



**BHARAT SANCHAR NIGAM LIMITED**  
**O/o Chief General Manager Telecom**  
**No.1, S.V Road, Halasuru, Bangalore – 560 008.**

**REQUEST FOR EXPRESSION OF INTEREST**

<b>Subject:</b>	Expression of Interest (EOI) for provision of content to BSNL's broadband customers through a Content Delivery Network(CDN)
<b>Notice no.</b>	BB/11-3/NIB II/ P2.2/ CDN/ 58
<b>Date of Issue:</b>	19.09.2007
<b>Valid upto :</b>	06.02.2008
<b>Send EOI to:</b>	DGM ( NIB ) , O/o CGMT, Karnataka Telecom Circle, No.1, S.V Road, Halasuru, Bangalore – 560 008.
<b>Telephone no:</b>	080-25571555
<b>Fax:</b>	080-25570899
<b>Availability of EOI document`</b>	The EOI document can be downloaded from BSNL's website <a href="http://www.bsnl.co.in">www.bsnl.co.in</a> . The same can collected in person by the company's authorized signatory or can be requested by sending a self addressed stamped envelope with stamps affixed of value Rs 100/-, addressed to DGM ( NIB ) , 3 <sup>rd</sup> Floor, New Annex Building, O/o CGMT, Karnataka Telecom Circle, No.1, S.V Road, Halasuru, Bangalore – 560 008.
<b>Bid Security</b>	Rs. 20 lakhs with validity upto 6 months.

**INSTRUCTIONS FOR BIDDERS**

---

**1.0 Introduction**

~~BHARAT SANCHAR NIGAM LIMITED~~ (BSNL), a leading Public Sector Company of Government of India, is the largest Telecom service provider in India with the dominant market share in the Landline Telephony, Cellular Mobile Telephony & Internet services besides other services like MPLS VPN, internet telephony, leased ccts, etc. It is also the largest ISP and has recently commenced



ADSL based broadband service under the brandname “DataOne.” For more details about BSNL, please log onto [www.bsnl.co.in](http://www.bsnl.co.in).

BSNL has been providing narrowband Internet services on all India basis with 432 Internet nodes. These services are available throughout the country on local call basis with concessional pulse rates. BSNL supports about 3.1 million dialup subscribers with large number of leased line and MPLS VPNs subscribers utilising this infrastructure

In its endeavour to provide the latest & best of the services to its customers at the affordable prices, BSNL has drawn huge plans of providing Broadband Internet services in 1150 cities in the country in a phased manner spanning over next few months. BSNL has planned to add broadband capacity in excess of 7 million during 2007-08 to the existing capacity of one million. The subscriber base is increasing at a very fast pace in all the categories, namely Narrowband, Broadband, MPLS VPNs, etc.

## **2.0 Broadband Network Architecture**

The broadband network of BSNL (Deployed under the project “National Internet Backbone-II”) comprises the managed MPLS backbone and the broadband access. The backbone network will carry broadband and narrowband Internet traffic, content based service traffic, Virtual Private Network (VPN) traffic, IP TAX traffic, etc.

The two layers of the MPLS backbone are the CORE & the EDGE networks. The CORE Network comprises the routers connected with the high speed STM-16 transmission links whereas the EDGE network comprises the EDGE routers connected to the CORE routers through the Gigabit Ethernet or STM-1 links. This layer aggregates customer traffic, enforces QOS and extends managed access to the customers.

This layer provides the customer access through three mechanisms: (a) Dialup, (b) Dedicated access, and (c) Broadband access. In addition, there will be routers at Mumbai, Chennai, Bangalore, Delhi, Kolkata, Pune, Hyderabad & Ernakulam working as International Gateway routers and at Mumbai, Bangalore & Noida for connectivity to back office facilities such as Web hosting, Customer servers, Messaging, Caching, Billing, etc.

The access network is ITU-T 992.5 compatible ADSL2 plus infrastructure. Project 2.2 of NIB-II consists of LAN switches which aggregate the traffic from all the DSLAMs of a city onto a Gigabit Ethernet link over a dedicated fiber. The traffic from various LAN switches is aggregated by the GigE aggregation switches, which in turn connect to the Core routers through a Broadband RAS(BRAS).

The network architecture envisaged in the Multiplay project is as given below:

Multiplay subscribers are to be connected to DSLAM. Traffic of DSLAMs and other access technologies shall be aggregated through aggregation network (through Tier 2 switch/L2PE on GE interface) which is based on RPR. One such



unit, called Metro Aggregation unit (MAU) is planned for 40,000 users. There is one broadband network gateway (BNG/BRAS) in each of such unit. The traffic from small cities is to be aggregated using Ethernet. Traffic of such aggregation units shall be handed over to backbone MPLS core directly. The MPLS core comprises of MPLS core in 30 cities and MPLS edge in 100 cities.

For Broadband deployments the cities are divided into 7 types in terms of size of customer base – A1, A2, A3, A4, B1, B2 and other cities. BSNL may evolve/enhance this architecture over a period of time to meet customer and traffic needs.

### **3.0 Purpose of the EOI**

This EOI invites offers from interested eligible companies or Consortium of companies for providing content based services like IP/broadcast TV channels, Video on Demand (VoD), Audio on demand, interactive gaming etc. through their content delivery network to BSNL's broadband customers on non-exclusive, revenue sharing and franchise basis. The concerned Bidders can offer the service after signing of the franchise agreement with BSNL. BSNL also expects complete operation, maintenance, billing and provisioning support in respect of provision of such contents by the selected Bidders.

### **4.0 Eligibility Requirements**

A copy of the "Franchise Agreement" containing the terms and condition for provision of content based services on BSNL broadband network, shall be supplied to the companies fulfilling the criteria given in this document.

#### **4.1 General Requirements**

- 4.1.1 The Bidder may either meet the eligibility criteria on its own and bid alone in the EOI or a bidder may form a Consortium, with suitable partner(s), so as to meet the eligibility criteria of the EOI; in such cases there should be an unambiguously designated member of the Consortium **who will submit the bid on behalf of the Consortium and henceforth called as the Bidder**. The bidder only will interact with BSNL for all obligations/payments; however all the Consortium partners will be jointly and severally responsible for the execution of the project.
- 4.1.2 The Bidder should be a company registered & incorporated under the Indian Companies Act, 1956.
- 4.1.3 A complete list of partners in the Consortium, formed for bidding in the project, shall be submitted by the Bidder along with the proposal clearly indicating the Bidder. A document of the formation of the Consortium shall be submitted on the bidder's letter head signed by authorized signatories of each of the Consortium partners in presence of 2 (two) witnesses of each of the companies and submitted along with the proposal. Other details to be included in the Consortium agreement are detailed in Annexure III.



- 4.1.4 The Consortium partners will submit a letter from their company indicating the details of authorized signatory for the company.
- 4.1.5 The Bidders are allowed to submit only one bid each.
- 4.1.6 A Consortium partner may participate in more than one Consortium.
- 4.1.7 The Bidder is not allowed to be a Consortium partner under another Bidder for this project.
- 4.1.8 The Bidder or any of the Consortium Member shall not be a licensed Telecom operator (Basic, NLDO, ILD, Unified, CMTS) in India. Bidder shall not be allowed to offer services in areas where any of the parent company or subsidiary of the parent or affiliate company of the parent /bidder is a licensed Telecom operator. Companies with Broadcast license holders are allowed only if they do not offer the content based services on IP Network.

## **4.2 Financial Requirement**

- 4.2.1 The Bidder shall be an IT/ Networking/ Telecom sector/ Content development/ provisioning / content management/ content delivery network company operating in India.
- 4.2.2 The Bidder shall have a turnover of at least 10 crores in each of the last two financial years. Audited Balance sheets for the last 2 years shall be enclosed as supporting document. The Turnover mentioned in this clause shall not include businesses other than IT/ Networking/ Telecom/ Content delivery. If the turnover criterion is not met by the bidder on its own the turnover of bidder's parent company or promoter companies may be considered to fulfill this criterion.
- 4.2.3 In case of proposal from a Consortium, in addition to Clause 4.2.2. above, the minimum total turnover of all the Consortium members including that of the Bidder should be at least INR 50 crores in each of the last 2 financial years. Audited Balance sheets for the last 2 years shall be enclosed as supporting document.

## **4.3 Special Eligibility Criteria**

- 4.3.1 In addition to the general and financial requirements specified above, the bidder/ consortium members should also fulfill the special eligibility criteria given in Table 1 below.

**Table 1- Special Eligibility Criteria**

	<b>Criteria</b>	<b>Requirement</b>
<b>A.</b>	<b>Experience &amp; Provenness</b>	The main Technology blocks of the project may be classified as: <ul style="list-style-type: none"><li>• Content aggregation/content arrangement/content development/content provisioning</li><li>• Content Delivery Network<ul style="list-style-type: none"><li>• Headend, Middleware, VOD servers,</li></ul></li></ul>



		<p style="text-align: center;"><b>STB.</b></p> <ul style="list-style-type: none"><li>• Provisioning, Management, Billing</li></ul> <p>Requirement in respect of above technology blocks are as follows:</p> <p>(i) The equipment/ solution proposed for each of the main Technology blocks listed above must have been implemented at least in one project in India or abroad.</p> <p>(ii) Service implementation using each of the above technology solutions should have been done with a minimum customer base of 5000 either in India or abroad.</p>
<b>B.</b>	<b>Quality</b>	<p>(i) Bidder must have a sound and well-documented Quality Framework.</p> <p>(ii) The bidder should have ISO 9001:2000 or equivalent certification within 12 months of commercial launch.</p>

#### **5.0 Proven-ness Certificate**

The bidder shall supply documentary evidence/ verifiable reference (name, address, telephone no, web-site address and email-id) of the customer(s) referred to in clause above for enabling assessment of the performance with a certification from the Service/Technology Provider where the solution has been implemented.

#### **6.0 Functional Requirements**

The Functional and technical requirements to be fulfilled by the Bidders would be according to the terms and conditions of the “Franchise Agreement (FA)”. This agreement shall only be given to successful bidders through their authorized representatives. No request for e-mail or fax copies would be entertained.

#### **7.0 Franchise Model**

The salient points of the broadband content & CDN franchise model of BSNL are given below:

- 7.1 The model envisages provisioning of the broadband content & relevant delivery network that will include IP/broadcast TV, Video/Audio on Demand (and its variants), Gaming applications.
- 7.2 Any increase in portfolio of other services at any future date (other than at the time of agreement) shall be at the discretion of BSNL, which will retain the first right to provide any such service. BSNL’s traditional and established services such as Internet, voice, VPN, conferencing, etc. shall in no way be compromised and shall be available to the customers on a preferred basis.



- 7.3 The following services shall be provided/ facilitated by the Bidder to the customers. Any service other than those listed below shall be provided only with the written permission of BSNL
- 7.3.1 IP/Broadcast TV/Radio
  - 7.3.2 Video/Audio on demand
  - 7.3.3 Gaming
- 7.4 Additional Services may be launched in association with a third party such as games, specialized content. These shall be introduced with first right of refusal being given to the existing franchisees in the area.
- 7.5 The Bidder's role shall be to bring the technology, make available the Content Delivery Network (comprising of Head End, Video Servers, MiddleWare, Conditional Access System/Digital Rights Management system, Set Top Box etc), provide direct support for operations, maintenance and customer care, direct management of Customer Premises equipment, etc.
- 7.6 The Bidder would also assume the role of the Content Aggregator and arrange for the content for the set of broadcast TV signals and Video on Demand. Provisioning and generation of CDRs/ billing information to enable BSNL to bill customers would also be Bidder's responsibility.
- 7.7 BSNL's role shall be to provide broadband access (virtual pipe) upto the customer's premises, to provide connectivity of CDN to BSNL's IP network, support for customer care, billing of customers and revenue collection.
- 7.8 BSNL shall market & promote the Content based services as part of its service portfolio from its own funds. However the franchisee would be required to commit a minimum of 2% of his revenues towards marketing and promotion of these services.
- 7.9 All services shall be offered either under BSNL's brand name or co-branded.
- 7.10 The term of the agreement shall be 10 years from the date of signing of FA and extendable on five -yearly basis thereafter on mutual consent and under agreement which may be revised by mutual agreement.
- 7.11 The use of the equipment installed by the Franchisee shall be provided by the Franchisee on a non- exclusive basis. These services shall be provided on SLAs, as finalized by BSNL.
- 7.12 Franchisees shall not offer any competing IPTV based services on its own or through some other company in the service to customers in the service area of the contract.
- 7.13 The franchisee shall be fully responsible for the operation, maintenance & proper upkeep of the equipment installed by him.
- 7.14 If the bidder is found eligible he would be offered to sign the Franchisee Agreement to start the content services on submission of Bank Guarantee. The franchisee can opt for more than one city to start the service subject to his submission of Bank Guarantee as applicable to the city type. The list of the cities is available at Annexure- IV.



- i. The franchisee shall be required to furnish a bank guarantee(BG) of INR 1 crore for each of ‘A1 and A2’ type city, INR 50 lakhs for each of ‘A3 and A4 ’ type city and INR 20 lakhs lakhs for each of type ‘B1 and B2’ city..
  - ii. The franchisees may also be allowed to offer services in cities other than those listed in annexure-IV subject to technical feasibility.
  - iii. Signing of the agreement by BSNL for any city does not guarantee the technical feasibility of BSNL network to deliver the content services to the customers all across the city. The franchisee should satisfy himself of the network capability/ feasibility to offer the services to the customers before signing an agreement.
  - iv. Information on existing franchisee agreement in respect of any city will be provided to the franchisee at the time of signing agreement to enable him to take an informed decision on the business prospects.
- 7.15 The bidders may apply for multiple cities by submitting the applicable bank guarantees. The bidders may be awarded multiple cities for launch of the services. The services should be launched as early as possible but not later than 4 months from the date of signing of the “Franchise Agreement” at least in one of the cities. This period includes validation, testing and clearance by BSNL team designated for this purpose. Subsequently, the services shall be made available in this city on trial basis for 2 months. However, this does not prevent the franchisee from building infrastructure in respect of other cities.
- i. On successful completion of the trial, the franchisee will be allowed to launch services in other cities also as per the FA after conducting necessary acceptance testing.
  - ii. The Acceptance testing shall be conducted by T&D Circle of BSNL.
  - iii. However, if the Bidder is not able to successfully complete the validation and trial in validation city, all the Bank Guarantees shall be forfeited & the agreement shall be terminated.
  - iv. The services in other cities shall be launched after AT with in 9 months of signing the FA. Failure to comply with this may lead to forfeiture of BG for that city.
- 7.16 During the trial phase customers may be provided free service for upto 15 days. Details of the Revenue share during and after trial period would be governed by the FA.
- 7.17 The FA can be terminated by BSNL if there is **consistent non performance by the Bidder**. The bidder can terminate the FA if there is **consistent denial of revenue share payments by BSNL**.
- 7.18 Service basket and tariff may be proposed by the franchisee and will be finalized and approved by BSNL in consultation with the Bidder.
- 7.19 The revenue share will be different for the content being provided by the Bidder and that made available by BSNL to be delivered to the customers using the CDN of the Bidder. The Revenue share shall be calculated on the Billed amount as given below:



- 7.19.1 **When franchisee provides the content** – In case of VOD he will be entitled to 70% of the revenue share, 30% being retained by BSNL from 2<sup>nd</sup> year onwards. However in first year of launch the revenue share of VoD to franchisee shall be 80% and 20% to BSNL. In case of IP TV services on multicast, the revenue share to the Franchisee shall be 90%, with balance to BSNL.
- 7.19.2 **When BSNL provides the content** - In case of VOD the revenue share to both the franchisee and BSNL shall be 50% each. In case of IPTV the revenue share to BSNL shall be 90% and 10% to the franchisee.
- 7.20 **The bandwidth** for providing the services shall be provisioned as given below. Bandwidth shall be provided by BSNL subject to availability.
- 7.20.1 VoD Services & IPTV Services on Multicast:**
- 7.20.1.1 Intra-city connectivity and bandwidth shall be provided and shall not be charged extra by BSNL upto city limits.
- 7.20.1.2 Inter-City bandwidth shall be provided to the Bidder on competitive rates by BSNL. BSNL shall be given first right of refusal by the bidder for providing the intercity bandwidth requirement of the franchisee.
- 7.20.2 Gaming services:**
- Intra-city connectivity and bandwidth shall be provided and shall not be charged extra by BSNL upto city limits. Beyond this, it shall be provided on chargeable basis. However, customers from other cities can also be served by forming a VPN of such customers with the gaming server.
- 8.0 Evaluation of proposals and award of contract**
- 8.1 BSNL shall consider award of work only to those bidders whose offers have been found technically, commercially and financially acceptable. Successful Bidders would become “Franchisees” of BSNL after signing the FA.
- 8.2 If the bidder is declared eligible by BSNL but fails to sign FA within one month with BSNL his bid security may be forfeited.
- 8.3 The Bidders may also be asked to give the presentations to make BSNL appreciate their proposed concepts/architecture.
- 8.4 The allocation of the additional cities, beyond the initial allotment, to franchisees shall be at the discretion of BSNL and subject to franchisee meeting rollout obligation in the allotted cities. BSNL shall also reserve the right to limit the number of franchisees in a city and also a suitable geographical area.
- 9.0 Information/Documents Required As Part Of The EOI**
- The following documents are required to be submitted along with the EOI application. Non-submission of any documents or submission of incomplete, misleading or false information may render the applicant liable for summary rejection or cancellation of application. The Bank Guarantee will be required to be submitted at the time of signing the agreement.



- (i) Clause by clause unconditional compliance to the specifications and terms and conditions of this Notice Inviting Expression of Interest shall be given. The applicant in lieu of it, must sign each page of this document, in original, and submit it intact without detaching any page and give a certificate signed by the authorized signatory conveying acceptance of all the provisions and terms and conditions contained in the document of Expression of Interest with all its attachments and Annexures.
- (ii) Partnership Deed/ Articles of Memorandum of Association or Proprietorship Deed and MOU/ Collaboration Deed with foreign manufacturers/ collaborators as the case may be.
- (iii) Certificate of Incorporation
- (iv) Consortium document as per clause 4.1 above
- (v) Power of Attorney/General power of Attorney or proper authorization to the person empowered by the firm to sign the documents on its behalf. Three specimen signatures duly attested and two latest photographs of the person authorized to sign, execute and act in respect of this Expression of Interest should be included.
- (vi) Power of attorney in favour of authorized signatory (*on Non-judicial stamp paper of Rs.50/-*) accompanied with the copy of the resolution of the Board/Management of the Bidder to that effect
- (vii) Specimen signature(s) of authorized signatory duly attested by the Bidder's bankers
- (viii) List of all Directors of the Company including their name(s), address (s) and contact telephone numbers (office & residence) duly signed by the authorized signatory, along with certification as per Annexure I.
- (ix) Declaration regarding close relatives working in DOT/ BSNL/ MTNL as per Annexure 2. If there is no close relative working in any of the stated organizations then the declaration should clearly say so.
- (x) Non-disclosure Undertaking (*on non-judicial stamp paper of Rs. 50/-*) (format enclosed) by the Bidder
- (xi) Duly attested turnover certificate given by the Company's auditor/CA/CS (as specified in clause 4.)
- (xii) Latest Annual Report of the Bidder
- (xiii) Latest valid Income Tax Clearance Certificate (ITCC), preferably with details of turnover.
- (xiv) Sales Tax Registration number and attested copy of registration certificate.
- (xv) **Information about the CDN, services and support**
  - 1) Details of the content based services like VoD, Gaming, IPTV etc proposed to be provided to the broadband customers
  - 2) Details of the Content Delivery Network infrastructure to facilitate the provision of such services across the country,



- 3) Content tie-ups proposed to support such services, detailing about the nature, tenure of such tie-ups,
- 4) Details of the Billing & provisioning support in respect of such services,
- 5) Deliverables proposed to be extended for this project,
- 6) Deliverables expected from BSNL,
- 7) Details of similar projects executed/undertaken for other IP/Telecom Service Providers, if any,
- 8) Cities proposed for provision of Broadband services
- 9) Rollout committed.
- 10) Services proposed along with the relevant details
- 11) Technology details along with the architecture details

## **10.0 CLARIFICATION OF BID DOCUMENTS**

The bidders may seek clarifications regarding the Bid Documents, from purchaser, within two weeks of issue of EOI. BSNL shall respond in writing to any request for the clarifications.

## **11.0 PROCEDURE FOR SUBMISSION OF EOI**

- 11.1 The application for Expression of Interest must be submitted in sealed envelopes, super scribed "Expression of Interest for CDN and content" and addressed to the contact person indicated in this EOI.
- 11.2 The bid shall not contain any financial offer or revenue share percentage etc.
- 11.3 The EOI should be submitted in person. Outstation applicants can send their application of EOI by Registered Post/Speed post.



**Annexure 1 – Format of Certificate regarding close relatives working in DOT/ BSNL/ MTNL**

“I.....s/o.....r/o..... hereby certify that none of my relative(s) as defined in the tender document is/are employed in DOT/ BSNL/ MTNL unit as per details given in tender document. In case at any stage, it is found that the information given by me is false/incorrect, BSNL shall have the absolute right to take any action as deemed fit/without any prior intimation to me.”

The near relatives for this purpose are defined as:-

- (a) Members of a Hindu undivided family.
- (b) They are husband and wife.
- (c) The one is related to the other in the manner as father, mother, son(s) & Son’s wife (daughter in law), Daughter(s) and daughter’s husband (son in law), brother(s) and brother’s wife, sister(s) and sister’s husband (brother in law).



## Annexure 2 – Format of Non Disclosure Agreement

This Agreement is made as of the ----- 2007 between **BHARAT SANCHAR NIGAM LIMITED (BSNL)** a Government of India Enterprise, having its registered office and Corporate office at Bharat Sanchar Bhawan, H.C.Mathur lane, Janpath, New Delhi-1 **hereinafter called BSNL** which expression shall unless repugnant to the subject or the context mean and included its successors, nominees or assigns and M/s ----- a company incorporated under the Indian Companies Act, 1956, and having its registered office at ----- herein after called “-----” which expression shall unless repugnant to the subject or the context mean and include its successors, nominees or assigns.

Whereas in order to pursue the mutual business purpose of this particular project as specified in **Exhibit A** (the “Business Purpose”), BSNL and M/s----- recognize that there is a need to disclose to one another certain information, as defined in para 1 below, of each party to be used only for the Business Purpose and to protect such confidential information from unauthorized use and disclosure.

In consideration of the other party’s disclosure of such information, each party agrees as follows:

1. This Agreement will apply to all confidential and proprietary information disclosed by one party to the other party, including information listed in Exhibit A attached hereto and other information which the disclosing party identifies in writing or otherwise as confidential before or within thirty days after disclosure to the receiving party (“Confidential Information”). Information consists of certain specifications, designs, plans, drawings, software, prototypes and/or technical information, and all copies and derivatives containing such Information, that may be disclosed to one another for and during the Purpose, which a party considers proprietary or confidential (“Information”). Information may be in any form or medium, tangible or intangible, and may be communicated/disclosed in writing, orally, or through visual observation or by any other means to one party (hereinafter referred to as the receiving party) by the other party (hereinafter referred to as one disclosing party). Information shall be subject to this Agreement, if it is in tangible form, only if clearly marked as proprietary or confidential as the case may be, when disclosed to the receiving party or, if not in tangible form, its proprietary nature must first be announced, and it must be reduced to writing and furnished to the receiving party within thirty(30) days of the initial disclosure.
2. M/s ----- and BSNL hereby agreed at during the Confidentiality Period:
  - a) The receiving party shall use Information only for the Purpose, shall hold Information in confidence using the same degree of care as it normally exercises to protect its own proprietary information, but not less than reasonable care, taking into account the nature of the Information, and shall grant access to Information only to its employees who have a need to know, but only to the extent necessary to carry out the business purpose of this project as defined in exhibit A, shall cause its employees to comply with the provisions of this Agreement applicable to the receiving party, shall reproduce Information only to



the extent essential to fulfilling the Purpose, and shall prevent disclosure of Information to third parties. The receiving party may, however, disclose the Information to its consultants and contractors with a need to know; provided that by doing so, the receiving party agrees to bind those consultants and contractors to terms at least as restrictive as those stated herein, advise them of their obligations, and indemnify the disclosing party for any breach of those obligations.

- b) Upon the disclosing party's request, the receiving party shall either return to the disclosing party all Information or shall certify to the disclosing party that all media containing Information have been destroyed. Provided, however, that an archival copy of the Information may be retained in the files of the receiving party's counsel, solely for the purpose of proving the contents of the Information.
3. The foregoing restrictions on each party's use or disclosure of Information shall not apply to Information that the receiving party can demonstrate:
- a) was independently developed by or for the receiving party without reference to the Information, or was received without restrictions; or
  - b) has become generally available to the public without breach of confidentiality obligations of the receiving party; or
  - c) was in the receiving party's possession without restriction or was known by the receiving party without restriction at the time of disclosure; or
  - d) is the subject of a subpoena or other legal or administrative demand for disclosure; provided, however, that the receiving party has given the disclosing party prompt notice of such demand for disclosure and the receiving party reasonably cooperates with the disclosing party's efforts to secure an appropriate protective order; or
  - e) is disclosed with the prior consent of the disclosing party; or
  - f) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the receiving party from the disclosing party under an obligation of confidence; or
  - g) the receiving party obtains or has available from a source other than the disclosing party without breach by the receiving party or such source of any obligation of confidentiality or non-use towards the disclosing party.

4. Each party agrees not to remove any of the other party's Confidential Information from the premises of the disclosing party without the disclosing party's prior written approval. Each party agrees to exercise extreme care in protecting the confidentiality of any Confidential Information which is removed, only with the disclosing party's prior written approval, from the disclosing party's premises. Each party agrees to comply with any and all terms and conditions the disclosing party may impose upon any such approved removal, such as conditions that the removed Confidential Information and all



copies must be returned by a certain date, and that no copies are to be made off of the premises.

5. Upon the disclosing party's request, the receiving party will promptly return to the disclosing party all tangible items containing or consisting of the disclosing party's Confidential Information all copies thereof.

6. Each party recognizes and agrees that all of the disclosing party's Confidential Information is owned solely by the disclosing party (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the disclosing party will have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

7. Access to Information hereunder shall not preclude an individual who has seen such Information for the purposes of this Agreement from working on future projects for the receiving party which relate to similar subject matters, provided that such individual does not make reference to the Information and does not copy the substance of the Information during the Confidentiality Period. Furthermore, nothing contained herein shall be construed as imposing any restriction on the receiving party's disclosure or use of any general learning, skills or know-how developed by the receiving party's personnel under this Agreement, if such disclosure and use would be regarded by a person of ordinary skill in the relevant area as not constituting a disclosure or use of the Information.
8. As between the parties, all Information shall remain the property of the disclosing party. By disclosing Information or executing this Agreement, the disclosing party does not grant any license, explicitly or implicitly, under any trademark, patent, copyright, mask work protection right, trade secret or any other intellectual property right. THE DISCLOSING PARTY DISCLAIMS ALL WARRANTIES REGARDING THE INFORMATION, INCLUDING ALL WARRANTIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND ALL WARRANTIES AS TO THE ACCURACY OR UTILITY OF SUCH INFORMATION. Execution of this Agreement and the disclosure of Information pursuant to this Agreement does not constitute or imply any commitment, promise, or inducement by either party to make any purchase or sale, or to enter into any additional agreement of any kind.
8. Either party's failure to enforce any provision, right or remedy under this agreement shall not constitute a waiver of such provision, right or remedy.
9. This Agreement will be construed in, interpreted and applied in accordance with the laws of India.
10. That in case of any dispute or differences, breach & violation relating to the terms of the Agreement. The said matter or dispute, difference shall be referred to sole arbitration of Chairman and Managing Director ( CMD) of BSNL or any other person appointed by him. That the award of the arbitrator shall be final and binding on both the



parties. In the event of such Arbitrator to whom the matter is originally referred to is being transferred or vacates his office on resignation or other wise or refuses to do work or neglecting his work or being unable to act as Arbitrator for any reasons whatsoever , the CMD BSNL shall appoint another person to act as Arbitrator in place of out going Arbitrator and the person so appointed shall be entitled to proceed further with the reference from the stage at which it was left by his predecessor. M/s ----- will have no Objection in any such appointment, that arbitrator so appointed is employee of BSNL. The said Arbitrator shall act under the Provisions of the Arbitration and conciliation Act, 1996 or any statutory modifications or reenactment there of or any rules made thereof.

11. This Agreement and Exhibit A attached hereto constitutes the entire agreement of the parties with respect to the parties' respective obligations in connection with Information disclosed hereunder and supersedes all prior oral and written agreements and discussions with respect thereto. The parties can amend or modify this Agreement only by a writing duly executed by their respective authorized representatives. Neither party shall assign this Agreement without first securing the other party's written consent.
  
12. This Agreement will remain in effect for five years from the date of the last disclosure of Confidential Information, at which time it will terminate, unless extended by the disclosing party in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers or representatives.

M/S -----

**BHARAT SANCHAR NIGAM IMITED**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**Exhibit A**

1. **Business Purpose:** Provision of Content based services to BSNL customers on non-exclusive, revenue sharing and Franchisee basis, through provision of CDN infrastructure and the content by the Franchisee, delivered over BSNL's ADSL/ ADSL2plus based access infrastructure and IP/ MPLS based Core infrastructure..
  
2. **Confidential Information of M/s** -----
  - a. All communication/ information submitted to the BSNL relating to the proposal of M/s \_\_\_\_\_ for offering Content based services to BSNL's customers on Franchisee basis under revenue sharing arrangements marked as confidential.
  
3. **Confidential Information of BSNL:**
  - a. All databases such as relating to customer profile, Billing profile, Network infrastructure etc.
  - b. All network details (NIB-I, NIB-II, Multiplay etc.)
  - c. All information shared in oral or in written form by BSNL with M/s-----  
-----.
  - d. Any information desired by M/s ----- shall be justified for.
  - e. Information downloaded or taken in physical form shall be returned/ destroyed after use and not copied.
  - f. Draft Technical specifications for the various projects and Tender documents for the same.
  
4. The confidentiality of the documents shall be maintained by the consortium partners of the Franchisee also.

BSNL : \_\_\_\_\_

M/s-----

Signed

Signed



## Annexure III – Format of Consortium Agreement

<On Bidder's Letter Head>

### CONSORTIUM AGREEMENT

This Consortium agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_ between:

M/s.(A) (with complete address) \_\_\_\_\_

M/s.(B) (with complete address) \_\_\_\_\_

The expression M/s. (A) \_\_\_\_\_ & M/s. (B) \_\_\_\_\_ shall mean and include their respective legal representative, successor-in-interest and permitted assigns and shall collectively be referred to as "the Parties" and individually as "the Party".

#### **1) RECITALS**

"Whereas the Bharat Sanchar Nigam Ltd. (BSNL) having its Registered and Corporate offices at Bharat Sanchar Bhawan, H.C.Mathur Lane, Janpath, New Delhi-110 001 invited Expression of Interest (EOI) for short listing of firms for the work of :

#### **For Project III of NIBs (i.e., Description of the Project)**

Whereas M/s. (A) \_\_\_\_\_ and M/s. (B) \_\_\_\_\_, being eligible and satisfying all the terms and conditions as stipulated by BSNL in the aforesaid EOI, have applied as consortium for pre-qualification for the above mentioned project and whereas BSNL after due consideration of experience and other criteria of pre-qualification notified vide EOI inviting pre-qualification applications, have pre-qualified the aforesaid consortium for participating in EOI / issuance of bid/tender documents and submission of financial bids. And whereas the joint financial bid shall be submitted by the consortium partners for consideration and acceptance by BSNL.

It is hereby agreed between the parties hereto as under:

#### **2) ARTICLE 1: NATURE OF CONSORTIUM**

The parties hereby form an exclusive Consortium ("The Consortium") for the purpose of joining together to jointly co-operate for the proper execution of the Project.

#### **3) ARTICLE 2: LEAD FIRM**

It is unanimously agreed that M/s. (A) \_\_\_\_\_ shall be the Leader for the Project (hereinafter referred to as Project Leader). Further, parties hereby agreed that they shall be abide by the acts, deeds and decision of the lead partner with regard to execution of the project.



The lead firm shall:

- a. Coordinate the day to day activities of the consortium.
- b. Lead any negotiations with BSNL, with or without assistance of second partner.
- c. Sign all documents on behalf of the consortium to be submitted to BSNL.
- d. Ensure completion in stipulated time all works assigned under the contract.
- e. Attend and rectify all or any defects noticed and notified during the defect liability period.

### **Article 3: Scope of Work**

The parties undertake to place all the technical and other know-how, skill, knowledge, specification, information, advice and assistance which they have in their power to provide and which may be necessary or advantage to the parties for the bid preparation and successful execution of the project. The scope of work to be executed by the parties, have been divided and are mentioned below. The division of work is only to facilitate the respective party's area of work clearly. Otherwise the execution of the project is under joint and several responsibilities of the consortium members.

M/s. \_\_\_\_\_ shall execute the work \_\_\_\_\_ and M/s. \_\_\_\_\_ shall execute the work \_\_\_\_\_

Whereas the consortium shall be responsible for execution of the aforementioned work, as and when allotted to it, and for its smooth execution shall be responsible to ensure that the required, Special Technical Know-how as well as the required Machinery & Equipment are made available for the execution of the works. In fact, both the parties of the Consortium accordingly will be jointly and severally responsible to BSNL for discharging their obligations as laid down. However, the project leader of the consortium shall be overall responsible for the contract obligations for the total scope of work during execution and (up to warranty period). Similarly, the required personnel will be deployed for this work by the consortium. The administration of the consortium and the contract performance and execution of works shall be conducted by project leader . The nominated project leader shall be responsible to:

- a. Perform strictly as per terms and conditions of the contract.
- b. Receive instructions and liaison with BSNL and implementation of all their instructions, directions, etc.
- c. Complete planning, organization management of all infrastructures and inputs and directions to the local staff as necessary.
- d. Monitoring the progress of work.



- e. Quality Control.
- f. Measurement and preparation and receipt of running account bills.
- g. Comprehensive financial management of the project including audit and accounting.
- h. All miscellaneous activities connected with security and safety and the performance of the consortium.
- i. Responsible in the defect liability period after completion of the project work.

In connection with the submission of the EOI / tenders and the execution of the works, no party of this consortium shall in anyway act either alone or jointly, with, by, or through any other party in a manner likely to be detrimental to the EOI / tender and/or execution of the works / Project.

The office of the consortium shall be located at \_\_\_\_\_ and also branch office at \_\_\_\_\_ and all work relating to the consortium vis-à-vis the contract works referred to above shall be carried out through their nominated project leader.

Notwithstanding above, the project leader is authorized to receive instructions for or on behalf of consortium for execution of contract and shall be solely be responsible for successful implementation / execution of project awarded by BSNL. He shall only be recognized by BSNL for the purposes of successful project execution.

#### **4) ARTICLE 4: ASSESSMENT OF COST**

The external costs consisting of third party costs such as legal, financial, tax, bid bonds, guarantees, for the execution of the Project shall be borne by the parties as mutually agreed upon.

#### **5) ARTICLE 5: BONDS AND GUARANTEES**

The costs of providing any bonds or guarantees required for the Project is to be borne by the consortium in proportion to each Party's participating interest in the Project. However, the project leader of the consortium is responsible to provide the bonds and guarantees for full scope of work.

The total expenditure incurred on performance of the contract is distributed and shared in ratio of \_\_\_\_\_ % by M/s. \_\_\_\_\_ and \_\_\_\_\_ % by M/s. \_\_\_\_\_ respectively. Similarly, all the net profits, assets and liabilities arising out of joint performance of contract shall be shared as mutually agreed.

#### **6) ARTICLE 6: TIME AND COMPLETION**

Each party agrees that time is of essence for the completion of the Project as a whole. In order to assure the fulfillment of such time schedule, subject to the conditions of the contract regarding extension of time, delay, etc., each party shall be individually and solely responsible and obliged to complete its respective SCOPE OF



WORK in strict compliance with the time schedule agreed to and provided for within the scope of work of each party.

Each PARTY of this consortium shall indemnify and hold harmless the other party with respect to any claims/ loss/ damages or injury suffered by the other party due to any default/ breach in performance of its contractual obligations under this Agreement or under the Contract with BSNL in respect of said project.

Similarly each Party agrees to indemnify the other party against any claims made by any third party in respect of any infringements of any rights protected by patents, designs or copy rights or trade marks employed in the Project by either party / parties.

#### **7) ARTICLE 7: UNDERTAKINGS**

All the parties in this consortium will be jointly and severally responsible towards BSNL under the Conditions of Contract and execution of the said project.

The parties undertake to abide by the terms and conditions of the Contract, for the proper execution of the Project as per the Contract with BSNL.

As a general principle, each Party, whenever possible, will make its best efforts to inform promptly the other party of any issues it is aware of that could serve or harm the Parties / BSNL interests.

#### **8) ARTICLE 8: WITHDRAWAL**

No Party shall withdraw from the Consortium until and unless the express consent of BSNL is obtained, in the interest of the work, and if any party breaches the agreement, shall be responsible for all costs / liabilities that may be suffered by the other Party as a result of any action taken by BSNL.

#### **9) ARTICLE 9: TERM AND DURATION**

Provided all rights and obligations amongst the Parties hereto and vis-à-vis the BSNL and third parties have ceased this Agreement shall terminate upon occurrence of one of the following events:

- a) On the successful completion of the Defects Liability/ Guarantee Period in accordance with the provisions of the Contract with BSNL.
- b) Upon either of the Parties being declared insolvent by a Court of Competent jurisdiction.
- c) Upon either of the parties committing a breach of this Agreement 'or' a breach of the contract with BSNL, such breach of contract being irreparable.

#### **10) ARTICLE 10: PAYMENT**

Bill for works done shall be raised by the nominated Project in charge as per Conditions of Contract. The payment shall be released in the name of the leader partner.



A Bank Account shall be opened in the name of the lead partner which shall be operated jointly by all the consortium parties and in absence of anyone of the party, all Bank transactions shall be carried out by the nominees of the said absentee in consultation with the other party / parties.

#### **11) ARTICLE 11: INSURANCE**

The consortium shall arrange the following:

- a) Third Party Liability
- b) Workmen's compensation and equipment insurance for its personnel and equipment and will keep harmless the BSNL against any claim. **(Add other products for which Insurance required).**

#### **12) ARTICLE 12: TAXES**

All statutory deductions shall be made by BSNL and TDS certificate issued in the name of Project leader. The Project leader shall be responsible for deduction and payment of its taxes as applicable to employees or contract labour or sub-contractors engaged for the purpose of execution of the project and BSNL will not be liable in any circumstances whatsoever.

#### **13) ARTICLE 13: LAW OF SETTLEMENT OF DISPUTES**

This agreement shall be governed and construed in accordance with the Laws of Republic of India.

All disputes/ differences arising out of or in connection with this Agreement shall be amicably settled by the authorized representatives of the Parties, failing which such disputes shall be referred to Arbitration in accordance with the Rules of Conciliation and Arbitration by one or more arbitrators appointed in accordance with the said rules.

Language of arbitration shall be English. The venue of the Arbitration proceedings shall be Delhi, India.

The Award rendered by the Arbitral Tribunal shall be final and binding upon the Parties.

None of the Parties shall be released from any of its obligations under the Contract with the BSNL by reason of arbitration proceedings having been initiated.

#### **14) ARTICLE 14: EXCLUSIVELY AND CONFIDENTIALITY**

Throughout the duration of this Agreement, the Parties undertake to collaborate applying the principle of exclusivity.

Each party must treat as confidential all information or documents relating to the Project or to the business and the financial affairs of the other parties including but not limited to, information or documents relating to sales, trade secrets, customers, industrial and intellectual property, financial and accounting details, employees and arrangements with suppliers.



**Article 15: Amendments**

This agreement can be amended or superseded by further agreement made in writing on the request of any of the Parties after unanimous approval by the Parties and the written approval from the BSNL.

**Article 16: Notices**

Any notices, requests, demands or any communications from any party to the other party under this Agreement shall be by Regd./Speed mail or facsimile transmission sent to the addresses as indicated in this Agreement. Any party may change in address but will promptly inform BSNL and the other parties of any changes.

**15) ARTICLE 17: LANGUAGES**

The official language of this Agreement and all future agreements shall be English.

**16) ARTICLE 18: ASSIGNMENT**

None of the Parties to this agreement shall have the right to assign its benefits or liabilities under this agreement to any other company, firm or person without obtaining prior written consent of the other party and written approval of BSNL.

**Article 19: Entire Agreement**

This Agreement constitutes the entire agreement between the Parties.

As between the Parties, this Agreement shall govern their relationship in relation to the project and shall take precedence over anything contained in this Agreement.

IN WITNESS WHEREOF the Parties have executed this AGREEMENT by their duly authorized representative on this \_\_\_\_\_ day of \_\_\_\_\_.

(M/s. \_\_\_\_\_)

(M/s. \_\_\_\_\_)

(Lead Party)

(Second Party)

Dated:

Dated:

Witness Signature \_\_\_\_\_

Witness Signature \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_