

AGREEMENT for empanelment of Broadband CPE vendor

THIS Agreement entered into on this -----day of -----
by and between:

BHARAT SANCHAR NIGAM LIMITED (hereinafter referred to as “BSNL”), a company incorporated under the Companies Act 1956, having its Registered Office and Corporate Office at Bharat Sanchar Bhawan, -----, New Delhi-110 001, represented by Shri _____ Principle General Manager (NWP-BB), BSNL CO (Hereinafter called BSNL which expression shall, unless repugnant to the context, include its successors in business, administrators, liquidators and assigns or legal representatives) of the FIRST PARTY

AND

M/S(hereinafter referred to as “CPE Vendor” a company incorporated under the Companies Act 1956, having its Registered Office -----, represented by Shri....., (Designation)....., the authorized signatory (Hereinafter called _____, which expression shall, unless repugnant to the context, include its successors in business, administrators, liquidators and assigns or legal representatives) of the SECOND PARTY

WHERE AS BSNL is in the business of providing Basic Telephony Services, Cellular Mobile Telephony Services (CMTS), Internet & broadband services and National Long Distance Services (NLDS) in its licensed areas of operation in the geographical territory of India.

AND the “CPE Vendor” is seller of (Technology such as ADSL2+) Broadband CPE having model No.....

Whereas CPE vendor “M/s” has approached BSNL CO to get empanelled as BSNL approved CPE vendor.

AND whereas M/s CPE vendor is in the intention to get empanelled as BSNL approved CPE vendor for sale of its approved CPE to BSNL customers based on the terms and conditions contained herein under.

Pre-requisites for signing of this agreement:

1. Application for empanelment from CPE vendor along with technical data sheet to BSNL Corporate office for empanelment. Technical data sheet contains, technology type, model no. & technical specifications of the CPE. Technical data sheet enclosed as Annexure-I.
2. CPE vendor to deposited INR 1 Lakh at BSNL QA as a testing fee.
3. Certification from QA BSNL as per above mentioned technical data sheet

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

4. The CPE vendor has approached BSNL CO to get empanelled as BSNL approved CPE vendor for sale of its approved CPE to BSNL customers and has requested to sign an agreement for provision of such empanelment in _____ Circle / Zone(s) / Pan India and has further assured to the BSNL that the CPE vendor have appropriate and sufficient arrangements for infrastructure, equipment and skilled manpower and other facilities to provide the services under the agreement. Whereupon and in pursuance to the said request and based upon such assurance, BSNL has agreed to sign the agreement with the CPE vendor for one year for provision of said arrangement / services as per terms and conditions contained in this agreement.
5. Pre-requisites stated above point no 1 to 3 have been fulfilled.
6. CPE vendor shall be permitted to print the BSNL logo on approved
(technology like ADSL2+) CPE, having Model No.....
7. CPE vendor shall provide the name of contact person with address & telephone /FAX no. to BSNL Corporate office / concerned circles / SSA / BSNL field units, which may be contacted by BSNL staff as well as by customers for purchase of BSNL approved CPEs
8. Any change in Address, Phone number, FAX Number etc shall also be informed to concerned field units, head of SSA and BSNL Corporate Office at the earliest.
9. BSNL shall make available the contact details of CPE vendor to CSCs and other BSNL customer outlets etc.
10. Agreement for empanelment shall be for a period of one year from the date of signing, subject to satisfactory performance by the vendor.
11. Agreement for empanelment may be renewed on year to year basis, based on past performance of CPE vendor on similar / mutually agreed terms and conditions.
12. CPE vendor shall limit the maximum sale price of its CPE to BSNL prevailing sale price of Type-I (non WiFi) & Type-II (WiFi) CPE.
13. After sale service of CPE is CPE vendor's responsibility as per the understanding between the customer & the CPE vendor. BSNL shall have no role in payment & after sale services of CPEs purchased by customers from the CPE vendors. CPE vendor shall not cast any obligation on BSNL of any kind.
14. CPE Vendor shall inform customers about the process of after sale services.

15. Empanelment Agreement shall not be amended or modified or altered or changed, except in writing and duly executed by the authorized representatives of each party.
16. At any point of time during agreement period, agreement may be cancelled, on customer's complaints and / or non-fulfill of after sale obligations or any other issue / problem. Notwithstanding any terms and conditions herein, this agreement may be terminated by giving one month written notice. Termination of the agreement shall be without prejudice to the accrued rights and liabilities of the parties at the date of termination. The effective date of termination of agreement will be one month counted from the date of receipt of such notice by the other party or the authority that signed the agreement on behalf of other party.
17. On termination of this agreement, CPEs already sold by CPE vendor may continue to be used by the BSNL customers. However CPE vendor shall not be further permitted to print the BSNL logo on their CPEs and BSNL shall no longer popularize the CPE vendor and it's CPE among BSNL customers for purchase of CPEs.

18. Representation & warranties:

The representation and warranties set out in this clause shall survive the execution of this agreement and its related documents and both parties acknowledge that they have entered into this agreement and other related documents in full reliance upon the representations and warranties as mentioned below:

- 18.1 The parties are companies duly formed and validly existing under the laws of India and have all the requisite corporate power, authority and necessary licenses to carry on its business and to enter into perform its obligations under this agreement and other related documents to which they are or will become a party.
- 18.2 The parties have the power to enter into and perform transactions contemplated by this agreement and its other related documents and the parties have taken all necessary corporate action to authorize the execution and delivery of this agreement and other related documents to which they are or will become a party. Additionally, the obligations of the parties there under constitute legal, valid and binding obligations, enforced in accordance with their terms.
- 18.3 They enter in to and performance of this agreement shall not violate any judgment, law or any other related document applicable to the parties.
- 18.4 Neither this agreement nor any other related document shall contain any untrue statement of a material fact or omit to state a material fact.
- 18.5 Bothe the parties are not party to any agreement, instrument, charter or other corporate restriction which individually or in aggregate might have a material adverse effect on this agreement.
- 18.6 None of the party to this agreement has occurred and is continuing or will occur any event of default as a result of the execution or performance of this agreement or any other related document to which it will become a party.
- 18.7 There are no actions suits or proceedings (including arbitration proceedings) pending with respect to the business of both the parties or any transaction contemplated thereby or affecting any clearance or which could have a material adverse effect on

this agreement.

19. Restrictions on “Transfer of agreement”

CPE vendor shall not assign or transfer its right in any manner whatsoever under this agreement to a third party or enter into any agreement for sub contracting and / or partnership relating to any subject matter of the agreement to any third party either in whole or in any part i.e., no sub-contracting / partnership / third party interest shall be created except with written consent of BSNL.

20. Severability:

Should TRAI / DoT declare any part of this agreement unenforceable through direction / order / regulation or if terms of license of BSNL are changed through any amendment or order of the Government, the parties will cooperate and take all appropriate steps to amend, modify or alter this agreement. This agreement shall be binding upon all respective successors of the parties.

21. BSNL reserves the right to suspend the operation of this agreement, at any time, due to change in its own license conditions or upon directions from the competent government authorities / Courts. In such a situation, BSNL shall not be responsible for any damage or loss caused or arising out of aforesaid action.

22. Compliance of laws:

BSNL and CPE vendor shall perform their duties in strict compliance with all applicable laws in India along with rules and regulations of the duly constituted Govt. authorities in India and shall obtain all licenses, restrictions or other approval, if any, required by laws in India in connection with the services to be rendered hereunder.

23. Further, service provided to the customers shall be subject to Indian Telegraph Act 1885, TRAI directions and tariff circulars issued by BSNL Corporate Office.

24. Indemnification:

CPE vendor agrees to protect, defend, indemnify and hold harmless BSNL and its employees, officers, directors, agents or representatives from and against any and all liabilities, damages, fines, penalties and costs (including legal costs and disbursements) arising from or relating to:

- (a) Any breach of any statute, regulation, direction, orders or standards from any governmental body, agency, telecommunications operator or regulator applicable to such party; “or”
- (b) Any breach of the terms and conditions in this agreement by the CPE vendor.

25. Relationship:

Each party understands that it is an independently owned business entity and this agreement does not make it, its employees, associates or agents as employees, agents or legal representatives of the other party for any purpose whatsoever. Neither party has express or implied right or authority to assume or to undertake any obligation in respect of or on behalf of or in the name of the other party or to bind the other party in any manner. In case, any party, its employees, associates or agents hold out as employees, agents, or legal representatives of the other party, the former party shall forthwith upon demand make good any / all loss, cost, damage including consequential loss, suffered by the other party on this account.

26. COURT JURISDICTION:

This agreement is subject to jurisdiction of Court at Delhi only.

27. ARBITRATION:

27.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BSNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BSNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BSNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

27.2 The arbitrator may from time to time with the consent of both the parties enlarge the time frame for making and publishing the award. Subject to the aforesaid, Arbitration and Conciliation Act, 1996 and the rules made there under, any modification thereof for the time being in force shall be deemed to apply to the arbitration proceeding under this clause.

27.3 The venue of the arbitration proceeding shall be the office of the CMD, BSNL, New Delhi or such other places as the arbitrator may decide.

IN WITNESS WHEREOF the Parties here so have caused this agreement to be duly executed on the date above written.

For BSNL _____

Witness

For CPE vendor _____

Witness