**AGREEMENT**

THIS Agreement entered into on this --------------------day of --------------------------------- by and between:

BHARAT SANCHAR NIGAM LIMITED (hereinafter referred to as “BSNL”), a company incorporated under the Companies Act 1956, having its Registered Office and Corporate Office at Bharat Sanchar Bhawan, New Delhi-110001, represented by Shri \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ PGMTD/GMTD/TDM/TDE, \_\_\_\_\_\_\_\_\_\_ SSA of ODISHA Telecom Circle, Pin -\_\_\_\_\_\_\_\_\_

AND

M/S ……………………………………………………….(hereinafter referred to as “Builder / RWA / Telecom Infrastructure provider (TIP)” a company incorporated under the Companies Act 1956, or Proprietary firm/Partnership firm having its Registered Office at

 -------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------- represented by …………………………………….

 WHEREAS BSNL is in the business of providing Basic Telephony Services, Cellular Mobile Telephony Services (CMTS), Internet & broadband services and National Long Distance Services (NLDS) in its licensed areas of operation in the geographical territory of India.( Except Mumbai & New Delhi).

AND

The Builder is having a objective of developing, promoting building and selling residential / commercial apartments or RWA is having a objective to work towards the welfare of the people using the residential / commercial complexes or Telecom Infrastructure provider is having a objective of providing the telecom services to the people using the residential / commercial complexes as mentioned in Annexure (hereinafter referred as “Projects in annexure”).

Here Telecom Infrastructure Providers (TIPs) means “A company incorporated under the Company Act 1956, or Proprietorship/Partnership firms having an objective of providing the Telecom Services including existing Cable Operators, Firms working for OFC laying, Broadband Provisioning & Maintenance and Other firms working in Telecom Field etc.

WHEREAS BSNL PGMTD/GMTD/TDM/TDE has approached “M/s ………………………………….” Offering to provide the BSNL telecom services of the residents of “Projects in Annexure”.

AND

WHEREAS M/s ………………………………………. Builder / RWA / Telecom Infrastructure provider (TIP) in the intention that the residents of the “Projects in Annexure” shall utilize the offer of BSNL GMTD/TDM/TDE based on the terms and conditions contained herein under.

**NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:**

1. In consideration of the due observance and performance of all the terms & conditions of this agreement, the BSNL and Builder / RWA / Telecom infrastructure provider(TIP) agree to sign this agreement on non exclusive and revenue sharing basis to provide the BSNL telecom services.
2. Builder / RWA / TIP agrees that the infrastructure provided by BSNL PGMTD/ GMTD/ TDM/TDE will be utilized for exclusively for BSNL services only.
3. Builder / RWA / TIP shall ensure the execution of services as per this agreement and continuance of the same by the future association / any other outside agency who may continue to maintain the telecom and other services in the residential complex / commercial complex for the entire agreement period.
4. **Case-I:** No existing telecom infrastructure available in the “Projects in Annexure”
	1. BSNL responsibilities:
5. To build / extend the OFC network upto residential / commercial complex, at one point (BSNL control room), within the complex.
6. To build / extend the BSNL telecom network.
7. To do the wiring of cable inside the building up to inside the flat / shop and laying of connecting cable network in whole premises / complex connecting various buildings / towers from the BSNL telecom Network point (BSNL control room).
8. To do the installation of all telecom equipments
9. To install the ONT.
10. To do the wiring of cable inside the building upto inside the flat / shop.
11. To provide the maintenance support to BSNL telecom equipments including OFC.
	1. Builder / RWA’s/TIP responsibilities:
12. To provide the space / room on rent for setting up of control room inside the residential / commercial complex for housing the essential telecom equipments with provisions of Air-conditioning and electricity availability.
13. To provide the maintenance support of space / room given on rent.
14. **Case-II:** OFC infrastructure available (laid by builder or RWA) but not in use in the “Projects in Annexure”
	1. BSNL responsibilities:
15. To build / extend the OFC network upto residential / commercial complex, at one point (BSNL control room), within the complex.
16. To build / extend the BSNL telecom network
17. To do the installation of all telecom equipments
18. To install the ONT
19. To provide the maintenance support to BSNL telecom equipments including OFC laid / build by BSNL.
	1. Builder / RWA’s/TIP responsibilities:
20. To build / extend the OFC network inside the residential / commercial complex and interconnection of building through OFC within premises.
21. To do the wiring of cable inside the building up to inside the flat / shop and laying of connecting cable network in whole premises / complex connecting various buildings / towers from the BSNL telecom Network point (BSNL control room).
22. To provide the maintenance support to OFC laid / build by the builder / RWA / infrastructure provider.
23. To provide the maintenance support to telecom equipment supplied / installed by the builder / RWA / infrastructure provider.
24. To provide the space / room to BSNL on rent, for setting up of control room inside the residential / commercial complex for housing the essential telecom equipment of BSNL with provisions of Air-conditioning and electricity availability.
25. To provide the maintenance support of space / room given on rent.
26. **Case-III:** Full telecom infrastructure available (laid by builder or RWA or telecom infrastructure provider) and is in use in the “Projects in Annexure”
	1. BSNL responsibilities:
27. To build / extend the OFC network upto residential / commercial complex, at one point (BSNL control room), within the complex.
28. To build / extend the BSNL telecom network
29. To do the installation of BSNL telecom equipments like OLTE.
30. To provide the maintenance support to BSNL telecom equipments including OFC laid / build by BSNL
31. The Compatible ONTs shall be supplied by BSNL to the customers
	1. Builder / RWA’s/TIP responsibilities:
32. To build / extend the OFC network inside the residential / commercial complex and interconnection of building through OFC within premises.
33. To do the wiring of cable inside the building up to inside the flat / shop and laying of connecting cable network in whole premises / complex connecting various buildings / towers from the BSNL telecom Network point (BSNL control room).
34. To provide a interconnectivity at the Network operation center (NOC) buildup by the builder / RWA / Telecom infrastructure provider
35. To provide the maintenance support to OFC laid / build by the builder / RWA / infrastructure provider.
36. To provide the maintenance support to telecom equipment supplied / installed by the builder / RWA / infrastructure provider.
37. To provide the space / room to BSNL, for setting up of control room inside the residential / commercial complex for housing the essential telecom equipment of BSNL with provisions of Air-conditioning and electricity availability.
38. To provide the maintenance support of space / room given on rent.
39. **Case-IV:** Full Telecom Infrastructure available (Laid by Builders/RWAs/TIPs) and responsible for supply, Deploy, Own, Operate and Maintain OLTs, ONTs, and all the Telecom Network Infrastructure (OLTs and beyond OLTs up-to Customers Premises)
	1. BSNL responsibilities:
40. BSNL shall extend the Bandwidth connectivity up-to OLTs free of cost subject to techno-commercial viability,
41. To provide the maintenance support OFC laid by BSNL for OLT connectivity.
	1. Builder / RWA’s/TIP responsibilities:
42. To Build/Extend the OFC network inside the residential/commercial complex and interconnection of building through OFC within premises.
43. To do the wiring of cable inside the building up to inside the flat/shop and laying of connecting cable network in whole premises/complex connecting various buildings/towers from the BSNL telecom network point( BSNL Control Room)
44. To provide interconnectivity at the Network Operation Centre (NOC) buildup by the builder/RWA/TIP.
45. To provide the maintenance support to OFC laid/ build by the builder/RWA/TIP.
46. To provide the maintenance support to telecom equipment supplied/installed by the builder/RWA/TIP.
47. Builders/RWA/TIPs shall be responsible for supply, deploy, own, operate and maintain the OLTs/ONTs.
48. Builders/RWA/TIPs shall be responsible for supply, deploy, own, operate and maintain the entire telecom network infrastructure beyond OLTs up to customer premises.
49. Space, power and Air conditioning shall also be arranged by Builders/RWAs/TIPs for installation of OLTs.
50. The Compatible ONTs shall be supplied by Builders/RWAs/TIP to the customers directly.
51. Cost towards this shall not be considered for revenue sharing purpose. Any further post sale obligation in respect of OLTs & ONTs shall rest with Builders/RWAs/TIPs and not with BSNL.
52. There shall be no other payment other than the revenue share to be paid to the Builder / RWA / Telecom infrastructure provider. All cost incurred on account of point no 4, 5, 6 & 7 is part of revenue share and shall not be charged extra from BSNL by Builder / RWA / Telecom infrastructure provider.
53. **Billing & Collection issues:**
	1. BSNL shall be solely responsible for all commercial functions of bill issue and its collection for the telecom services provided to customers under this agreement. The services shall be billed as part of telecom services provided by BSNL. The bills will be raised and collected by BSNL from the subscribers.
	2. Builder / RWA / Telecom infrastructure provider shall not charge any money from the customers. No additional services other than those contained within the scope of this agreement shall be provided to the customers of BSNL either free or for a cost without the written approval of BSNL.
	3. All deposits levied, including security deposits collected on account of CPE /STB /ONT provided by BSNL / registration amounts as decided by BSNL, shall be billed and collected by BSNL and no revenue share shall be payable to Builder / RWA / Telecom infrastructure provider from such receipts.
	4. The terms and conditions of payments by customers shall be governed by BSNL’s rules from time to time. The disconnection and resolution practice from payment defaulters shall be enforced.
54. **Revenue share payment process:**
	1. Revenue sharing shall be applicable on the OVERALL REALIZED REVENUE (i.e. Including Rental/FMC & Usage charges).
	2. For Leased lines and VAS( Value added services) which are being offered by BSNL in partnership with other VAS providers, Builders/RWAs/TIPs shall get a revenue share equal to 20% of his agreed share of revenue for Voice and BB services ( net of all statutory Taxes & levies like License fee, Service Tax etc.) in the respective agreement.
	3. Illustration for revenue share for lease line & VAS service to Builder/RWAs/TIPs is given below:

Suppose, U%, X%, Y%, & Z% are agreed revenue shares for Builder/RWAs/TIPs in Case- I, Case-II, Case-III, Case-IV respectively. Then the revenue share that can be paid for lease line & VAS service for Case-I is 20%, for Case-II is 20% of X%, Case III is 20% of Y, Case IV Z%.

* 1. CGM of the circle shall adhere to above upper limit of revenue share payable to Builder/RWAs/TIPs and they shall make effort to negotiate revenue share further downwards. All the customers falling under the purview of this agreement shall be identified separately and the revenue share may be paid to the Builder / RWA / Telecom infrastructure provider as per the terms & conditions of this agreement for such customers.
	2. The payment of revenue share to the Builder / RWA / Telecom infrastructure provider will be made by BSNL by 28th of the following month in which the revenue is realized.
	3. The payment of revenue share shall be made to the Builder / RWA / Telecom infrastructure provider after the deduction of applicable statutory levies which includes license fees payable by BSNL and / or taxes applicable from time to time, from the revenues accrued on account of provision of telecom services under the agreement. All such taxes / levies shall be a pass-through item and shall be billed to and collected from the customers and paid to the respective statutory bodies by BSNL, except such cases where liabilities arise on account of claims raised by concerned authorities in a post-facto manner, wherein such liability shall be shared in the same ratio as the revenue share for the respective services.
	4. Any discrepancy found would be mutually discussed and resolved. Balance of payments arising due to any reason shall be adjusted in future payments by BSNL.
1. **Revenue Share :**
	1. Revenue sharing shall be as given below:

|  |  |  |  |
| --- | --- | --- | --- |
| Business Model | Case-I | Case-II | Case-III |
|    |    | No existing Telecom infrastructure  | OFC infrastructure available (laid by builder or RWA), but not yet put in use. | Full telecom infrastructure available and services already offered by different TSPs (its M/s Radius like situation) |
| BSNL | Builder / RWA/ Telecom infrastructure provider | BSNL | Builder / RWA/ Telecom infrastructure provider | BSNL | Builder / RWA/ Telecom infrastructure provider |
| Revenue Share Ratio |  |  |  |  |  |  |

|  |  |
| --- | --- |
| Business Model | Case-IV |
|    |    | Builders/RWAs/TIPs responsible for supply, Deploy, Own, Operate and Maintain OLTs, ONTs, and all the Telecom Network Infrastructure available ( Laid by Builder/RWAs/TIPs and OLTs and beyond OLTs up-to Customers Premises Etc. |
| BSNL | Builder / RWA/ Telecom infrastructure provider |
| Revenue Share Ratio |  |  |

* 1. Fixed one time marketing charges of Rs \_\_\_\_\_ shall be given as an entry fee (optional as decided by the CGM) and acquisition charges of Rs \_\_\_\_\_ shall be given on per customer basis for the cases where the customer is acquired by the builder / RWA / telecom infrastructure/ Cable TV N/W Companies/Firms or Multi System Operators (MSOs) provided for BSNL.
	2. All commercial works (CAF etc) shall be undertaken by BSNL and all customers shall be BSNL customers.
	3. BSNL shall collect dues payable to it by the individual residents / commercial complex occupants of “Projects in the Annexure” directly from such subscribers / residents. “Builder / RWA / Telecom infrastructure provider” shall not in any way be liable or responsible for the nonpayment or delayed payment of the dues to BSNL GMTD by the individual subscribers residing in “Projects in annexure”. Any charges are to be borne by the individual customers and “Builder / RWA / Telecom infrastructure provider” is not liable.
1. **General Conditions:**
	1. This agreement is applicable for all kinds of telecom services (fixed, wireless, broadband etc) being offered presently and in future also.
	2. This agreement is a confidential document. The builder / RWA / Telecom infrastructure provider shall not divulge any part of the agreement either through oral or written communication or through any other mode to any third party.
	3. This agreement shall not be amended or modified or altered or changed in any way except in writing and duly executed by the authorized representatives of each party.
	4. **PENALTY PROVISION:-**

12.4.1:- Non adherence to the Fault clearance timelines: If the TIP fail to restore the fault of the connections within 24 hrs, then a penalty of 5% of the rental will be levied upon him per day basis with maximum penalty amount equivalent to the FMC under which the connections have been provided.

* 1. **Period of agreement:** This agreement shall be valid for the period of 10 years from the date of signing and is renewable thereafter on similar / mutually agreed terms and conditions.
	2. **Termination of the agreement:** This agreement may be terminated only by the mutually, written consent of the parties giving 30 days notice. Notwithstanding any terms and conditions herein, this agreement may be terminated only by the mutually, written consent of the parties giving one month notice. Termination of the agreement shall be without prejudice to the accrued rights and liabilities of the parties at the date of termination. On termination of this agreement the telecom services may continue to be used by the residents of the “Projects in annexure” as per applicable terms & conditions.
	3. **Severability:**

Should TRAI / DoT declare any part of this agreement unenforceable through direction / order / regulation or if terms of license of BSNL are changed through any amendment or order of the Government, the parties will cooperate and take all appropriate steps to amend, modify or alter this agreement.

* 1. This agreement shall be binding upon all respective successors of the parties.
1. **Compliance of laws:**

BSNL and Builder / RWA / Telecom Infrastructure provider shall perform their duties in strict compliance with all applicable laws in India along with rules and regulations of the duty constituted Govt. authorities in India and shall obtain all licenses, restrictions or other approval, if any, required by laws in India in connection with the services to be rendered hereunder.

Further, service provided to the customers shall be subject to Indian Telegraph Act 1885, TRAI directions and tariff circulars issued by BSNL Corporate Office.

1. **Indemnification:**

Builder / RWA / Telecom Infrastructure provider( TIPs) agrees to protect, defend, indemnify and hold harmless BSNL and its employees, officers, directors, agents or representatives room and against any and all liabilities, damages, fines, penalties and costs (including legal costs and disbursements) arising from or relating to:

1. Any breach of any statue, regulation, direction, orders or standards from any governmental body, agency, telecommunications operator or regulator applicable to such party; “or”
2. Any breach of the terms and conditions in this agreement by the Builder / RWA / Telecom Infrastructure provider (TIPs)
3. **Relationship:**

Each party understands that it is an independently owned business entity and this agreement does not make it, its employees, associates or agents as employees, agents or legal representatives of the other party for any purpose whatsoever. Neither party has express or implied right or authority to assume or to undertake any obligation in respect of or on behalf of or in the name of the other party or to bind the other party in any manner. In case, any party , its employees, associates or agents hold out as employees, agents, or legal representatives of the other party, the former party shall forthwith upon demand make good any / all loss, cost, damage including consequential loss, suffered by the other party on this account.

1. **ARBITRATION**
	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.
	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.
	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.

IN WITNESS WHEREOF the Parties here so have caused this agreement to be duly executed on the date above written.

For BSNL \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness

For “Builder / RWA / Telecom infrastructure provider (TIPs) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness