

## **Terms and Conditions for Creative Agencies empanelled with DAVP**

**“Print-Media Creative Agencies are those agencies which specialize and execute the production of Creatives for the Print Media, Printed Publicity and produce the adaptations of the same for Outdoor Publicity and/or Exhibitions”**

### **1. General**

- a. The agencies will abide by the terms and conditions laid down herewith and any other condition prescribed by DAVP from time to time in fulfillment of its objective of serving the client ministries of the government.
- b. This Empanelment would not in any way mean that DAVP would be paying any retainership fee or monthly consultancy charges or any other form of remuneration to the empanelled agencies.
- c. The scope of work of the empanelled agencies will be as per Annexure A.
- d. DAVP shall hire the agency only if it is not being able to do so with its existing resources and after applying the due procedures.
- e. DAVP may hire the agency for its own campaign related work or even for those of other Client Ministries and Departments.
- f. The advertisements and other creative work so produced in consultation with the client Ministry and DAVP would be released only through DAVP to the Print and other Publicity media.
- g. While for the Creative work done for DAVP’s Campaign the payment would be met from its own funds, for the creative work done for the client Ministries/Departments, the payment would be met from the funds allocated by the respective client Ministry/Department to DAVP. The payment to the agency in either case shall be released through DAVP.
- h. Government of India shall retain the absolute copyright and all such related rights including the rights for adaptations/ translation, reproduction, alteration and archiving without any restriction of time period of all such creatives and their inputs which might be produced by the agency for executing a work/campaign. Such creatives could be used in any such future campaigns that the Government may consider appropriate.
- i. The empanelled agencies by agreeing to these Terms and Conditions shall be liable to for penalty as per the terms of this contract in the event of their failing to adhere to them.

- j. The agency also agrees to abide by any other terms and conditions to be prescribed by the DG: DAVP in future.

**2. Manner of Employment :**

- a. DAVP shall hire the services of the Empanelled Print Media Agency either for its own campaigns or for the campaigns pertaining to the client Ministry or Departments of the Government of India. DAVP shall hire the agency only after it makes an assessment of the requirement to hire an empanelled agency for the scope of work or any part of it.
- b. A briefing of three agencies chosen through the random roster method (the agencies who have received less assignments will get more weightage for briefing) will be done by DAVP.
- c. The agencies will be asked to present their work before a selection committee. The final selection of the agency will be done based on the recommendation of the committee. The selection so arrived at will be final.

**3. Release of the Advertisement:**

All the media release- either of the Ministries/Departments or DAVP shall be routed only through DAVP.

**4. Payment Schedule**

For all kinds of production jobs no advance payment shall be made. Payments will be made only after satisfactory completion of each job and on submission of authenticated bills in the manner stipulated by DAVP/Ministry/Department of the Government of India.

**5. Territory**

The Agency shall provide all such services described above within the territorial limits of India only. The Agency shall arrange international inputs and advertising through its international affiliates, if required, on terms to be agreed separately.

**6. Conflict of Interest**

DAVP/Ministry/Department of the Government of India requires that the Agency provide professional, objective and impartial advice and at all times hold DAVP/Ministry/department's interests paramount, strictly avoid conflicts with other assignments/jobs or their own corporate interests and act without any consideration for future work.

## **7. Confidentiality**

Confidentiality shall be maintained for the information relating to the examination, clarification and comparison of the proposal. Violation of this clause may result in the rejection of the proposal.

## **8. Approvals**

The Agency shall seek written approval of all visuals, artworks, copy, scripts, etc. and the Agency shall not proceed further with any work until approval of related documents by DAVP/Ministry/Department of Government of India.

Both, DAVP/Ministry/Department of Government of India and the Agency, shall communicate to each other the names of officials authorized to sign various documents or grant approvals under the agreement.

## **9. Records**

The Agency shall maintain all layouts, artworks, copy, negatives, tapes, bills vouchers, etc. for duration of the contract period and then submit the same to the DAVP /Ministry/Department of Government of India.(if not already submitted).

## **10. Fraud & Corruption**

DAVP/Ministry/Department of Government of India requires that Agencies selected for the particular Campaign must observe the highest standards of ethics during the performance and execution of such contract. In pursuance of this policy, Government of India :

- a) Defines, for the purposes of this provision, the terms set forth as follows:
  1. "Corrupt practice" means the offering, giving, receiving or soliciting of any thing of value to influence the action of DAVP or any personnel of Agencies in contract executions.
  2. "Fraudulent practice" means a mis-presentation of facts, in order to influence a procurement process or the execution of a contract, to DAVP/Ministry/Department of Government of India and includes collusive practice among Respondents (prior to or after Proposal submission) designed to establish Proposal prices at artificially high or non-competitive levels and to deprive DAVP/Ministry/Department of Government of India or the benefits of free and open competition;

3. “Unfair trade practices” means supply of services different from what is ordered on, or change in the Scope or Work which was given by the DAVP/Ministry/Department of Government of India in Section IV.
  4. “Coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the execution contract.
- b) Will reject a proposal for award, if it determines that the Agency recommended for the award of the Creative Campaign, has been determined by DAVP/Ministry/Department of Government of India to having been engaged in corrupt, fraudulent or unfair trade practices.
- c) Will declare a firm ineligible, either indefinitely or for a stated period of time, for awarding the contract, if it at any time determines that the firm has engaged in corrupt, fraudulent and unfair trade practice in competing for, or in executing, the contract.

## **11. Standards of Performance**

- i. The Agency shall perform the services and carry out their obligations under the Contract with due diligence, efficiency and economy in accordance with generally accepted professional standards and practices. The Agency shall always act in respect of any matter relating to this contract as faithful advisor to DAVP/Ministry/Department of Government of India. The Agency shall always support and safeguard the legitimate interests of DAVP/Ministry/Department of Government of India in any dealings with the third party. The agency shall abide by all the provisions/Acts/Rules etc. of Government of India. The Agency shall conform to the standards laid down in the Campaign Proposal Details in totality.
- ii. All submissions made by the Agency after the award of contract must be countersigned by the Head – Creative of the Agency.

## **12. Delivery and Documents**

As per the time schedule agreed between the Parties for specific projects given to the empanelled Agency from time to time, the Agency shall submit all the deliverables on due date as per the delivery schedule. The Agency

shall not without DAVP/Ministry/Department of Government of India's prior written consent disclose the Contract, drawings, specifications, plan, pattern, samples to any person other than an entity authorized by the DAVP/Ministry/Department of Government of India for the performance of the Contract. In case of termination of the Contract all the documents used by Agency in the execution of project shall become property of DAVP/Ministry/Department of Government of India.

### **13. Change Orders**

DAVP/Ministry/Department of Government of India may at any time before completion of work under project awarded to empanelled Agency, change the work content by increasing/reducing the quantities of the services by not more than 20% of the estimated total cost of the Campaign project as mentioned in the Contract Agreement for execution of the Project, without creating the liabilities for compensation on any grounds, whatsoever due to this change. In such a case, the Agency will have to perform the service in the increased/decreased quantity at the same contract rates within the time stipulated for providing services to DAVP/Ministry/Department of Government of India.

### **14. Agency Personnel**

The Agency shall employ and provide such qualified and experienced personnel as may be required to perform the services under the specific project assigned by DAVP/Ministry/Department of Government of India and it is desirable from the Agency to deploy the personnel, who have adequate experience in the domain related with the project. It is desirable that for the Projects, the Consultant/Agencies must hire the services of Relevant Specialists, on a case to case basis, to work on the Project effectively. The Agency shall give proof of the status of its regular employees status or contractual staff and its creative team on a regular basis to DAVP/Ministry/Department of Government of India during such period of the time of contract.

The Agency shall not change the team deployed for the work without due intimation to DAVP/Ministry/Department of Government of India.

### **15. Applicable Law**

Applicable Law 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. The Contract shall be interpreted in accordance with the laws of the Union of India.

### **16. Intellectual Property Rights**

No services covered under the Contract shall be sold or disposed by the Agency in violation of any right whatsoever of third party, and in particular, but without prejudice to the generality of the foregoing, of any patent right, trademark or similar right, or any charge mortgage or lien. The Agency shall indemnify DAVP/Ministry/Department of Government of India from all actions, cost, claims, demands, expenses and liabilities, whatsoever, resulting from any actual or alleged infringement as aforesaid and at the expenses of the Agency, DAVP/Ministry/Department of Government of India shall be defended in the defense of any proceedings which may be brought in that connection.

### **17. Copyrights**

Copyrights and other intellectual property rights in all materials, ideas and work or any kind generated by the activities of the Agency performed hereunder shall vest in DAVP/Ministry/Department of Government of India, to the extent copyright belongs to the Agency, provided that DAVP/Ministry/Department of Government of India has paid the Agency for its services.

### **18. Waiver**

The failure of either party at any time to enforce any provision of these Terms and Conditions, shall in no way affect its right thereafter to require complete performance by the other party. Further, waiver of any breach of any provision shall not be held to be a waiver for any subsequent breaches.

### **19. Notices**

Any notice or notices under these terms and conditions shall be deemed to be properly served, if they are sent to the addresses mentioned hereinabove by courier service or registered mail.

### **20. Survival of Terms**

The provisions of Articles 5, 15, 16 and 20 of this Agreement shall survive the expiry or termination of the Agreement.

### **21. Severability**

If for any reason, whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is so declared by any court of competent jurisdiction, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable.

### **22. Indemnity**

The Agency shall indemnify and keep DAVP/Ministry/Department of Government of India indemnified from and against all claims, suits and

demands due to injury to or death of any person and /or loss or damage caused or suffered to property under or belonging to the DAVP/Ministry/Department of Government of India, its agents or employees or third party as a result of any acts done or omitted to be done by the Agency or as a result on the part of Agency to perform any of its obligations under this agreement or on the failure of the Agency to perform any of its duties and/or obligations including good industry practices.

### **23. Assignments**

The Agency shall not assign the project to any other agency, in whole or in part, to perform its obligation under the Contract, without the DAVP's authorized representative's prior written consent.

### **24. Performance Assessment**

- i. If during execution of the Project, following problems were to be found, then a penalty of 2% of the Contract value per week (subject to maximum of 20%) may be imposed by DAVP/Ministry/Department of Government of India
  - a) Quality of deliverable is not up to the mark, (till the quality is improved to the required extent)
  - b) Delays in deliverables
  - c) Not assigning adequate resources in time
  - d) Not engaging resources on a dedicated basis, even when required
  - e) Assigning resources that do not meet the clients requirements as per the approved time schedule or the quality of deliverable.
- ii. If the delay is beyond 5 weeks then DAVP/Ministry/Department of Government of India may rescind the Contract and shall be free to get it done from other Agencies at the risk and costs of the appointed Agency. DAVP may debar the Agencies for applying in its future empanelment also.

### **25. Termination**

Under these terms and conditions, DAVP/Ministry/Department of Government of India may, by written notice terminate the Agency in the following ways –

- a) Termination by Default for failing to perform obligations under the Contract or if the quality is not up to the specification or in the event of non adherence to time schedule.
- b) Termination for Convenience in whole or in part thereof, at any time

- c) Termination for Insolvency if the Agency becomes bankrupt or otherwise insolvent.

In all the three cases termination shall be executed by giving written notice to the Agency. No consequential damages shall be payable to the Agency in the event of such termination.

## **26. Force Majeure**

Notwithstanding anything contained in these terms and conditions, the Agency shall not be liable for liquidated damages or termination for default, if and to the extent that, it's delay in performance or other failures to perform its obligations under the agreement is the result of an event of Force Majeure.

For purposes of this clause "Force Majeure" means an event beyond the control of the Agency and not involving the Agency's fault or negligence and which was not foreseeable. Such events may include wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargos. The decision of the DAVP, regarding Force Majeure shall be final and binding on the Agency.

If a Force Majeure situation arises, the Agency shall promptly notify to DAVP in writing, of such conditions and the cause thereof. Unless otherwise directed by DAVP in writing, the Agency shall continue to perform its obligations under the agreement as far as reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

## **27. Resolution of Disputes**

If any dispute arises between parties, then there would be following two ways for resolution of the dispute under the Contract.

- a) **Amicable Settlement**

Performance of the Contract is governed by the terms and conditions of the Contract, however, at times dispute may arise about any interpretation of any term or condition of Contract including the scope of work, the clauses of payments etc. In such a situation either party of the contract may send a written notice of dispute to the other party. The party receiving the notice of dispute will consider the Notice of dispute to the other party. The party receiving the notice of dispute will consider the Notice and respond to it in writing within 30 days after receipt. If that party fails to respond within 30 days, or the dispute cannot be amicably settled within 60 days following the response of that party, then Clause 'Resolution of Disputes' of these General Condition of Contract shall become applicable.



**b) Arbitration**

Any dispute, difference or question arising out of this agreement shall be settled amicably between the parties, failing which the same shall be referred to a sole arbitrator to be nominated by the Secretary, Department of Legal Affairs, Govt. of India, New Delhi, for arbitration under the Arbitration & Conciliation Act 1996, and the place of arbitration shall be Delhi.

**28. Taxes and Duties**

The Agency shall fully familiarize themselves about the applicable Domestic taxes on amount payable by DAVP under the contract. The Agency, sub Agency and personnel shall pay such domestic tax, duties, fees and other impositions (wherever applicable) levied under the applicable law.

**29. Legal Jurisdiction**

All legal disputes between the parties shall be subject to the jurisdiction of the Courts situated in Delhi, India only.

**30. Notice**

Any notice, request or consent required or permitted to be given or made pursuant to this contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the party to whom the communication is addressed, or when sent to such party at the address mentioned in the project specific Agreement.

**31. Audit**

The Ministries/Departments of Government of India shall be entitled to conduct audits, on the appointed Service Provider (name of the agency) whether by its internal or external auditors, or by agents appointed to act on its behalf and to obtain copies of any audit or review reports and findings made by the said audit Service Provider in conjunction with the Services performed for Government of India. The audit will cover strategy and cost of implementing the communication programmes and value derived thereof. The service provider (name and agency) shall extend full cooperation to the duly appointed auditor.