permission period, government policy on cross-media ownership is announced, the Permission holder shall be obliged to conform to such guidelines as may be prescribed in the said policy, within a period of six months from the date of such notification, failing which he shall be treated as non-compliant of Grant of Permission Agreement, and liable for punitive action. Provided however, that in case the Permission Holder is not in a position to comply with cross media restrictions for bonafide reasons to the satisfaction of the Ministry of Information & Broadcasting, the Permission Holder would be given an option of furnishing one month's exit notice and the entry fee for the remaining period, to be calculated on pro rata basis, shall be refunded to the Permission Holder.

### 3.4 CODE OF CONDUCT

- 3.4.1 No Permission holder shall use brand names or owners' names or corporate-group names to identify its Channel to gain commercial advantage over other Permission holders. The Permission Holder shall not use any existing names of companies, product or service, brand names as FM Station/ Channel identity. The Permission Holder shall obtain prior approval of the Ministry of Information & Broadcasting before using Channel Identity.
- 3.4.2 The permission holder shall ensure that there is no linkage between a party from whom a programme is outsourced and an advertising agency.
- 3.4.3 The Ministry of Information & Broadcasting shall have the right to temporarily suspend the Permission of one or more Permission holders in public interest or for national security for such period or periods as it may direct and the Permission holders shall be obliged to immediately comply with the directives of the Government.
- 3.4.4 The Permission is non-transferable. The Permission Holder shall not grant a sub-permission;
- 3.4.5 The Permission shall be governed by the provisions of the Telecom Regulatory Authority of India Act, 1997, Indian Telegraph Act 1885 and Indian Wireless Telegraphy Act 1933 as

amended from time to time, and any other law as applicable to broadcasting, which has or may come into force;

- 3.4.6 The Permission Holder shall not lease the Channel / broadcast service in whole or in part;
- 3.4.7 The Permission Holder shall continue to meet the eligibility conditions prescribed in the Tender Document during the entire period of the Permission;
- 3.4.8 Notwithstanding anything contained in these documents, the grant of permission will be subject to the condition that as and when any regulatory authority to regulate and monitor the broadcast services in the country is constituted, the Permission Holder will have to adhere to the norms, rules and regulations laid down by such authority.
- 3.4.9 No permission holder, whether with or without foreign investment, shall be permitted to change the ownership pattern of the company through transfer of shares of the majority shareholders/promoters to any new shareholders without the written permission of the Ministry of Information & Broadcasting, which shall not be granted for a period of five years from the date of operationalisation of the permission, subject to the condition that the new shareholders conform to all the prescribed eligibility criteria.

### 3.5 PROGRAMME CONTENT AND QUALITY OF BROADCAST

- 3.5.1 The Permission Holder shall also broadcast Public Interest Announcements as may be required by the Central Government/concerned State Government and a maximum of one hour per day shall be earmarked for this purpose. In case the total demand of Central Government and the State Government exceeds one hour per day, the concerned State Government shall be eligible for announcements covering only the period remaining after meeting the demand of the Central Government.
- 3.5.2 The Permission Holder shall follow the same Programme and Advertisement codes as followed by All India Radio, as amended from time to time, or any other code, which may come into force.
- 3.5.3 The Permission Holder shall ensure that at least fifty percent (50%) of the programmes broadcast by it are produced in India.
- 3.5.4 The Permission Holder shall be exclusively liable for the programme broadcasted and will indemnify and keep the Government of India indemnified for any damage, loss or claim occasioned by the broadcast of any programme by the Permission Holder.

### 3.6 TECHNICAL PARAMETERS

- 3.6.1 The Permission Holder shall comply with the following technical parameters and standards both for transmission and audio quality of the service.



3.6.2 The transmission equipment including antenna are to conform to the following technical parameters:

Category	Basis (one or more of the following)	Effective Radiated Powe (ERP) (kW)		Antenna Height (Meters.)	
		Min.	Max.	Min.	Max.
A+	Métro cities	25	50		
	Delhi			75	200
	Mumbai			75	175
A	Population above 20 lakhs	10	30	75	150
B	Population above 10 lakhs and up to 20 Lakhs	5	15	50	100
C	Population above 3 lakhs and up to 10 Lakhs	3	10	30	75
D	Population above 1 lakh and up to 3 Lakhs	1	3	20	40

[Note 1: In cases where it may not be possible to remain within the prescribed limits of EHAAT due to topographical constraints or non-availability of a suitable Prasar Bharati tower meeting the prescribed values of EHAAT, the Permission Holder shall have to adjust the ERP of their transmitters so as to lay RF signal not exceeding that due to combination of maximum ERP and maximum EHAAT, as may be prescribed.]

Note 2: In case of interim set up, the LOI/Permission Holder shall, as far as practicable, adhere to the technical parameters for the respective cities. In case it is not possible, it should ensure that the coverage from the interim set up is not less than 60% by area of the coverage of the permanent set up.

3.6.3 The Permission Holder shall comply with the audio and transmission standards for FM sound broadcasting at each Center conforming to the ITU-R (International Telecommunication Union) Recommendations viz: 450-1, 467, 646 and 644-1;

3.6.4 The Permission Holder shall also comply with the technical standards on data broadcasting on FM sub-carriers, whenever introduced, conforming to ITU-R Recommendations viz. 643-1 and BS-1194.

### 3.7 MONITORING, PUBLIC COMPLAINTS AND INSPECTION BY THE GOVERNMENT.

3.7.1 The Permission Holder at its own cost shall, (a) on demand by the Government of India, provide the necessary infrastructure for continuous monitoring of the broadcasting service, (b) preserve the recordings of broadcast material for a period of three months from the date of broadcast and produce the same to the Government of India or its authorized representative.

The Permission Holder shall submit such information as may be required by the Government of India to dispose of complaints by public with respect to its broadcast.

The Permission Holder shall furnish any such information at periodic intervals as may be required by the Government of India concerning Programme Content and quality, Technical Parameters etc. relating to the broadcast in the format as may be prescribed from time to time.

### 3.8 PENALTY FOR NON-OPERATIONALISATION OF AWARDED LICENSES

3.8.1 Each Permission Holder shall Operationalize the Channel within 12 months from the date of signing of the Grant of Permission Agreement or within the extended time limit, if any, given under clause 2.11.2, failing which the Permission will be revoked, and Permission Holder shall be debarred from allotment of another Channel in the same city for a period of five years from the date of such revocation. The frequency so released may be allotted to a fresh Successful Bidder.

3.8.2 The Government of India may also revoke the Permission if the transmission from the channel is discontinued for more than six months for whatever reason.

### 3.9 NETWORKING

3.9.1 A Permission Holder will be permitted to network its Channels in C & D category cities within a region only.

3.9.2 No two Permission Holders shall be permitted to network any of their Channels in any category of cities.

### 3.10 FOREIGN INVESTMENT

3.10.1 If during the currency of the permission period, government policy on FDI/FII is modified, the permission holder shall be obliged to conform to the revised guidelines within a period of six months from the date of such notification, failing which it shall be treated as non-compliant of Grant of Permission Agreement, and liable for punitive action.

### 3.11 CO-LOCATION

- 3.11.1 It has been made mandatory for all Phase II (Bidding for Vacant Channels) operators to co-locate transmission facilities in all the 48 cities, on the prescribed terms and conditions. In 45 cities, the facilities would be co-located on existing AIR/DD towers, while in remaining 3 cities, new towers shall be got constructed by the Ministry, through Broadcast Engineering Consultants India Limited (“BECIL”), for the purpose. The details of cities where AIR/DD towers would be utilized for co-location as well as where new towers will be constructed are available at Schedule I hereto.
- 3.11.2 Pending creation of co-location facility by BECIL in due course, the successful bidders in these 3 cities will be permitted to operationalise their Channels on individual basis for a period of two years or till the co-location facility is commissioned, whichever is later, at the end of which they shall shift their operations to the new facilities. Permission to run its individual Channel will be granted to each successful bidder only after it has entered into an agreement with BECIL and made full payments towards its share in the common infrastructure.
- 3.11.3 BECIL shall act as the system integrator for providing the common transmission infrastructure and will help the LOI holder/ Permission holders to obtain SACFA clearance and frequency allocation on prescribed terms and conditions. After grant of Permission, each Permission Holder shall obtain wireless operational license, for which Wireless Planning & Coordination Wing, Department of Telecommunication, Ministry of Communications & Information Technology will be requested to grant priority clearance.

### 3.12 PENALTIES

- 3.12.1 In the event of a Permission Holder letting its facilities being used for transmitting any objectionable, unauthorized content, messages or communication inconsistent with public interest or national security or failing to comply with the directions as per para 3.4.3 above, the Permission granted shall be revoked and the Permission Holder shall be disqualified to hold any such Permission in future, apart from liability for punishment under other applicable laws.
- 3.12.2 Subject to the provisions contained in the above para 3.12.1 and 3.8.2, in the event of a Permission Holder violating any of the terms and conditions of Permission, or any other provisions of the FM Radio policy, the Government of India shall have the right to impose the following penalties:
1. In the event of first violation, suspension of the Permission and prohibition of broadcast up to a period of 30 days.
  2. In the event of second violation, suspension of the Permission and prohibition of broadcast up to a period of 90 days.
  3. In the event of third violation, revocation of the Permission and prohibition of broadcast up to the remaining period of the Permission.
  4. In the event of the failure of the Permission Holder to comply with the penalties imposed within the prescribed time, revocation of Permission and prohibition to broadcast for the remaining period of the Permission and disqualification to hold any fresh Permission in future for a period of five years.

- 3.12.3 In the event of suspension of Permission as mentioned in Para 3.4.3 or 3.12.2 above, the Permission Holder will continue to discharge its obligations under the Grant of Permission Agreement including the payment of fee.
- 3.12.4 In the event of revocation of Permission, the Permission holder will lose the One Time Non-Refundable Entry Fee. The Government shall not be responsible for any investment towards the Operationalisation of the Channel, not limited to capital and operating expenditure, in case of imposition of any penalty referred above.
- 3.12.5 Any penalty mentioned above shall be imposed only after giving a written notice to the Permission holder identifying the violation, providing opportunity to rectify it, if its nature so permits or otherwise show cause, within a period of 15 days and non-satisfaction from such rectification and/or cause so shown.

### 3.13 DISPUTE RESOLUTION MECHANISM

- 3.13.1 In the event of any question, dispute or difference arising under the Grant of Permission Agreement or in connection thereof, except as to the matter, the decision of which is specifically provided under the Grant of Permission Agreement, the same shall be referred to the *Telecom Disputes Settlement and Appellate Tribunal (TDSAT), New Delhi*.

### 3.14 FORCE\_MAJEURE DURING THE PERMISSION PERIOD

- 3.14.1 If at any time, during the period of permission, the performance of any obligation either in whole or in part by any party is prevented or delayed, by reason of war, hostility, acts of enemy, civil commotion, sabotage, fire, flood, act of state or center, explosion, epidemic, quarantine restriction, strikes materially affecting the performance of any obligations of affected party, or act of God (all or any of these hereinafter referred to as Force Majeure Event), neither party shall, by reason of such Force Majeure Event be entitled to terminate this permission, nor shall either party have any claim for damages against the other, in respect of such non-performance or delay in performance provided notice of such happenings of any such Force Majeure Event is given within 21 days from the date of occurrence thereof. Provided further that services under this permission shall be resumed as soon as practicable, after such Force Majeure event comes to an end or ceases to exist. The decision of the Government of India as to whether the services may be so resumed or not, shall be final and conclusive.
- 3.14.2 If the broadcast of the Permission Holder remains discontinued due to such Force Majeure event for more than two months, the parties shall meet together and discuss the future course of action.

3.14.3 The Government of India shall not be obliged to grant any rebate in Annual Fee on account of Force Majeure event referred to above, where the Permission Holder decides to continue the broadcast. Provided, however, the Government of India may at its discretion allow rebate in appropriate case in case the broadcast cannot be continued, even after two months of the occurrence of the event.

### 3.15 NATIONAL SECURITY AND OTHER CONDITIONS

3.15.1 All foreign personnel likely to be deployed by way of appointment, contract, consultancy, etc. by the Permission Holder for installation, maintenance and operation of their services shall be required to obtain security clearance from the Government of India prior to their deployment.

### 3.16 REQUIREMENT TO FURNISH INFORMATION

3.16.1 The Permission Holder shall be liable to furnish to the Government of India, such documents, reports, accounts, estimates, returns or other information such as change in Board of Directors, equity Holding Patterns, etc. or any such other information and at such periodic intervals or at such times as the Government of India may require.

**SCHEDULE-I\***

**FM CHANNELS PUT ON BID FOR VACANT CHANNELS OF PHASE II OF PRIVATE FM RADIO BROADCASTING**

**A. FM Channels in cities where common infrastructure will be created by the Government.**

S.No.	City	State/UT	No. of Channels available for bidding
	Category - A+		
1	Delhi	Delhi	1
	Category - A		
2	Hyderabad	A.P.	3
	Category - C		
3	Dehradun	Uttaranchal	4
	Total		8

**B. FM Channels in cities where Broadcasters will share common infrastructures on Prasar Bharati towers.**

S.No.	City	State/UT	No. of Channels available for bidding
	Category - A+		
4	Mumbai	Maharashtra	2
	Category - A		
5	Ahmedabad	Gujarat	1
6	Bangalore	Karnataka	1

7	Nagpur	Maharashtra	2
	Category – B		
8	Allahabad	U.P.	1
9	Jamshedpur	Jharkhand	1
10	Patna*	Bihar	3
	Category – C		
11	Ajmer	Rajasthan	1
12	Akola	Maharashtra	2
13	Aligarh	U.P.	1
14	Aurangabad	Maharashtra	1
15	Bareilly	U.P.	2
16	Bhubaneshwar/ Cuttack	Orissa	1
17	Bikaner	Rajasthan	3
18	Bilaspur	Chattisgarh	2
19	Dhule	Maharashtra	1
20	Gorakhpur	U.P.	3
21	Gulbarga	Karnataka	2
22	Jalgaon	Maharashtra	1
23	Jammu	J&K	2
24	Jhansi	U.P.	3
25	Kota	Rajasthan	1
26	Muzzafarpur	Bihar	3
27	Mysore	Karnataka	2
28	Nanded	Maharashtra	2

29	Rajamundri	A.P.	2
30	Rourkela	Orissa	2
31	Sagar	M.P.	4
32	Sholapur	Maharashtra	1
33	Srinagar	J&K	3
34	Tiruchy	Tamil Nadu	2
35	Tirunelveli	Tamil Nadu	1
36	Tuticorin	Tamil Nadu	1
37	Udaipur	Rajasthan	1
38	Warangal	A.P.	2
	Category - D		
39	Agartala	Tripura	3
40	Aizawl	Mizoram	3
41	Daman	Daman & Diu	1
42	Gangtok	Sikkim	1
43	Imphal	Manipur	4
44	Itanagar	Arunachal Pradesh	3
45	Kohima	Nagaland	4
46	Port Blair	A&Nicobar	4
47	Shillong	Meghalaya	2
48	Shimla	H.P.	1
	TOTAL		89
	Grand Total		97

\* **Corrected on 9.6.2007.** Initially, it was inadvertently mentioned as:

28	Patiala	Punjab	3
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There is no vacant channel at Patiala.



APPENDIX A

STAGE I – APPLICATION FORM  
[PRE-QUALIFICATION BID FOR FM RADIO BROADCASTING PHASE-II]

TO,  
SECRETARY,  
MINISTRY OF INFORMATION AND BROADCASTING  
GOVERNMENT OF INDIA  
A Wing, SHASTRI BHAVAN, NEW DELHI-110001.

Sir,

This is with reference to the Ministry of I&B's NIT dated ....., inviting pre-qualification bids for subsequent participation in financial bidding process for allocation of FM radio channels (Phase-II). I hereby submit the following details in support of the eligibility criteria as prescribed in the Tender Document, in addition to other particulars:

1.	Name of the Applicant Company and Status (Pvt. Ltd./Pub. Ltd.)	:	
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2.	Complete Postal Address with Telephone/Fax Nos. E-mail ID (i) Corporate Office	:	
	(ii) Registered Office	:	

3.	Address for Correspondence with Telephone/Fax/E-mail	:	
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4.	Name of Authorised Contact Person, his designation and Telephone/Fax Nos/ Email ID.	:	
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5.	Processing fee and details thereof.	:	
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6.	Incorporation No. and Date (attach copy of Certificate of incorporation and Memorandum & Articles of Association)	:	
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7. Details of Promoters & Major Shareholders

(Attach a separate sheet giving Name, Address, contact Telephone numbers and equity held in terms of amount as well as percentage of paid up equity).

8.	Details of the Company	:	
8.1	Board of Directors (Attach list of Directors along with bio data of each Director giving date of birth, place of birth, parentage, nationality, permanent address, residential address, official address, passport number(if any), qualification, experience, parentage, etc., in addition to information required in terms of Clause 2.5.1 of Section 1.)		

8.2	Equity		
-----	--------	--	--

Amount (Rs. in lakhs)

(A)	Authorised Capital:		
-----	---------------------	--	--

		Amount (Rs. In Lakhs)	As % of Authorised Capital
(B)	Issued and paid up Capital		

(C)	Classification of equity holding	Amount (Rs. In Lakhs)	As % of Paid Up Capital (B)
-----	----------------------------------	-----------------------	-----------------------------

(i)	Total equity held by Indian Promoters/Majority Shareholders		
-----	---	--	--

(ii)	Pro rata share of FDI in the promoters/majority shareholders.		
------	---	--	--

(iii)	Indian Financial Institutions and Banks.		
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(iv)	Other Indian Shareholders		
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(v)	Percentage of Majority Shareholders' equity to Total Paid Up Equity net of Banks and Financial Institutions Equity		
-----	--	--	--

(vi)	Direct FDI holding (including OCB, PIO, NRI, etc.)		
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	PIO, NRI, etc.)			
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(vii)	Indirect FDI/FII (Pro rata share of FDI in Indian Promoters and majority shareholders)			
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(viii)	Foreign Institutional Investors/ Portfolio Investments.			
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9.	Net Worth of the Applicant Company as on 31st March 2007. [Please enclose certificate from Statutory Auditor, as per Appendix G]		Rs. _____ Lakhs.
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10. Categories of Cities and the Regions in which the Applicant Company desires to participate in the Bidding Process within its Net Worth entitlement:

[Please tick Mark relevant Boxes below to indicate your preferences and calculate the total Net Worth requirement on the basis of net worth required for each box)

Categories/Regions	North	East	West	South	Total
A+					
A					
B					
C					
D					
TOTAL					

**Note1:** Please do not indicate numbers or names of cities.

**Note2:** The Net Worth requirement is on per category per region basis subject to a maximum of Rs.10 crore and no relation to number of cities in any particular category/region.

11. Annual Reports and Audited Accounts for the last three years or in the case of a newly incorporated company, Balance Sheets from the date of incorporation till 31<sup>st</sup> March 2007 certified by the Statutory Auditor to support its claim of financial eligibility.

12. A Written Power of Attorney, authorizing the signatory of the tender to commit the tenderer, to be attached.

13. Please indicate whether the company is disqualified in terms of the provisions of Clause 2.2 of the Tender Document.

14. (a) Please indicate whether the company or any of its related companies were successful bidders in the process of frequency/ channel allotment during Phase-I/Phase-II (Yes/ No). If Yes, the details of operational and non-operational stations, as the case may be.

(b) In case of revocation of LOI/LA by the Government, whether the company or its related companies have contested the revocation of LOI/LA concerning Phase-I/Phase-II (Yes/No). If Yes, whether the company exercised its option to participate in Phase –II (yes/No) [Please furnish copy of the option.]

15. LIST OF SUPPORTING DOCUMENTS TO BE ATTACHED:

1. Memorandum & Articles of Association of the Company;
2. Copy of the Registration Certificate of the Company issued by the Registrar of Companies;
3. Copies of Annual Reports and the audited accounts for the last three years (wherever applicable);
4. Bio-data giving details of qualifications/experience, etc. of all Directors of the Company;
5. Certificate regarding Net Worth and the total foreign shareholding in the company from the Statutory Auditors.
- 5(a) Details of Promoters & Major shareholders
6. List of projects carried out by the Company;
7. List of the projects carried out by the Directors;
8. Details of Management positions of the Directors in other companies/organisations and details of these companies/organisations;
9. List of subsidiary companies, holding companies and inter-connected companies of the applicant company;
10. Compliance statement of sections 1, 2 & 3.
11. Letter exercising option to participate in Phase-II (Relevant only for Phase-I LOI/LA holders whose LOI/LA were revoked).
12. Certificate in Appendix B.
13. Any other relevant document(s).

Place: Signature and name of the authorised signatory

Date: (Company Seal)

## APPENDIX B

### CERTIFICATES & UNDERTAKINGS

1. I hereby certify that I have carefully read the **grant of Permission conditions for bidding of vacant channels of Phase II FM Radio Broadcasting**. I undertake to fully comply with the all terms and conditions therein.
2. I understand that this application, if found incomplete in any respect and/or if found with conditional compliance or not accompanied with the requisite documents shall be summarily rejected.
3. I understand that all matters relating to the application or Permission if granted to me will be subject to jurisdiction of courts in Delhi only.
4. I understand that if at any time any averments made or information furnished for obtaining the Permission is found incorrect, misleading or invalid, my application shall be liable to be rejected and any LOI/Permission granted on the basis of this application shall be liable for termination, including forfeiture of financial bid amount.
5. I undertake that none of my subsidiary/holding/inter-connected Companies shall submit any financial bid for the same city for which I submit a financial bid.
6. I certify that I will not use the name of my company and product brand name as the name of my FM Channel if Permission is granted to me.
7. I certify that my company is not disqualified in terms of the provisions of Clause 2.2 of the Tender Document.

Place:

Signature and name of the authorised signatory

Date:

(Company Seal)

APPENDIX C

APPLICATION FORM FOR FINANCIAL BID

{Letterhead of the QIP}

**FINANCIAL BID FOR VACANT CHANNELS OF FM BROADCASTING PHASE II CHANNEL LICENCE**

This Financial Bid is submitted by \_\_\_\_\_ ("QIP"), [insert details \] pursuant to a comprehensive and complete understanding of the Tender Document dated \_\_\_\_\_ and Bidding Process, by the QIP for FM broadcasting PHASE II Channel permission.

The Financial Bid is: -

1. For the grant of FM one broadcasting PHASE II Channel permission.
2. An unconditional and irrevocable offer, which is valid, and may be accepted by Government of India until [ ]days from \_\_\_\_\_ [insert deadline for submission of Financial Bid] irrespective of any events that may occur within this 180 day period.
3. Made on the basis of and upon acceptance of the Grant of Permission Agreement circulated by Government of India to the QIP, and which shall remain the basis and so accepted throughout the period that this Financial Bid remains valid.
4. Based on the representations, warranties and covenants that all information provided by the QIP is true accurate and complete even as of the date hereof.
5. Signed by a person duly authorised to sign on behalf of the QIP.

**Financial Bid for the one FM broadcasting PHASE II Channel licence**

Particulars	Amount of Bid/One Time Entry Fees
Grant of one FM broadcasting PHASE II Channel Permission in the city of _____ -----	Rupees (in figures): _____ (In words). _____

6. Particulars of Account Payee Demand Draft
7. Whether PBG-I enclosed for the 50% of the bid amount (Yes/No)

**(Enclose PBG-I in original)**

8. In the event of his being unsuccessful in the bidding, whether the applicant gives his consent for the PBG I to be retained by the Government of India to consider his request for being kept on the Waiting List.

Signed:

Name:

Place:

Authorised Representative:

Designation:

For and behalf of



## APPENDIX D

### FORMAT FOR PERFORMANCE BANK GUARANTEE-I (PBG-I).

FM Broadcasting Service at \_\_\_\_\_

In consideration of the President of India acting through Under Secretary(FM) Ministry of Information & Broadcasting (the Ministry) having declared \_\_\_\_\_ [Name and address] as "Qualified Interested Party" (hereinafter called "the QIP ") to submit a financial bid to seek permission to establish, maintain and operate FM radio broadcasting Service at \_\_\_\_\_ on the terms and conditions set out in the tender document notified through NIT dated 21.9.05..... , wherein it has been stipulated that the QIP shall furnish to the Ministry a Bank Guarantee from a scheduled bank for the sum equal to 50% of the amount of the financial bid as security for the due observance and performance of the terms and conditions of the said Tender Document.

WHEREAS we \_\_\_\_\_ Bank, (indicate the name, address and other particulars of the Bank), a body corporate constituted under the Banking Companies (Acquisition & Transfer of Undertaking) Act, 1970 (hereinafter referred to as 'the Bank") having its Head Office at \_\_\_\_\_ and a branch office amongst other places at \_\_\_\_\_ has agreed to irrevocably and unconditionally guarantee to the Ministry that the QIP shall comply with all the terms and conditions of the tender document to the satisfaction of the Ministry.

NOW THEREFORE we, the Bank, hereby affirm that we are the Guarantor and responsible to you, on behalf of the QIP up to a total \_\_\_\_\_ (Amount of Guarantee) \_\_\_\_\_ (in words) payable, and we undertake to pay you, upon your first written demand and without cavil, demur or argument, any sum or sums within the limits of \_\_\_\_\_ (Amount of Guarantee) as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We, the Bank, do hereby agree that the decision of the Ministry as to whether the QIP has failed to or neglected to perform or discharge his duties and obligations as aforesaid as per the terms and conditions of the said Tender Document and as to the amount payable to the Ministry by the Bank hereunder, shall be final and binding on the Bank. Any dispute between the Ministry and the said LOI/Permission Holder shall not affect our obligation under this guarantee.

We hereby waive the necessity of your demanding the said debt from the QIP before presenting us with the demand and acknowledge that we are the primary obligee and not just the surety of the QIP.

We further agree that no change or addition to or other modification of the terms of the Tender or of the works to be performed there under shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification, etc.

We \_\_\_\_\_ Bank, do hereby declare and agree that:

- (a) The Guarantee herein contained shall remain in full force and effect till the expiry of one year from the date of opening of financial bids. It shall also continue to be enforceable till all the dues of the Ministry under and by virtue of the said financial bid have been fully paid and its claims satisfied or discharged or till Ministry informs that all the terms and conditions of the said Tender have been fully and properly carried out by the said QIP and accordingly discharges this guarantee.
- (b) The Ministry shall have the fullest liberty without our consent and without discharging in any manner our obligations hereunder to vary any of the terms and conditions of the said Tender or to extend time of performance of any obligations by the said QIP from time to time or to postpone for any time or from time to time any of the powers exercisable by the Ministry against the said QIP and to forbear or to enforce any of the terms and conditions relating to the said Tender and we shall not be relieved from our liability by reason of any variation or extension being granted to the said QIP or forbearance act or omission on the part of the Ministry or any indulgence by the Ministry to the said QIP or to give such matter or thing whatsoever which under the law relating to sureties would but for this provision, have effect of so relieving us.
- (c) Any claim which we have against the QIP shall be subject and subordinate to the prior payment and performance in full of all the obligations of us hereunder and we will not without prior written consent of the Ministry exercise any legal right or remedy of any kind in respect of any such payment or performance so long as our obligations hereunder remain owing and outstanding.
- (d) This guarantee shall be irrevocable and the obligations of us herein shall not be conditional of any prior notice by us or by the QIP.
- (e) The Bank will not revoke the guarantee during the currency except with the previous consent of the Ministry.

The bank under its constitution power gives this guarantee and Sh. \_\_\_\_\_, who has signed on behalf of the bank, is duly authorized to execute this guarantee.

This guarantee shall not be discharged or affected due to any change in the name, constitution or address of the bank or the QIP.

This guarantee shall be valid for a period of one year from the date of opening of financial bid and until 28 days after the date of issue of the Defect Liability Certificate by the \_\_\_\_\_.

SIGNATURE AND SEAL OF THE GUARANTOR \_\_\_\_\_

NAME OF BANK \_\_\_\_\_

ADDRESS \_\_\_\_\_

DATE \_\_\_\_\_

In the presence of:

1. \_\_\_\_\_  
(Name and Occupation)

2. \_\_\_\_\_  
(Name and Occupation)

Appendix E

No. \_\_\_\_\_,  
Ministry of Information & Broadcasting  
(FM Cell), A Wing, Shastri Bhawan  
New Delhi-110 001

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

To

-----  
-----  
-----

Sub : Letter of Intent (“LoI”) for operating the FM radio broadcast service (Phase II) at \_\_\_\_\_

Dear Sir,

Consequent to your being declared a successful bidder and deposit of the balance 50% of the financial bid by you, I am directed to issue this Letter of Intent (LoI in short) for establishing and providing FM radio broadcasting services (Phase II) at \_\_\_\_\_.

2. The purpose and objective of this LoI is to enable you, as the Successful Bidder, to comply with the requisite conditions of eligibility within nine months hereof for signing the Grant of Permission Agreement (GOPA in short), to obtain frequency allocation, SACFA clearance, achieve financial closure, appoint all key executives, enter into agreements with Prasar Bharati (DD/AIR) /BECIL, deposit the requisite amounts towards land/tower lease rent, common transmission infrastructure etc., and to furnish an irrevocable, unconditional and confirmed performance bank guarantee in favour of the Government of India for an amount equivalent to 10% of the Reserve OTEF (“PBG II”) as specified in the Tender Document.

3. Your attention is invited to Clause 2.10.6 of the Tender Document, in terms whereof, your failure to comply with the conditions for executing the GOPA or otherwise executing GOPA within the prescribed period, this LOI shall stand cancelled and the amount deposited by you shall stand forfeited without any further notice.

4. Please do acknowledge the receipt of this LoI immediately.

Yours faithfully,

Authorised Signatory,  
Ministry of I&B

APPENDIX F

**STATEMENT OF GROSS REVENUE FORMING PART OF THE FINAL ACCOUNTS OF M/S**

..... **THE**  
**FM PERMISSION HOLDER**

sl.no	INCOME HEADS	Tariff rate/ rate card	Discounts		Agency commi- ssion	Taxes	Net as per P& L a/c
			trade	others			
			( Amount Rupees in lacs)				
		A	B	C	D	E	F
1	Advertisement						
2	Promotional Events						
2.1	Musical/Star Events						
2.2	Sponsored Programmes						
3	Marketing Rights						
4	Commission						
5	Royalties						
6	Sale of recorded cassettes, CDs etc						
7	Rent -Premises						
8	Rent-Equipment						
9	Interest/Dividend						
10	Related Party Transactions						
10.1	Goods Sold						
10.2	Services rendered						
10.3	Production						
10.4	Marketing						
10.5							
10.6							

Notes.

1. The income heads are only indicative and illustrative and the Auditor would include all the relevant Heads of the FM Permission Holder.
2. The income from the Related Parties shall tally with the Related Parties schedule as per accounting standards no 18.
3. Additional columns may be introduced in appendix D if required.
4. Column F is the total revenue as per profit and loss account. To arrive at the gross revenue as per column the taxes, agency commission as applicable are to be added.  
Gross Revenue (A) = B + C + D + E + F  
Gross Revenue for Annual Fee @ 4% = [A -(B + C)] x 4%

## APPENDIX G

### FORMAT FOR CERTIFICATE OF NET WORTH BY STATUTORY AUDITORS.

We have audited the Books of Accounts of \_\_\_\_\_ for the financial year/period ended month-day-year 2007 and certify that the "Net Worth" of M/s \_\_\_\_\_ the Applicant Company as on \_\_\_\_\_ 2007 is Rupees \_\_\_\_\_ lacs (rupees in words lacs). We further certify that the Net Worth of the Applicant Company is computed as follows:

Sl.No.	Particulars	Amount in Rupees-lacs
1.	Book Value of assets	
2.	Book Value of fictitious and intangible assets	
3.	Liabilities other than owner's funds	
4.	Net Worth {1-(2+3)}	

Place/Date

Statutory Auditors

Note:

#### NET WORTH

The excess of the book value of assets (other than fictitious and intangible assets of an enterprise over its liabilities. This is also referred to as Net assets or shareholder's funds

#### BOOK VALUE OF ASSETS

The amount at which an item appears in the books of account or financial statement. It does not refer to any particular basis on which the amount is determined. Eg. Cost, replacement value etc

#### Fictitious assets.

Items grouped under the assets in a balance sheet which has no real value (eg. The debit balance of the profit and loss account)

#### LIABILITIES

The financial obligation of an enterprise other than owner's funds.