

AGREEMENT

FOR

SUBSIDY SUPPORT FROM USO FUND

TO

**PROVIDE MOBILE SERVICES IN AREAS IDENTIFIED BY
Ministry of Home Affairs, Govt. of India**

UNDER

THE INDIAN TELEGRAPH (2nd AMENDMENT OF 2013) RULES, 2013

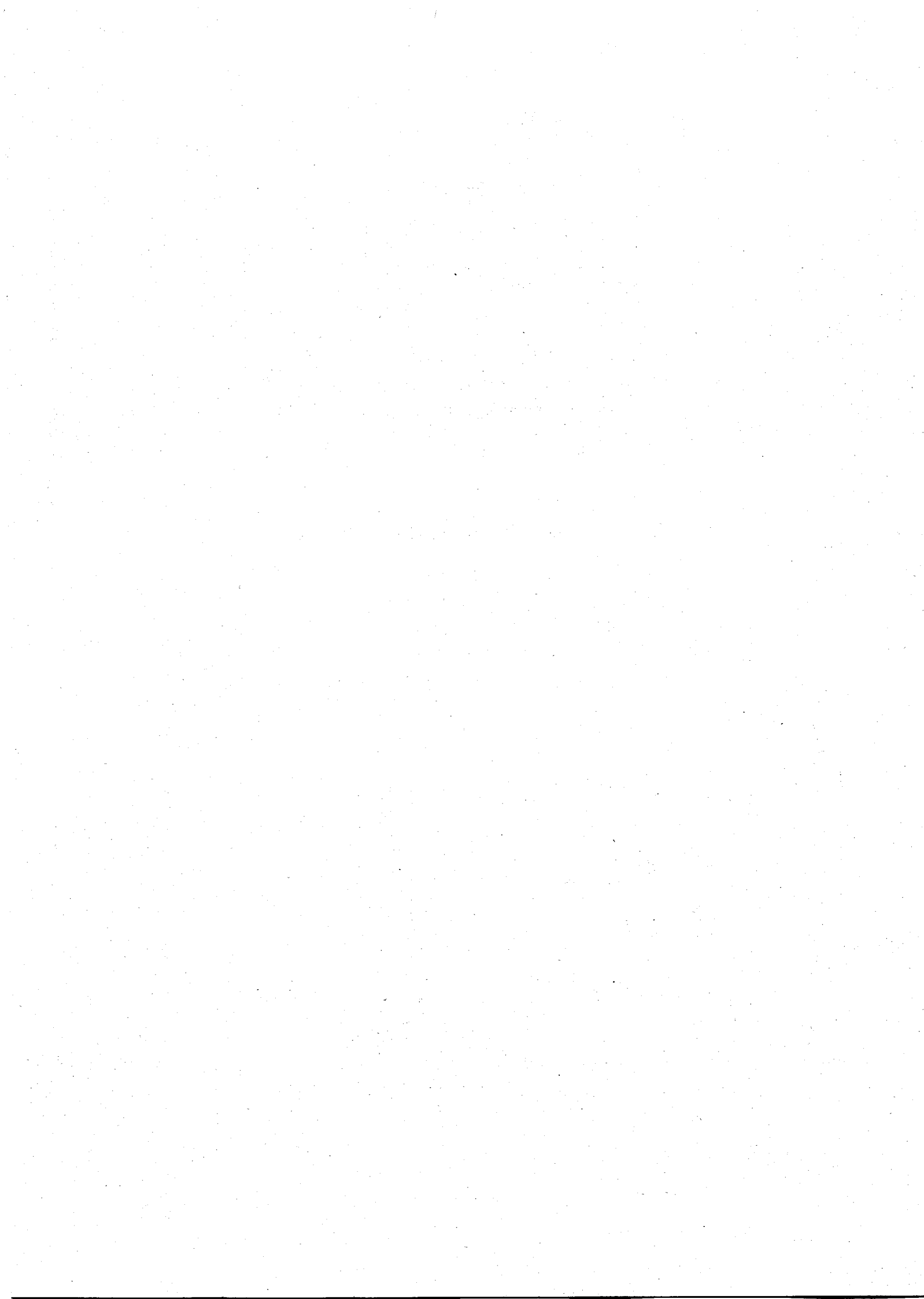
No. 30-156-8/2013-USF Dated 30/09/2014

TOTAL PAGES - 97

**GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS & IT
DEPARTMENT OF TELECOMMUNICATIONS
OFFICE OF THE ADMINISTRATOR, USO FUND
SANCHAR BHAWAN, 20, ASHOKA ROAD,
NEW DELHI-110 001, INDIA**

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SECTION-I
AGREEMENT

Government of India
Department of Telecommunications
Office of the Administrator, USO Fund
20, Ashoka Road, Sanchar Bhawan, New Delhi- 110001

The President of India, acting through the Administrator, Universal Service Obligation Fund (USOF) who for the purpose of this Agreement is being represented by Shri Vivek Srivastava, Dy. Administrator (T) USOF, Department of Telecommunications, under Government of India and having its office at 2nd Floor, Sanchar Bhawan, 20 Ashoka Road, New Delhi 110001, (hereinafter referred to as the "Administrator ", which expression, unless repugnant to the context or meaning thereof, shall include its successors, administrators or assignees;) of the First Part

AND

M/s. Bharat Sanchar Nigam Limited, a company registered under the Companies Act 1956, having its registered office at Bharat Sanchar Bhawan, H.C.Mathur Lane, New Delhi – 110 001, acting through Shri H.C.Pant, Company Secretary, Bharat Sanchar Nigam Limited, the Authorised Signatory (hereinafter called the Universal Service Provider or "USP" which expression shall, unless repugnant to the context or meaning thereof, shall include its successors, administrators or permitted assignees) of the Second Part.

WHEREAS the Government of India has approved a Project/Scheme to provide Mobile service in areas affected by Left Wing Extremism (LWE);

AND WHEREAS the USP has agreed to provide mobile services in areas affected by Left Wing Extremism (LWE) and the Administrator has, subject to the USP performing all his obligations, agreed to provide subsidy on the terms and conditions hereinafter;

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

In consideration of the mutual covenants set out in this Agreement, the parties agree as follows:

1.1 The USP hereby agrees and undertakes to provide mobile services in areas affected by Left Wing Extremism (LWE) and manage the same during the entire period of this Agreement and the Administrator, in consideration of the USP having agreed to set up and manage the aforesaid mobile service sites, does hereby agree to grant subsidy to the USP, in accordance with this Agreement.

1.2 This Agreement will remain valid for **Six years** from the Effective Date unless revoked earlier for any reason whatsoever.

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[Handwritten signature]

1.3 The USP hereby agrees and unequivocally undertakes to fully comply with all terms and conditions stipulated in this Agreement without any deviation or reservation of any kind.

1.4 Effective Date of this Agreement shall be 30 /09/2014.

1.5 This Agreement is divided into seven Sections. Apart from the present Section-I, other Sections are as under:

- II General Conditions
- III Technical Conditions
- IV Operating Conditions
- V Commercial Conditions
- VI Financial Conditions
- VII Definitions

All the Sections and Annexures together form the Agreement.

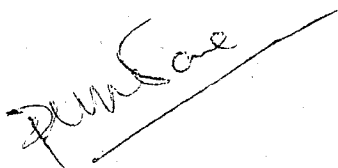
1.6 **No Partnership** – Nothing in this Agreement shall be construed to constitute a partnership or agency between the Parties and the USP shall not make any assurance, promise or covenant nor shall hold himself out as competent to do so on behalf of the Administrator nor shall pledge the credit of the Administrator for any transaction in relation to this Agreement.

1.7 **No Employment** – Nothing in this Agreement shall constitute an offer or assurance of employment of any nature whatsoever to the USP or any person employed by or under him for this Agreement.

1.8 **Indemnify the Administrator** – The USP shall indemnify and at all times keep the Administrator indemnified and harmless against any direct loss to it or any claims by any third person, for any personal injury to anybody or loss to property, movable or immovable, caused by or attributable to any act or omission of the USP or any of his officer, employee, agent or professional etc. while performing or purporting to perform this Agreement.

1.9 **Waiver** – Neither the failure of either Party to insist on any occasion upon the performance of the provisions of this Agreement nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right thereunder. Waiver by either Party of any default by the other Party in the observance or performance of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent default or of other provisions of or obligations under this Agreement nor shall affect the validity or enforceability of this Agreement in any manner.

1.10 **Severability of Terms** – If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner.





IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed through their respective authorized representatives on the 30th day of September, 2014.

H.C. Pant
~~H.C. Pant~~ AIX/W

Company Secretary, BSNL
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath,
New Delhi – 110001

H.C. PANT
Company Secretary & Sr. G.M. (Legal)
Bharat Sanchar Nigam Limited
FOS No-2578

Seal with Board Resolution

Witnesses :

B.P. Singh

(B. P. Singh) 30/9/14
Asst. General Manager (NWO-CM), BSNL,
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
Janpath,
New Delhi – 110001

बी. पी. सिंह
B. P. SINGH
महा. महाप्रबन्धक (एन. डब्ल्यू. ओ.-सी.एम.)
Asst. General Manager (NWO-CM)
भारत संचार निगम लिमिटेड, नई दिल्ली
B.S.N.L. Corporate Office, New Delhi

Signed for and on behalf of President
of India

Vivek
30/09/2014

(Vivek Srivastava)
Dy. Administrator (T),
Universal Service Obligation Fund,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi -110001

(VIVEK SRIVASTAVA)
Dy. Administrator (T)
USOF
Department of Telecommunications, Govt. of India
New Delhi - 110001

Saurabh Mohan
30/09/2014

(Saurabh Mohan)
Dy. Administrator (F-II),
Universal Service Obligation Fund,
Department of Telecommunications,
Sanchar Bhawan, 20 Ashoka Road,
New Delhi -110001

(SAURABH K. MOHAN)
Dy. Administrator (F-II) USOF
संचार निगम, भारत सरकार
Dept. of Telecom, Govt. of India
नई दिल्ली / New Delhi

SECTION - II

GENERAL CONDITIONS

- 2.1 The Agreement shall be subject to the terms and conditions (including transfer, assignments or franchising) of CMTS (Cellular Mobile Telephone Services)/ UASL (Unified Access Service License)/ Migration or award of new license in lieu of CMTS/UASL.
- 2.2 The USP shall be bound by the terms and conditions of the Agreement or any other instructions issued from time-to-time by the Administrator. The USP shall always be liable to perform the obligations under this Agreement for Provision of Mobile Services for which the Agreement has been entered into during the validity period of the Agreement.
- 2.3. **Scope of the Agreement**
- 2.3.1 USP shall provide mobile services from mobile towers at 2199 locations identified by the Ministry of Home Affairs. List of 2199 locations are enclosed at **Annexure - I**.
- 2.3.2 Out of 2199 locations, list of locations where mobile towers have already been installed by BSNL is enclosed at **Annexure- II**.
- 2.3.3 USOF shall provide financial support as per the Financial Conditions of the Agreement. (Section - VI).
- 2.3.4 The infrastructure created under this project shall be owned by BSNL.
- 2.4 **Deliverables**
- 2.4.1 USP shall install and commission mobile towers in the remaining 1836 mobile sites within 12 months from the effective date of the agreement. USP shall operate and maintain the mobile service provision from all the 1836 sites under this USOF Scheme from the date of commissioning and from 363 sites from the date of effect of the agreement.
- 2.4.2 The existing network of USP in the Licensed Service Areas shall be utilized for core network, customer care and Billing requirements etc.
- 2.4.3 Mobile services shall be available to the general public as well as security personnel.
- 2.4.4 The USP shall be bound by the terms and conditions of the Agreement as well as by such orders/directions/regulations of DoT/ TRAI as per provisions of the TRAI Act, 1997 as amended from time to time and instructions as are issued by the Administrator.

2.4.5 The terms and conditions of the relevant License Agreement, as applicable, shall prevail and shall be binding *mutatis mutandis*. The same shall also be applicable in case of migration to or award of new license in lieu of the CMTS/ UASL license.

2.5 Implementation Methodology

2.5.1 BSNL shall implement the solution as per the recommendations given by the committee of Advisor (T), DoT, reproduced below :

- “(a) The solution for LWE areas may be based on the Generic Requirements as contained in TEC GR No GRWS/BSS-002/01.Dec. 2009 on ‘Small size GSM Radio Sub System’. The solution would predominantly be based on Cat-1 of TEC GR depending on the terrain and security arrangements. In select locations Cat-2 deployment may be required.*
- (b) Wireless back-haul is desirable.*
- (c) Renewable Energy Technology Sources like Solar are required at all locations.*
- (d) DG Set usage may not be required if solar powered solutions are used.*
- (e) The committee recommends that Open tenders may be floated, in order to facilitate discovery of most competitive price.”*

2.5.2 Representatives from TEC be associated for drawing up tender specifications and conditions to ensure that technology requirements are in line with the above mentioned recommendations.

2.5.3 Notification issued by DoT vide dated 05.10.2012 on Policy for Preference to domestically manufactured telecom products in procurement shall be applicable.

2.6 Duration of the agreement :

This Agreement will remain valid for **Six years** from the Effective Date unless revoked earlier for any reason whatsoever.

2.7 EXTENSION OF AGREEMENT

2.7.1 The Administrator may extend, if deemed expedient, the validity of Agreement for such period and on such terms as may be mutually agreed. The decision of the Administrator shall be final in this regard.

2.8 MODIFICATIONS IN TERMS AND CONDITIONS OF AGREEMENT

- 2.8.1 The Administrator reserves the right to modify at any time the terms and conditions of the Agreement signed with the USP, if in the opinion of the Administrator it is necessary or expedient to do so in public interest or in the interest of the security of the State or for the proper conduct of the service. The decision of the Administrator shall be final in this regard.

2.9 REQUIREMENT TO FURNISH INFORMATION

- 2.9.1 The USP shall furnish to the Administrator, on demand, such documents, accounts, estimates, returns, reports or any other information as may be called for by the Administrator pertaining to provisioning of mobile services under this Agreement.

2.10 TERMINATION OF AGREEMENT

- 2.10.1 The Administrator may, without prejudice to any other remedy available for the breach of any conditions of Agreement, by a written notice of 90 calendar days issued to the USP at its registered office, terminate the Agreement under any of the following circumstances:
- a) Failure to perform any obligation(s) under the Agreement;
 - b) Failing to rectify, within the time prescribed, any defect as may be pointed out by the Administrator.
- 2.10.2 The Agreement shall stand terminated forthwith in case the USP goes into liquidation or is ordered to be wound up.
- 2.10.3 Provided that if the respective CMTS/ UASL license is terminated, as the case may be, then the Agreement for Provision of Mobile Services shall also stand terminated forth-with for the area falling under the Service Area of that License.
- 2.10.4 Wherever considered appropriate, Administrator may conduct an inquiry to determine whether there has been any breach in compliance of the terms and conditions of the Agreement by the USP and upon such inquiry, the USP shall extend all reasonable facilities and shall endeavor to remove the hindrance of every type.
- 2.10.5 It shall be the responsibility of the USP to maintain the Quality of Service as per conditions of the Agreement during the period of notice for termination of Agreement.

2.11 ACTIONS PURSUANT TO TERMINATION OF AGREEMENT

- 2.11.1 If the Quality of Service (QoS) is not maintained as per standard prescribed hereto during the notice period then no subsidy for the notice period shall be payable.
- 2.11.2 If it is found that the USP had received any payment in excess of the amounts under the Agreement prior to termination, then such amount shall be paid back immediately on demand by the USP to the Administrator. Any amount due from the USP under this agreement, without prejudice to any other mode of recovery, may be recovered as arrears of land revenue.

2.12 DISPUTE SETTLEMENT

- 2.12.1 In the event of any question, dispute or difference arising under the Agreement, or in connection thereof, except as to the matter, the decision of which is specifically provided elsewhere under the Agreement, the same shall be referred to an Arbitral Tribunal, hereinafter called the "TRIBUNAL" consisting of sole Arbitrator to be appointed by Secretary, Department of Telecom, Government of India.
- 2.12.2 The Arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 as amended or replaced from time to time. The governing law shall be laws of India
- 2.12.3 Notwithstanding any dispute or claim of the pendency of any arbitration or other proceedings, the USP shall continue to provide the service for the whole duration of the Agreement.

2.13 FORCE- MAJEURE

- 2.13.1 If at any time, during the continuance of this Agreement, the performance in whole or in part, by either party, of any obligation is prevented or delayed, by reason of war or hostility, acts of the public enemy, civic commotion, sabotage, Act of State or direction from Statutory Authority, explosion, epidemic, quarantine restriction, strikes and lockouts (not limited to the establishments or facilities of the USP), fire, floods, natural calamities or any act of GOD (hereinafter referred to as EVENT); provided notice of happenings of any such EVENT is given by the affected party to the other, within 10 Calendar days from the date of occurrence thereof, neither party shall, by reason of such event, be entitled to terminate the Agreement, nor shall either party have any claims for damages against the other, in respect of such non-performance or delay in performance; provided further that mobile services under the Agreement shall be resumed as soon as practicable, after such EVENT comes to an end or ceases to exist.
- 2.13.2 The decision of the Administrator as to whether the service may be so resumed (and the time frame within which the service may be resumed) or not, shall be final, binding and conclusive.

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2.14 SET OFF CLAUSE

- 2.14.1 In the event any sum of money or claim becomes recoverable from or payable by the USP to the Administrator either against the Agreement or otherwise in any manner, such money or claim can (without restricting any right of set off for counter claim given or implied by law) be deducted or adjusted against any amount or sum of money then due or which at any time thereafter may become due to the USP under this Agreement or any other Agreement or Contract between the Administrator/ Department Of Telecommunications, Govt. of India and the USP.
- 2.14.2 The aforesaid sum of money payable by the USP shall include any valuable security convertible into money.
- 2.14.3 After exercising the right of set off, a notice shall always be given immediately by the Administrator to the USP.

2.15 OTHER OBLIGATIONS

- 2.15.1 The USP shall be bound by the terms and conditions of the Agreement as well as by such orders/directions/regulations of DoT/ TRAI as per provisions of the TRAI Act, 1997 as amended from time to time and instructions as are issued by the Administrator.
- 2.15.2 The provisions of the Indian Telegraph Act, 1885 or the Indian Wireless Telegraphy Act, 1933 as amended or replaced, the Rules made and orders passed under these statutes, so far as applicable, shall be binding on the USP.

2.16 The USP represents and warrants to the Administrator that

- a) It is duly organized and validly incorporated under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement;
- b) It has taken all necessary corporate and other actions under applicable laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement ;
- c) It has the financial standing and capacity to undertake and perform the obligations in accordance with this Agreement;
- d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations under it in accordance with the terms hereof;

- f) The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by, any of the terms of its memorandum and Articles of Association or any Applicable law or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

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SECTION - III

TECHNICAL CONDITIONS

3.1 The USP shall work within the framework of the Technical conditions of the CMTS/ UASL License Agreement.

3.2 Technical Solution:

3.2.1 USP shall be solely responsible to set up, operate and maintain the mobile services from specified site locations by installing the following Components.

- (i) Mobile Tower
- (ii) BTS equipment,
- (iii) Associated antennas,
- (iv) Backhaul connectivity to core networks,
- (v) Power/RET arrangements and back-up
- (vi) Network Management System
- (vii) Other necessary equipments and
- (viii) Associated civil and electrical works required to provide mobile services

3.2.2 BSNL shall implement the solution as per the recommendations given by the committee of Advisor (T), DoT, reproduced below:

- “(a) The solution for LWE areas may be based on the Generic Requirements as contained in TEC GR No GRWS/BSS-002/01.Dec. 2009 on ‘Small size GSM Radio Sub System’. The solution would predominantly be based on Cat-1 of TEC GR depending on the terrain and security arrangements. In select locations Cat-2 deployment may be required.*
- (b) Wireless back-haul is desirable.*
- (c) Renewable Energy Technology Sources like Solar are required at all locations.*
- (d) DG Set usage may not be required if solar powered solutions are used.*
- (e) The committee recommends that Open tenders may be floated, in order to facilitate discovery of most competitive price.”*

3.2.3 Representatives from TEC be associated for drawing up tender specifications and conditions to ensure that technology requirements are in line with the above mentioned recommendations.

3.3 Tower Locations

BSNL shall coordinate with the Ministry of Home Affairs (MHA)/State Governments to decide each Tower locations and for the arrangement of the land for installing mobile towers and other necessary equipments and intimate the Administrator.

3.4 Complete power plant/ RET and battery drawings and information regarding inter-connecting arrangements and layout shall be made available on site. Maintenance spares including spares for control panel and spare fuses should also be provided at the site.

3.5 FIRE ALARM SYSTEMS AND FIRE EXTINGUISHERS:

3.5.1 Proper arrangement shall be made for fire detection and fire extinguisher system for the installed equipment as per fire safety norms applicable for that location.

3.6 QUALITY OF SERVICE PARAMETERS

3.6.1 The Quality of Service Parameters for Mobile Telecommunication Services as prescribed by TRAI shall be applicable.

3.6.2 The USP shall ensure provision of reliable services to the customers as per the Quality of Service (QoS) prescribed by the TRAI from time to time. The USP shall adhere to such QoS standards and provide timely information as required therein.

3.6.3 The Administrator or TRAI may carry out performance tests either directly themselves or through Designated Monitoring Agency and also evaluate the QoS parameters at any time during the tenure of the Agreement. The USP shall provide ingress and other support including documents, instruments, equipment etc. for carrying out such performance tests and evaluation of Quality of Service parameters.

3.6.4 The USP will keep a record of rural connections provided from the BTS installed under the scheme. The USP shall also maintain faults and rectification reports of the BTS, Backhaul, Antenna, Battery, Power Plant and other related details in respect of the service rendered which will be produced before the Administrator or TRAI as and when and in whatever form desired.

3.6.5 The USP shall be responsive to the complaints lodged by the customers. They shall rectify the deficiencies and maintain the history sheets for each installation, statistics and analysis on the overall maintenance status.

3.6.6 Proper arrangement should be made by the USPs for reporting/ booking service related complaints.

3.7 TESTING :

- 3.7.1 It shall be the responsibility of BSNL to ensure that installation, commissioning, operation and maintenance of all infrastructure created under the Project are carried out as per Tender Requirements specified by BSNL.
- 3.7.2 It shall be the responsibility of BSNL to ensure that Quality Assurance Testing, Acceptance Testing and validation are conducted as per Tender Requirements specified by BSNL.
- 3.7.3 It shall be the responsibility of BSNL to ensure compliance to QoS requirements.
- 3.7.4 BSNL shall submit details as per **Annexures VII & VIII**.

3.8 PENALTY:

- 3.8.1 Penalty on BSNL shall be imposed in case of interruption of service.
- i. No penalty shall be levied if BTS uptime is above 98%.
 - ii. If BTS uptime is below 98%, the percentage by which BTS uptime is below 98% shall be deducted.
 - iii. For BTS uptime below 60%, no payment shall be made.
 - iv. The cap on total penalty will be 100%.
 - v. The basis of calculation of penalty would be the applicable monthly tendered OPEX for that particular BTS.
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SECTION -IV

OPERATING CONDITIONS

4.1 CUSTOMER SERVICE

- 4.1.1 The terms and conditions of the CMTS or UASL License Agreement, as applicable, shall prevail and shall be binding *mutatis mutandis*. The same shall also be applicable in case of migration to or award of new license in lieu of the CMTS/ UASL license.

4.2 RIGHT TO INSPECT, TEST AND MONITOR

- 4.2.1 The Administrator or his authorized representative shall have the right to inspect the equipment installed by the USPs at the Mobile Services Sites so created for providing the mobile services in particular but not limited to, access to backhaul, terminating interfaces, distribution frames etc. and conduct the service performance tests. The USP will provide the necessary facilities at own cost for monitoring of the system, as required by the Administrator or its authorized representative(s). The Inspection will ordinarily be carried out after reasonable notice except in circumstances where giving such a notice will defeat the very purpose of the inspection.
- 4.2.2 Wherever considered appropriate Administrator may conduct any inquiry either *suo-motu* or on a complaint, to determine whether there has been any breach in compliance of terms & conditions of the Agreement by the USP, and during such inquiry the USP shall extend all reasonable facilities without any hindrance.

4.3 PROVISIONING OF RURAL CONNECTIONS

- 4.3.1 The USP shall ensure that the rural connections as mentioned in the monthly report have actually been provided in the area being served by the BTS installed with the subsidy support from USO Fund. A certificate to this effect is to be provided by the USP in the monthly report in the prescribed proforma as per **Annexure-III**.

4.4 UPGRADATION OF EQUIPMENT

- 4.4.1 The USP may upgrade the existing equipment by installing new equipment, if required, during the validity of the Agreement provided it meets all other performance parameters of Quality of Service.

4.5 ROLL OUT

- 4.5.1 **BSNL shall set up infrastructure and commission the mobile network and services in the identified areas, within 12 months from effective date.**
- 4.5.2 BSNL shall coordinate with the Ministry of Home Affairs to decide the priority of installation for each mobile tower within the rollout period.

4.5.3 The USP shall provide a monthly statement in **Annexure-III** and **Annexure-IV** giving details of the mobile services sites commissioned during the month.

4.6 CONFIDENTIALITY OF INFORMATION

4.6.1 The terms and conditions as to confidentiality of information of the CMTS or UASL , as the case may be, shall be binding *mutatis mutandis*.

4.7 PROHIBITION OF CERTAIN ACTIVITIES BY THE UNIVERSAL SERVICE PROVIDER

4.7.1 The terms and conditions as to prohibition of certain activities of the CMTS or UASL agreement, as the case may be, shall be binding *mutatis mutandis*.

4.8 SECURITY CONDITIONS

4.8.1 The terms and conditions as to security conditions of the CMTS or UASL agreement, as the case may be, shall be binding *mutatis mutandis*.

4.9 LIQUIDATED DAMAGES (LD)

4.9.1 Liquidated Damages (LD) on BSNL will be imposed for non-execution of the work in scheduled time-period. The quantum of LD will be in accordance with the LD provisions contained in the Contract Agreement of BSNL with successful bidder, consistent with the bid document. BSNL shall ensure recovery of LD from vendor, in accordance with the contract agreement, and shall pass on the same to USOF.

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