

- 15.1 The MVS services will be offered by BSNL on post-paid as well as prepaid basis to the customers. For prepaid, both online and offline payment collection methods shall be used.
- 15.2 There shall be four nodal circles one in each zone for settlement of revenue share with the MVSSP for MVS services/CPE provided over Landline & BB. However for MVS provided over leased lines EB units of respective circles shall carry out the billing and revenue settlement.
- 15.3 For post-paid MVS billing over Landline/BB, IT Project circle of BSNL shall share the details of billed revenue as well as realized revenue with the 4 nodal circle nominated for settlement of revenue sharing claims for the complete zone. Same details will be shared with the MVSSP also. MVSSP shall raise monthly invoice accordingly, and payment of revenue share shall be released on monthly basis to MVSSP within 7 days of receipt of invoice.
- 15.4 The revenue share payable to the MVSSP for post-paid services shall be calculated on the realized amount. Revenue sharing shall be done on realized amount net of all statutory levies/duties/taxes/licenses fee (if any) etc. payable to government.
- 15.5 For online subscription of service, BSNL payment portal shall be utilized. BSNL shall extend support for the integration of MVS portal to BSNL payment portal by MVSSP.
- 15.6 No revenue share shall be payable to the MVSSP for access charges on dialup or Broadband, leased line etc.
- 15.7 Any SLA and any other penalty by the end customer is to be borne by the MVSSP only. Therefore such penalties shall also be deducted prior to sharing of the revenue. However BSNL shall bear the penalty (if any) on account of connectivity.
- 15.8 Any discrepancy found would be mutually discussed and resolved by nodal circle. Balance of payments arising due to any reason shall be adjusted in future.
- 16 **Initial Term, Lock in Period, Exit Clause and Renewal** (clause 7, Section 5 Part A of EOI Document)
- 16.1 Duration of contract is 5 years from the date of Launch of MVS for offering services to the end customers. After five years also, the contract can be extended in a block of two years at the liberty of BSNL on mutually negotiated terms and conditions including commercials.



- i) The terms and conditions of the contract shall come into effect from the date of award of work, and will remain valid up to a period of five (5) years plus the implementation period (time period to launch the service i.e., 4 months or more on account of delay in launch of services) unless and until terminated by either party by providing a written notice of termination not less than six (6) months prior to the intended termination date. However, bidder (MVSSP) can serve the notice of termination only after completion of three years of contract starting from date of launch of service.
- ii) Given the nature of services proposed under this EOI, the terms and conditions of the contract shall survive beyond the termination period and up to the expiry of term of end customer purchased service as extant on the date of expiry of this contract, for the remaining period of such terms in customer service plan.
- iii) If MVSSP exits, it will be liable to pay BSNL the sum of expenses that BSNL will be required to incur on servicing all existing customers, for the remaining period of their purchased plan validity. In such case, those customers may be serviced through alternate means /partners, at risk and cost of the MVSSP, and the sum of expenses on executing such arrangement, if any, and difference of Revenue share (in case of the same being lower for BSNL in the new engagement), shall be payable by MVSSP to BSNL. In case MVSSP offers to continue to discharge the existing liabilities for all current customer contracts till expiry of their term, but refrain from taking up any new business, then the same shall be acceptable to BSNL on existing terms and conditions.
- iv) No penalty / damages / compensation shall be payable by either party before expiry of agreement period, if exit is made under the following circumstances:
 - a) the order of any Government (Central/State) or any statutory body
 - b) in Force Majeure event

17 **Force Majeure** (clause 8, Section 5 Part A of EOI Document)

- 17.1 If, at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract is prevented or delayed by reasons of any war or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, quarantine restrictions, strikes, lockouts or act of God (hereinafter referred to as events) provided notice of happenings of any such eventuality is given by either party to the other within 21 days from the date of occurrence thereof, neither party shall by reason of such event be entitled to terminate this contract nor shall either party have any claim for damages against other in respect of such non-performance or delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such an event come to an end or cease to



exist, and the decision of BSNL as to whether the deliveries have been so resumed or not shall be final and conclusive. Further that if the performance in whole or part of any obligation under this contract is prevented or delayed by reasons of any such event for a period exceeding 60 days, either party may, at its option, terminate the contract.

- 17.2 Provided, also that if the contract is terminated under this clause, BSNL shall be at liberty to take over from the MVSSP at a price to be fixed by BSNL, which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of manufacture which may be in possession of the MVSSP at the time of such termination or such portion thereof as BSNL may deem fit, except such materials, bought out components and stores as the MVSSP may with the concurrence of BSNL elect to retain
- 18 **Termination of contract due to non-performance (default)** (clause 9, Section 5 Part A of EOI Document)
- 18.1 The BSNL may, without prejudice to any other remedy for breach of contract, by written notice of default, sent to the MVSSP, terminate this contract in whole or in part
- a) If the MVSSP fails perform services and meeting the Rollout obligations within the time period(s) as specified in the contract, or any extension thereof granted by the BSNL;
 - b) If the MVSSP fails to perform any other obligation(s) under the Contract; and
 - c) If the MVSSP, in either of the above circumstances, does not remedy his failure within a period of 15 days (or such longer period as BSNL may authorize in writing) after receipt of the default notice from the BSNL.
- 18.2 MVSSP's termination during the lock-in period shall carry a penalty in the form of surrender of all equipment and transfer of ownership to BSNL at zero cost in addition to the sum of all consequential damages, if any that arise on account of pre mature closure of as on date service contracts that BSNL would have entered into with its customers.
- 18.3 MVSSP shall be liable to pay BSNL the sum of all such expenses that BSNL will be required to incur on servicing all existing customer contracts. In such case, these contracts may be serviced through alternate means /partners, at risk and cost of the MVSSP, and the sum of expenses on executing such arrangement, if any, and difference of Revenue share (in case of the same being lower for BSNL



in the new engagement), shall be payable by MVSSP to BSNL.

18.4 In the event the BSNL terminates the contract in part, the MVSSP shall continue the performance of the contract to the extent not terminated.

19 Termination for Insolvency (clause 10, Section 5 Part A of EOI Document)

19.1 BSNL may at any time terminate the Contract by giving written notice to the MVSSP, without compensation to the MVSSP. If the MVSSP becomes bankrupt or otherwise insolvent as declared by the competent court provided that such termination shall not prejudice or affect any right of action or remedy which has accrued or shall accrue thereafter to BSNL.

20 Arbitration (clause 11, Section 5 Part A of EOI Document)

20.1 In the event of any question, dispute or difference arising under this agreement or in connection there-with (except as to the matters, the decision to which is specifically provided under this agreement), the same shall be referred to the sole arbitration of the CMD, BSNL or in case his designation is changed or his office is abolished, then in such cases to the sole arbitration of the officer for the time being entrusted (whether in addition to his own duties or otherwise) with the functions of the CMD, BSNL or by whatever designation such an officer may be called (hereinafter referred to as the said officer), and if the CMD or the said officer is unable or unwilling to act as such, then to the sole arbitration of some other person appointed by the CMD or the said officer. The agreement to appoint an arbitrator will be in accordance with the Arbitration and Conciliation Act 1996. There will be no objection to any such appointment on the ground that the arbitrator is a Government Servant or that he has to deal with the matter to which the agreement relates or that in the course of his duties as a Government Servant he has expressed his views on all or any of the matters in dispute. The award of the arbitrator shall be final and binding on both the parties to the agreement. In the event of such an arbitrator to whom the matter is originally referred, being transferred or vacating his office or being unable to act for any reason whatsoever, the CMD, BSNL or the said officer shall appoint another person to act as an arbitrator in accordance with terms of the agreement and the person so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.

20.2 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.

20.3 The venue of the arbitration proceeding shall be the office of the CMD, BSNL, New Delhi or such other places as the arbitrator may decide.

21 **Sub Contracts** (clause 12, Section 5 Part A of EOI Document)

The MVSSP shall notify BSNL in writing of all subcontracts awarded under these contracts if not already specified in his bid. Such notification, in his original bid or later shall not relieve the MVSSP from any liability or obligation under the contract.

22 **Set off** (clause 13, Section 5 Part A of EOI Document)

Any sum of money due and payable to the MVSSP (including security deposit refundable to him) under this contract may be appropriated by the BSNL or any other person(s) contracting through the BSNL and set off the same against any claim of the BSNL or such other person or person(s) for payment of a sum of money arising out of this contract or under any other contract made by the MVSSP with the BSNL or such other person(s) contracting through the BSNL.

23 **Indemnification** (clause 14, Section 5 Part A of EOI Document)

23.1 MVSSP shall indemnify BSNL against any third party claim for carriage/ termination or any other charges that may be payable for this traffic.

23.2 In case of any claims by any third party towards licensing or otherwise for the products provided by the MVSSP, it will be the sole responsibility of the MVSSP to settle such claims. Under no circumstance, BSNL will have any liability for any such claim.

23.3 Since the MVS service shall be launched under BSNL license granted by DOT, MVSSP will ensure that there is no breach of license conditions and indemnify BSNL for damages both for financial and otherwise, arising out of any breach of the licensing condition.

23.4 MVSSP, as a provider of MVS services on behalf of BSNL, will abide by all the regulatory, statutory and licensing norms without any violation.

24 **Court Jurisdiction:** (clause 15, Section 5 Part A of EOI Document)

(i) Any dispute arising out of the EOI/bid document/evaluation of bids/issue of acceptance letter shall be subject to jurisdiction of the competent court at the place from where the NIT/EOI has been issued.



- (ii) Where a contractor has not agreed to arbitration, the dispute/claims arising out of the Contract/WO entered with him shall be subject to the jurisdiction of the Competent Court at the place from where Contract/WO has been issued. Accordingly, a stipulation shall be made in the contract as under:

“This Contract/ WO is subject to jurisdiction of Court at Delhi only”.

All other terms and conditions of the Tender and amendments, clarification etc related to the said tender enquiry shall be applicable for this WO.

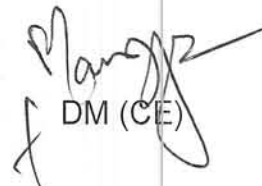
Note: Payments are subject to confirmation of the final prices from the tendering authority/BSNL wherever provisional prices are conveyed.

These issues with the approval of competent authority.


(MANOJ JAIN)
Asst. General Manager (CE)

Copy to:-

- ✓ 1. All CGMT/Telecom District concerned.
2. CGMQA, Sanchar Complex, WMS Compound, Jayanagar, Bangalore-56
3. GM (NWP-BB)/ GM(PF), BSNL Corporate office, New Delhi-110001.
4. A.O. (MMD), BSNL Corporate office, New Delhi-110001.
5. Office copy


DM (CE)