



No. 27-15/2013-S&M-CM/8

Date: 01.11.2013

To
Chief General Managers,
All Telecom Circles / Districts,
BSNL

Subject: Revision of "Scope of work" and "Area of Operation" under CM - e-Distributor Policy 2012

Ref: 27-23/2011-S&M-CM dated 07.06.2012
30-19/2012-S&M-CM/19 dated 19.02.2013

Kindly refer to this office letter under reference vide which "CM – S&D policy 2012" and draft agreement for e-Distributors was issued.

With the approval of competent authority, certain modifications in "**Scope of Work**" and "**Area of Operation**" at para 6 under "e-Distributor policy 2012" have been made to increase participation in Eol and to spread distribution channels. The modified provisions are as under:

Scope of work: e-Distributors may sell value to customers through web portal / Kiosk /ATMs/ POS (Retailers) and other electronic mode. e-Distributors shall not disturb/use the existing distribution network of primary franchisees of BSNL. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them.

Area of operation:

a) Pan India Internet Based e-Distributor:

- i. e-Distributors have to sign agreement in All 4 Zones (North, South, East & West) with nodal circles. They may opt to purchase inventory from any circle of the zone, however monitoring of performance etc. will be done by nodal circles only with whom agreements have been signed.
- ii. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them.
- iii. The e-Distributor shall sell values to customers through web based platform / Kiosk /ATMs/ POS (Retailers) using Internet /API / mobile apps/data access or other electronic modes across the zones.
- iv. e-Distributor will arrange communication / transaction links among its web portal and PoS at its own cost. BSNL shall not provide any technical support for distribution network viz: Short Code, free SIMs and Free SMS.

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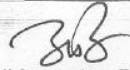


भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

b) Circle based e-Distributor:

- i. e-Distributors have to sign agreement in allotted circle.
- ii. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them.
- iii. Circle based e-Distributor will sell values to customers through retail chain using SMS / internet /data path in allotted circle.
- iv. BSNL shall provide support for distribution network viz: Short Code on request, free SIMs and Free SMS to Short Code. However no other concessional tariff or freebies will be allowed.

The revised draft agreement for e-distributor is enclosed with this letter which may be customized by circles and modified EoI has been uploaded on www.bsnl.co.in


(Upendra Bakolia)
Addl. GM (S&M-CM)

Encl : as above

Format of e-Distributorship Agreement
(The Agreement should be typed on non-judicial stamp paper of Rs. 100/-)

This agreement is made at _____ day of _____ 20____, between _____ Telecom Circle / District, of Bharat Sanchar Nigam Limited (BSNL), a Company incorporated under the Companies Act, 1956 having its Registered Office & Corporate Office at Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi-110001, Circle office at _____ (hereinafter referred to as "BSNL" which expression shall be deemed to include its successors and assigns wherever the context so admits or requires) through its duly authorized representative Mr. _____ Sales & Marketing - CM Unit, BSNL _____ Telecom Circle, ON THE ONE PART.

AND

M/s _____ (hereinafter referred to as the "e-Distributor" which expression shall include his servants, heirs, executors and administrators wherever the context so admits or requires) through its authorized representative, Mr. _____ ON THE OTHER PART.

WHEREAS

- (a) The BSNL is desirous of appointing authorized e-Distributor with a view for selling/ distributing BSNL's e-Recharge / C-TOPUP **on non-exclusive basis** under its brand name.

Whereas BSNL invited application _____ dated _____ for e-Distributor, based upon evaluation of application received under said document/application M/s _____ has been shortlisted /emerged as successful applicant for selling/ distributing BSNL's e-Recharge / C-TOPUP **on non-exclusive basis** on the terms and conditions as agreed herein between parties of this agreement.

OR

The existing e-PIN franchisee has requested to consider himself for migration to this "**e-Distributorship policy-2012**", based upon criteria/ performance as described in "**e-Distributorship Policy-2012**" and other related letters/ amendments/ clarifications issued time to time by BSNL, M/s _____ has become successful in migration. The **e-Distributor** has requested to sign agreement for provision for selling/ distributing BSNL's e-Recharge / C-TOPUP **on non-exclusive basis** in _____ (Name of the Circle), in pursuance of the said request and based upon such assurance, BSNL has agreed to sign the agreement with the **e-Distributor** for _____ months / years for provision of providing services as given in this agreement.

(Only applicable part is to be retained)

- (b) The e-Distributor has approached the BSNL for authorizing it to act as an authorized e-Distributor for selling/ distributing BSNL's e-Recharge / C-TOPUP **on non-exclusive basis** subject to the terms and conditions hereinafter appearing.
- (c) The e-Distributor has given an unconditional Bank Guarantee (As per Annexure A) of Nationalized Bank of Rs.1,00,000/- (Rs. One lakh only) per circle in case of Circle level e-Distributor or Rs.2,00,000/- (Rs. Two lakh only) per Zone in case of Pan India Internet based e-Distributor valid for Three years nine months and shall be refunded after due fulfillment of the said agreement. In case of Circle level e-Distributor the agreement will be signed separately with concerned telecom circle, and in case of Pan India Internet based e-Distributor agreement will be signed in all four zones separately at nodal telecom circle.

1. SCOPE OF WORK:

- 1.1** To serve BSNL customers through web portal / Kiosk /ATMs /POS (Retailers) and other electronic mode, there is a need to appoint Circle Level / Pan India Internet based franchisees to be known as e-Distributors.
- 1.2** Distributors in Circle(s) selling products in allotted circle(s) through retail chain using SMS / internet /data path will be called Circle level e-Distributors. They may use their retail network or may use established retail network(s) without disturbing /using the existing distribution network of primary franchisees of BSNL.
- 1.3** Distributors selling products through web based platform / Kiosk /ATMs/ POS (Retailers) using Internet /API / mobile apps/ data access or other electronic modes will be called Pan India Internet based e-Distributors. They may sell values across Pan India, i.e., in all four zones. They may use their retail network or may use established retail network(s) without disturbing /using the existing distribution network of primary franchisees of BSNL.
- 1.4** e-Distributors will sell e-Recharge / C-TOPUP to prepaid and / or postpaid bill payment and/ or other BSNL services/ products etc. as decided by BSNL from time to time, through web portal / Kiosk /ATMs/ POS (Retailers) and other electronic mode. e-Distributors shall not disturb/use the existing distribution network of primary franchisees of BSNL. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them
- 1.5** The e-Distributor shall be responsible for investment in setting up requisite infrastructure viz. outlets, portals, servers, leased connectivity etc. for sale of the services. e-Distributor shall maintain a suitable organization for the marketing & distribution of products & services in the allocated territory. The e-Distributor shall make its best efforts to actively provide effective services to the walk-in subscribers of the BSNL and always act in the interest of both the BSNL and its subscribers.
- 1.6** e-Distributor shall integrate its system with BSNL's zonal C-topup systems and will ensure security of data link by way of Firewall/ IDS etc. C-Topup vendor will share APIs for the integration purpose.
- 1.7** The reports needed by BSNL for reconciliation and monitoring purpose will have to be developed by both parties and will be validated by BSNL team appointed by the GM (CMTS), Nodal Center before start of actual application.
- 1.8** The EFTPOS terminals at POS shall connect to the central server through the PSTN or IP connectivity / Data connectivity / GPRS / CDMA. A Free phone number (Toll free/UAN) shall be allotted to the e-Distributor for this purpose at e-Distributor cost.
- 1.9** A secured password based account shall be created for BSNL to facilitate remote login to the server by designated BSNL staff. BSNL shall be permitted to view all reports and track sale and distribution to the EFTPOS terminals/NET/SMS.
- 1.10** Messaging facility shall be provided between the central server and the EFTPOS terminals wherein BSNL shall be able to pass on marketing related information, special promotional schemes etc to the EFTPOS terminals. The EFTPOS terminals/NET/SMS should be possible to be created in sub-groups area-wise so that it is possible to send messages to a specific sub- group only.
- 1.11** The e-Distributor shall store all records of sale at the Central server for a period of atleast one year to enable tracking of Sale etc by Law enforcement agencies in India.

- 1.12 BSNL may from time to time (at least once in a quarter) require the e-Distributor to carry out customer satisfaction surveys as decided by BSNL, concerned Circle. The cost thereof, if any, will be borne by the e-Distributor.
- 1.13 BSNL may from time to time provide information, training and assistance relating to the services. The training will be free of cost at a venue/training centre chosen by the BSNL at its discretion. The e-Distributor shall bear all costs relating to including travel, accommodation and subsistence costs of such representatives.
- 1.14 BSNL may provide the marketing material to the e-Distributor. It will not be obligatory and binding on the BSNL to provide all the above material, and will be provided as per availability only.
- 1.15 BSNL/ its representatives will have unlimited access to the business premises of the e-Distributor to check, from time to time, e-Distributor operations, including:
 - i. the process of selling and customer problem resolution,
 - ii. to identify problems and suggest solutions for e-Distributor to implement remedial measures,
 - iii. inspect and audit any or all statutory and other books of records and accounts
- 1.16 BSNL shall not be liable for any loss, pilferage or damage to the goods stored and sold at the premises and the merchandise shall be the entire responsibility of the e-Distributor.
- 1.17 e-Distributor will not sign agreement for BSNL primary franchiseeship during this agreement period.

2. PERFORMANCE BANK GUARANTEE (PBG) to the tune of following amounts shall be taken by BSNL Circle before signing of agreement (not to be submitted to the BSNL corporate office for empanelment):

- i. Circle Level e-Distributor - Rs.1 Lakhs / Circle
- ii. Pan India Internet based e-Distributor - Rs.2 Lakhs / Zone

- 2.1 PBG will be for a period of 3¾ years from the date of agreement. No interest is payable on performance bank guarantee.
- 2.2 Without prejudice to its right of any other remedies BSNL shall, on failure of the e-Distributor to provide services under the agreement or in case of breach of any terms & conditions of the agreement by e-Distributor or on failure of e-Distributor to start the business within 6 months of signing of agreement or failure of e-Distributor to achieve minimum committed annual sale of RC, encash/ forfeit the said PBG in part or full.
- 2.3 BSNL reserves the right to deduct any amount of whatsoever due to BSNL against agreement from said PBG. The said PBG shall be discharge by BSNL after successful completion of obligations under agreement.

3. AREA OF OPERATION:

3.1 **Circle based e-Distributor** : e-Distributor will operate within the area of _____ Telecom Circle.

- i. e-Distributors have to sign agreement in allotted circle(s).
- ii. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them.
- iii. Circle based e-Distributor will sell values to customers through retail chain using SMS / internet /data path in allotted circle.
- iv. BSNL shall provide support for distribution network viz: Short Code on request, free SIMs and Free SMS to Short Code. However no other concessional tariff or freebies will be allowed.

Or

3.2 Pan India Internet Based e-Distributor:

- i. e-Distributors have to sign agreement in All 4 Zones (North, South, East & West) with nodal circles & will be operative only after signing of all 4 agreements. They may opt to purchase inventory from any circle of the zone, however monitoring of performance etc. will be done by nodal circles only with whom agreements have been signed.
- ii. They may use their retail network or may use established retail network of Banks, Govt./ PSUs, utility bill payment centres, Retail stores like Big Bazaar, More, Croma etc. by having agreement with them.
- iii. The e-Distributor shall sell values to customers through web based platform / Kiosk /ATMs/ POS (Retailers) using Internet /API / mobile apps/data access or other electronic modes across the zones.
- iv. e-Distributor will arrange communication / transaction links among its web portal and PoS at its own cost. BSNL shall not provide any technical support for distribution network viz: Short Code, free SIMs and Free SMS.

Nodal Circles for signing the zonal agreements are given below:

Internet based e-Distributor on Pan India Basis Nodal Circles for Zonal agreement			
1	Hyderabad	Andhra Pradesh Telecom Circle	South Zone
2	Chandigarh	Punjab Telecom Circle	North Zone
3	Pune	Maharashtra Telecom Circle	West Zone
4	Kolkata	West Bengal Telecom Circle	East Zone

4. **DURATION OF AGREEMENT:** The e-Distributorship shall initially be for a period of **Thirty Nine (39) months (which includes three months for the preparations for roll out)** from the date of agreement and will be subjected to review of performance as prescribed by BSNL. The e-Distributor will have to achieve minimum 50% of the recharge /topup sale on year to year basis to have continuity for the agreement period of three years.
5. **ROLL OUT PLAN:** e-Distributor will install its system, will ensure integration with BSNL network elements like C-Topup system etc., and arrange for successful **verification** of provisioning, delivery and charging/reconciliation of recharge/topup transactions within a period of **three months** from the date of signing of agreement. The monitoring of annual performance against the sales target will commence from such date of launch of service.
6. **SALES TARGET:**
 - i. Circle Level e-Distributor Rs.25 Lakhs / Month / Circle
 - ii. Pan India Internet based e-Distributor Rs.25 Lakhs / Month / Zone
7. **MINIMUM PURCHASE:** In order to avoid frequent and small quantity purchase requisitions from e-Distributors, a minimum order quantity will have to be purchased by e-Distributor and are as given below :
 - i. Circle Level e-Distributor Rs.1 lakh /Circle
 - ii. Pan India Internet based e-Distributor Rs.1 Lakh/Zone

Material can be issued to e-Distributor against RTGS / Cheque on realization of Money in BSNL account or against Cash / Draft. The prefer mode for fund transfer for the e-Distributor to get material is RTGS.

- 8. DISCOUNT/COMMISSION:** It will be 85% of Primary Franchisee's Discount/ Commission, payable by BSNL, subject to maximum discount/commission rate of 4.5% of the transacted value.

8.1 The commission / discount can be reviewed by BSNL at any time and decision of BSNL in this regard will be final.

8.2 Retailers of the e-Distributors may be given free SIMs and the SMS sent to the short code of e-Distributor shall be made free. However, no other concessional tariff or freebies be given.

- 9. TAX LIABILITY:** e-Distributors have to bear all applicable taxes as per Central / States/ Local Laws. Service tax on Commission, claimed by e-Distributor, will be paid by BSNL. Income tax may be deducted at source on Commission paid as per applicable rules.

- 10. DAMAGES:** Should the e-Distributor fail to achieve the sales targets as specified above in clause 6 & 7, BSNL without prejudice to the other remedies available to it shall be entitled to recover damages, as pre-estimated damages at the rate & circumstances mentioned below:

- i. The imposition of damages will come into force after expiry of rollout period.
- ii. The damages will be calculated as a percentage of the short fall in the achievement of target. These percentages could be as under:
 - a. 0.1% penalty: on short achievement of target from 4 to 6 months.
 - b. 0.2% penalty: on short achievement of target from 7 months onward.Note: CGMs may relax the above damage(s) for exclusive channels of e-Distributors in case of single tie-up. e.g. bank/ Organized Retail Chain/ Service Centre Agents (SCAs) etc.
- iii. The damage(s) as stated above shall be recovered for each failure (para 10(ii)) and same shall be set off / adjusted against dues of BSNL or PBG besides any other action/ remedies/ rights of BSNL including the termination of agreement.

- 11. CROSS SELLING:** If e-Distributor is found involved in cross selling i.e., selling recharge/ TOPUP in area beyond the authorized area of operation, BSNL may decide to Black-list such e-Distributor.

- 12. EXTENSION:** e-Distributor shall request the concerned Circle/ Nodal Circle for extension of its agreement well in advance from the end date of its agreement. The agreement shall be extended for willing e-Distributors on year-to-year basis for a period of two years by concerned Circle/ nodal Circle, subject to condition that
- a. Achievement of the sales targets during previous year &
 - b. e-Distributor has paid applicable penalty in full for short achievements.

- 13. ROLE OF NODAL CIRCLE:** Nodal Circles, as given below, will be overall responsible for signing agreement for Pan India Internet based e-Distributor, implementation of the policy for both types of e-Distributors and its success.

i.	Hyderabad (Andhra Pradesh Telecom Circle)	South Zone
ii.	Chandigarh (Punjab Telecom Circle)	North Zone
iii.	Pune (Maharashtra Telecom Circle)	West Zone
iv.	Kolkata (West Bengal Telecom Circle)	East Zone

- 14. EXIT CLAUSE:** Either party may, by giving 60 days notice in advance to the other party, exit from the agreement and the agreement shall stand terminated on expiry of 60th day from receipt of such notice. In such cases, the PBG shall be returned after deducting any amount whatsoever due to BSNL against the agreement.
- 15. TERMINATION:** Agreement with e-Distributors may be terminated under following conditions:
- 15.1 BSNL shall reserve the right to terminate the agreement if e-Distributor is found not working for six consecutive months at any time by giving 30 days notice in writing for performance in obligation under the agreement, failing which the agreement shall stand terminated upon expiry of the 30th day of said notice. The PBG shall be forfeited.
 - 15.2 BSNL shall reserve the right to terminate agreement in case it comes to conclusion that the e-Distributor has violated any of the clauses of the agreement which would result in loss to BSNL or damage to services being provided by BSNL. The decision of the BSNL will be final in this regard. The PBG shall be forfeited.
 - 15.3 If either party suffers distress or execution or commits an act of bankruptcy or insolvency or put into liquidation (otherwise than solely for amalgamation or restriction) or if a receiver is appointed over any part of the party's business then the other party shall have a right to terminate agreement by written notice of 60 days. The PBG shall be forfeited.
 - 15.4 BSNL shall also reserve the right to suspend the operations of e-Distributor, at any time, due to change in its own license conditions or upon directions from the competent government authorities. In such a situation, BSNL shall not be responsible for any damage or loss caused or arisen out of aforesaid action. Further, the suspension of the agreement will not be a cause or ground for extension of the period of the agreement and suspension period will be taken as period spent. During this period, no charges for use of the facility of the e-Distributor shall be payable by BSNL.
 - 15.5 In case the e-Distributor parts with its business including its assets in favour of any 3rd party directly or indirectly, BSNL shall have the right to terminate the agreement. The exercising of the right of cancellation / termination shall not have the effect of waiving any damages to which the canceling / terminating party might otherwise be entitled to.
 - 15.6 Unless otherwise agreed in writing by BSNL, any sums payable and which are unpaid on the date of termination shall become due and payable by the e-Distributor. Otherwise e-Distributor shall be liable to pay interest @ 18% p.a. till the said amount is paid to BSNL.
 - 15.7 Provisions of the agreement shall, to the extent stated or necessarily implied, survive the termination thereof.
 - 15.8 Cancellation or termination or expiry of agreement shall not relieve or release either party from making payments which may be owing to the other party under the terms of the Agreement. However the e-Distributor shall not be entitled to refund from BSNL for the unutilized/unsold PINs/ Recharge / topup value in any circumstances what so ever.
 - 15.9 e-Distributor shall at its own expense return to BSNL promptly all information, documentation and materials relating to BSNL services and / or software or any other documents entrusted to the e-Distributor by BSNL
 - 15.10 On the termination of the agreement for any cause whatsoever, all rights and privileges granted to the e-Distributor shall immediately stand terminated. e-Distributor shall immediately cease and desist from using the trade name BSNL and any other sign, slogan, symbol or other distinguishing characteristic owned by or associated with BSNL's services.

- 15.11 BSNL shall be entitled to injunctive and equitable relief for any violation of the terms and conditions. e-Distributor shall pay all costs and expenses including reasonable advocate fee borne by the BSNL for enforcing any provision of the agreement. The provisions of this clause shall survive the termination of the agreement.
- 15.12 In the event of termination of agreement consequent upon breach of any of the terms of the agreement or surrender of e-Distributorship at its own will:
- i. Damages to the extent of loss determined by BSNL shall be recovered from the e-Distributor in addition to the encashment of Performance Bank Guarantee without prejudice to any other remedies and rights.
 - ii. e-Distributor may be debarred for future dealings with BSNL for e-Distributorship.

16. INDEMNIFICATION:

- 16.1 The e-Distributor shall have to agree to sign NDA & also indemnify BSNL, against all type of embezzlement, misappropriation or misapplication of money. BSNL will decide responsibility matrix between e-Distributor and C-Topup system provider.
- 16.2 e-Distributor shall treat all verbal and written communication as confidential, lists and circulars which in the opinion of the BSNL are regarded as confidential information and/or trade secrets. The e-Distributor shall adopt and implement security procedures acceptable to the BSNL for determining the persons to whom such information is authorized to be disclosed based upon such person's need to know the same for the purpose of fulfilling his responsibilities in relation to the Agreement. Confidential and trade secret information shall remain the property of the BSNL and shall be returned to the BSNL upon termination of agreement in the manner prescribed by the BSNL. The e-Distributor shall undertake and agree not to retain and make any copies of the entrusted confidential information. However it shall not relieve the e-Distributor from any liability or obligation under the agreement.
- 16.3 e-Distributor shall agree to protect, defend, indemnify and hold harmless BSNL and its employees, officers, Directors, Agents or representatives from and against any/and all liabilities, damages, penalties and cost including legal costs and disbursement arising from or relating to all losses or any claims for damages or any other claims of whatsoever nature which are brought against BSNL by any third party owing to deeds or misdeeds attributable to the e-Distributor.
- a) Any breach/ any statute or regulation, directive or order or standard from any government body, agency, Telecom Regulator
OR
 - b) Any breach of terms & conditions of the agreement by e-Distributor
OR
 - c) Any claim or infringement or any copyright or intellectual proprietorship or any other right or any third party by e-Distributor
OR
 - d) Any claim made by any third party arising out of the use of the services and arising in connection with the content of services or interruption or degradation of services to BSNL's customers caused by e-Distributor,

BSNL shall be vested with the sole discretion to determine such damages/ claims and have the right to adjust the same from any dues payable to the e-Distributor.

- 16.4 BSNL shall not be liable to the e-Distributor or any other party consequent upon termination of the agreement for any reason whatsoever for any claim for loss or profits or for any anticipated booking for BSNL or on account of any expenditure,

investments, leases or any other commitments made by the e-Distributor in connection with the agreement made in reliance upon or by virtue of the e-Distributor's appointment under the agreement.

- 16.5 BSNL's acceptance of any transaction from the e-Distributor after the termination / expiry of the agreement shall not be construed as a renewal or extension of the agreement nor as a waiver of termination.
- 16.6 The liability to insure the stocks in the outlet (s) or in the possession of the e-Distributor and the liability for any loss or damage due to any fire, burglary, theft, etc. will be that of the e-Distributor.

17. DISPUTE RESOLUTION/ARBITRATION: All disputes arising out of e-Distributorship for sales and the BSNL on the other part shall be decided by arbitration through an arbitrator to be appointed by the BSNL as per existing orders on the subject.

Any question, dispute or differences arising out of or in connection with agreement or breach, termination or validity hereof, shall be first endeavored to be settled through bipartite discussion or negotiations between the parties. If the dispute cannot be amicably settled either party, as soon as practicable, but not earlier than three months after a request to settle the dispute amicably has been made to the other party, give to the other party note in writing or existence of such question, dispute or difference, specifying the nature and the point at issue, and the same shall be finally settled by Arbitration conducted in accordance with The Arbitration and Conciliation Act 1996 any modifications or reenactments thereto and relevant laws and regulations in force at that time in India. All such disputes and differences which may arise between the parties hereto as to the meaning, construction or effect of any of the terms and provisions of agreement or as to the right or claim of either party under agreement shall be referred to the sole arbitration of the Chief General Manager of the concerned telecom Circle or his nominee including any officer of Bharat Sanchar Nigam Limited (BSNL) nominated by him and the e-Distributor shall not raise any objection to such arbitration on the ground that the arbitrator is an officer of Bharat Sanchar Nigam Limited (BSNL) and as such is an interested party or that the Arbitrator so appointed has earlier dealt with the subject matter of agreement. Any order / Directions / Awards of the Arbitrator shall be final and binding on both the parties. The arbitration proceedings shall take place in New Delhi or at a place within the area of Operation and will be governed by the provisions of The Arbitration and Conciliation Act 1996 or of any statutory amendment thereto or any reenactment thereof for the time being in force. The Arbitrator so appointed shall pass a speaking award. In case of any dispute, the Court having the territorial jurisdiction shall adjudicate the matter.

18. e-DISTRIBUTOR AS INDEPENDENT ENTITY:

- 18.1 The e-Distributor, its employees, agents and representatives shall provide services as an independent "entity" on an exclusive basis and nothing contained herein shall be deemed to create any partnership, joint venture, employment or relationship of principal and agent between the parties hereto or between BSNL and the e-Distributor representatives and employees or to provide service with any right, power or authority, or to provide the e-Distributor with any right, power or authority, whether express or implied to create any such duty or obligation.
- 18.2 The e-Distributor's personnel, employees, agents or representatives have no authority and/or right to bind BSNL in any manner. It is clarified that the personnel employed by the e-Distributor shall be the sole employees of the e-Distributor and BSNL shall have no financial or statutory responsibility towards them.
- 18.3 The e-Distributor represents and warrants that no officer, director, employee of BSNL or immediate family member thereof ("collectively, BSNL, personnel") has received or will receive anything of value of any kind from the e-Distributor or its

officers, directors, employees or agents in connection with agreement and that no BSNL personnel have a business relationship of any kind with the e-Distributor or its officers.

19. MISCELLANEOUS:

- 19.1 The e-Distributor may publish advertisement in newspapers at his own cost with the prior approval from the BSNL for text matter and design.
- 19.2 The terms and conditions may be amended as and when any changes, addition or deletion is required with the consent of both the parties except what is stated herein above.
- 19.3 The e-Distributor shall make all endeavors to ensure that no fraud of any kind, criminal or otherwise is committed by any agent or staff and shall be responsible for the costs and consequences thereof including litigation losses damages or loss suffered/ to be suffered by BSNL etc.
- 19.4 The e-Distributor shall carry out its obligation at its own cost and expenses including but not limited to usage of his own space and personnel and no reimbursement whatsoever shall be made by BSNL on any account whatsoever.
- 19.5 The e-Distributor shall be fully responsible for the employment or payment of wages to its employees and shall fully comply with all laws, rules, regulations, notifications, directions orders etc. of the Govt. whether Central, State, Local or Municipal relating to such employment, payment of wages etc. and all others matter connected therewith and hereby indemnifies and agrees to continue indemnifying BSNL in this regard.
- 19.6 The e-Distributor shall perform their duty in strict compliance with all applicable laws in India along with rules and regulation of duly constituted govt. authorities in India and shall obtain all licenses, restrictions or other approval, if any required by laws in India.
- 19.7 In connection with the services to be rendered, e-Distributor shall undertake, affirm and agree that e-Distributor has fully authorized to enter into an agreement and subject to obtaining the necessary approval under applicable law, if any, required to perform the obligation according to the stipulated terms.

20. GENERAL PROVISIONS:

- 20.1 **No authority to Commit:** The e-Distributor, its agents and employees will not be the legal representatives, employees or agents of the BSNL for any purpose and have no right or authority to incur any expenses on behalf of the BSNL or to create, in writing or otherwise, obligations of any kind, express or implied, in the name of or on behalf of BSNL excluding the rights and duties under agreement. The e-Distributor shall make no representations inconsistent with the foregoing, but so long as agreement remains in force, the e-Distributor shall be entitled to describe itself as the "Authorized e-Distributor" of BSNL for the services in the territory.
- 20.2 **Assignment:**
 - I. e-Distributor shall not assign its rights and remedies nor transfer its obligations under agreement without prior written consent of BSNL may so assign to any of its affiliated or subsidiary companies without such consent. In any event, any assignment or transfer shall not operate to relieve the assigning party of any of its obligations hereunder, nor will any such assignment impose any obligation on the assignee except in the case of an express written assumption by the assignee.
 - II. e-Distributor are not authorized to sublet/ assign the e-Distributor work in partial/ full by any means to any individual/ firm, failing which this agreement will be treated as null and void and PBG shall be forfeited.

- 20.3 **Notices:** Any notice or communication pursuant to agreement shall be deemed duly given or made when they shall have been delivered by hand, first class registered mail or, to the party at the address set forth at the beginning of agreement, or to such other address as shall have been given in writing to the other party.
- 20.4 **Failure to enforce:** The failure of either party to enforce at any time the provisions hereof shall not be construed to be a waiver of such provisions nor a waiver of the right of such party thereafter to enforce each and every such provision.
- 20.5 **Remedies for enforcement:**
- i. Nothing shall be construed to restrict the right of the BSNL to institute appropriate proceedings at law and equity to obtain injunction or other relief on account of any default hereunder whether or not the BSNL has exercised its right to terminate the agreement.
 - ii. The remedies granted to BSNL will be cumulative and are not intended to be exclusive if any, other remedies to which it may be lawfully entitled in case of any breach or threatened breach of the terms and provisions. Failure of BSNL to insist on strict performance of any of terms and provisions of the agreement or to exercise any right or remedy shall not be construed as a waiver of any such rights.

21. FORCE MAJEURE: Without in any way limiting the general limitations of liability contained in the agreement neither party shall be responsible for failure or delay in performance of service hereunder due to any occurrence commonly known as force majeure including without limitation acts of God, any government body (de jure or de facto) or public enemy, acts of war, riots, earthquake, embargoes, strikes or other concerted acts of workmen (whether of the parties or others) casualties, or accidents, and shortage of power, labour or materials, or any other causes, circumstances, or contingencies, whether of a similar or dissimilar nature to the foregoing, beyond the parties' control and which cannot be reasonably forecast or prevented thereby hindering the performance by the parties of any of its obligations.

The parties shall give each other notice in the event of any one or more of the foregoing occurrences. Upon such notice the parties may cancel or delay performance for so long as such performance is prevented or delayed by such occurrence and in such an event neither party shall have any liability to the other.

The agreement including the Annexure / e-Distributor Policy-2012, and application / no. ____ dated _____ constitute the entire Agreement of the parties with respect to the matters herein contained and all its terms and conditions are binding between the parties and supersedes all prior agreements and understandings between the parties whether written or oral. The Agreement shall be signed by the authorized representatives of both parties. In witness whereof, the parties have caused this agreement to be executed and delivered by the duly authorized officers:

For and on behalf of the e-Distributor

For and on behalf of the BSNL

Signature _____

Signature _____

Name _____
(In capital letters)

Name _____
(In capital letters)

Executive Director / Prop. _____
Designation _____

Name & Address _____

Name & Address _____

Dated at _____ on _____

FORMAT OF THE BANK GUARANTEE

(To be typed on Rs.100/- non-judicial stamp paper)

Re: Bank Guarantee in respect of Agreement dated _____ between Bharat Sanchar Nigam Limited and M/s _____.

_____, a company registered under The Companies Act, 1956 and having its Registered Office at _____ (hereinafter called "e-Distributor ") has entered into an agreement dated _____ (hereinafter referred to as "the said agreement") with M/s Bharat Sanchar Nigam Limited (BSNL in short) (A Government of India Enterprise), at Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath , New Delhi – 110001(hereinafter referred to as "BSNL") whereby BSNL has agreed to appoint e-Distributor s for providing BSNL cellular mobile service on the terms and conditions exclusively mentioned therein.

It has been agreed between the parties that an unconditional Bank Guarantee of Nationalized Bank of Rs.1,00,000/- (Rs. One lakh only) per circle in case of Circle level e-Distributor or Rs.2,00,000/- (Rs. Two lakh only) per Zone in case of Pan India Internet based e-Distributor shall be given by the e-Distributor in favour of the BSNL for due and faithful performance of the terms and conditions of the said agreement.

_____ Bank having its office at _____ has at the request of the e-Distributor (M/s _____), agreed to give the guarantee as hereinafter contained :

1. We, _____ (hereinafter called "the Bank") do hereby undertake and assure to the BSNL that if in the opinion of the BSNL, the e-Distributor has in any way failed to observe or perform the terms and conditions of the said agreement or has committed any breach of its obligations there-under, the Bank shall on demand and without any objection or demur pay to the BSNL the said sum of Rs.1,00,000/- (Rs. One lakh only) per circle in case of Circle level e-Distributor or Rs.2,00,000/- (Rs. Two lakh only) per Zone in case of Pan India Internet based e-Distributor or such lesser amount as BSNL may demand without requiring BSNL to have recourse to any legal remedy that may be available to it compel the Bank to pay the same.
2. Any such demand from the BSNL shall be conclusive as regards the liability of e-Distributor to pay to BSNL or as regards the amount payable by the Bank under this guarantee. The Bank shall not be entitled to withhold payment on the ground that the e-Distributor had disputed its liability to pay or has disputed the quantum of the amount or that any arbitration proceeding or legal proceeding is pending between e-Distributor and BSNL regarding the claim.
3. We, the Bank further agree that the guarantee shall come into force from the issue of bank guarantee and shall remain in full force and effect for the period of ___ years. But if the period of the said agreement is extended either pursuant to the provisions in the said Agreement or by mutual agreement between the e-Distributor and the BSNL, the Bank guarantee shall be renewed by the Bank at the request of e-Distributor for a period of Three Years Nine Months.
4. The Bank further agrees that the BSNL shall have the fullest liberty without the consent of the Bank and without affecting in any way the obligations hereunder to vary any of the terms and conditions of the said agreement or to extend the time for performance of the said agreement from any of the powers exercisable by BSNL against the e-Distributor and to forebear to enforce any of the terms and conditions relating to the said agreement and the Bank shall not be relieved from its liability by reason of such

failure or extension being granted to e-Distributor or through any forbearance, act or omission on the part of BSNL or any indulgence by BSNL to e-Distributor or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of relieving or discharging the guarantor.

5. The Bank further agrees that in case this Guarantee is required for a larger period and it is not extended by the Bank beyond the period specified above in Clause 3, the Bank shall pay to BSNL without BSNL having to demand the payment of the said sum of Rs.1,00,000/- (Rs. One lakh only) per circle in case of Circle level e-Distributor or Rs.2,00,000/- (Rs. Two lakh only) per Zone in case of Pan India Internet based e-Distributor on the last day on which the Bank Guarantee is due to expire.
6. Notwithstanding anything herein contained ;
 - (a) The liability of the Bank under this guarantee is restricted to Rs.1,00,000/- (Rs. One lakh only) per circle in case of Circle level e-Distributor or Rs.2,00,000/- (Rs. Two lakh only) per Zone in case of Pan India Internet based e-Distributor and it will remain in force for a period of Three Years Nine Months i.e. upto _____.
 - (b) The guarantee shall stand completely discharged and all rights of the BSNL under this Guarantee shall be extinguished if no claim or demand is made on us is writing on or before _____.
7. The Bank guarantees under its constitutional power to give this guarantee and _____ and _____ who have signed it on behalf of the Bank have authority to do so.

(Authorised Signature of the Bank Official)

Power of Attorney Number :

(Complete address of Bank, Name of signing officer, telephone & Fax numbers)

Dated: