

Bharat Sanchar Nigam Limited

(A Government Enterprises)

Opportunity to become VAS Provider under Unified Policy for provision of USSD/SMS/Data/3G based services to BSNL customers

No. 200-1/2012-VAS

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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 Million Mobile Subscribers (Prepaid & Postpaid) and 18 Million PSTN subscribers.

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

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 1Crore 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 14months (2months for installation of equipment & integration with BSNL network and 12months for service).
- 1.4 The company will be required to submit a non-refundable connectivity fee of Rs.1.125 Lakhs per zone and Rs.4.5 lakhs 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 of Rs.40Lakh in 1Zone, Rs.70Lakh in 2Zones and Rs.1Crore 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. 6Lakh for 1 Zone, Rs.10.5Lakh for 2Zones and Rs.15Lakh for 3/all Zones).
- 1.6 The Bank Guarantee is to be provided within 15days of signing of the agreement. The Bank Guarantee should be valid for 20months and will be forfeited in case of not generating the committed revenue in agreement period.

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) along with 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 Revenue generation commitment, required as per eligibility conditions and an undertaking clearly committing to submit the Bank Guarantee within 15days of signing of the agreement.
- 2.9 Non-Disclosure Undertaking (NDU), duly notarized on non judicial stamp paper of Rs.50/- (NDA format enclosed).
- 2.10 Details of USSD/SMS/DATA/3G Content based services, including price points, which the company wants to provide on BSNL's network.
- 2.11 Contact details i.e. Name, mail id, phone no., mobile no., fax no. of a responsible person for liaising in this matter.
- 2.12 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 USSD/SMS/DATA/3G content based VAS 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, 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 standard cost of content/service (revenue share on EUP) to VAS provider effective from 1.7.2013 is 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)
- c) Data services/content providing on VASPs branding : 40% (EUP to be decided in mutual consultation)
- d) Data services/content providing through BSNL LiVE: 50%-40% (depending upon the mode of delivery of service/type of content /branding) & EUP to be decided in mutual consultation.
- e) For the VAS delivered through USSD bearer:- 30% (EUP to be decided in mutual consultation).

3.4 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 7days and CMTS-Nodal Centre shall release the cost of content/services payment to the company within the next 15days. The payment of charges shall be made to the company after deduction of TDS amount as per provisions of the Income Tax Act 1961.

3.5 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.

3.6 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 GSM zonal Rs.50,000 for a periods of atleast 6 months in a year. Else the company will have to deposit the proportionate amount in respect of failure zones of non-refundable empanelment fee of Rs.1.125 lakh per zone.
- ii) Overall revenue generated by the company during the tenure of agreement is Rs.40lakh in 1Zone, Rs.70lakh in 2Zones and Rs.1Crore in 3/all Zones as the case may be. In case of non-achievement of this target, the PBG will be forfeited and company will have to submit fresh PBG for renewal. Else company will be considered for extension without the requirement of submitting fresh PBG.

- 3.7 BSNL reserves the right to provide the USSD/SMS/DATA/3G Content based 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.
- 3.8 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.
- 3.9 Addition of zones during the concurrency of agreement
- a) Additional revenue commitment, Bank Guarantee, Duration of Monthly zonal revenue commitment, short code fees for addition of new zone is to be calculated on prorata basis. Empanelment fees will be taken as whole and not be fixed on prorata basis.
 - b) VASP shall submit revised consolidated BG before the release of old BG by BSNL, if any. Bank guarantee is not required in those cases where VAS Provider has crossed the revised revenue commitment as calculated by prorata basis.
 - c) Policy of duration of integration is to be continued for addition of zones ie 2 & 3 months may be given for integration and for IVR agreements respectively for new zones.
 - d) All the prorata calculation is to be done on monthly basis only ie VASPs signing on any day of the month, the whole month will be considered for calculation of RC/BG etc assuming agreement has been done on 1st day of month.

4. **Delivery of Service:**

The company shall ensure provisioning of commercial services in the agreed service area within 7 days of provision of requisite connectivity by BSNL.

5. **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.

6. **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 any liability rising out of non compliance of the same.

7. Dispute Settlement:

7.1 Except as otherwise provided elsewhere in the contract, in the event of any disputes ,controversy, or differences arising out of or relating to this agreement, or the breach, termination or invalidity thereof between the parties , such party or parties shall make a request to the other party or parties to amicably settle such differences or disputes and parties shall thereupon make every effort to settle the same amicably within a period of 60 (sixty) days from the date of making of such request.

Where parties are unable to settle the disputes through conciliation, the same shall be referred to the authority in BSNL (CMD/CGM/GMTD, as the case may be) for referral of such disputes to a sole arbitrator (chosen from the name(s) provided by BSNL), to be mutually decided by the parties, as per the provisions of the Arbitration and Conciliation Act, 1996, any amendment thereof, and any notification issued or rules made there under from time to time.

7.2 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.

7.3 The venue of the arbitration proceeding shall be New Delhi/or Circle/SSA HQ (as the case may be).

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

8.1 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.

8.2 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.

8.3 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.

9. Submission of Proposal

The proposal, complete in all respect, addressed to DGM (VAS-III), Seventh 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.

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 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.