

Bharat Sanchar Nigam Limited

(A Government Enterprises)

Policy on provision of Data based content services through OTT / content Partners on non-exclusive basis

No VAS-11/OTT/Content partners/2018

Dated: 9th Aug 2018

BSNL is currently providing the GSM/PSTN/CDMA services across the nation except Delhi and Mumbai and has a GSM/CDMA subscriber base of approx. 110 Millions Prepaid and Postpaid and 18 Millions PSTN subscriber. At present BSNL has 25 Million mobile data users and 5 Mn landline broadband customers of different tariff plans.

The objective is to deliver quality content and enhance the data consumption of BSNL considering the tough competitive conditions of market. As various efforts have been made to increase the data consumption such as creation of Special tariff voucher (STV) so as to align with current competition. It has been observed that the delivery of premium content needs to be delivered with such STV so that BSNL customers can get best experience of BSNL data services since the other operators are offering to their customers and fetching good revenue. In view of this a need to create a policy where in branded content honors may sign agreement with BSNL and association with such big brand, BSNL may earn high revenue.

Proposals are invited from interested and eligible companies for providing DATA based Content / service as Value Added Services on non-exclusive basis. The eligible companies can offer the services to BSNL's subscribers after entering into an agreement with BSNL for provision of OTT services. The objective is to increase revenue of BSNL, therefore the VASP shall deliver quality content (with valid IPR) for value addition in the services and profitability for both BSNL & VASP. As the content of such Branded companies would be well established in the market therefore would add value to the BSNL therefore would be unlikely to give any revenue commitment.

Salient points regarding eligibility conditions, documents required and major terms & conditions are given below:-

1. Eligibility Conditions:

- 1.1 The prospective VASP shall either be a company registered and incorporate in India under Companies Act, 1956/2013 or a Foreign company. In case prospective VASP is Foreign Company, it can participate either through its established place of business in India duly registered with the Registrar of Companies, Ministry of Corporate Affairs, Government of India or through its wholly owned subsidiary company registered and incorporate under companies act 1956/2013.
- 1.2 The company should have a minimum annual turnover (audited) of Rupees 1 Crore or equivalent during the last financial year in one of the following areas or any combination thereof,

- a) Telecom applications/ VAS or
- b) IT applications or
- c) Content provisioning or
- d) Content development or
- e) Content application development.

The turnover of parents / holding company may also be considered for deciding turnover criteria; the subsidiary company shall submit a declaration in this regard.

1.3 The period of non-exclusive agreement will be 27 months (3 months for installation of equipment & integration with BSNL network and 24 months for service).

1.4 The company will be required to submit a non-refundable connectivity fee of Rs.4.5 lakhs for all four zones (Rs.1.125 lakh per zone) plus applicable GST (SMS promotional resources of 10 TPS will be given in this cost) along with the proposal in the form of DD in favor of Accounts Officer (Cash), BSNL, New Delhi.

2. List of documents to be submitted as part of the proposal:

- 2.1 Copy of the Article of Association & Memorandum of Association.
- 2.2 List of Directors including their names(s) and address (es) alongwith contact telephone numbers, DIN of each director & CIN of the company.
- 2.3 Certified True copy of Board's/ Management's resolution in favor of authorized signatory.
- 2.4 Specimen signature of the authorized official duly attested by Company's/authorized signatory's Banker.
- 2.5 Latest audited Annual Report of the company, in case printed copy is not available then copy of the same duly certified by the Company Secretary/ Director/ Managing Director of the company.
- 2.6 Turnover certificate from the company's Auditors/ CA mentioning the field of turnover as required under the eligibility conditions.
- 2.7 Non-refundable Empanelment fees in the form of DD in the name of AO (Cash) BSNL New Delhi, required as per eligibility conditions.
- 2.8 Non-Disclosure Undertaking (NDU), duly notarized on non judicial stamp paper of Rs.50/- (NDA format enclosed).
- 2.9 Details of Contents/ services, including price points, which the company wants to provide on BSNL's network.
- 2.10 Contact details i.e. Name, mail id, phone no., mobile no., fax no. of a responsible person for liaising in this matter.
- 2.11 All necessary documents are to be submitted by Foreign VASP, as relevant to conditions mentioned in para 1.1.

Draft agreement, containing the complete commercial, financial and technical conditions to be signed for providing the OTT services shall be forwarded to the eligible companies only after evaluating the proposal containing the above documents in full after finalization of the list of services & their respective price points.

3. General Terms and Conditions of the Agreement:

3.1 BSNL's Cellular Mobile Operations are divided into four Zones viz. East, West, North and South, comprising of the Licensed Service Areas as defined below.

S. N.	Zone	Licensed service areas
1.	East	Assam , Bihar including Jharkhand , Kolkata Metro ,Orissa, West Bengal including A&N, North East (NE-I including NE-II)
2.	West	Gujarat, Maharashtra, Madhya Pradesh including Chhattisgarh
3.	North	Haryana, Himachal Pradesh, , Jammu & Kashmir ,Punjab, Rajasthan, UP (East), UP (West) including Uttarakhand
4.	South	Andhra Pradesh including Telangana, Karnataka, Kerala, Tamil Nadu including Chennai

3.2 The required connectivity to the concerned network elements of BSNL will be provided by BSNL.

3.3 The VASP shall have to enable its platform, such that it can allow the CVPS compatibility with its platform along with charging of subscribers accordingly. VASP platform shall have capability of STV bundling which may arise from time to time with BSNL data services and associated cost levied in the form of retailer's cost or otherwise as per terms of BSNL.

3.4 Revenue share is as 40:60 between BSNL & VASP, Which can be reviewed from time to time.

3.5 The partner may be allowed to deliver the content (audio /video) free of cost to the subscribers of BSNL, where partner may compensate cost of content through legitimate advertisement who may sponsor the free content to BSNL subscriber.

3.6 The BSNL customers may request for provision services via SMS/USSD/WAP without any charge, the customers shall be allowed to request for services on toll free number, hence no charges on MO and the charging it to be done on MT only when explicit consent received.

3.7 The VASP may be allowed to bundle its services with various product of BSNL depending upon their utility and customer requirement. The services can be provisioned by BSNL retail franchisee chain also wherein the necessary retail / franchisee commission shall be borne by VASP as per prevailing rates of BSNL. The VASP will be given the revenue share on mutually agreed condition. In no case the revenue share will be more than 60%.

3.8 The VASP shall commit the revenue commitment of Rs 1Cr in a year (annually) which shall be backed by Bank Guarantee of Rs.15 Lakhs on yearly basis.

- 3.9 The period of non-exclusive initial agreement shall be 27 months (3 months for installation of equipment & integration with BSNL network and 24 months for service) & renewal from time to time as per extant guideline. Renewal or extension of the agreement will be based on the performance of the VAS Provider and as per prevailing policy of BSNL at that time. As per current policy, the extension for one year can be considered provided the performance of the VAS provider is satisfactory. The revenue commitment and Corresponding Bank Guarantee shall be applicable on annual basis.
- 3.10 Payment shall be made on monthly basis to the company on receipt of the bill. The company shall submit the State/UT-wise bill (in compliance of GST) to the Zonal In-charge, who may be DET (VAS) or any other officer nominated by GM (CMTS), Nodal Centre. The Zonal In-charge shall verify the bill within 7 days and CMTS-Nodal Centre shall release the cost of content/services payment to the company within the next 15 days. The payment of charges shall be made to the company after deduction of TDS amount as per provisions of the Income Tax Act 1961.
- 3.11 BSNL reserves the right to provide the DATA based OTT service as Value Added Services on its own or to enter into Agreement with other service providers/companies for providing similar services in its licensed Cellular Mobile Telephony service area(s) from time to time in future without any restriction on number of VAS providers.
- 3.12 Company shall be totally bound and obliged to comply with all applicable norms and directions issued from time to time by the Regulator (TRAI) or the Licensor (DOT) or Govt of India.
4. **Integration of platform:-** VASP shall integrate its system with BSNL's VAS Provisioning system for transferring customer VAS Profile database on daily basis and also for enabling near on-line execution of activation, renewal or de-activation of VAS through VAS Provisioning system based on request/option received from the customer.
5. **Payment gateway:-** Online payment gateway (net banking/credit card/debit card / M-Wallet) of BSNL shall initially take the cost of the services from customers and thereafter revenue share will be share with VASP as per agreed on financials.
6. **Operator agnostic:-** The system of the VASP should be Interoperable among various systems of BSNL wherein VASP has to enable its all network element with BSNL systems in seamless manner.
7. **Marketing of Services:** Marketing, advertising and promotion of agreed VAS besides sourcing the content for the services will be borne by the company at its own cost. BSNL may market, if needed, the services provisioned through its Bundled products.
8. **Delivery of Service:** The company shall ensure provisioning of commercial services in the agreed service area within 30 days of provision of requisite connectivity by BSNL.
9. **Indemnification:** VASP shall agree 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;
- b) Any breach of the terms and conditions in the agreement by VASP;
- c) Any claim of any infringement of any intellectual property right or any other right of any third party or person or of law by VASP;
- d) Any claim made by any third party or person arising out of the use of the services and arising in connection with interruptions or degradations of service caused solely VASP.
- e) Any liability arising out of non compliance of Laws, Directives, guidelines etc. of the Land where VASP is located.

This clause shall survive the termination or expiry of this Agreement.

10. Directions / Guidelines from Licensor/regulator or Any Govt. statutory body:

- 10.1 In accordance with DOT guidelines, any directions of DOT thereunder, BSNL shall have the right to direct, to warn, to penalize the company or terminate the Agreement after considering any report of conduct or antecedents detrimental to the security of the nation. The decision of BSNL in this regard in accordance with such DOT directions shall be final and binding and in any case the company shall bear all liabilities in the matter and keep BSNL informed for all claims, cost, charges or damages in this respect.
- 10.2 In accordance of DOT guidelines, the company shall have provision for lawful interception for VAS which are being provided to BSNL subscribers using Voice bearer/data/SMS/USSD/PTT etc. Further, any new Value Added Services should be added/ commissioned in the network only after having confirmed the provisioning of appropriate monitoring facilities for the same.
- 10.3 In accordance with TRAI directions, no forced activations of VAS is to be done by any VASP. In case VASP is found indulging in VAS forced activations, BSNL reserves the right to take action as per BSNL prevailing policy, amended from time to time.

11. Submission of Proposal

The proposal, complete in all respect, addressed to Dy. Manager (VAS-III), Second Floor, Bharat Sanchar Bhawan, HC Mathur Lane, Janpath, New Delhi-110001, can be submitted on any working day. BSNL will scrutinize such proposal and will enter into an agreement within 15 days from the date of finalization of the list of services & their respective price points else will communicate deficiencies.

FORMAT OF THE NON-DISCLOSURE UNDERTAKING

(To be submitted duly notarized on non-judicial stamp paper of Rs.50/- only)

M/s _____, a company registered under Companies Act 1956, having its registered office at _____ acting through Shri _____, the authorized signatory (which expression shall, unless repugnant to the context, include its successors in business, administrators, liquidators and assigns or legal representatives) hereby declare and undertake that we will not divulge any part of this agreement either through oral or written communication or through any mode to anyone.

We further undertake and declare that we shall be responsible for safe custody of the papers/documents including the Agreement proposed to be entered into between M/s BHARAT SANCHAR NIGAM LIMITED and ourselves. We shall ensure all necessary steps to safeguard the privacy and confidentiality of the Agreement and shall use our best endeavours to secure that no person acting on our behalf or ourselves divulge or disclose or use any part of the Agreement without the written consent of M/s BHARAT SANCHAR NIGAM LIMITED.

We further declare and undertake that if we declare not to sign the above Agreement with M/s BHARAT SANCHAR NIGAM LIMITED, we shall return back the copy of the Agreement (in original) back to GM (VAS) acting on behalf of M/s BHARAT SANCHAR NIGAM LIMITED within one month without preserving any copy of the same, in any form, whatsoever.

We further declare and undertake to indemnify M/s BHARAT SANCHAR NIGAM LIMITED for any loss or damage(s) caused to it by virtue of any default from our side in compliance to the aforesaid conditions.

Signed on behalf of M/s _____ by Shri _____
(Name and Designation) authorized signatory.