

Bharat Sanchar Nigam Limited
(A Government Enterprises)

**Opportunity to become VAS Provider for providing OTA based VAS to
Wireless Subscribers of BSNL on non-exclusive basis**

No. VAS-18/Policy-OTA-2013

Dated: 25th June, 2013

Proposals are invited from interested and eligible companies (henceforth referred to as Value Added Service Provider or VASP) **for providing OTA based Value Added Services using SMS/Data bearers on non-exclusive and cost of content/services (revenue sharing) basis.** The eligible companies can offer the services to BSNL's GSM based 2G and 3G mobile subscribers after entering into an agreement with BSNL.

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.

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

1. Eligibility Conditions:

- 1.1 The company should be registered & incorporated under the Indian Companies Act, 1956.
- 1.2 The company should have a minimum annual turnover of Rupees 1 Crore during the last financial year or in current financial year at the time of submitting of proposal 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 company will have to submit a Turnover certificate from the company's Auditors/ CA to this effect.

- 1.3 The period of non-exclusive agreement will be 14 months (2 months for installation of equipment & integration with BSNL network and 12 months for service).

- 1.4 The company will be required to submit a non-refundable empanelment fee of Rs.1.125 lakhs per zone and Rs. 4.5 Lakh for all four zones along with the proposal in the form of DD in favor of Accounts Officer (Cash), BSNL, New Delhi.
- 1.5 The company will have to give a commitment to generate topline revenue of Rs.40 Lakh in 1 Zone, Rs.70 Lakh in 2 Zones and Rs.1 Crore in 3/all Zones during the tenure of agreement and back it up with the Performance Bank Guarantee (PBG) of 15% of committed amount (i.e. Rs. 6 Lakh for 1 Zone, Rs.10.5 Lakh for 2 Zones and Rs.15 Lakh for 3/all Zones).
- 1.6 The Bank Guarantee is to be provided within 15 days of signing of the agreement. The Bank Guarantee should be valid for 20 months and will be forfeited in case of not generating the committed revenue in agreement period.
- 1.7 The company should not have substantial equity stake (10% or more), or vice versa, in and of any Basic services/ Cellular services/ Internet services/ Unified Access services/ National Long Distance services operating company (ies) in India or their promoters. Even at a later date, if there is a substantial change in the ownership structure of the company leading to the above mentioned types of companies/promoters getting more than 10% stake, then BSNL reserves the right to terminate the contract.
- 1.8 The company should not be a licensed service provider to provide Basic services/ Cellular Services/ Internet services/ Unified access services/ NLD services anywhere in India.

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/Authorized Signatory 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 Revenue generation commitment, required as per eligibility conditions and an undertaking clearly committing to submit the Bank Guarantee within 15 days of signing of the agreement.
- 2.9 Undertakings, in support of company not having equity stake more than 10% and not being a Licensed Service Provider as required in eligibility conditions in the enclosed format.
- 2.10 Non Disclosure Undertaking (NDU), duly notarized on non judicial stamp paper of Rs.50/- (NDA format enclosed).
- 2.11 Details of OTA based VAS using SMS/Data bearer services, including price points, which the company wants to provide on BSNL's network.
- 2.12 Contact details i.e. Name, mail id, phone no., mobile no., fax no. of a responsible person for liaising in this matter.

Draft agreement, containing the complete commercial, financial and technical conditions to be signed for providing the OTA Based VAS using SMS/Data bearer, 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. Scope of Work;

- 3.1 The timely provision of services, regular & The timely provision of services, regular & timely update of content and ready availability of requisite content from its legal source along with its due copyright/ IPR, shall be the essence of this Agreement and shall form the central factor of this Agreement.
- 3.2 The broad list of activities agreed to be undertaken by VASP would include
 - i) Operation & Maintenance: **VAS Provider** shall be responsible for Operation & Maintenance of the requisite application/ content server(s) on 24X7X365 basis by a dedicated team. It shall include the regular monitoring & updation of the content/ services based on market scenario/ trends, as per customers' tastes & preferences and/ or as desired by BSNL.
 - ii) Content arrangement: **VAS Provider** shall be responsible for arranging the required content along with the copyrights/ IPRs at its own costs.
 - iii) Billing information: The necessary logs/Call Detailed Records (CDRs) in support of delivery of content/services through the service to facilitate differential charging shall be provided to BSNL, as per format & frequency requested for by it, by VASP.
 - iv) Hosting infrastructure: VASp shall be responsible for arranging the hosting infrastructure for the requisite content/applications at its own costs.
 - v) Miscellaneous: Any other activity(ies) necessary for the successful implementation/provisioning of services.

4. General Terms and Conditions of the Agreement:

4.1 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, Karnataka, Kerala, Tamil Nadu including Chennai

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

4.3 The current standard cost of content/service (revenue share) to VAS provider will be as mentioned below:

- a) MO-SMS: 20% (End User Charge Rs.3/-)
- b) MT-SMS & SMS Subscription: 30% (End user price(EUP) to be decided in mutual consultation)

4.4 Payment shall be made on monthly basis to the company on receipt of the bill. The company shall submit the Licensed Area-wise bill to the Zonal In-charge in South Zone, 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.

4.5 No cost of content/services (revenue share) shall be payable by BSNL to **VAS provider** if its zonal monthly topline revenue remains less than Rs. 50,000/-. The cost of content/services to **VAS provider** shall be on pro-rata basis in case of any period less than one calendar month.

4.6 The agreement with the eligible company will be signed for 14 months (out of which, 2 months may be for installation, integration of the equipment/ system with BSNL network and starting of the services).

4.7 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 i.e.

- i) Generates minimum monthly topline revenue of Rs.50,000/- for a period of atleast six months in a year. Else, the company will have to deposit proportionate amount (in respect of failure zones) of non-refundable Empanelment fee of Rs. 1.125 Lac per zone.
 - ii) Overall revenue generated by the company during the tenure of agreement is Rs.40 lakh in 1 Zone, Rs.70 lakh in 2 Zones and Rs.1 Crore in 3/all Zones. In case of non-achievement of this target, the PBG will be forfeited and the company will have to submit fresh PBG for renewal. Else company will be considered for extension without the requirement of submitting fresh PBG.
- 4.8 BSNL reserves the right to provide the OTA based Value Added Services using SMS/Data bearer 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.
- 4.9 VASP 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.
- 4.10 VASP will query and get response in line with the standing instruction from the Regulator and Licensor and as modified from time to time should be obtained.

5. 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.

6. Marketing of Services:

Marketing, advertising and promotion of agreed VAS besides sourcing the content for the services will be done by the company at its own cost. The Company may get pamphlets or brochures designed, approved, printed at least upto 2% of the BSNL GSM subscriber base in the zone and delivered to DGM (Sales & Marketing) office in the Circle or any other predefined single point of delivery in the Circle, during first 6 months of the agreement and again during next 12 months. BSNL will facilitate distribution of these pamphlets/ brochures through its Franchisees & Points of Sales (POS) to those customers who will be coming to POS for recharge or buying some other BSNL products/ services.

7. 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) The VASP shall comply with all the Laws, Directives, guidelines etc. of the Land where VASP is located and shall be fully responsible for the same. The VASP shall Indemnify BSNL for ant liability rising out of non compliance of the same.

8. Dispute Settlement:

- 8.1 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, New Delhi.

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, BSNL 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, BSNL 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 BSNL 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 BSNL 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 by his predecessors.

- 8.2 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.
- 8.3 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.

9. Directions/guidelines from Licensor/Regulator or any Government statutory body:

- 9.1 In accordance with clause 6.1A of DOT guidelines vide letter No 842-725/2005-VAS-66 dated 31st July, 2008 and 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.
- 9.2 In accordance of DOT guidelines vide letter No 800-62/2008-ASP II/2 dated 14th May, 2008 the company shall provision for lawful interception for VAS which are being provided to BSNL subscribers using Voice bearer/GPRS/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.
- 9.3 In accordance with TRAI Directions dated 04.07.2011, no forced activation 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's prevailing policy, amended from time to time.

10. Quality of Service:

- 10.1 The Company shall ensure the Quality of Service (QoS) as prescribed by TRAI (Regulator) from time-to-time. The Company shall operate and maintain its Network conforming to Quality of Service standards to be mutually agreed subject to such other directions as the competent authority may give from time to time. The Company shall adhere to such QoS standards and provide timely information as required therein.
- 10.2 In the process of operating the Services, the company shall be responsible for
- a) Installation, Operation & proper maintenance of the equipment.
 - b) Maintaining the performance and quality of service standards.
 - c) Response time to any query/ de-activation command from VAS Provisioning system shall not exceed 120 seconds.
 - d) Maintaining the MTTR (Mean Time to restore) within the specified limits of the quality of service as given below in respect of normal failures excluding catastrophes:
 - i) 90% of faults reported by subscribers should be rectified within 24hours and 99% within three Calendar days.
 - ii) The company will keep a record of number of faults and rectification reports in respect of the service, which will be produced before BSNL as and when and in whatever form desired.

e) Rectification of fault in the company owned links /equipment will have to be ensured within 24 hours.

10.3 The company shall be responsive to the complaints lodged by BSNL. He shall rectify the anomalies within the MTTR specified above and maintain the history sheets for each installation, statistics & analysis on the overall maintenance status and the same shall be made available to BSNL at desired intervals in prescribed format/ Performa.

11. Submission of Proposal:

Interested and eligible companies may submit their proposals alongwith all the requisite documents as per para 2 above, on any working day to:- **Deputy Manager (VAS-III), Bharat Sanchar Nigam Limited, Second Floor, Bharat Sanchar Bhawan, HC Mathur Lane, Janpath, New Delhi 110001.**

Note: This policy is open ended and any company which is interested and meets the eligibility conditions may submit its proposal on any working day. BSNL would however reserve the right of periodic review of the entire policy or any elements thereof based on its business needs.

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 endeavors 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.

UNDERTAKING

We, M/s _____, a company registered under Companies Act 1956, having registered office at _____ do hereby undertake and declare that we do not have substantial equity stake (10% or more) in & of any

Basic Services
Cellular Services
Internet Services
Unified Access Services
National Long Distance Services

operating company(ies) in India.

Signed on behalf of M/s _____ by Shri _____ (Name & Designation) authorized signatory (with company stamp).

UNDERTAKING

We, M/s _____, a company registered under Companies Act 1956, having registered office at _____ do hereby undertake and declare that we are not a licensed service provider to provide Basic services/Cellular services/Internet services/Unified Access services/ NLD services anywhere in India.

Signed on behalf of M/s _____ by Shri _____ (Name & Designation) authorized signatory (with company stamp).