

MODEL
TRIPARTITE AGREEMENT
(among(Utility),.....(NBSP) &(ITIA))

for providing MPLS VPN based wide area network services,
Internet Bandwidth and GPRS connectivity at various locations
of Projects Area under Part-A scheme of R-APDRP

*This model document is for reference/use of Utilities and needs to be
suitably customized / modified by them as per their requirement*

The document covers inputs received from Utilities and various Network Bandwidth Service
Providers in the country

NOTE

- a. *This agreement is for providing MPLS VPN based wide area network services, Internet Bandwidth and GPRS connectivity at various locations in Part-A scheme as per R-APDRP guidelines.*
- b. *This is a general agreement format; separate agreements need to be signed in case NBSP is different for different Services (MPLS/Internet/GPRS) etc.*
- c. *It is to be ensured by Utility that:*
 - *Prior to this agreement Contract agreement between Utility and ITIA/SI has been signed.*
 - *The Purchase Order on the same price and work, as quoted by ITIA against the 'networking (MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity) and Related Services' component of ITIA LOA/PO has been/is to be signed between Utility and NBSP.*
- d. *SLA format for including in the Utility's Purchase Order to NBSP is given at the end of this document.*
- e. *This agreement does not endorse any agreement between NBSP and ITIA*
- f. *The Responsibility Matrix may be modified depending upon specific works.*

MODEL AGREEMENT

This Agreement is entered on _____ day of _____ 2010 among (name of utility) a company incorporated under the Companies Act 1956 and having its registered office at (hereinafter called the "....."), of the one part

AND

..... (name of ITIA), a company incorporated under the Companies Act 1956 and having its corporate office at SELECTED IT IMPLEMENTATION AGENCY (ITIA) FOR R-APDRP PROJECT i.e., Party engaged by vide LOI No: and detailed order no.(herein referred to as the "Purchase Order") for Supply, installation, integration, testing, commissioning and facility management service of System Integration Project covering software, hardware, field survey and networking (MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS

connectivity) and Related Services incidental thereto as specified in the Scope of Work at Section II of the said Purchase Order (hereinafter referred to as “ITIA or(name of ITIA) which expression shall unless excluded by or repugnant to the meaning or context thereof be deemed to include its successors and assigns) of the second Part.

AND

.....(name of NBSP) a company incorporated under the Companies Act 1956 and having its corporate office at....., being a preferred TELECOM SERVICE PROVIDER/NETWORK BANDWIDTH SERVICE PROVIDER for the referred R-APDRP PROJECT engaged for Providing MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity incidental thereto as specified in the Scope of Work in the agreement between (ITIA) and(utility) (hereinafter referred to as “.....(NBSP)” which expression shall unless excluded by or repugnant to the meaning or context thereof be deemed to include its successors and assigns) of the third Part.

“.....(utility)”, “(ITIA)” and “.....(NBSP)” are individually referred as “Party” and collectively as “Parties”.

WHEREAS (utility), the party of the first part has contracted(ITIA), the second party, for supply, **installation, integration, testing, commissioning and facility management service of System Integration Project covering software, hardware, field survey, networking related services** (hereinafter referred to as “The Project”) vide its RFP No.WHEREAS as per the requirements of the project,(utility) requires these services for successful implementation of the project.

WHEREAS(ITIA), in order to service its obligation under the above mentioned RfP to the full satisfaction of the Utility, had proposed “.....(NBSP)” as a service provider vide their letter/ offer no _____dated _____and now agrees to associate with(NBSP) for execution of the part of the order, to provide support services as detailed in the purchase Order (ITIA) and/or indicated in Article 5 of this agreement to be the responsibility of(NBSP), namely, related to required Bandwidth services for the project.

WHEREAS ITIA has done the due diligence with respect to the capabilities, technical or otherwise, of(NBSP) for providing the required type of connectivity and services within time frame, quality, security and reliability level as envisaged in the RFP / SRS before recommending their name.

WHEREAS the bid price quoted by (ITIA) for networking (MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity) and Related Services (“Service”) at locations as specified in(utility) Order Form (hereinafter referred to as the “Locations”) for the purpose of utilization by the(utility) and their respective subsidiaries and affiliates as specified in the PO No.....to(ITIA) placed by(utility), is passed through to..... (NBSP) by(Utility) in the form of Purchase Order in accordance with the bid proposal datedsubmitted to(Utility) by(ITIA), and the Terms & Conditions and SLA of(Utility) with(NBSP), for carrying out the networking (MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity) and Related Services.

WHEREAS (NBSP) has Category 'A' ISP/NLD/ILD license having its network spread across India.

The Purchase Order no. (to ITIA) placed by(utility) on(ITIA) and the Purchase Order placed vide/to be placed by (Utility) to(NBSP) shall form an integral part of this agreement.(NBSP) and(ITIA), shall be responsible jointly and severally for roles and responsibility with respect to the Requisite Services and(ITIA), severally, shall be responsible for the obligation as envisaged under RfP/SRS for ITIA, both in the fulfillment of the said Purchase Orders.

WHEREAS by virtue of this agreement, the parties(ITIA) and(NBSP) bind themselves to the terms & conditions that are embedded in the contract between the first two parties.

Now these presents witness and it is hereby agreed by and between the parties hereto as follows:

1. APPLICATION

This Agreement details the general terms and conditions for the provision of the Services to be rendered by(NBSP) [as per PO placed vide.../to be placed by Utility] and by(ITIA) [as per PO No.with(Utility)]. Upon signing the scope, duration and other services to be so rendered under this Agreement the parties agree to accept and be bound by these terms and conditions.

2. PROVISION OF SERVICE

- i. The provision of the Services is subject to these terms and conditions stated in this Agreement. Where(NBSP) shall accept the Order form from(Utility),(NBSP) shall provide the Services required by(utility), and by(ITIA) on behalf of(utility), within a timeframe, quality, security and reliability level agreed with between(utility),(NBSP) and(ITIA). The ITIA shall provide(NBSP) with a complete network diagram of the set-up along with the details of connectivity at the Locations and services will be provisioned to the(utility) accordingly. It is the responsibility of ITIA, severally and jointly with(NBSP) of proper network monitoring and network management as per SLA like uptime, proper bandwidth etc. and to submit the SLA performance report of the(NBSP) to the (Utility) on monthly/as and when required basis.
- ii. The network links will be provided by.....(NBSP) and the ITIA will monitor and report any problems on behalf of(NBSP) to(Utility).
- iii. Where the(Utility) deems necessary, it shall have the right to add and/or replace (NBSP) with another NBSP. In case of replacement of NBSP, the ITIA shall terminate forthwith all agreements/contracts other arrangements with such NBSP and find suitable replacement for such NBSP to the satisfaction of the (Utility) at no additional charge. The default / delay on the part of (NBSP) shall not constitute the reasons for waiver of delay or meeting the performance as per SLA for the entire scope of ITIA

work. The ITIA has to execute the contract as per agreed schedule and SLA and as per contractual provision entered between utility and ITIA.

- iv. (ITIA) shall ensure that Requisite Services from(NBSP) for project area (town) are available on time when its own system/works that are to be installed/ executed/implemented under PO no.with(Utility), are ready for testing & commissioning.
- v. The(NBSP) shall not use the establishments and services installed under this agreement for organizations other than(utility).

3. SERVICE TERM

The term of the Services is initially for years (as per ITIA PO) from the date of commencement of service, and if required, thereafter, shall be extended from time to time by written consent of the parties. The Service Commencement Date shall be set forth in accordance with the Purchase Order placed vide...../to be placed by(utility) on(NBSP).

4. TERMINATION OF SERVICE

The Termination of this Agreement and Services shall be as per provisions of Termination clause as appearing in PO No.with (ITIA) and/or PO placed vide...../to be placed with (NBSP).

5. RESPONSIBILITIES OF THE PARTIES

The Responsibility Matrix for each party is given in the table below:

Responsibility of(utility)	Responsibility of(ITIA)	Responsibility of(NBSP)
To monitor the project progress against time frame & quality and performance with , quality, security and reliability levels of required services as per agreement with(ITIA) and ...(NBSP).	To provide MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity, incidental thereto as specified in the Scope of Work in the agreement between (ITIA) and(utility).	To provide MPLS VPN based Wide Area Network services, Internet Bandwidth and GPRS connectivity, incidental thereto as specified in the Scope of Work as per PO placed by Utility to (ITIA) and.....(NBSP).
To disburse the payment to the(NBSP) upon achievement of the SLA on the basis of performance reports/ SLA reports.	Timely execution of the part of the order related to required Bandwidth for the project.	To provide the Services (as per SLA) required by(utility), and by(ITIA) on behalf of(utility), within the timeframe, quality, security and reliability level agreed with between(utility),
To provide safe access	To provide(NBSP) with a complete network diagram of the set-up along with the details of connectivity at the Locations and	

<p>and conditions to(ITIA) and (NBSP)'s employees or appointed personnel whilst in the premises.</p>	<p>services provisioned to the.....(utility)</p> <p>Proper network monitoring and network management as per SLA like uptime, proper bandwidth etc. and submit SLA report to the utility on monthly/as and when required basis.</p> <p>To monitor and report any problems on behalf of(NBSP).</p> <p>To ensure that the(NBSP) comply with all relevant and applicable provisions of the Contract.</p> <p>To ensure compliance of Indian Telecom regulation & statutory requirements while performing the works/services under this agreement.</p> <p>To obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.</p>	<p>.....(NBSP) and(ITIA).</p> <p>Not to use the establishments and services installed under this agreement for organizations other than(utility).</p> <p>To raise direct invoices against the works/services performed, as per the terms of the Purchase Order with Utility.</p> <p>To ensure compliance of Indian Telecom regulation & statutory requirements while performing the works/services under this agreement.</p> <p>To obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.</p>
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6. INVOICE AND PAYMENT

- i.(NBSP) shall raise direct invoices against the Requisite Services so rendered, as per the terms of the Purchase Order placed vide...../to be placed by..... (utility) and(utility) shall directly make the payment to(NBSP) based on the SLA (as per NBSP PO) report and confirmation made by(ITIA).
- ii. The other terms and conditions shall remain applicable as per(Utility's) PO No.with (ITIA) and/or PO placed vide...../to be placed by Utility to (NBSP).

7. DISPUTES WITH REGARDS TO INCORRECT INVOICING

Disputes with regard to incorrect Invoicing shall be governed by(Utility’s) PO No.with (ITIA) and/or PO placed vide...../to be placed by Utility to (NBSP).

8. ACCESS TO PREMISES

.....(utility) shall allow or obtain the required permission to enable(NBSP) employees or authorized personnel, appointed distributors, agents or subcontractors to enter at all times during the normal working hours of(utility) into the premises where the Services are provided for periodical inspection with seven (7) days prior notice, installing, maintaining, replacing and removing equipment hardware and/or software prior to, during and after the provision of the Services, as well as to inspect the network and/or to the CPE or any other equipment used in or in connection with the Services. The(utility) shall render all assistance in this regard and shall provide safe access and conditions for(NBSP)’s employees or appointed personnel whilst in the premises.(NBSP)’s employees or appointed personnel shall comply with security and confidentiality policies and procedures while on the(utility)’s premises.

9. NOTICES

Any party may deliver notices to the other by personal delivery or by postal delivery at -

.....(utility)
.....

..... (ITIA)
.....

.....(NBSP)
.....

Notices shall be deemed delivered on the date of actual receipt.

10. ENTIRE UNDERSTANDING

This Agreement constitutes the entire understanding of the parties related to the subject matter hereof. The agreement may be amended only in writing when it is signed by(NBSP),(ITIA) and(utility).

11. MISCELLANEOUS

- a. The terms of this Agreement shall not be construed to constitute a partnership, joint venture or employer/employee relationship between the parties. This Agreement along with any other relevant document constitutes the whole of the agreement and understanding between the parties about the subject matter.
- b. In the event of any provision of this Agreement being held or becoming invalid, unenforceable or illegal for any reason, this Agreement shall remain otherwise in full force apart from the said provision which will be deemed deleted. The parties shall however attempt to replace the deleted provision with a legally valid provision that reflects the same purpose of the deleted provision to the greatest extent possible.
- c. Headings used in this Agreement are for the convenience and ease of reference only, and shall not be relevant to or affect the meaning or interpretation of this Agreement.
- d. No forbearance, relaxation or inaction by any party at any time to require the performance of any provision of this Agreement shall in any way affect, diminish, or prejudice the right of such party to require the performance of that or any other provision of this Agreement or be considered to be a waiver of any right, unless specifically agreed in writing.
- e. Each Party shall obtain and arrange for the maintenance in full force and effect of all government approvals, consents, licenses, authorizations, declarations, filings, and registrations as may be necessary and advisable for the performance of all of the terms and conditions of this Agreement.
- f. The(NBSP) and (ITIA) shall ensure compliance of Indian Telecom regulation & all other statutory requirements while performing the works/services under this agreement.

12. APPLICABLE LAW

The Agreement shall be governed by and construed in accordance with Indian Law. Subject to arbitration provision stated hereinafter the Courts at shall have the jurisdiction.

13. ARBITRATION

Any disputes which may arise out of this Agreement, and which cannot be settled in discussions or negotiations between the Parties, shall be referred to the appropriate management or higher authorities of the respective parties to resolve such dispute in good faith. In case no settlement is reached the parties shall refer it to a sole arbitrator appointed and selected by parties. Arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996 or any other subsequent modifications or enactments thereof. The venue for Arbitration proceedings shall be The Arbitration shall be conducted in English Language and the award shall be binding upon all Parties.

14. LIMITATION OF LIABILITY

Limitation & liability shall be governed by(Utility's) PO No.with (ITIA) and/or PO placed vide...../to be placed by Utility to (NBSP).

IN WITNESS WHEREOF the parties hereto have executed these presents the day and year first above written.

SIGNED AND DELIVERED BY (on behalf of Utility) in the presence of

Signature
Name & Designation
Address
.....

Signature
Name & Designation.....
Address
.....

SIGNED AND DELIVERED BY (on behalf of ITIA)

Signature
Name & Designation
Address
.....

Signature
Name & Designation
Address
.....

SIGNED AND DELIVERED BY (on behalf of NBSP.....)

Signature
Name & Designation
Address
.....

Signature
Name & Designation
Address
.....

To be Part of Purchase Order of Utility with NBSP (not in agreement document)

The SLAs broadly would cover the following services:

1. MPLS Services
2. MPLS Pipe terminating at Data center
3. Data Center to DR dedicated pipeline
4. Internet Services at Data Center & DR Center
5. GPRS Services at all AMR meters installed at Distribution Transformer Sub-stations/Feeders/Town boundary/HT Sub-stations/HT,LT Consumers etc and Data Center, DR Center.

The overall SLA for the Services (individually and combined) should be as follows:

- a) For first three: 99% uptime or as per PO placed on ITIA,
- b) For point 4 (individually and combined) : 99.5% uptime or as per PO placed on ITIA
- c) For point 5 (individually and combined) : 98% uptime or as per PO placed on ITIA

Duration of SLA

This Service level agreement would be valid for entire period of contract. This SLA may be reviewed and revised according to the procedures detailed below under section "SLA Change Control".

The following table represents the SLAs required:

Mapping With section G5 of SRS Document	Service	Parameter	Service Level	Validation	Penalty
5.9	Network Operation & Management	Resolution of ticket logged related to networks	99% (or uptime as per PO placed on ITIA)	Reports generated from Ticket logging system	Penalty of 2% per month will be deducted from the monthly charges of(NBSP).
	Network Operation & Management	Data Centre Network Availability Minimum of 99.8% (or	99.8% (or uptime as per PO placed	Report	<ul style="list-style-type: none"> • 2% of monthly charges of(NBSP) for less than 99.8% (or uptime as per PO placed on ITIA) uptime. • 3% of monthly charges of(NBSP) for less than 98.0% (or

		uptime as per PO placed on ITIA) uptime measured on a monthly basis	on ITIA)		uptime as per PO placed on ITIA) • 5 % of monthly charges of(NBSP) for less than 95% (or uptime as per PO placed on ITIA)
		Regional Offices Network Availability Minimum of 98% (or uptime as per PO placed on ITIA) uptime measured on a monthly basis	98% (or uptime as per PO placed on ITIA)	Report	<ul style="list-style-type: none"> • 2% of monthly charges of(NBSP) for less than 98% (or uptime as per PO placed on ITIA) • 3% of monthly charges of(NBSP) for less than 97% (or uptime as per PO placed on ITIA) • 5 % of monthly charges of(NBSP) for less than 95 % (or uptime as per PO placed on ITIA)
		Divisional & Other Offices Network Availability Minimum of 97% (or uptime as per PO placed on ITIA) uptime measured on a monthly basis	97% (or uptime as per PO placed on ITIA)	Report	<ul style="list-style-type: none"> • 2% of monthly charges of(NBSP) for less than 97% (or uptime as per PO placed on ITIA) • 3% of monthly charges of(NBSP) for less than 95% (or uptime as per PO placed on ITIA)
		AMR meters installed at Distribution Transformer Sub-stations/Feeders /Town boundary/ HT Sub-stations/ HT Consumers etc and Data Center, DR Center Minimum of 98% (or uptime as per PO placed on ITIA) uptime measured on a monthly basis	98% (or uptime as per PO placed on ITIA)	Report	<ul style="list-style-type: none"> • 2% of monthly charges of(NBSP) for less than 98% (or uptime as per PO placed on ITIA) • 3% of monthly charges of(NBSP) for less than 97% (or uptime as per PO placed on ITIA) • 5 % of monthly charges of(NBSP) for less than 95 % (or uptime as per PO placed on ITIA)
		Data Centre Network (Internet) Availability Minimum of 99.5% (or as per PO placed on	99.5% (or as per PO placed on ITIA)	Report	<ul style="list-style-type: none"> • 2% of monthly charges of(NBSP) for less than 99.5% (or uptime as per PO placed on ITIA) • 3% of monthly charges of(NBSP) for less than 98.0% (or uptime as per PO placed on ITIA)

		ITIA) uptime measured on a monthly basis			<ul style="list-style-type: none"> • 5 % of monthly charges of(NBSP) for less than 95% (or uptime as per PO placed on ITIA)
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The uptime calculation, The Severity Definition Chart, and SLA Change Control would be done as per "Appendix C – Service Level Agreement" of document "Appendices" given in PO No..... placed on(ITIA) by(Utility).