This **MEMORANDUM OF UNDERSTANDING** made and effective as of this **4th day of December 2012** and is being executed in New Delhi.

# BETWEEN:

**Bharat Broadband Network Limited**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at Sanchar Bhawan, New Delhi (hereinafter referred to as "**BBNL**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) (being represented through Shri Pradeep Kumar Agarwal, Director (Planning), BBNL who is duly authorised vide Board Resolution dated 03-12-2012)

## AND

**Bharat Sanchar Nigam Limited**, a Company incorporated under the Companies Act, 1956, having its Registered Office at Bharat Sanchar Bhawan, H.C.M. Lane, Janpath, New Delhi 110001 (hereinafter called "**BSNL**" which expression shall unless repugnant to the context, include its successors and assigns) (being represented through Shri H.C. Pant, Company Secretary, BSNL who is duly authorised vide Board Resolution dated 02-08-2003)

**WHEREAS**: the Central Government has proposed to establish an Optical Fibre based network for Broadband connectivity to Panchayats for Universal Services to Rural Population of the country and accordingly Cabinet has approved vide cabinet memo No. 37/CM/2011. (i) dated 28.10.2011 for creation of National Optical Fibre Network (hereinafter referred to as "NOFN") as a National Asset, for providing Broadband to Panchayats and to be owned by the Government of India. The objective is to extend the existing optical Fibre network to Panchayats by utilizing the Universal Services Obligation Fund (USOF) and creating an institutional mechanism for management and operation of NOFN for Non-discriminatory access to all service providers.

**AND WHEREAS: BBNL** will take on lease the existing optical Fibre cable (OFC) from BSNL/ POWERGRID/ RAILTEL and lay incremental OFC to Gram Panchayats and provide non-discriminatory access to all the service providers.

AND WHEREAS BBNL intends to undertake laying of the incremental OFC for execution of the NOFN project (hereinafter referred to as the "Project") through participation of the partner PSUs, on the terms and conditions contained in this MOU and Guidelines for NOFN issued from time to time.

AND WHEREAS BBNL has entered into an understanding with BSNL with regard to contracting of said work of laying OFC to BSNL.

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MOU between BBNL and BSNL for NOFN Project Execution

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

# 1. DEFINITIONS AND INTERPRETATION:

- 1.1. **"MOU"** shall mean the Memorandum of Understanding herein containing the Terms & Conditions set forth & agreed therein, including all other documents expressly annexed thereto or incorporated therein.
- 1.2. **"Contractor"** shall mean the Bidder whose bid is accepted by BSNL on behalf of BBNL for award of contract for the total work or any part of the work of the Project resulting in a contract and shall include such contractor's legal representatives, successors and permitted assigns.
- 1.3. **"Sub-Contractor"** shall mean any person (other than the contractor) named in the contract for execution of any part of the works or any person to whom any part of the contract has been entrusted with the consent of BSNL and include such sub-contractor and the Sub-contractor's legal successors in title but not any assignee of the contractor.
- 1.4. "Nodal officer" shall mean the officer nominated by BBNL in writing to act as coordinator for the purpose of this work.
- 1.5. **"Project Manager"** shall mean the official nominated by BSNL in writing who shall be responsible for co-ordination with BBNL and for all activities concerning the execution of the Project.
- 1.6. "Parties" shall mean BBNL and BSNL.
- 1.7. **"Centage"** shall mean payment towards management/ consultancy towards superintendence, direction and control of the work as mentioned in clause 4 of this MOU.
- 1.8. Words singular shall include the plural and vice versa, where the contexts so desire.
- 1.9. Clause headings are inserted for ease of reference only and shall be ignored in interpreting the terms of this memorandum.

# 2. Pre-requisites for Execution of works

- 2.1. There will be four stages as follows in the execution of work:
  - 2.1.1. Administrative approval by way of signing of MoU.
  - 2.1.2. Expenditure sanction by way of approval of Preliminary Estimate.
  - 2.1.3. Technical sanction by way of Approval of survey report & Bill of quantities.
  - 2.1.4. Availability of Funds.

## 3. Stages of work execution

3.1. The execution of Project/ work has three stages, viz, the Pre-construction stage, the Construction stage and the Post-Construction stage. The following activities are involved in these stages:

### Pre-construction stage: 3.2.

- Allocation of work by BBNL. (i)
- Preparation of Project Estimate by BBNL. (ii)
- (iii) Preparation of Detailed Survey Report by BSNL.
- (iv) Discussions on Survey Reports to assess Project requirements and incorporation of modification (as required).
- Approval of Survey Report by BBNL.  $(\mathbf{V})$
- (vi) Inviting Tenders by BBNL for Optical Fibre Cable, accessories & GPON Equipment.
- (vii) Preparation of Preliminary Estimates (District wise) for Cable Laying, installation & commissioning including Bill of quantities by BSNL.
- (viii) Preparation & sanction of component wise Detailed estimates by BBNL.
- (ix) Approval of Preliminary estimates, submitted by BSNL, by BBNL.
- Award of work through competitive bidding by BSNL as per their procedures.  $(\mathbf{X})$

#### 3.3. **Construction stage:**

- Carrying out of work and contract management. (i)
- Completion of work including Acceptance Testing. (ii)
- Testing and Commissioning. (iii)
- Handing over. (iv)
- Settlement of accounts. (v)

### **Post Construction stage:** 3.4.

Asset handing over and Operation & Maintenance on agreed terms and (i) conditions.

## 4. Indicative Scope of work

The Indicative Scope of work (not in chronological order) shall be as follows: 4.1.

SN	Item of work	Responsibility
4.1.1 A	Detailed Field Survey & Planning of Panchayats Block wise where the Incremental Optical Fibre cable is proposed to be laid along with documentation both in electronic format and hard copy along with Bill of quantities for various items required for cable work and submit to BBNL.	BSNL
4.1.1 B	Making available data about existing OFC	BSNL
4.1.1 C	Approval of Survey Report	BBNL
4.1.1 D	Right of Way (RoW) approvals from State Governments	BBNL
4.1.2	Approval of Preliminary Estimate	BBNL
4.1.3 A	Tender invitation for Cable laying works and its finalization.	BSNL
4.1.3 B	Preparation of Preliminary Estimate for both Cable laying & Equipment work including material and submit to BBNL.	BSNL
4.1.4	Procurement of items for Cable laying work such as different type of Ducts, accessories, spare chamber box, Route Indicators etc. as per approved TEC specifications (wherever applicable) and laying practises approved by BBNL.	BSNL

I.1.5 A	required for Optical Fibre Cable work such as OF Cable, Joint closures, splitters, Fibre Distribution Frames, WSC, Pigtail, Patch Cords and any other items required by inviting open tender and intimating the same to BSNL.	
4.1.5 B	1.5 B Obtain Optical Fibre Cable, Joint closures, splitters, Fibre Distribution Frames, WSC, Pigtail, Patch Cords and any other items required based on the rates finalized by BBNL. This also includes Quality Assurance and handling of stores at various locations.	
4.1.6	Trenching, Ducting, Trench refilling, reinstatement, Pulling of Cable, Cable Jointing, Termination, Depth AT, Testing Cable, Cable AT etc.	BSNL
4.1.7 A	Existing Fibre testing. (This will be part of the Fibre Leasing Agreement also.)	BSNL in coordination with TSP
4.1.7 B	Laid Fibre combined testing from OLT to ONT (Panchayat)	BSNL
4.1.8	Complete documentation in Electronic Format, GIS, Hard Copies.	BSNL
4.1.9		
4.1.10	Preparation of Bill of quantities of GPON equipment.	BSNL
4.1.11 A		
4.1.11 B	adopted by BBNL and the rates finalized by BBNL. This also includes Quality Assurance and handling of stores at various locations.	BSNL
4.1.12	Supervise Equipment installation, testing and commissioning of entire system.	BSNL
4.1.13		
4.1.14		
4.1.15	Provisioning of Solar Power Backup for running of ONT on 24X7 basis. Specs to be provided by BBNL.	BBNL and BSNL

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4.1.16	Port connectivity of different users on OLT/ ONTs.	BSNL in coordination with TSP
4.1.17 A	Bandwidth for connecting with NMS.	BBNL
4.1.17 B	Integration with NMS.	BSNL
4.1.18	Identify any other item of work/ store required to be carried out by BSNL for commissioning of equipment.	BSNL
4.1.19	Documentation in Electronic format / hard copy.	BŞNL
4.1.20	Existing Core of TSP and GPON Equipment combined testing as per requirement.	BSNL in coordination with TSP
4.1.21	Submission of Project completion report for each Preliminary Estimate approved.	BSNL
4.1.22	* Operation and maintenance of complete network.	BSNL
4.1.23	* Note: Item 4.1.13, 4.1.14 and 4.1.22 will not form part of Preliminary Estimate. Items 4.1.13 and 4.1.14 will form part of the Fibre Leasing Agreement as part of OPEX. Item 4.1.22 will form part of O&M Agreement	

The price determination for Underground Optical Fibre Cable (Non-metallic 4.2. type) and GPON Equipment & other associated items along with one year warranty and five year comprehensive maintenance (for GPON Equipment) will be decided centrally by BBNL by inviting open tender. Based on the rates finalized by BBNL, BSNL shall be consignee for these items and BSNL would be responsible for ensuring Quality Assurance of the material/ consignment. The procurement to be in line with the Notification issued vide letter number 18-07/2012-IP dated 05-10-2012 for procurement of Telecom products.

# 5. Responsibility Matrix & Time Line

SN	Item of work	Responsibility	Time line
1	Allocation of work to BSNL	BBNL	Done
2	Signing of MoU with BSNL indicating the scope of work, centage, cost, time & quality control parameters etc.	BBNL/ BSNL	Latest by 30th Nov 2012 (T0)
3	Preparation of Project Estimate.	BBNL	By 30th Nov 2012.
4	Detailed field survey for assessment of work and material requirements as listed in scope of work.	BSNL	T0 + 5 weeks
5	Based on detailed field survey BSNL to submit Preliminary estimate (District wise) for Technical Sanction.	BSNL	T0 + 9 weeks
6	Preliminary Estimates Technical Sanction approval. These will form part of Detailed Estimate for BBNL.	BBNL	T0 + 13 weeks
6A	Submission of cost estimate for Expenditure Sanction.	BSNL	T0 + 15 weeks
7	Communication of Expenditure sanction to BSNL along with a copy of approval& release of 10% Advance.**	BBNL	T0 + 17 weeks = T1



8	Second advance of 10% on getting confirmation from BSNL that the work is awarded	BBNL/ BSNL	T1 + 2 weeks
8A	Placement of Purchase Order for the supply of Optical Fibre Cable, associated items as well as GPON equipment.	BBNL	T1 + 2 weeks
9	Execution of work (within 24 weeks from communication of Expenditure sanction)	BSNL	T1 + 24 weeks
10	Approval of Telecom Commission for Detailed Estimates in 4-5 tranches	BBNL	Within the above time table.
11	Running Bill Payments up to another 50% on getting due certification from BSNL/ Project Monitoring teams	BBNL/ BSNL	Within the above time table.
12	Another 25% Payment on getting confirmation that AT has been successfully conducted alongwith commissioning.	BBNL/ BSNL	
13	Balance 5% payment after one Yr of completion of work successfully	BBNL/ BSNL	
14	Submission of Project completion report	BSNL	31st March 2014

Note: The timelines are as indicated by BBNL. BSNL shall make efforts to adhere to the above timelines. In the event of any necessity, BBNL may revise the timelines.

\*\* Out of this 10% advance, a mobilisation advance may be released by BBNL after signing of detailed agreement, limited to a maximum of 4% of the estimated work to be done by BSNL, after adjusting the already released advance(s).

# 6. Control Mechanisms regarding Cost, Quality and Time

## 6.1. Cost Control Mechanism

The cost control mechanism is to be implemented in the following manner:

- 6.1.1. Checks will be exercised to control the cost through Project Management. The Project Management Software will be made available by BBNL.
- 6.1.2. The actual expenses shall not exceed 10% of expenditure sanction/ revised expenditure sanction. Beyond this limit, BSNL shall seek for revision of the expenditure sanction. Further work can be started by BSNL only on sanction of revised estimate by BBNL.
- 6.1.3. Centage payment to BSNL shall be linked to the Cost of execution for which general guidelines are as follows:
  - i. The Centage of 10% (excluding Taxes on Centage) of the Actual cost of execution alongwith the actual cost of Optical Fibre Cable and Equipment or the revised estimate, whichever is lower.
  - ii. The Centage will be paid on the net amount after deduction of applicable penalty for delay in execution (Illustration: If the cost of work executed in Rs. 100/-, then the Centage would be Rs. 10/- excluding taxes on Centage. However, if there is delay in execution and a penalty for delay in execution is imposed for Rs. 10/-, then the cost of work executed would be Rs. 90/- and the Centage would be Rs. 9/- excluding taxes on Centage).

6.1.4. BSNL may avail any credit of Taxes, Duties, etc., as permitted under law. The same will be deducted from the reimbursement claim and Centage calculations.

### 6.2. **Quality Control**

- 6.2.1. State of the art technology shall be used. Quality control through Acceptance Test (AT) shall be done by BSNL as per guidelines issued by BBNL from time to time. BBNL reserves the right to carry out sample checks. Shortcomings/ deficiencies noted shall be attended by BSNL within 15 days and intimated to BBNL for re-verification.
- 6.2.2. Payment shall be linked to Acceptance Testing (AT).
- 6.2.3. Quality will also be controlled through Project Management.
- 6.2.4. BSNL will ensure incorporation of sufficient safety clauses for punitive action for unsatisfactory performance on part of their contractors/ vendors.

### 6.3. **Time Control**

- 6.3.1. Penalty for delay in execution will be imposed in case of delay in execution.
- 6.3.2. Time control will also be exercised through Project Management.
- 6.3.3. Termination of contract in case of Time overrun and award to another agency.
- 6.3.4. BSNL will ensure incorporation of sufficient safety clauses for punitive action for unsatisfactory performance on part of their contractors/ vendors.

## 7. FORCE MAJEURE

- 7.1. If, at any time, during the continuance of this contract/ MOU, the performance in whole or in part by either party of any obligation under this contract/ MOU is prevented or delayed by reasons of any war or hostility, acts of the public enemy, civil commotion, sabotage, fires, floods, explosions, epidemics, guarantine 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/ MOU nor shall either party have any claim for damages against other in respect of such non-performance or delay in performance, and deliveries/ services under the contract/ MOU shall be resumed as soon as practicable after such an event come to an end or cease to exist, and the decision of BBNL as to whether the deliveries/ services 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/ MOU 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/ MOU.
- Provided, also that if the contract/ MOU is terminated under this clause, BBNL shall 7.2. be at liberty to take over from BSNL on as-is-where-is basis , which shall be final, all unused, undamaged and acceptable materials, bought out components and stores in course of execution which may be in possession of BSNL at the time of such termination or such portion thereof as BBNL may deem fit, except such materials, Pursone bought out components and stores as BSNL may with the concurrence of BBNL elect to retain.

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# 8. TERMINATION FOR DEFAULT

- 8.1. BBNL may, without prejudice to any other remedy for breach of contract/ MOU, by written notice of default, sent to BSNL, terminate this contract/ MOU in whole or in part
  - (a) if BSNL fails to deliver any or all of the goods/ services within the time period(s) specified in the contract/ MOU, or any extension thereof granted by BBNL:
  - (b) if BSNL fails to perform any other obligation(s) under the Contract/ MOU; and
  - (c) if BSNL, in either of the above circumstances, does not remedy its failure within a period of 15 days (or such longer period as BBNL may authorize in writing) after receipt of the default notice from BBNL.
- 8.2. In the event BBNL terminates the contract/ MOU in whole or in part pursuant to para 8.1 BBNL may procure, upon such terms and in such manner as it deems appropriate, goods/ services similar to those undelivered and BSNL shall be liable to BBNL for any excess cost for such similar goods/ services. However BSNL shall continue the performance of the contract/ MOU to the extent not terminated.

# 9. TERMINATION FOR INSOLVENCY

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

## **10. ARBITRATION**

- 10.1. In the event of any question, dispute or difference arising under this MOU or in connection therewith (except as to the matters, the decision to which is specifically provided under this MOU), the same shall be first referred for Conciliation amongst the CMDs of the parties concerned. If the conciliation does not lead to settlement of the dispute within 60 days, the matter shall be referred within 30 days thereafter to Secretary Telecom for mediation. If the mediation fails, the dispute shall be referred within further 30 days for arbitration to Permanent Machinery of Arbitrators (PMA) as per clause 10.2.
- 10.2. In the event of any dispute or difference relating to the interpretation and application of the provisions of the contracts, such dispute or difference shall be referred by either party for Arbitration to the sole Arbitrator in the Department of Public Enterprises to be nominated by the Secretary to the Government of India in-charge of the Department of Public Enterprises. The Arbitration and Conciliation Act shall not be applicable to arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute, provided, however, any party aggrieved by such award may make a further reference for setting aside or revision of the award to the Law Secretary, Department of Legal Affairs, Ministry of Law & Justice, Government of India. Upon such reference the dispute shall be decided by the Law Secretary or the Special Secretary/ Additional Secretary, when so authorized by the Law Secretary, whose decision shall bind the Parties finally and conclusively. The Parties to the dispute will share equally the cost of arbitration as intimated by the Arbitrator.

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

# 11. SET OFF

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

# **12. COURT JURISDICTION**

12.1. This Contract/ MOU is subject to jurisdiction of Court at New Delhi only.

# **13. THIRD PARTY DISPUTE**

- 13.1. If any litigation/ arbitration cases crop up during the process of placement of various contract orders or thereafter by BSNL on behalf of BBNL, BSNL shall resolve the same on behalf of BBNL. BBNL shall provide necessary details, if required.
- 13.2. The cost of arbitration/ litigation will be borne by BBNL except in cases arising out of shortcomings or inefficiencies in tender/ purchase orders issued by BSNL or arising out of any other incidence solely attributable to BSNL.

# **14. ASSIGNMENT**

- 14.1. Unless otherwise agreed in writing, no rights, benefits or obligations under this MOU may be assigned by a party without prior written consent of the other Party.
- 14.2. If either Party appoints an agent for the purpose of this MOU & notifies the other Party, then the other party shall deal with the appointed agent for such purpose until the first party notifies the other party that the said appointment has been terminated. Notwithstanding the above, both parties hereto shall be solely and primarily responsible for performance of their obligations under this MOU.

# **15. LIABILITIES**

- 15.1. Not withstanding any other provisions of this MOU, neither party shall be liable to each other for any incidental, indirect, special or consequential damages, including but not limited to costs, claims, damages, losses or expenses arising from loss of revenue or profits, loss of use, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss or damage whatsoever, arising out of the performance or non-performance of any provision of this MOU.
- 15.2. Except as otherwise specifically provided herein, neither party shall be liable for any breach of this MOU (other than a failure to make payments due hereunder) where the breach is caused by Force Majeure.

# **16. PENALTY FOR DELAY IN COMPLETION**

16.1. BSNL shall incorporate the provisions towards levy of Penalty for delay in execution in their Agreements with Contractor(s) for delay in completion of the work. All amount and Rage 9 of 11

Page 9 of 1 New Delhi towards the Penalty for delay in execution, if any, as may be received by BSNL under this provision, shall be suitably adjusted in the Project Cost.

16.2. Penalty for delay in execution of pending work/ route @ 0.5% for each week of delay or part thereof for a period upto ten weeks and thereafter at the rate of 0.7% for each week of delay or part thereof for another ten weeks subject to a maximum of 12% will be applicable and deducted on delay of execution of project, which may be recovered by BSNL from their contractor(s) on a back-to-back basis.

## **17. PERFORMANCE GUARANTEE**

- 17.1. BSNL shall suitably incorporate the provision of Guarantee Clause in their Contract Agreements with Contractor(s) valid for a period of 12 calendar months commencing immediately after commissioning of the Project, which will be enforceable by BBNL.
- 17.2. BSNL shall submit a Bank Guarantee/ Corporate Guarantee for an amount equal to 5% of the estimated value of work after signing of the MoU. Any advance would be released to BSNL only after receipt of the Bank Guarantee/ Corporate Guarantee by BBNL.

## **18. PAYMENT**

18.1. Payment clauses will be detailed in the agreement to be signed subsequently.

## **19. AMENDMENT**

19.1. This MOU may be amended or modified if necessary by a written instrument signed by the Parties and the same shall be considered as an integral part of this MOU.

# 20. EFFECTIVE DATE

20.1. This MOU shall be deemed to have come into force with effect from the date of signing of MOU or receipt of first initial advance payment whichever is later. All rights, obligations and responsibilities of BBNL and BSNL shall be deemed to have commenced and accrued from the above date.

## 21. NOTICE OF DEFAULT

21.1. Notice of default given by either Party to the other Party under this MOU shall be in writing and shall be deemed to have been duly and properly served upon the Parties hereto if delivered by Registered mail against acknowledgement due and addressed to the signatories to this MOU.

# 22. CORRESPONDENCE

- 22.1. All communications from BBNL to BSNL shall be addressed to the Project Manager nominated by BSNL in writing for the purpose of this work.
- 22.2. All communication from BSNL to BBNL shall be addressed to the Nodal Officer nominated by BBNL in writing for the purpose of this work.

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23. Based on the letter and spirit of this MoU, detailed agreement(s) will be signed within four weeks by BBNL and BSNL.

IN WITNESS WHEREOF the Parties hereto have fully executed these present through their duly authorized representatives on the 04th Day of December 2012.

SIGNED AND DELIVERED BY In the presence of (for and on behalf of Bharat Broadband Network Limited) Signature Autorsh Ajama Signature 04-12 NamePRADEE KUHA Name AVINASH AGARWAL AGARWAL Designation GM (MM), BBNL Designation DIRECTOR (PL बदीप कुमार अग्रवाल, आई.टी.एस Address..... Address.. ADEEP KUMAR AGARMAL ....TS निदेशक (योजना) / Director (Planning) भारत बोडवेंड नेटवर्क लिपिते !! Sheret Broadband Network Ltr. (भारत सरकार का एक उपक्रम) (A Government of India Enterprises) In the presence of SIGNED AND DELIVERED BY (for and on behalf of Bharat Sanchar Nigam Limited) Signature Signature . AN Name H·C Name ..... cefor IRECTOR Designation ... Designation. Address.... Address.....

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