

Memorandum of Understanding
For
Implementation of BharatNet Phase – II Project
Under State Led Model

AMONGST

**Universal Service Obligation Fund, Department of Telecommunications,
Government of India**

Bharat Broadband Network Limited (BBNL)

State Government of Andhra Pradesh

Andhra Pradesh State FiberNet Ltd.

MoU No. 30-166-14/2016-BB-USOF/BharatNet Phase-II

Dated November 13, 2017

Total Pages – 17

Government of India

Ministry of Communications

Department of Telecommunications

Universal Service Obligation Fund (USOF)

Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001, India

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Memorandum of Understanding

AMONGST

(i) Universal Service Obligation Fund (USOF), Department of Telecommunications (DoT), Government of India	(ii) Bharat Broadband Network Limited (BBNL)
(iii) State Government of Andhra Pradesh	(iv) Andhra Pradesh FiberNet Ltd.

MoU No. 30-166-14/2016-BB-USOF/BharatNet Phase-II

Dated 13/11/2017

This MEMORANDUM OF UNDERSTANDING is made on this 13th day of November 2017 amongst

THE PRESIDENT OF INDIA ACTING THROUGH THE ADMINISTRATOR, UNIVERSAL SERVICE OBLIGATION FUND (USOF), DEPARTMENT OF TELECOMMUNICATIONS (DoT) (hereinafter referred to as "Government of India") under the administrative control of Ministry of Communications having its office at Sanchar Bhawan, Ashoka Road, Delhi – 110001 (hereinafter referred to as "USOF, DoT" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of the First Party:

AND

Bharat Broadband Network Limited, a company incorporated under the provisions of the Companies Act. 1956 / 2013 as amended from time-to-time and having its registered office at Room No. 306, 3rd Floor, C-DOT Campus, Mandigaon Road, Mehrauli, New Delhi (hereinafter referred to as "BBNL" which expression shall, unless repugnant to the context or meaning thereof, include its Authorized Signatory, successors and assigns) of the Second Party:

AND

Government of Andhra Pradesh (hereinafter referred to as "State Government") which expression shall, unless repugnant to the context or meaning thereof, include its Authorized Signatory, successors and assigns of the Third Party:

AND

Andhra Pradesh State FiberNet Ltd. a State Public Sector Undertaking incorporated as a public limited company under the Companies Act 1956 / 2013 as amended from time to time and having its registered office at _____ (hereinafter referred to as "State Implementing Agency"), which expression shall unless repugnant to the context or meaning thereof, include its Authorised Signatory, successors and assigns of the Fourth Party:

Definitions:

- (a) "Administrator" means the Administrator of Universal Service Obligation Fund (USOF), Department of Telecommunications (DoT) appointed by Government of India;
- (b) "BharatNet Project" means a Project of Government of India (GOI) for provisioning of broadband connectivity to all Gram Panchayats;
- (c) "Bharat Broadband Network Limited (BBNL)" means a Central Public Sector Undertaking (CPSU) under Department of Telecommunications, Government of India which is responsible for executing the BharatNet Project;
- (d) "CAPEX" means Capital cost of the project;
- (e) "Detailed Project Report (DPR)" means a Project Report for planning and Implementation submitted by State Government for the State Led Model for implementation of BharatNet Phase-II;
- (f) "Empowered Committee" means a GoI committee, chaired by Secretary, Department of Telecommunications consisting of GoI Officials and special invitees such as subject expert(s) and the concerned State represented through Chief Secretary;
- (g) "Gigabit Passive Optical Networks" means a point-to-multipoint access mechanism. Its main characteristic is the use of passive splitters in the fibre distribution network, enabling one single feeding fibre from the service provider's central office to serve multiple homes and small businesses;
- (h) "End-to-End Connectivity" means optical fibre cable has been laid from Block to GP and tested for dark fibre connectivity (TPA approved);
- (i) "Lifetime" means a period of contract/MoU valid for 8 years;
- (j) "Linear Architecture" means a network architecture in which each device is connected one after the other in a sequential chain;
- (k) "MoU" means the Memorandum of Understanding herein containing the Terms & Conditions set forth & agreed therein, including all other documents expressly annexed thereto or incorporated therein and the instructions, clarifications and the modifications/amendments issued thereunder by USOF;
- (l) "Network Operations Centre (NOC)" means one or more locations from which network monitoring and control or network management, is exercised over a set of computer(s), telecommunication and/or satellite network devices;
- (m) "Nodal Officer" means Principal Secretary / Secretary (Information Technology or Department of which Information Technology is a part) or Principal Secretary / Secretary nominated by the State Government to act as a coordinator for the purpose of this Project;
- (n) "OFC" means Optical Fibre Cable;

- (o) "OPEX" means cost to be incurred on operations & maintenance and management of the project;
- (p) "Optical network terminal (ONT)" means a network interface device used for fibre termination at end location;
- (q) "Parties" means USOF (DoT), BBNL, State Government and State Implementing Agency;
- (r) "Project Steering Committee" means a Gol committee chaired by Administrator USOF (DoT) which would have heads of State implementing agencies as its members;
- (s) "Project Implementing Agency (PIA)" means an Agency entrusted to carry out Project implementation and Operations & Maintenance of the total or part of work for any given package by SIA;
- (t) "RFP Template" means a template for "Request for Proposal" prepared by DoT/BBNL to be issued by State/ SIA for selection of PIA;
- (u) "State Level Implementation Committee" means a committee headed by Chief Secretary of the State. Other members of the committee shall be nominated by the State Government and would include Administrator (USOF (DoT)) or his nominee, representative of BBNL and CGM (BSNL) of the State/Circle. The Principal Secretary/Secretary (Information Technology or Department of which Information Technology is a part) or Principal Secretary/Secretary nominated by the State Government shall be the convenor;
- (v) "State Led Implementation Model" means project to be implemented by State Government / State Implementing Agency;
- (w) "State Implementing Agency (SIA)" means a nodal agency appointed by the State to ensure smooth implementation of the Project. State Implementing Agency shall also be known as SIA;
- (x) "State" means a State of India;
- (y) "Third Party Agency (TPA)" means a third party that is assigned the task of inspection, verification and certification of the completion of work;
- (z) "Universal Service Obligation Fund (USOF)" means funds established under Indian Telegraph (amendment), ACT 2003, Indian Telegraph (amendment), ACT 2006 and Administered in accordance with the rules framed thereunder. USOF is funding the creation, Operations & Maintenance of BharatNet Project;
- (aa) "Work Order" means a Work order to be issued by the State/State Implementing Agency to the PIA;

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Note:

1. Words in singular shall include the plural and vice-versa where the contexts so desires.
2. Clause headings are inserted for ease of reference only and shall be ignored in interpreting the terms of this memorandum

WHEREAS the Government of India has approved on 19.7.2017 a modified implementation strategy for BharatNet to provide broadband connectivity to all GPs (approximately 250000)

WHEREAS the approval of this Project involves broadband connectivity to GPs through an optimal mix of media i.e. Underground OFC, Aerial OFC, Radio and Satellite. The implementation, inter-alia, through State-led model provides for creation, operation & maintenance, management, utilization of BharatNet Project and any other related activities

WHEREAS the asset(s) created under BharatNet project shall be the National Asset(s) and access shall be available on non-discriminatory basis to the Service Providers

WHEREAS the Telecom Commission (TC) has approved the proposal of the State Government of Andhra Pradesh submitted vide its Detailed Project Report (DPR) for implementation of BharatNet Phase-II

WHEREAS "BharatNet Phase-II Project" hereinafter referred to as Project

NOW THIS MEMORANDUM IS HEREBY AGREED BY AND AMONGST THE PARTIES HERETO as follows:-

1. MoU is signed for the implementation of the Project in the concerned State in letter and spirit.
2. **Integral Features of State-led implementation of the Project shall be as under:**
 - 2.1. Project is targeted to be completed by March 31st, 2019
 - 2.2. The asset(s) so created shall be the National Asset(s) fully owned by the Government of India and non-discriminatory access, including leasing of dark fibres, shall be provided to Service Providers
 - 2.3. The State and its SIA shall be responsible for network design, building, operating, maintaining, managing, utilization and any other related activities pertaining to the created network
 - 2.4. The approval of the Project is primarily based on GPON technology in linear architecture. The cost of any enhanced network architecture beyond the approval of TC shall be borne by the State.
 - 2.5. Laying of fresh fibre OFC from Block to GPs to provide end-to-end connectivity, and leasing of dark fibres to Service Providers
 - 2.6. 48 and above core OFC for underground and 24 and above core OFC for Aerial and availability of minimum 6 dedicated dark fibres from Block to GP

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- 2.7. Interoperability among all the network elements and integration with BBNL central NOC is mandatory
- 2.8. Provision of 1 Gbps bandwidth in case of wired media (OFC) at each GP
- 2.9. Provision of minimum 100 Mbps bandwidth scalable upto 1 Gbps in case of Wireless media (Radio) at each GP
- 2.10. Award of work through an open, competitive and transparent bidding process
- 2.11. Quality Assurance of materials procured for the project
- 2.12. Inspection, validation, certification and acceptance testing of each milestone of the project by Third Party Agency (State TPA)
- 2.13. Quality of Service (QoS) as mandated by TRAI

Details of Project Report for Implementation of the Project for the Andhra Pradesh

S No.	Item		Details [#]
1.	No. of GPs		11254
2.	GPs through OF cable	Underground	0
		Aerial	10608
3.	GPs on radio		646
4.	GPs on Satellite		0
5.	Total Route Km OFC to be laid	Underground	0
		Aerial	51449
6.	Route Km per GP	Underground	0
		Aerial	4.85
7.	Network topology		Linear
8.	Technology		GPON
9.	Total CAPEX provisioned for 11254 GPs # (INR Cr.)	Underground	0
		Aerial	847.98
		Radio	
10.	Net OPEX provisioned for 3 years (INR Cr.)	Underground	0
		Aerial	3.25
		Radio	
11.	Total Estimated Cost (INR Cr.)		851.23
12.	Time line to complete the 11254 GPs		March 31 st , 2019

Table: 1

Indicative; based on actual survey and design there may be variation. The CAPEX includes cost towards Quality Assurance (QA) of materials but excludes Administrative Expenses (AE) & Establishment Cost (EC). The CAPEX will be revised based on the work order value

3. Payment Terms to SIA

S. No.	Payment Phases	Payment Milestone	Amount/ Payment	Documents required
1.	Mobilization Advance to SIA*	On signing of MoU	10% of recommended basic estimated cost as per DPR	Copy of Signed MoU
2.	Award of work Order to PIA	*On signing of Work Order (Payment made under S. No. 1 shall be adjusted such that total payment released to SIA is 20% of Actual work order value)	20% of the relevant work order value (CAPEX)	Copy of Work Order to PIA
3.	Completion of work (10%)	End-to-End connectivity in 10% of the GPs (on submission of documentary evidence)	30% of the relevant work order value (CAPEX)	Copy of completion certificate issued by State TPA, proof of accessibility of GP ONT from BBNL Central NOC

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S. No.	Payment Phases	Payment Milestone	Amount/ Payment	Documents required
4.	Completion of work (30%)	End-to-End connectivity in 30% of the GP s (on submission of documentary evidence)	20% of the relevant work order value (CAPEX)	Copy of completion certificate issued by State TPA, proof of accessibility of GP ONT from BBNL Central NOC
5.	Completion of work (70%)	End-to-End connectivity in 70% of the GPs (on submission of documentary evidence)	20% of the relevant work order value (CAPEX)	Copy of completion certificate issued State TPA, proof of accessibility of GP ONT from BBNL central NOC
6.	Completion of work (100%)	End-to-End connectivity in 100% of the allotted work (on submission of documentary evidence)	N.A.	Copy of completion certificate issued by State TPA, proof of accessibility of GP ONT from BBNL central NOC
7.	After 1 Year Completion (End-to-End connectivity) of Work	On Successful Operations and running of services	10% of the relevant Work Order Value (CAPEX)	As per performance reports through BBNL NOC and TPA report

Table: 2

Note 1: All releases of funds to the State shall be in a separate Project Bank Account to be specially opened for the project. The utilization of this account will be made only for AE&EC of the State/SIA for this Project and payment to PIA and for no other purpose(s). The spare funds in this account shall be kept in fixed deposit with a public sector bank and the interest accrued there upon will be added to the corpus of this account;

Note 2: State/SIA can withdraw up to 2% from the mobilization advance for the purpose(s) like AE&EC. However, for further withdrawal from this mobilization advance beyond 2%, State/SIA shall get authorisation for withdrawal from State Level Implementation Committee;

Note 3: USOF/BBNL shall not pay anything in excess of the Project cost to the State/SIA throughout the currency of the contract (MoU);

Note 4: All payments to Project Implementing Agency (PIA) by SIA shall be released only after certification of Delivery and completion of Implementation Milestones by the State Appointed TPA;

Note 5: All parties shall adhere to Tax Compliance of the Government. Applicable taxes would be paid on actuals. In case the work order value is inclusive of applicable taxes, then additional taxes shall not be paid to the parties. The SIA shall raise a tax compliant invoice on BBNL for the due amount;

Note 6: The tax compliance of payments from BBNL to SIA shall be ensured by SIA by raising Advance Receipt Voucher (ARV) and/or invoice on BBNL as per GST applicable rules;

3A. Administrative Expenses (AE) & Establishment Cost (EC): The applicable AE & EC will be released prorata along with the advances to SIA. For AE & EC, SIA shall have to raise a tax compliant invoice on BBNL

4. Payment Terms for OPEX

Payment to SIA will be on Net OPEX basis i.e. OPEX Less Revenue in Project for Operations & Maintenance. The OPEX will be based on the tender discovered rates along with the administrative expenses and establishment cost of SIA. The revenue earned will be deducted from the OPEX. BBNL will reimburse the net OPEX on submission of tax compliant invoice(s) and supporting documentation from the SIA. The period of Settlement shall not be less than 3 months. The arrangement will be reviewed on the project becoming revenue positive.

5. Monitoring Mechanism

The progress of the Project shall be monitored through the tool(s) and the format(s) decided/provided by USOF/BBNL. The State shall be free to deploy an IT tool for monitoring of the work, but the access to the same shall be provided by the State to USOF/BBNL. The progress reports shall be issued every month or as required by DoT/USOF/BBNL from the State. Reports shall include such schedules, charts and drawings as required by DoT/USOF/BBNL, considering necessity for adequately monitoring the Project. The reports shall be made available to DoT/USOF/BBNL at least five working days prior to scheduled progress review meeting. The States shall provide necessary data / progress reports / funds utilization reports or any other reports whenever required by DoT/USOF/BBNL.

The State Implementing Agency (SIA) shall be required to publish a 30 day Look Ahead schedule with monthly progress report to DoT/USOF/BBNL and the SIA shall be required to update the overall schedule, procurement schedule, construction and commissioning schedule and any other implementation schedule as and when required by DoT/USOF/BBNL. The State shall give the detailed mapping prescribing timeline of all the activities, project plan, partial completion report or any other progress report of the project as and when required by DoT/USOF/BBNL.

Roles and Responsibilities of the Parties to the Contract (MoU) are defined below:

6. State Government

- 6.1. The State shall be responsible for implementation of the Project.
- 6.2. The State shall ensure that the representative(s) of DoT/USOF/BBNL shall be the special invitees on the Board of SIA.
- 6.3. The State shall designate a nodal officer to coordinate with BBNL for implementation of the Project.
- 6.4. The State shall ensure Right of Way (RoW) to SIA as per the tripartite agreement signed among DoT, BBNL and State. In case the State/SIA faces any issues in getting RoW from central agencies, the State/SIA may approach DoT/USOF/BBNL to facilitate the same.
- 6.5. The State shall provide the requisite space, power and access at GPs for installation of equipment and smooth implementation of the Project at its own cost. The State shall

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- provide additional space, power and access at the GP level for any additional infrastructure to be deployed for the project.
- 6.6. The State shall ensure the implementation of underground OFC cable/ aerial OFC cable/ Radio and related equipment, accessories, etc. The State shall also be responsible for the utilization of network.
 - 6.7. The State shall ensure that non-discriminatory access, including leasing of dark fibres is provided to the service providers for service delivery.
 - 6.8. The State shall ensure Interoperability across all the network elements and integration with BBNL central NOC.
 - 6.9. The State may ask SIA to deploy an IT tool for real-time monitoring of the project and provide access to DoT/USOF/BBNL.
 - 6.10. The State shall ensure to provide access (physical and remote) of project management and monitoring tool to DoT/USOF/ BBNL.
 - 6.11. The State shall ensure to provide access to the representatives of DoT/USOF/BBNL to BharatNet asset(s) as and when required.
 - 6.12. The State shall ensure that SIA provides all reports of physical and financial progress of the Project in the format prescribed by DoT/USOF/BBNL.
 - 6.13. The State shall setup a State NOC and ensure network management, operations and monitoring which shall be further integrated with centralized Network Operating Centre (NOC) of BBNL.
 - 6.14. The State shall ensure that SIA must provide at least one broadband connection to any one of the government institution and shall ensure that this connection does not get disconnected at GP.
 - 6.15. The State shall share the Business plan for utilization of the network.
 - 6.16. The State shall adhere to the project timelines which are of utmost importance. USOF shall reserve the right to take over the project implementation, in case of the project milestones (as per RFP Template) are delayed by over 60 days of its agreed time. In this regard, the decision of Empowered Committee shall be final and binding and the State has to adhere to it.
 - 6.17. The State shall make provision for identification of appropriate network termination locations within GPs and undertake any necessary upgrade of the same at its own cost, if required.
 - 6.18. The State shall seek approval of final enhanced proposed network architecture from DoT/USOF/BBNL before release of RFP.
 - 6.19. The State shall ensure the appointment of TPA to carry out the inspection, verification and certification of each milestone of the Project. The TPA shall submit various reports and certificates to the State Government/BBNL which shall be further shared with USOF.
 - 6.20. The State shall ensure that the District e- Governance society extends its support to the Wi-Fi Implementing Agencies for the Wi-Fi provisioning in that State.

7. State Implementing Agency (SIA)

- 7.1. The SIA shall be responsible for Design, Build, Operate, Manage, Maintain and Utilize the created network for the Project.
- 7.2. The SIA shall provide non-discriminatory access, including leasing of dark fibre to service providers for service provision.
- 7.3. The SIA shall be responsible for implementation of underground/ aerial OFC/Radio Network according to the approved plan.
- 7.4. The SIA shall ensure availability of at-least 6-dark fibres at each GP and ensure that one dark fibre out of six fibres shall be provided for connectivity to any one of the State institution.
- 7.5. The SIA shall ensure Interoperability among all the network elements & integration with BBNL central NOC.
- 7.6. The SIA shall appoint PIA through open, competitive and transparent bidding process. In this regard, mandatory clauses of the RFP template shall be followed by the SIA.
- 7.7. The SIA shall maintain network availability of at-least 95% in each GP at all time.
- 7.8. The SIA shall develop a business model which can sustain costs incurred in the O&M phase over the long run.
- 7.9. The SIA shall establish a State NOC through which all necessary network management, operations and monitoring shall be carried out.
- 7.10. The SIA shall provide all reports of physical and financial progress of the project in the formats prescribed by USOF/BBNL.
- 7.11. The SIA shall deploy an IT tool for real-time monitoring of the project and provide access (physical and remote) of project management to USOF/BBNL.
- 7.12. The SIA shall appoint a TPA to carry out inspection, verification and certification of each milestone of the Project. The TPA shall submit various reports and certificates to the State Government/BBNL which shall further be shared with USOF.
- 7.13. SIA shall ensure that the utilization reports of service providers in future shall be integrated with the Central NOC of BBNL.

8. Bharat Broadband Network limited (BBNL)

- 8.1. BBNL shall oversee and review the implementation (both physical and financial) of the project through proper mechanism and tools.
- 8.2. BBNL shall issue guidelines/ modalities / reporting formats for reviewing the implementation of the project.
- 8.3. BBNL shall provide funds to the State as per the matrix defined in Table 2 above.
- 8.4. BBNL shall share the RFP Template with the State for appointment of PIA. The RFP Template shall also include mandatory requirements which shall be followed by the State.
- 8.5. In case, the State/SIA faces any issues in getting RoW from central agencies, the State/SIA may approach BBNL to facilitate the same. BBNL shall reimburse the cost incurred on RoW clearances, wherever applicable, as per actuals on submission of relevant bills.
- 8.6. BBNL shall implement the satellite component of the Project in the State.

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9. Universal Service Obligation Fund (USOF)

- 9.1. USOF shall monitor and review the implementation of the project.
- 9.2. USOF shall fund the State/ SIA through BBNL for Implementation of the Project.
- 9.3. USOF shall monitor the fund disbursement and its utilization.
- 9.4. USOF shall have the right to appoint a TPA other than the TPA appointed by the SIA. The TPA shall randomly inspect, verify and certify the progress and completion of the project on sample basis. The TPA shall submit reports, both progress and financial to DoT/USOF.

10. Project Governance Structure:

- 10.1. **Empowered Committee** chaired by Secretary Telecom, DoT would be constituted.
- 10.2. **State Level Implementation Committee** chaired by Chief Secretary of the State would be setup, which would have DoT/USOF/BBNL designated officials and CGM (BSNL) of the State/Circle as its members.
- 10.3. **Project Steering Committee** chaired by Administrator USOF, DoT which would have heads of State Implementing agencies as its members.

11. Right to Inspect

- 11.1. USOF shall have the access to all physical and financial records and systems pertaining to the project at all times. All signatories to this MoU shall facilitate the inspection of the project assets by and verification of records/systems by USOF to ensure proper utilization of the funds disbursed.

12. Set off Clause

- 12.1. In the event any sum of money or claim becomes recoverable from or payable by BBNL to the State against the MoU, such money or claim can be (without restricting any right of set off for counter claim given or employed by law) deducted or adjusted against any amount or sum of money then due or which at any time thereafter may become due to BBNL under this MoU or any other MoU or Contract between the State and BBNL.
- 12.2. The aforesaid sum of money, payable to BBNL shall include any valuable security, which can be converted into money. After exercising the right of set off, a notice shall always be given immediately within seven days by the State to BBNL.

13. Non-Execution of Project

- 13.1. In case of non-execution of the project for whatever reason, the advances provided to the State shall have to be refunded in full along with interest accrued thereon.
- 13.2. In case of non-execution of the project in part or failure to complete the project, the State shall return the amount towards non-executed portion of the project.
- 13.3. Since the project timelines are of utmost importance, USOF (DoT) reserve the right to take over the project implementation, in case the project milestones (As per the RFP Template) get delayed by over 60 days of its agreed timelines for reasons attributable to State/SIA. In this regard, the decision of the Empowered Committee shall be final and binding and State has to adhere to it.

14. Confidentiality

14.1. All parties acknowledge the confidentiality of the information, which may be exchanged among the parties from time to time and agree not to disclose the same to any outside party. However, each party shall be free to disclose such information as:

- part of the public domain at the time of disclosure; or
- Required to be disclosed by official authorities in accordance with the applicable laws.

15. Arbitration and Applicable law:

15.1. Except otherwise provided in this MoU in the event of any question or interpretation of any clause, dispute or difference or to any other claim, right, matter or thing whatsoever in any way arising out or relating to this MoU whether arose during the progress of the work or after the cancellation, termination, completion or abandonment thereof, shall be settled by the parties amicably through negotiation within a period of 30 days of the notice by other party, failing which, the dispute shall be referred to the sole arbitrator appointed by the Secretary, Department of Telecommunications, Government of India. The arbitration shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification of re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings. The arbitrator shall adjudicate on only such disputes as are referred to him by the appointing authority and give separate award against each dispute and claim referred to him and shall give reasons for the award. The fee payable to arbitrator shall be paid equally by both the parties.

15.2. Notwithstanding any dispute or claim of the pendency of any arbitration or other proceedings, the State shall continue to provide the service for the whole duration of the MoU.

16. Suspension, Revocation or Termination of MoU

16.1. The Administrator on behalf of President of India reserves the right to suspend the operation of the MoU in whole or in part, at any time, if in the opinion of the Administrator it is necessary or expedient to do so in the public interest or in the interest of the security of the State. However, the Administrator shall not be responsible for any damage, claim or loss caused or arising out of such action. The suspension of the MoU will not be a cause or ground for extension of the period of the MoU and suspension period will be counted towards period spent under the validity of the MoU.

16.2. The Administrator on behalf of President of India may, without prejudice to any other remedy available for the breach of any conditions of the MoU, by a written notice of 60 calendar days issued to the State at its registered office, terminate the MoU under any of the following circumstances:

- (a) Failure to perform any obligation(s) under the MoU;
- (b) Failing to rectify any defect as may be pointed out by the Administrator;
- (c) Going into liquidation or is ordered to be wound up.

16.3. Wherever considered appropriate, the Administrator may conduct inquiry to determine whether there has been any breach in compliance with the terms and conditions of the

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MoU by the State and upon such inquiry, the State shall extend all reasonable facilities and shall endeavour to remove the hindrance of every type.

- 16.4. The Administrator on behalf of President of India shall have right to access all project related records, all physical infrastructure created and its related data sets. During the course of implementation, the Administrator shall have the right to issue advisories and other directions, and the SPV shall be obligated to follow such directions/advisories.

17. Withdrawal and Changes

- 17.1. Withdrawal from Project: In the event of the State/SIA withdrawing from executing the Project, then the State/SIA should immediately return the unutilized amount released by USOF/BBNL together with the interest accrued thereon as per the applicable norms.
- 17.2. Changes to the project: Any changes in the project components, change in the pattern of use of grant-in-aid funds other than as approved by the TC/DOT/USOF/BBNL while according final approval to the Project would need the prior approval of TC/DOT/USOF/BBNL.

18. Intellectual property rights

- 18.1. DoT/USOF shall own and have Intellectual Property Rights of all the deliverables which shall be developed for this Project.

19. Force Majeure

- 19.1. If at any time, during the continuation of the MoU, 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 IP), 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 MoU, 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 services under the MoU shall be resumed as soon as practicable, after such EVENT comes to an end or ceases to exist.
- 19.2. **No Breach of Agreement:** The failure of a Party to fulfil any of its obligations under the MoU shall not be considered to be a breach of, or default under this MoU insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this MoU, and (ii) has informed the other Party as soon as possible about the occurrence of such an event.
- 19.3. **Extension of Time:** Any period within which a Party shall, pursuant to this MoU complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

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- 19.4. 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.
- 19.5. It is understood and declared that any strike, lock out or labour dispute or unrest only in the undertaking of the State or the reasonable harshness of the nature due to the terrain or difficulties arising from remoteness of the area or insufficiency of funds will not be treated as an EVENT.

20. Validity

- 20.1. This MoU shall come into force upon signature by all the parties and shall be valid for entire lifecycle of the project.

21. Termination due to Event of Default

Without prejudice to any other right or remedy which USOF/BBNL may have in respect thereof under this MoU, upon the occurrence of an Event of Default by the State/SIA, USOF/BBNL shall be entitled to terminate this MoU by issuing a Termination Notice to the State/SIA, provided that before issuing the Termination Notice, USOF/BBNL shall, by a notice in writing, inform the State/SIA, of its intention to issue the Termination Notice ("Preliminary Notice"). In case the underlying breach/default is not cured within a period of 60(sixty) days from the date of the Preliminary Notice (Cure Period), USOF/BBNL shall be entitled to terminate this MoU by issuing the Termination Notice;

- 21.1. The following shall apply in respect of cure of any of the defaults and/or breaches of this MoU:

- a) The Cure Period provided in this MoU shall not relieve the State/SIA from liability for damages caused by its breach or default;
- b) If the cure of any breach by the State/SIA requires any reasonable action by the State/SIA that must be approved by USOF/BBNL hereunder, the applicable Cure Period shall be extended by the period taken by USOF/BBNL to accord the required approval

- 21.2. Notwithstanding anything contained in this MoU, the MoU can be terminated under extreme exigency condition by the concerned parties under mutual agreement.

In case of war / hostilities, the USOF/BBNL, based on operational requirements towards national security, can suspend the MoU by giving three months' notice to the State/SIA and can resume the same at the end of the war / hostilities.

22. Rights of USOF/BBNL on Termination

In the event of Termination, USOF/BBNL shall be fully authorized to take possession of the assets so created under the project and recall the unutilized amount released under the project along with accrued interest thereon as per the applicable norms.

- 22.1. Notwithstanding anything to the contrary contained in this MoU, any Termination pursuant to the provisions of this MoU shall be without prejudice to accrued rights of either Party including its right to claim and recover money damages and other rights and remedies which it may have in law or contract.

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23. LIABILITIES AND INDEMNITIES

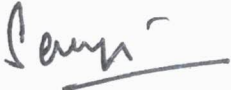
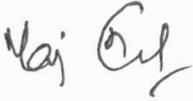
23.1. General Indemnity

- i. The State/SIA shall indemnify, defend and hold USOF/BBNL harmless against any and all proceedings, actions and, third party claims arising out of a breach by State/SIA of any of its obligations under this MoU.
- ii. Without limiting the generality of the aforesaid sub-para of the MoU, the State/SIA shall fully indemnify, save harmless and defend USOF/BBNL including its officers, agents, subsidiaries, Agencies from and against any and all loss and damages arising out of or with respect to (a) failure of the State/SIA to comply with any laws or permits, (b) payments of taxes relating to the State/SIA's Contractors, suppliers and representatives income or other taxes required to be paid by the State/SIA without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the State/SIA or any of its Contractors which are payable by the SPV or any of its Contractors.

23.2. Governing Law and Jurisdiction: This MoU shall be construed and interpreted in accordance with and governed by the laws of India and the Courts in New Delhi, India shall have jurisdiction over all matters arising out of or relating to this Agreement.

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SIGNED AND DELIVERED BY (On behalf of Universal Service Obligation Fund (USOF), Department of Telecommunications (DoT)) Signature:  Name & Designation: Sh. Sanjay Singh, IAS Administrator, USOF Address:	In the presence of Signature: Name & Designation: Address:
SIGNED AND DELIVERED BY (On behalf of Bharat Broadband Network limited) Signature:  Name & Designation: Sh. Manoj Anand Director Finance, BBNL Address:	In the presence of Signature: Name & Designation: Address:
SIGNED AND DELIVERED BY (On behalf of State of Andhra Pradesh) Signature:  Name & Designation: Sh. K. Vijayanand, IAS Principal Secretary - IT Government of Andhra Pradesh Address:	In the presence of Signature: Name & Designation: Address:
SIGNED AND DELIVERED BY (On behalf of State Implementing Agency Andhra Pradesh State FiberNet Ltd.) Signature:  Name & Designation: Sh. Babu A., IAS Managing Director, Andhra Pradesh State FiberNet Ltd. Address:	In the presence of Signature: Name & Designation: Address:

