

Policy for Empanelment of partners for providing outgoing International A2P SMS service

BSNL



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1. Background/Introduction

Bharat Sanchar Nigam Limited (BSNL), a fully Government owned company, is currently providing Cellular Mobile service in 20 Licensed Service Areas in India (i.e. across the nation except Delhi & Mumbai Metro City Service Areas) and has a base of around 117.01 Million GSM based 2G/3G/4G subscribers.

The purpose of this policy is to empanel International SMS carriers for carrying and ensuring successful termination of International A2P SMS originated by its GSM based 2G/3G/4G network.

- A set of technical and financial parameters are being defined through the current policy, which the prospective A2P service provider / company, desirous of providing A2P International SMS services to BSNL, would have to conform to, in order to become eligible.
- By becoming eligible, the Service provider / company would be able to quote for providing International A2P services to BSNL.
- In the event of being declared L1 (Bidder Quoting lowest rate for that country/ code), country wise/code wise, BSNL shall provide its Originating International A2P SMS traffic for that designated country / code and the service provider / company will carry and successfully terminate the International A2P SMS in that designated country / code.

For quoting international A2P SMS termination rates (country wise/code wise), by eligible empanelled company, a dynamic bidding portal has been developed by BSNL. Once, a Service provider / company qualifies the empanelment procedure as defined in the current policy, BSNL shall provide a Commercial Launch letter (CLL) along with unique login details of BSNL's dynamic bidding portal to the empanelled service provider / company. All such empanelled companies will use dynamic bidding portal and would be allowed to update country-wise international A2P SMS rates on bidding portal during the next bidding period/window. The selection of L-1 bidder for a particular country will be based on evaluation criterion given at clause no. 4.3 below.

2. DETAILS OF PRESENT NETWORKS OF BSNL: -

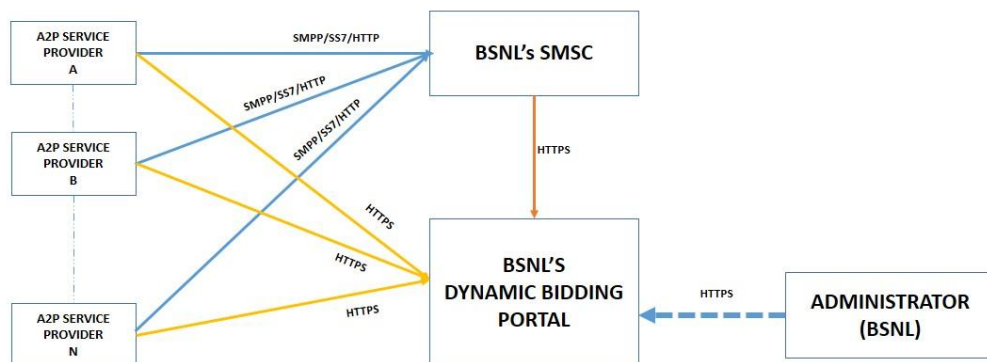
The 20 Licensed Service Areas (LSAs) of BSNL have been grouped together into 4 Zones namely North, South, East and West. Presently there are total four SMSCs of ZTE make working in these zones for GSM based 2G/3G/4G services.

As BSNL network grows there may be changes in the MAKE, locations, versions, types, number of SMSCs, etc. The Service provider / company shall have to make necessary changes at his cost if required, to cater to the said changes / augmentation and provide seamless service. The Service provider / company would have to make the said changes within two weeks of written intimation by mail /letter. The service provider / company shall have the provisions for offering the connectivity via SS7 signaling / SMPP / HTTP at the discretion of BSNL.

3. PROPOSED CONNECTIVITY WITH THE SERVICE PROVIDER / COMPANY

The connectivity of the service provider / company’s platform to BSNL network could either be using SS7 signaling or via SMPP or HTTP link using public Internet. BSNL reserves the right to choose the mode of connectivity between service provider / company and BSNL.

Network Diagram
International outgoing A2P SMS service



4. SCOPE OF WORK

4.1 The work by the Service provider / company shall comprise the following activities, which are indicative but not exhaustive:

- (i) The connectivity with BSNL will be either via SS7 signaling or via SMPP or via HTTP over public internet. BSNL reserves the right to choose the mode of connectivity.
- (ii) For connectivity via SS7, the service provider / company will have to interconnect either with international SS7 signaling provider of BSNL, which is M/s TCL or will have to interconnect directly with SS7 signaling network of BSNL. BSNL uses UT STARCOM MAKE STP nodes for its SS7 signaling cloud at present. The initial bandwidth requirement of the connectivity as well as its upgradation will be as per BSNL requirements from time to time

taking into account the traffic. The same shall have to be provided by the service provider / company at its own cost.

- (iii) For connectivity via SMPP or HTTP, each BSNL SMSC will have to be provided separate connectivity over public Internet. The service provider / company will arrange for connectivity of adequate bandwidth, as informed by BSNL, to public Internet at its own cost. The connectivity will be SMPP 3.3 or higher version to be upgraded as per BSNL network requirements from time to time. The bandwidth of connectivity of the service provider / company to public Internet will be as per BSNL requirements from time to time and the same will be at the cost of the service provider / company.
- (iv) Delivery of A2P SMS generated by applications connected to GSM based 2G/3G/4G cellular mobile network or other SMS routed via GSM network of BSNL or any other Radio access technology that BSNL introduces in future to subscribers of foreign networks. Foreign networks would mean networks providing Telecom services outside India and would include both GSM as well as non GSM networks.
- (v) Service provider / company should clearly specify whether the offered solution delivers SMS to the destination foreign subscriber or to the destination foreign network. (In case of delivery to the foreign network, the destination foreign network stores the SMS and would subsequently deliver the SMS to its respective subscriber). **The Service provider / company should provide details for the same as per format in Annexure - I.**
- (vi) Provision of centralized, scalable, secure, reliable and cost-effective solution including required hardware and software etc. for routing SMS traffic between BSNL and foreign operators.
- (vii) Establish and test connectivity with BSNL and do necessary configuration for routing SMS traffic between BSNL and foreign operators and for the entire scope of work mentioned herein. Work including installation, testing, commissioning, integration, acceptance tests, etc in the shortest possible time frame.
- (viii) As and when any new network is added by the service provider / company, the service provider / company will intimate BSNL about the same.
- (ix) Service provider / company will facilitate direct testing between BSNL and each foreign network to which the SMS is routed by BSNL through the service provider / company for troubleshooting as and when required by BSNL. The said testing will be in addition also be at least once a quarter for routine testing. The said testing will be individually with each SMSC of BSNL.
- (x) The service provider / company will comply with the relevant GSMA PRD documents and GSMA guidelines as amended from time to time and would provide all standard services to be provided by a SMS service provider / company as per GSMA.

- (xi) Service provider / company will provide 24 x 7 support round the year in English language to BSNL for all the services provided by the service provider / company. Service provider / company will provide a 24 X 7 round the year online accessible NOC (Network operation centre). For each monitoring event as mutually decided, a threshold will be agreed. As soon as the threshold is crossed or earlier, the service provider / company will arrange for immediate rectification. In case BSNL reports a fault / concern, the service provider / company will open a trouble ticket and address the same at the earliest. Service provider / company will also provide facility to BSNL for monitoring of status of the trouble tickets on 24 x 7 basis, online via Internet with password protected access.
- (xii) Service provider / company will provide timely and periodic reports to BSNL on network wise traffic, congestion, QoS, etc. BSNL shall specify frequency of the reports to be provided by the Service provider / company. BSNL may ask for other reports in the formats as required by BSNL. The same would be provided by the service provider / company to the extent possible.
- (xiii) Service provider / company shall have to provide status of individual SMS routed via the service provider / company with time stamp of each activity for delivery of the said SMS to BSNL within 24 hours of such request. Access to the generic NMS / or suitable means would normally be provided via Internet through password-protected access and the same would be available on 24 X 7 basis round the year.
- (xiv) Service provider / company will have adequate security features in place to prevent spamming / unsolicited messages, any other kind of security threats, etc. In case of violation, BSNL reserves the right to suspend SMS service from the service provider / company or take any other action as deemed fit. Service provider / company will indemnify BSNL against any claims arising out of the same.
- (xv) The Service provider / company shall be totally bound and obliged to comply with all the applicable norms and directions issued from time to time by the Regulator (Telecom Regulatory Authority of India), or the Licensor (Department of Telecommunications, Govt. of India) or Govt. of India and any new condition / direction / amendment / stipulation which may be brought in force by the regulator / Licensor / Govt. of India subsequent to the execution of the contract. All such condition / direction / amendment / stipulation should be deemed to be automatically included in the contract. .
- (xvi) The Service provider / company will also provide continuous support to BSNL enabling BSNL to comply with the Indian laws, directives, guidelines, etc.
- (xvii) The Service provider / company shall ensure protection of privacy of communication and ensure that unauthorized interception of messages does not take place.

- (xviii) The Service provider / company shall maintain all relevant commercial records with regard to the communications exchanged on the network. Such records shall be archived for at least one year for scrutiny by BSNL / Govt. of India for security reasons and may be destroyed thereafter unless directed otherwise by the BSNL / Govt. of India.
- (xix) The service provider / company shall extend the latest version(s) of the above services to BSNL without any discrimination with other CMSPs to whom it may be providing similar services. Further, it shall ensure the evolution of the services as per the GSMA guidelines / market scenario.
- (xx) CLI of the source of SMS will be delivered to the recipient of SMS for all SMS routed by the service provider / company. This will however not apply to cases wherein CLIR facility has been specifically granted by BSNL to its subscriber. However, in such cases, the service provider / company will facilitate BSNL / designated Indian security agencies in knowing the source network for such SMS, if required on case to case basis. The service provider / company will also provide all possible help to BSNL / designated Indian security agencies in acquiring any other information as may be required.
- (xxi) The service provider / company is also required to separately provide list / details of delivery report, and all other details as may be required by BSNL along with the Invoice, for reconciliation and financial settlement.
- (xxii) The Service provider / company is also to do the requisite format conversions etc. if required, for delivery of SMS to the B party "called party" belonging to different types of technology networks. This also includes format conversions etc. as may be required by the destination SMSC / network.
- (xxiii) The Service provider / company should have a mechanism in place to deliver the MO SMS of BSNL to the respective foreign network in Non-MNP country. In respect of Countries following Number portability, Service provider / company will have the facility to dip into the respective number portability data bases and ascertain as to which operator the foreign subscriber currently belongs to and send the SMS to the called party accordingly.
- (xxiv) Service provider / company will ensure that any SMS with "A" party address having prefix as + 91 will **not** be delivered to BSNL SMSCs. (i.e. SMS originated with sender MSISDN as +91....and meant for BSNL subscribers (MT SMS for BSNL subscribers) will **not** be delivered to BSNL SMSCs for delivery to subscribers).
- (xxv) India has adopted Full Mobile Number Portability regime. Accordingly the service provider / company shall have all process/procedures in place, to support the same, in accordance with the DoT/TRAI guidelines (refer DoT website www.dot.gov.in & TRAI website www.trai.gov.in) on the issue for necessary compliance for both the Incoming & Outgoing SMS's i.e. MO & MT cases whatever applicable.
- (xxvi) The service provider / company shall have to comply with the directions issued by the Regulator on blocking of bulk International SMS issued vide its

direction dated 20-01-2012 (refer TRAI website www.trai.gov.in) and modified from time to time.

(xxvii) **Miscellaneous:** Any other activity(ies) like configurational changes etc. necessary for the smooth implementation of the Project and successful execution of entire scope of work.

4.2 Mechanism for dynamically updating international A2P SMS Rates on Quarterly basis and Evaluation process

- (i) For updating international A2P SMS termination rates by selected bidders, a dynamic bidding portal has been developed by BSNL.
- (ii) All empanelled Service providers / companies will be provided with login-id & password of dynamic bidding portal and bidders would be allowed to quote/bid country-wise / code wise for International A2P SMS rates on bidding portal during the bidding period/window.
- (iii) The selection of L-1 bidder for a particular country will be based on evaluation criterion given at clause no. 4.3 below.
- (iv) Bidding window for bidders will be on Quarterly basis. Tentative bidding period/window is as given below:

Sr. No	Quarter period (start -end)	Tentative Bidding window*
1	01-07-2020 to 30-09-2020	20 th to 22 nd days of the preceding month of Quarter period in question.
2	01-10-2020 to 31-12-2020	
3	01-01-2021 to 31-03-2021	
4	01-04-2021 to 30-06-2021	

*Note: * In case of weekends/Public holiday the bidding window will be extended for next working days.*

- (v) The rate quoted by the Service provider / company for a country / code shall remain valid for the next entire Quarter.

4.3 Dynamic bidding procedure and Evaluation Criteria for selecting L1 bidder (country-wise) on quarterly basis:

Step-I -> Bidder will login in portal. Then click on “Edit bid rate” link. If current date is within the bid entry dates mentioned in schedule matrix then bidder can edit rates. In the **Edit bid rate** form, bidder’s previous cycle rates are available in ‘previous cycle rate’ as well as ‘new cycle rate’ column.

- a) If the bidder wants to bid for the particular country then bidder should press “edit” link, enter the new rate and click “save” link. For first cycle, some default rates would be available against each country.
- b) If the bidder wants to bid with old rates, then bidder should press “edit” link and then “save” link. If bidder doesn’t want to bid for any particular country, then bidder should enter “NA” in current cycle rate column.

- c) If the bidder does not perform “Step-I” for particular country/all countries then system automatically has to take its old rates as a new rate and will be considered to decide L1 for that country for the present cycle.
- d) In this way all bidders will be able to modify their bid for country for the coming quarter, during the bidding window as defined above.

Step-II - → On the bid opening date, BSNL will decide L1 bidder for each country/code based on following criteria.

- a. If all the bidders have quoted different rates for a particular country / code, then the lowest rate quoting bidder will be decided L1 for that country / code.
- b. If two or more bidders have quoted same rate for a particular country / code and that quoted rate is the lowest, then out of these same lowest- rate- quoting bidders, the bidder who had quoted lower rate for that particular country / code in the previous bidding cycle, will be declared as L1 for that country / code. For the first bidding cycle, the bidder who has quoted more number of lower rates will be declared as L1 for that particular country / code. Furthermore, in case two or more bidders quote same number of lower rates, then criterion in (d) below will be followed.
- c. If two or more bidders have quoted same rate for a particular country / code and that quoted rate is the lowest and also that both bidders have either quoted same rate in the previous bidding cycle, then the bidder who has quoted more number of lower rates, when all the quoted country / code of last bidding cycle are taken into account is declared as L1 for that particular country / code.
- d. Further to above, if two or more bidders had quoted same number of lower rates, when all the quoted country / code of last bidding cycle are taken into account then, the bidder who is having lowest average rate for their L1 countries will be L1 for specific country.

Formula for calculating Average = (Sum of rates of L1 countries of the bidder/ Total number of L1 countries for the Bidder)

4.4 Roles:

BSNL’s Role

- a) BSNL shall have right to change the period of bidding window in case of any administrative reason/weekend/public holiday.
- b) BSNL shall run evaluation procedure on application after the bidding window and to generate bidder-wise L-1 Rate list.
- c) BSNL shall have a right to generate new password to bidders in case they forget.

Bidder’s Role:

- a) Bidders need to submit its Rates for a quarterly period during bidding window period only.

- b) If bidder fails to update their rates during bidding window period, old rates will continue to be applicable for bid evaluation in corresponding quarter.
- c) No special extension will be provided to any bidder.
- d) Country-wise L-1 bidder rates are available to all bidders. Bidder needs to be ready with competitive rates to update the same during bidding window.
- e) Bidders are allowed to submit its rate to any number of countries for any quarter and will be allowed to submit rates for new countries in next cycle.

5. Eligibility criteria for Selection for empanelment:

- 5.1 The bidder should be an established service provider / company for delivering International A2P SMS and should be providing same services to BSNL / other GSM Operator(s) continuously for minimum one year on the last date of submission of Proposal against this policy document.
- 5.2 The bidder shall have annual turnover of at least Rupees 1 Crore (Rupees one crore only) or its equivalent in foreign currency during each of the financial year 2018-19 and 2019-20. This should be supported by the audited annual report along with a certificate from the auditors of the bidder company.
- 5.3 The bidder should not be a Licensed Telecom Service provider / company to provide Basic Services/ Cellular Telephony Services/ Internet Services/ UASL/ NLD/ ILD Services anywhere in India.
- 5.4 The bidder should not have controlling equity stake, or vice versa, in and of any Basic Services/ Cellular Telephony Services/ Internet Services/ UASL/ NLD Services operating companies in India (except for MTNL) or their promoters.
- 5.5 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 controlling stake, then BSNL reserves the right to terminate the contract.
- 5.6 The bidder should not have been black-listed by central/ state governments/PSUs. An undertaking in this regard may be given along-with bid document.

6. Evaluation of the proposals for empanelment (Technical):

- 6.1 The proposals will initially be screened based on the eligibility criteria and submission of all the requisite documents as asked for in this policy.
- 6.2 List of the documents submitted in this policy should be mentioned clearly in the index so that BSNL is able to easily locate them.
- 6.3 The Companies may also be asked to give presentations in respect of the technical details/proposal.
- 6.4 Evaluation of the proposals will be purely on the basis of the eligibility criteria.

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

- 7.1 Copy of the Article of Association & Memorandum of Association.

- 7.2 List of Directors including their names(s) and address(es) along with contact telephone numbers, DIN of each director & CIN of the company.
- 7.3 Certified True copy of Board's/ Management's resolution in favor of authorized signatory.
- 7.4 Experience certificate from at least one of the GSM operators certifying that the Service Provider has been continuously providing satisfactory services for delivery of International A2P SMS as asked in this Policy for at least past one year period from the last date of submission of proposal for empanelment under this policy .
- 7.5 Specimen signature of the authorized official duly attested by Company's/authorized signatory's Banker.
- 7.6 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 / Authorized Signatory of the company.
- 7.7 Turnover certificate from the company's Auditors/ CA mentioning the field of turnover as required under the eligibility conditions.
- 7.8 NDA, duly notarized on non-judicial stamp paper of Rs.50/- (NDA format enclosed at Annexure-III).
- 7.9 Details of List of foreign networks with which the Service provider / company will arrange to and fro SMS traffic as per Annexure-I.
- 7.10 Contact details i.e. Name, email id, phone no., mobile no., fax no. of a responsible person for liaison in this matter.

After availability and checking of these documents, the case for empanelment of company will be submitted for necessary internal approvals in BSNL. After such approval, draft Agreement containing complete commercial, financial and technical conditions to be signed for providing services shall be forwarded to the eligible company. Company shall send back the signed document along with PBG as per the provision contained in Clause-8 below.

8. Performance Bank Guarantee (PBG)

- 8.1 The eligible company shall provide within 14 days from the offer letter, a performance Bank Guarantee for an amount Rs. 2 Lakhs (Two Lakhs only).
- 8.2 PBG (s) will be valid for 42 months. PBG (s) will be in the format as per Annexure-III.
- 8.3 If the Firms desires, Demand Draft (DD) payable as under for the full amount can also be paid in place of PBG, as Security Deposit (SD). However, it is clarified that SD carries no interest.
- 8.4 If the Firms desires, the full amount can also be transferred to BSNL Account through RTGS or NEFT in place of PBG, as Security Deposit (SD). However, it is clarified that SD carries no interest. Details of E-payment for BSNL are as under:-

Beneficiary Name: A.O. (Cash), Bharat Sanchar Nigam Ltd.

Name of Bank : Punjab National Bank

Bank Branch : ECE House, K. G. Marg, New Delhi 110001

IFSC Code: PUNB0112000

Bank A/c No : 1120002102306372

MICR Code : 110024043

8.5 BSNL has a right to review the PBG amount based on market conditions.

9. Agreement period:

BSNL reserves the right to empanel and sign agreement with eligible Service provider / company / companies for an initial term of **Three years**, which could later be renewed for a period of one year or more on mutually agreed basis.

If any partner doesn't want to continue service after three years (i.e. initial agreement period) then after receiving such request from the service provider / company, PBG will be returned back after due account/billing settlement.

10. Confirmation to start of commercial service.

After the submission of Signed Agreement and Performance Bank Guarantee (PBG), the Service provider / company / will get commercial launch letter (CLL) to start their services from next dynamic bidding cycle as per terms and conditions defined in Clause-5 (Scope of Work).

11. Quality of Service (QoS):

Service Provider / Company need to maintain quality of Service (QoS) as per following mandatory requirement:

- i) Maximum Time to Restore critical faults in 95% of the cases *
(A minimum of 04 Hrs is mandatory)
- ii) Maximum Time to Restore Major faults in 90% of the cases *
(A minimum of 16 Hrs is mandatory)
- iii) Maximum Time to Restore Minor faults in 90% of the cases *
(A minimum of 36 Hrs is mandatory)
- iv) Service Provider (SMSIP) system availability for BSNL*
(A minimum of 99.95% is mandatory)
- v) Maximum time for which SMS is stored for delivery to the destination MSISDN in case of delivery via SS7.
(A minimum of 48 Hrs is mandatory)
- vi) Timing and number of retries for sending SMS to the destination handset in case of delivery via SS7 (SS7 connectivity between XYZ and foreign operator).
(A minimum of 04 retries are mandatory)
- vii) Maximum time for which SMS is stored for delivery to the destination network in case of delivery via SMPP (SMPP connectivity between XYZ and foreign operator).
(A minimum of 48 Hrs is mandatory)

* (as per AA71 document of GSMA)

12. Invoicing and Payment Terms :

- 12.1 **Charges for Services:** For the Services, BSNL shall compensate SERVICE PROVIDER/COMPANY in accordance with the terms of Annexure-I, clause 4.1(v) above and Rates quoted (country-wise) on dynamic bidding portal on quarterly basis as per Annexure-I. Invoicing for Message Service Fees shall begin no later than twenty-four (24) hours after beginning of the commercial availability phase as agreed to by BSNL and SERVICE PROVIDER/COMPANY. BSNL shall be responsible for obtaining and keeping valid all applicable local corporate, government and regulatory approvals necessary for it to perform its obligations under this contract. Invoice shall be raised by SERVICE PROVIDER/COMPANY on a monthly basis, in arrears for messages (SMS) of the previous month. The respective Invoices shall be sent to the 4 Nodal centers of BSNL. All the supporting documents, as may be required by BSNL from time to time like CDRs of messages etc., to enable BSNL in reconciliation of the Invoice shall invariably be sent along with the Invoice.
- 12.2 SERVICE PROVIDER/COMPANY will render to BSNL an invoice and a statement (prepared in accordance with ITU or generally accepted industry standards) of all traffic terminated on its side at the end of each calendar month. SERVICE PROVIDER/COMPANY shall render to BSNL such invoice and statement for traffic terminating on its network not later than twenty (20) days after expiry of such monthly period. The invoice would include the following information: total number of SMS, the country and network of termination; the price per SMS per country of termination and a statement setting forth the total charges for the relevant Service period. SERVICE PROVIDER/COMPANY would also provide all possible help to BSNL in reconciliation of the SMS records and Invoice. BSNL would not be responsible for delay in payment in case all the supporting documents required for reconciliation are not enclosed along with the Invoice. Invoice shall be in INR (Indian National Rupee). Unless specifically agreed between the Parties in writing, payments will be made "after deduction of Tax deduction at source" or other taxes, if any through normal banking channels in a designated account.
- 12.3 All amounts due and payable for each monthly period by one Party to the other will be payable within thirty five (35) days of the date of receipt of the invoice ("Due Date") and statement referred to in Clause 12.2 above by the respective Parties.
- 12.4 Notwithstanding any payment made within the Due Date, a statement or payment of any balance due will be deemed to have been accepted by the Party to whom it is rendered if that Party does not object in writing within thirty (30) days following the receipt of such statement for the monthly period to which that statement relates. In the event either Party disputes, in good faith, the amount of any statement, it shall forthwith give written notice of the dispute to the creditor Party and shall pay the

undisputed amount, if any, in accordance with this Contract. The Parties will thereafter endeavour in good faith to resolve the dispute within 15 days. It is agreed that in such event, the originating and terminating CDRs of both Parties shall be considered, using mutually acceptable and industry standard practices for CDR comparison and reconciliation.

- 12.5 If a dispute cannot be resolved between the Parties, the matter will be submitted for arbitration as set forth in Clause 15 of the Agreement. However, the Parties shall continue to be bound to provide the Services without causing any disruption or interference in the same manner and extent under this Contract, as they would have had the above disagreement on the statement of traffic not occurred.
- 12.6 Each Party is responsible for complying with and paying all taxes, duties or surcharge assessed by government authorities with jurisdiction over its activities or the Services.
- 12.7 Taxes. Income Tax if applicable and deductible at source shall be accordingly deducted. Further, all statutory levies as per the law of the land of SERVICE PROVIDER/COMPANY shall be borne by SERVICE PROVIDER/COMPANY.

13. Paying Authority

- 13.1 All the accountability, reconciliation process, payment settlements will happen at Nodal centers only, as per GST law, the Place of Supply (POS) of International SMS service may be considered as the Nodal Centre at Zonal Level where the SMSC for International SMS is located and the invoices are to be addressed to & processed in the State/ UT where the Place of Supply (POS) is situated.
- 13.2 Service provider/ Company raise the invoices at each zonal SMSC with GST details of corresponding state where SMSC is situated i.e. Maharashtra (Pune) for West Zone, Tamilnadu (Trichy) for South Zone, Punjab (Chandigarh) for North Zone & West Bengal (Kolkata) for East Zone. Further, each zone would process the payment to Service provider & book the expenses through corresponding state of the SMSC.

14. Indemnification:

Service provider / company 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:

- (i) Any breach of any statute, regulation, direction, orders or standards from any governmental body, agency, telecommunications operator or regulator applicable to such party;
- (ii) Any breach of the terms and conditions in this agreement by the Service provider / company;
- (iii) Any claim of any infringement of any intellectual property right or any other right of any third party or of law by the Service provider / company;
- (iv) Any claim made by any third party arising out of the use of the services and arising in connection with interruptions or degradations of service to BSNL's customers caused solely by the Service provider / company.
- (v) The Service provider / company will comply with all the laws, directives, guidelines etc. of the land where Service provider / company is located and shall be fully responsible for the same. The service provider / company will indemnify BSNL for any liability arising out of non-compliance of the same.

This clause shall survive the termination or expiry of the contract.

15. Dispute resolution / Arbitration:

I. ARBITRATION (Applicable in case of supply orders/Contracts with firms, other than Public Sector Enterprise) (Not applicable in cases valuing less than Rs. 5 lakhs)

Except as otherwise provided elsewhere in the contract, if any dispute, difference, question or disagreement arises between the parties hereto or their respective representatives or assignees, in connection with construction, meaning, operation, effect, interpretation of the contract or breach thereof which parties unable to settle mutually, the same shall be referred to Arbitration as provided hereunder:

(1) A party wishing to commence arbitration proceeding shall revoke Arbitration Clause by giving 60 days' notice to the designated officer of the other party. The notice invoking arbitration shall specify all the points of disputes with details of the amount claimed to be referred to arbitration at the time of invocation of arbitration and not thereafter. If the claim is in foreign currency, the claimant shall indicate its value in Indian Rupee for the purpose of constitution of the arbitral tribunal.

(2) The number of the arbitrators and the appointing authority will be as under:

Claim amount (excluding claim for counter claim, if any)	Number of arbitrator	Appointing Authority
Above Rs. 5 lakhs to Rs. 5 crores	Sole Arbitrator to be appointed	BSNL (Note: BSNL will forward a list containing names of three empanelled arbitrators to the other party)

	from a panel of arbitrators of BSNL.	for selecting one from the list who will be appointed as sole arbitrator by BSNL)
Above Rs. 5 crores	3 Arbitrators	One arbitrator by each party and the 3 rd arbitrator, who shall be the presiding arbitrator, by the two arbitrators. BSNL will appoint its arbitrator from its panel.

- (3) Neither party shall appoint its serving employee as arbitrator.
- (4) If any of the Arbitrators so appointed dies, resigns, becomes incapacitated or withdraws for any reason from the proceedings, it shall be lawful for the concerned party/arbitrators to appoint another person in his place in the same manner as aforesaid. Such person shall proceed with the reference from the stage where his predecessor had left it both parties consent for the same; otherwise, he shall proceed de novo.
- (5) Parties agree that neither party shall be entitled for any pre-reference or pendente-lite interest on its claims. Parties agree that any claim for such interest made by any party shall be void.
- (6) Unless otherwise decided by the parties, Fast Track procedure as prescribed in Section 29 B of the Arbitration Conciliation Act, 1996 for resolution of all disputes shall be followed, where the claim amount is upto Rs. 5 crores.

[29B. Fast track procedure –

- i. *Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).*
- ii. *The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.*
- iii. *The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):-*
- (a) *The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without oral hearing;*
- (b) *The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;*
- (c) *An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;*
- (d) *The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.*
- iv. *The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.*

- v. *If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of Section 29 A shall apply to the proceedings.*
- vi. *The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.]*

(7) The arbitral tribunal shall make and publish the award within time stipulated as under:

Amount of Claims and Counter Claims	Period for making and publishing of the award (counted from the date the arbitral tribunal enters upon the reference)
Upto Rs. 5 crores	Within 6 months (Fast Track procedure)
Above Rs. 5 crores	Within 12 months

However, the above time limit can be extended by the Arbitrator for reasons to be recorded in writing with the consent of parties and in terms of provisions of the Act.

- (8) In case of arbitral tribunal of 3 arbitrators, each party shall be responsible to make arrangements for the travel and stay, etc. of the arbitrator appointed by it. Claimant shall also be responsible for making arrangements for travel/stay arrangements for the Presiding Arbitrator and the expenses incurred shall be shared equally by the parties.

In case of sole arbitrator, BSNL shall make all necessary arrangements for his travel/stay and the expenses incurred shall be shared equally by the parties.

- (9) The Arbitration proceeding shall be held at New Delhi or Circle or SSA Headquarter (as the case may be).

- (10) Subject to the aforesaid conditions, provisions of the Arbitration and Conciliation Act, 1996 and any statutory modifications or re-enactment thereof shall apply to the arbitration proceedings under this clause.

III. APPLICABLE LAW AND JURSDICTION

- a. The supply order for Goods 'or' Services, including all matters connected with this supply order shall be governed by the Indian law both substantive and procedural, for the time being in force and shall be subject to the exclusive jurisdiction of Indian Courts at the place from where the Purchase Order has been placed.
- b. Foreign companies, operating in India or entering into Joint Ventures in India, shall have to obey the law of land and there shall be no compromise or excuse for the ignorance of the Indian legal system in any way.

16. PENALTY

In the event, that Quality of Service provided by the Service Provider falls below the quality standard committed against this policy (against Clause 11) based on a monthly calculation period, BSNL at its' discretion may impose a penalty up to 15% of the monthly bill (average monthly invoice of the Service Provider for last six months till the month of disruption. However, if the event occurs within 6 months of the execution of this Agreement, then the monthly average charges for the preceding months shall be

used to calculate the charges for the 6 months period)) will be imposed on the service provider. In case of persistent deficiency in Quality of Service, BSNL may terminate the agreement with the Service Provider without any liability or compensation.

16.1 Liquidated Damage (LD)- Failure to commission the system within the stipulated period of ten weeks from the date of CLL, shall result in imposition of penalty as in the subsequent Para.

16.2 Liquidated Damage- Failure to commence operation within stipulated period of ten weeks from the date of issuance of Purchase order will result in imposition of penalty of amount equivalent to 0.5 % of the PO value per week or part thereof of delay for a period of first ten weeks and thereafter, a penalty of amount equivalent to 0.7 % of the PO value per week or part thereof for further delay for next ten weeks. Delay beyond 20 weeks may attract forfeiture of the SD/ PBG and further actions like blacklisting etc. at the discretion of BSNL.

17. General Conditions:

- 17.1 BSNL reserves the right to accept or reject any proposal or to annul the process and reject all proposals, at any time prior to finalization of the service provider / company(s) without assigning any reason whatsoever and without thereby assigning any liability to the affected participant on the ground of BSNL's action(s).
- 17.2 BSNL reserves the right to blacklist a participant for a suitable period (as deemed fit by BSNL) in case it fails to honor its proposal in totality.
- 17.3 BSNL reserves the right to sign agreement with finally short-listed companies for an initial term of three years, which could later be extended for a period of one year or more on mutually agreed basis.
- 17.4 BSNL reserves the right to discontinue the commercial provisioning of the services any time in future, depending upon its network conditions or market scenario or directives from the regulator / licensor or due to change in its own license conditions or upon directions from the competent Government authorities.
- 17.5 Any effort by a company to influence the proposal comparison/evaluation/ work award decision by way of overt/covert canvassing shall result in non-consideration / rejection of its proposal.
- 17.6 The finally selected service provider / company, with whom BSNL signs the agreement, will be required to intimate BSNL as and when any new operator is connected to their hub and is available for BSNL for SMS traffic, along with financial quote for the same.
- 17.7 There is no commitment of minimum traffic by BSNL.
- 17.8 BSNL reserves the right to route the said traffic through any other service provider / company as well, at sole discretion of BSNL.
- 17.9 The service provider / company will have to route traffic of International SMS to all the foreign operators as decided by BSNL.

18. Submission of Proposal:

18.1 This policy is open ended. BSNL reserves the right of periodic review of the entire policy or any elements thereof based on its business needs.

18.2 Interested and eligible companies who are willing to provide services may submit their proposals along with all the requisite documents as per clause-7 above to :-

**PGM (NWO CM - I)
Bharat Sanchar Nigam Limited,
First floor, Bharat Sanchar Bhawan,
HC Mathur Lane, Janpath, New Delhi - 110001.**

Annexure - I

1. List of foreign networks with which the Service provider / company will arrange to and fro SMS traffic. i.e. successful delivery of A2P International SMS.

Sl. No.	Name of country *	Name of foreign operator	Type of network GSM / CDMA / IDEN / Other (if other, specify type of network)	SMS delivery via SS7 / SMPP / Other (if other, specify type along with signal flow diagram)	Both way / one way with reply (refer legend below)	Delivery Report - H / N (refer legend below)
	A	B	C	D	E	F

(List to be filled up in alphabetical order of name of country).

In case of SS7 it is understood that the Service provider / company will deliver SMS to the destination handset. In case of SMPP it is understood that the Service provider / company delivers the SMS to the concerned foreign operator and the said operator then delivers the said SMS to their destination subscribers. In case of any other type of SMS delivery please give details.

One Way with reply - BSNL network can send SMS to MSISDN of subscriber of foreign operator. The subscriber of foreign network cannot send a SMS to the MSISDN of BSNL subscriber. **The Service provider / company will clearly specify the time duration within which the reply may be sent in Col. E**

Delivery Report - H - Service provider / company will provide delivery report to BSNL for delivery of SMS to the destination MSISDN in such a way that BSNL is able to co-relate the delivery report with SMS.

Delivery Report - N - - Service provider / company cannot provide delivery report to BSNL for delivery of SMS to the destination MSISDN but can provide delivery report for delivery of SMS to destination network. **In this case the Service provider / company should provide details as how to ascertain if the SMS was delivered to the Destination MSISDN or not, in each case. This detail should be provided along with this Annexure for each such foreign operator.** Where ever the service provider / company gets delivery report from the foreign operator confirming delivery to the destination MSISDN then such delivery report will also be sent to respective SMSC of BSNL in an automated manner in such a way that BSNL is able to co-relate the delivery report with SMS.

*** In case number portability is being followed in any country then the same should be specifically mentioned separately in this Annexure. List of mobile networks in each of these countries should also be given country wise.**

For the Performance Guarantee

(To be typed on Rs.100/- non-judicial stamp paper)

Dated:

Sub: Performance guarantee.

Whereas PGM (NWO-CM-I) BSNL CO, Delhi R/o
..... (Hereafter referred to as BSNL) has issued an APO no.
Dated/...../20..... awarding the work of
..... to M/s R/o
..... (hereafter referred to as "Bidder")
and BSNL has asked him to submit a performance guarantee in favour of PGM(NWO-CM-I)
BSNL CO, Delhi of Rs./- (hereafter referred to as "P.G. Amount") valid up to
...../...../20.....(hereafter referred to as "Validity Date")

Now at the request of the Bidder, We Bank
.....Branch having
..... (Address) and Regd. office address as
.....
..... (Hereinafter called 'the Bank') agreed to give this guarantee as hereinafter
contained:

2. We, "the Bank" do hereby undertake and assure to the BSNL that if in the opinion of the BSNL, the Bidder has in any way failed to observe or perform the terms and conditions of the said agreement or has committed any breach of its obligations there-under, the Bank shall on demand and without any objection or demur pay to the BSNL the said sum limited to P.G. Amount or such lesser amount as BSNL may demand without requiring BSNL to have recourse to any legal remedy that may be available to it to compel the Bank to pay the same.
3. Any such demand from the BSNL shall be conclusive as regards the liability of Bidder to pay to BSNL or as regards the amount payable by the Bank under this guarantee. The Bank shall not be entitled to withhold payment on the ground that the Bidder had disputed its liability to pay or has disputed the quantum of the amount or that any arbitration proceeding or legal proceeding is pending between Bidder and BSNL regarding the claim.
4. We, the Bank further agree that the guarantee shall come into force from the date of its issue and shall remain in full force and effect up to its Validity date.
5. The Bank further agrees that the BSNL shall have the fullest liberty without the consent of the Bank and without affecting in any way the obligations hereunder to vary any of the terms and conditions of the said agreement or to extend the time for performance of the said agreement from any of the powers exercisable by BSNL against the Bidder and to forebear to enforce any of the terms and conditions relating

to the said agreement and the Bank shall not be relieved from its liability by reason of such failure or extension being granted to Bidder or through any forbearance, act or omission on the part of BSNL or any indulgence by BSNL to Bidder or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of relieving or discharging the guarantor.

6. Notwithstanding anything herein contained ;
 - (a) The liability of the Bank under this guarantee is restricted to the P.G. Amount and it will remain in force up to its Validity date.
 - (b) The guarantee shall stand completely discharged and all rights of the BSNL under this Guarantee shall be extinguished if no claim or demand is made on us in writing on or before its validity date.
7. In case BSNL demands for any money under this bank guarantee, the same shall be paid through banker's Cheque in favour of "AO (Cash) BSNL CO" payable at New Delhi.
8. The Bank guarantees that the below mentioned officer who have signed it on behalf of the Bank have authority to give this guarantee under its delegated power.

Place:

Date:

(Signature of the Bank Officer)

Rubber stamp of the bank

Authorized Power of Attorney Number:

Name of the Bank officer:

Designation:

Complete Postal address of Bank:

.....

Telephone Numbers

Fax numbers

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 (NWO-CM-I) 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