

**MAHANAGAR TELEPHONE NIGAM LIMITED,**

**O/o Sr. Manager (TX-MM), Room No. 355,**

**Kidwai Bhawan, Janpath, New Delhi-110001.**

Ref. : EOI No. Sr. Manager (TX-MM)/Hiring of fibers on lease/2019-20/8

Expression of Interest (EOI) is invited for empanelment of Infrastructure Providers registered with DoT (with the scope to establish and maintain assets such as dark fibers, Right of Way, Duct Space and towers for the purpose to grant lease/rent/sale basis only to the licensed Telecom Service Providers under Section-4 of Indian telegraph act, 1885), for provisioning and maintenance of Last Mile Fibers (single/ two core dark fibers) between specified locations of MTNL Delhi.

Dear Sir,

Please find enclosed the following EOI documents in original to be used for submission of the EOI:

The EOI has to be submitted in sealed envelope in the O/o Sr. Manager (TX-MM), **Room No. 355, Kidwai Bhawan, Janpath, New Delhi** w.e.f. 19.09.2019.

Thanking you,

 Yours faithfully,

Sr. Manager (TX-MM)

 Room No 355, Kidwai Bhawan

Janpath, New Delhi-110001

Encl: EOI documents.

On behalf of Executive Director MTNL, New Delhi, Expression of Interest (EOI) is invited for empanelment of Infrastructure Providers registered with DoT (with the scope to establish and maintain assets such as dark fibers, Right of Way, Duct Space and towers for the purpose to grant lease/rent/sale basis only to the licensed Telecom Service Providers under Section-4 of Indian telegraph act, 1885), for provisioning and maintenance of Last Mile Fibers (single/ two core dark fibers) between specified locations of MTNL at the terms and conditioned prescribed as detailed below.

1. **General Information:**

MTNL intends to hire on lease the optical fibers in Delhi area for the lengths as per MTNL’s requirement (in the form of Dark Fiber) on annual leased charges basis in Delhi. EOI is invited from Infrastructure Service Providers registered with DoT to enter into agreement with MTNL. Fiber connectivity to be provided as P2P connectivity exclusively for MTNL.

The rates for leasing the dark optical fibre has been fixed by MTNL as Rs. 30,000/- plus applicable taxes (Rupees Thirty thousand only, plus taxes) per core dark fibre per kilometer\* per annum and Rs.45,000/- plus applicable taxes (Rupees Forty Five thousand only, plus taxes) for two core dark fiber per kilometer\* per annum.

For the fiber distance of more than 1Km, rate applicable will be Rs.30/- per meter per annum for single core dark fiber and Rs.45/- per meter per annum for two core dark fibers.

(\*Rates for less than a Km will be based on rounding off Principle i.e. if it is less than 0.5 Km then it will be 0.5 Km and for the distance between 0.5 to 1.0 Km will be 1 km.)

1. **Scope of the work:-**
	1. Dark fibers single core on lease to be provisioned at the last mile for provisioning of Lease Line on FTTH or any other method. Approximately 750 leased lines to be provided in a year.

2.2 Dark fibers two core on lease to be provisioned at the last mile for provisioning of Lease Line on STM/ MES/ LAN switch or any other method. Approximately 250 leased lines to be provided in a year.

2.3 Dark fibers two core on lease to be provisioned for ring formation between specified locations of MTNL Exchange/ RSU/CNE in Delhi as tabulated in **Annexure-I.**

2.4 SLA of 99% uptime to be provided. Assuming 30 days in a month, the cumulative downtime of the OFC should not exceed 7hrs. (7.2 hrs rounded to 7 hrs.) in any month. The SLA time will be measured with respect to the uptime of MTNL active equipment. In case there is excessive power loss in the fiber which renders the MTNL active equipment out of service, then the condition will be taken as fault condition. SLA agreement to be signed by the authorised signatory of Service Provider as per **Annexure-II**.

2.5 If the SLA is not met, then the penalty as per the table below shall be levied.

|  |  |  |  |
| --- | --- | --- | --- |
| SLA % | Cumulative downtime in month | Penalty | Maximum Penalty |
| >= 99% | =< 7 hrs/month | Nil | Nil |
| 97%-99% | >7 to <22 hrs/month (21.6hrs rounded to 22hrs.) | 0.25% per hour or part thereof on prorata monthly charges. | 20% of the prorata monthly charges. |
| <97% | >22hrs/month. | 0.5% per hour or part thereof on prorata monthly charges. |

* 1. Any continuous failure more than 72 hrs (3 days) will be taken as prolonged failure. If there is prolonged failure then in addition to the penalty as per above clause, the applicable hiring charges on prorata basis for that period will not be payable.
	2. Any fault or downtime will be intimated by MTNL to the service provider on SMS/email or call or to the service provider fault control centre or any other number as per the agreed mode of communication. The restoration time must also be recorded with proper documentation. The restoration time will be taken as MTNL active system/equipment restoration time.
	3. After restoration of each fault, the service provider/operator will generate fault closure report with time of fault occurrence, time of restoration, nature of fault and action taken. Email/Fax to MTNL will be jointly signed by authorized representative from both the sides. SLA monitoring and penalty levied will be based on fault closure report.
	4. Distribution of work to the empanelled service providers, approved by MTNL, will be at sole discretion of MTNL.
1. **Eligibility Criteria:-**

(i) The Infrastructure/Service Providers should be registered with DoT with the scope to establish and maintain assets such as dark fibers, Right of Way, Duct Space and towers for the purpose to grant lease/rent/sale basis only to the licensed Telecom Service Providers under Section-4 of Indian telegraph act, 1885.

1. Along with the EOI, the Infrastructure/Service Providers must attach the copy of valid license/ registration certificate.
2. **Terms and conditions:-**
	1. As per the above scope, it will be sole responsibility of the Infrastructure/Service Provider to extend the fibers. Infrastructure/Service Provider shall take permissions required, if any from **local/ statutory authorities** for extending optical fiber to MTNL sites.
	2. Fiber connectivity to be provided as P2P connectivity exclusively for MTNL.
	3. The complete work of extending optical fiber cable from one designated location to the other location has to be completed in 7 days from the date of issue of WO.
	4. The fiber shall be single mode and end to end loss in the fiber provisioned should not be more than the average loss of 0.50 db per Km. (in addition the allowable connector Loss is 0.5 db per connector). The Service Provider should submit OTDR readings with loss details to MTNL.
	5. MTNL will have the right to add or drop the sites from the list attached.
	6. It is agreed that the fiber links are to be set-up at the locations as specified in the said Work order. The fiber link set up between the two points is under rental usage of MTNL. The Infrastructure/Service Provider is responsible for the licensing and related issues pertaining to statutory authorities. MTNL is the custodians of the set-up for the purpose of security and normal physical upkeep. Maintenance and other performance related upkeep services are the responsibility of Infrastructure/Service Provider.
	7. Fiber length will be applicable as per actual OTDR distance being calculated at the time of handover.
	8. **Rates of lease of fiber**:

(i) The rate fixed by MTNL for leasing the dark optical fiber has been fixed at Rs. 30,000/- plus applicable taxes (Rupees Thirty thousand only, plus taxes) per core dark fiber per kilometer\* per annum and Rs. 45,000/- plus applicable taxes (Rupees Forty Five thousand only, plus taxes) for two core dark fiber per kilometer per annum.

1. For the fiber distance of more than 1Km, rate applicable will be Rs.30/- per meter per annum for single core dark fiber and Rs.45/- per meter per annum for two core dark fibers.

(\*Rates for less than a Km will be based on rounding off Principle i.e. if it is less than 0.5 Km then it will be 0.5 Km and for the distance between 0.5 to 1.0 Km will be 1 km.)

* 1. SLA of 99% uptime to be provided. Failure to meet the SLA agreement condition will lead to penalties. Work order will be issued subsequent to signing of SLA agreement by both parties. The SLA agreement (to be signed by both parties before issue of work order) should be in prescribed Performa. **(Annexure- II).**
	2. **Period of Contract**:
1. This agreement for hiring of fiber is for a minimum period of one year and extendable up to five years by extending one year at a time, subject to review. Extension of this Agreement shall be negotiable for the second term depending on the performance of the Service Provider during the period of the initial term.
2. The validity period of a given circuit shall be its operational period from its commissioning.
3. The hiring period of fiber for a given leased Line/ Circuit location shall be valid till the continuance operation of circuit or One year whichever is later. Beyond one year, hiring shall continue till continuance of that particular circuit/ location subject to yearly review.

Before award of the work, the Infrastructure service Provider has to submit Performance Bank Guarantee (PBG) of Rs. 50,000/- (Rupees Fifty Thousand only) **in the form of a DD or irrevocable and unconditional Bank Guarantee in favour of AO (Cash) Transmission, MTNL, Delhi, valid for 18 months from the date of signing of agreement, issued by a scheduled Bank and in the format provided in Annexure-III of EOI**. which has to be further extended by one year if MTNL continues to hire beyond one year. Additional PBG will be submitted by Infrastructure/Service Provider for extension period. MTNL shall not be liable to pay any interest on PBG deposited.

* 1. If the Infrastructure/Service Provider fails to provide and commission the project within stipulated time, the MTNL shall be entitled to recover 0.5% of the value of the work order for each week delay or part thereof for period up to 10 weeks and thereafter 0.7% of the WO value for each week delay or part thereof subject to maximum 12% of the WO value.

**4.13 PAYMENT TERMS:**

(a) Payment shall be done on yearly basis within 30 days of revenue realization to MTNL from the given circuit.

(b) The infrastructure/Service provider shall submit the invoices along with “Fiber commissioning reports / SLA reports” after deducting SLA penalties, if any.

(c) In case of Exchanges/ BTS/DSLAM/OLT etc. connectivity, the hiring on fixed revenue share basis is for MTNL own internal consumption, hence the cost for the services will be borne by MTNL and will be paid on the same priority as in the circuit commissioning cases.

(d) While submitting the bills the Infrastructure /Service Provider shall also submit: -

(i) An undertaking that “I will pay GST (CGST/SGST/IGST/UTGST) to the respective GST Department.”

(ii) Proof of deposit of GST (CGST/SGST/IGST/UTGST) of previous month(s) to the respective GST Department.

(e) The payment to the Service Provider will be subject to deduction of tax deducted at source of bill (s), the MTNL will deduct Income Tax (TDS) as applicable or as may be fixed by the Government of India from time to time on the gross amount of each bill passed for payment in accordance with the provision of Clause 194-C of Income Tax Act, 1973 as amended from time to time. In addition to this MTNL will also deduct all other applicable Taxes implemented by Govt. of India/Delhi Govt., at the **applicable rate** from the amount of each bill passed for payment.

1. Payment of GST shall be released on production of necessary supporting documents i.e. GST invoice. If the Service Provider fails to furnish necessary supporting documents i.e. GST invoice, the amount pertaining to such Duties/Taxes will not be paid. Tax amount will be payable to the Service Provider only after Service Provider declares the details of the invoices in its GSTR-1 and GSTR-3 and the same is reflected in GSTR-2A of MTNL on GSTN portal.

(g) Wherever domestic reverse charge is applicable on MTNL or in case service provider is un-registered under GST Act, service provider shall not charge tax on invoice. It shall be the liability of MTNL to pay tax under reverse charge mechanism.

(h) No payment of GST shall be made to those Service Provider, who are either not registered for GST or who are registered under Composition Scheme of GST.

(i) If status of a Service Provider who was initially registered on GST under Composition Scheme at the time of submission of EOI, subsequently his status changes to normal GST registered Service Provider any time during the period of contract, under such circumstance, his unit price will be discounted by the applicable Tax rate as applicable under the composition scheme. In such cases if the Service Provider furnishes necessary supporting documents regarding GST payment and which is also GST credit eligible amount to MTNL in such cases the GST payment will be reimbursed.

(j) Entire payment of invoice shall be paid by MTNL only after the credit of the GST portion in the invoice is selected in the GSTN portal i.e. the outward return in GSTR 1 is uploaded by the Service provider by 10th of the subsequent month and duly reflected in MTNL account on GSTN portal.

  **Note: MTNL shall not be liable for payment of any interest on any bill outstanding for payment.**

1. The invoices along with “Fiber commissioning / SLA reports” certified by MTNL designated in-charge, the concerned DE (Tx)”, shall be submitted in the O/o A.O. (Works) Trans., MTNL Delhi for release of payment.

Bill submission authority - AO (Works) Trans

Bill processing authority - Sr. Manager (Tx-MM)

Bill paying authority - AO (Cash) Trans

1. The following documents are required to be submitted along with the bill for payment.
* Copy of WO issued.
* Fiber commissioning reports / SLA reports certified by the concerned DE(TX),if applicable

## 4.14 The EOI is covered under Integrity Pact and the service provider shall submit an Agreement as per format provided in Annexure – IV.

The Service Providers can send their grievances to the Independent External Monitors through the Nodal Officer on the following address:

Sr. Manager (Pers.), MTNL, CO

Nodal Officer- Independent External Monitoring Cell (IEMC)

6th Floor, Mahanagar Doorsanchar Sadan

9, CGO Complex, Lodhi Road, New Delhi-110003

Tel. No. 011-24322529

Fax No. 011-24325576, E-Mail: noiemc@bol.net.in

E-mail addresses of IEMs (Independent External Monitors) are given below:

|  |  |
| --- | --- |
| 1. | dhruv6650@gmail.com |
| 2. | vinod102000@yahoo.co.in |
| 3. | alka.sirohi@gmail.com |

As per CVC’s guidelines/notification Dtd 13.01.2017, the vendor will not go to the court till the time the matter/complaint is pending with the IEMs. This CVC Circular may be seen in MTNL website <http://www.mtnl.net.in>

**4.15 Submission of EOI.**

The EOI to empanel with MTNL has to be submitted in sealed envelope in the O/o Sr. Manager (Tx-MM), **Room No. 355, Kidwai Bhawan, Janpath, New Delhi** w.e.f. 19.09.2019.

The sealed envelope shall contain full name, postal address of the Infrastructure/Service Provider written on the sealed envelope. The envelope should have heading in quotes stating “Leasing of Dark fiber in MTNL Delhi”.

MTNL reserves the right to reject any or all the EOIs without assigning any reason thereof.

**ANNEXURE-I**

Tentative List of MTNL Exchange site locations are tabulated below:

|  |  |  |
| --- | --- | --- |
| **Sl. No** | **MTNL Exchange location** | **RSU/CNE Location** |
| 1 | Nehru Place | Amar Colony RSU-I |
| 2 | Nehru Place | Amar Colony RSU-II |
| 3 | Okhla | Jamia Milia RSU |
| 4 | Tuglakabad | Sangam Vihar RSU |
| 5 | Jor Bagh | RAJIV GANDHI BHAWAN RSU |
| 6 | Jor Bagh | CVC RSU |
| 7 | Bhicaji Cama Place | SSB MHP RSM |
| 8 | Chattar Pur | Jonapur RSU |
| 9 | Chattar pur | Mandi RSU |
| 10 | Bhicaji Cama Place | IUAC RSU |
| 11 | Chanakya Puri | AB Hotel CNE |
| 12 | Chanakya Puri | Grand Hyatt CNE |
| 13 | Hauz Khas | Chatter Pur Pahari |
| 14 | Chattar Pur | ASOLA RSU |
| 15 | Shakti Nagar | Nimri Colony (Bharat Ngr.) RSU |
| 16 | Shakti Nagar | Jahangir Puri RSU |
| 17 | Shakti Nagar | Delhi University RSU |
| 18 | Shakti Nagar | Netaji Subhash Place RSU |
| 19 | Paschim Vihar | Kanjhawala RSU |
| 20 | Chattar Pur | ASOLA RSU |
| 21 | Shakti Nagar | Nimri Colony (Bharat Ngr.) RSU |

Note: MTNL will have the right to add or drop the sites from the above list

**ANNEXURE-II**

**SLA (SERVICE LEVEL AGREEMENT) FOR HIRING DARK FIBER.**

*(To be furnished on Rs 100/- stamp paper after communication for final selection is received from MTNL )*

*To be executed on non-judicial stamp paper worth Rs 100/- and continuation sheets on ledger papers and two copies on ordinary paper to be submitted neatly type-written sheets on one side of the paper in single line spacing.*

This agreement is made on the \_\_\_\_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_(Year) to be effective from \_\_\_\_\_\_\_\_\_\_\_\_between Mahanagar Telephone Nigam Limited a company registered under the Companies Act 1956 having license to provide all types of services of Telegraph and having its registered office at 5th floor, Mahanagar Doorsanchar Sadan, 9, CGO Complex, Lodhi Rod, New Delhi 110003 (hereinafter called MTNL which expression shall unless repugnant to the context, include its successors in business, legal representative and administrators or permitted assigned) of the ONE PART and M/s.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_a company registered under the Companies Act 1956 and having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(hereinafter called Service Provider which expression shall unless repugnant to the context, include its successors in business, legal representative and administrators or permitted assigned) of the OTHER PART.

WHEREAS, MTNL Delhi has placed Work/ purchase order to the Service Provider vide No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dated \_\_\_\_\_\_\_\_\_ for hiring of dark fiber (against quotation No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_dated \_\_\_\_\_\_\_\_)

WHEREAS the Service Provider has made the offer to duly comply with all the provisions of the Bid Document, including those pertaining to Service Level Agreement, after making himself fully aware and understanding fully the implications of their terms and conditions and specifications mentioned therein and which has been accepted by MTNL Delhi on the terms and conditions mentioned hereafter and after ascertaining that the Service Provider is fully capable of complying with the aforesaid terms of the Bid Document.

NOW the AGREEMENT WITNESSETH as follows:-

1. **PERIOD OF VALIDTITY OF THE AGREEMENT:**
	1. This Agreement shall remain in force **for one year** and extendable up to five years by extending one year at a time, subject to review**.** Before award of the work, the supplier has to submit performance bank guarantee for an amount of Rs. 50,000/- (Rupees Fifty Thousand only) valid for 18 months, which has to be further extended by one year if MTNL continues to hire beyond one year. In case of extension, additional PBG will be submitted by Service provider before placing WO for extension period. MTNL shall not be liable to pay any interest on PBG deposited.

PBG in the form of Demand Draft or Bank Guarantee shall be submitted to Senior Manager (TX-MM), Room No 355, Kidwai Bhawan, New Delhi-110001.

1.2 Extension of this Agreement shall be negotiable for the second term depending on the performance of the Service Provider during the period of the initial term.

**2.** In addition to complying with all the terms and condition recorded in the EOI Document, the Service Provider hereby agrees and unequivocally undertakes to fully comply with all the terms and conditions stipulated in this Service Level Agreement and without any deviation or reservations of any kind.

**3.** Unless otherwise mentioned or appearing from the context, the EOI Document and any clarifications thereof and the Work order shall form part and parcel of this agreement provided that in case of conflict or inconsistency on any issue relating to this Service Level Agreement, the terms set out in the body of this agreement with schedules and Annexure thereto shall prevail.

1. **“Service Level Agreement”** shall mean the level of services which MTNL purchases from IP-1 License Service provider in respect of the services.
2. It specifies the Service Levels that should be met by the Service provider during the operation phase of the service. The Service Levels shall be used to measure the performance of the delivery of the service from Service provider.

**4. FIBER LINK AVAILABILITY.**

The following Service Levels (measured on a monthly basis) for availability apply:

1. The Service Provider will guarantee fiber link with a minimum availability of 99% for a period of 1 year (one year). This excludes unavailability due to scheduled maintenance, unfavorable atmospheric conditions, interference or other unfavorable transmission conditions like natural disasters, events of accidental nature and similar force-majeure conditions.
2. The Service provider will provide support from 24\*7 days a week. The Service Provider has to support beyond business hours with adequate teams to meet the MTNL’s requirements.

**5. SERVICE LEVEL DETAILS**

The times within which the Service provider will respond through SMS / Call / Mail and commence action for operational helpdesk enquiries are assigned priorities according to their severity as outlined below:

**6.** SLA of 99% uptime to be provided. Assuming 30 days in a month, the cumulative downtime of the OFC should not exceed 7hrs. (7.2 hrs rounded to 7 hrs.) in any month. The SLA time will be measured with respect to the uptime of MTNL active equipment. In case there is excessive power loss in the fiber which renders the MTNL active equipment out of service, then the condition will be taken as fault condition.

**7.** If the SLA is not met, then the penalty as per the table below shall be levied.

|  |  |  |  |
| --- | --- | --- | --- |
| SLA % | Cumulative downtime in month | Penalty | Maximum Penalty |
| >= 99% | =< 7 hrs/month | Nil | Nil |
| 97%-99% | >7 to <22 hrs/month.(21.6hrs rounded to 22hrs.) | 0.25% per hour or part thereof on prorata monthly charges. | 20% of the prorata monthly charges. |
| <97% | >22hrs/month. | 0.5% per hour or part thereof on prorata monthly charges. |

**8.** Any continuous failure more than 72 hrs (3 days) will be taken as prolonged failure. If there is prolonged failure then in addition to the penalty as per above clause, the applicable hiring charges on prorata basis for that period will not be payable.

**9.** Any fault or downtime will be intimated by MTNL person to the service provider on SMS or call or to the service provider fault control centre or any other number as per the agreed mode of communication. The restoration time must also be recorded with proper documentation. The restoration time will be taken as MTNL active system/equipment restoration time.

**10.** After restoration of each fault, the service provider will generate fault closure report with time of fault occurrence, time of restoration, nature of fault and action taken. Email/Fax/ to MTNL will be jointly signed by authorized representative from both the sides. SLA monitoring and penalty levied will be based on fault closure report.

**11. Force Majeure**

If, at any time, during the continuance of this contract, the performance in whole or in part by either party of any obligation under this contract is prevented or delayed by reasons of any war or hostility, acts of the public enemy, civil commotion, sabotage , fires, floods, explosions, epidemics, quarantine 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 nor shall either party have any claim for damages against other in respect of such non-performance or delay in performance, and deliveries under the contract shall be resumed as soon as practicable after such an event come to an end or cease to exist, and the decision of the MTNL as to whether the deliveries 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 agreement is prevented or delayed by reasons of any such event for a period exceeding 60 days, either party may, at its option, terminate the agreement.

**12. Termination for Default:**

The MTNL may, without prejudice to any other remedy for breach of contract, by written notice of default, sent to the service provider, terminate this contract in whole or in part if the Service provider fails to deliver any or all of the services within the time period(s) specified in the agreement, or any extension thereof granted by the MTNL.

if the Service provider fails to perform any other obligation(s) under this agreement; and

if the Service provider, in either of the above circumstances, does not remedy his failure within a period of 15 days (or such longer period as the MTNL may authorize in writing) after receipt of the default notice from the MTNL.

In the event the MTNL terminates the contract in whole, the MTNL may hire, upon such terms and in such manner as it deems appropriate, services similar to those undelivered and the Service provider shall be liable to the MTNL for any excess cost for such similar services. However the Service provider shall continue the performance of the contract to the extent not terminated.

**13. Termination for Insolvency :**

The MTNL may at any time terminate the Agreement by giving written notice to the Service provider, without compensation to the Service provider. If the Service provider 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 the MTNL.

**14. The clause to be incorporated in the agreements regarding arbitration between the parties (other than with other Central PSU, Government of India Departments/Organizations) will be as follows**:

**DISPUTE RESOLUTION, ARBITRATION, APPLICABLE LAW AND JURISDICTION:**

14.1 The parties shall endeavour to resolve any dispute under the Agreement through mutual discussions and negotiations.

However, If, after thirty (30) days from the commencement of such negotiations. the efforts to resolve all or any of the disputes through negotiations fails, then, such disputes or differences, whatsoever arising between the parties in respect of this agreement shall be referred to Arbitration, unless the matter is time barred as per the Limitation Act, in accordance with the following provisions:

1. Matters to be arbitrated upon shall be referred to the sole Arbitrator where the total value of claims does not exceed Rs 20 crores. Beyond the claim limit of Rs. 20 crores, there shall be three Arbitrators.
2. For this purpose the MTNL shall publish a Panel of Arbitrator, meeting the requirements of the Arbitration and Conciliation Act as amended from time to time, consisting of eminent persons having wide experience in Telecom, Telecom Finance, Civil and Electrical fields. This panel will be of serving or retired officers of Government Departments or of Public Sector Undertakings of the rank of Joint Secretary to Govt. of India or above.
3. For the disputes to be decided by the sole Arbitrator, the party invoking the Arbitration Clause shall submit a list of three Arbitrators from the aforesaid panel alongwith the letter invoking the Arbitration. The other party shall convey its consent for one of the said Arbitrators from the said list within 15 days of receipt of such request.
4. For the disputes to be decided by a panel of three Arbitrators, the party invoking the arbitration clause shall submit a one name from the aforesaid panel, as its Nominee, alongwith the letter invoking the arbitration. The other Party shall convey the name of its nominee from the aforesaid Panel to the party invoking the Arbitration, within 15 days of receipt of such request. Both the nominated Arbitrators shall nominate a third Arbitrator from the aforesaid panel, who shall act as the presiding Arbitrator.
5. The Arbitration and conciliation Act, 1996, as amended from time to time, and the rules made there under shall be applicable. The Arbitration proceedings shall be held in Delhi/Mumbai only.
6. In the event of such an Arbitrator(s) to whom the matter is originally referred, being vacating his office or neglecting his work or being unable to act for any reason whatsoever, the new Arbitrator(s) shall be appointed after following the procedure as enumerated hereinabove. The Person(s) so appointed shall be entitled to proceed from the stage at which it was left out by his predecessors.
7. The arbitration proceeding shall be in English language.
8. The law of land as promulgated/modified/amended or replaced from time to time shall govern this agreement. The agreement shall be subject to exclusive jurisdiction of courts at New Delhi/Mumbai.
9. No person other than the Empanelled Arbitrators of MTNL shall be appointed as an Arbitrator to adjudicate the dispute.

14.2 In all agreements/contracts to be entered into by MTNL with any other Central PSU or Central Government Department/Organization in respect of any of the matter pertaining to any of the sections/units of MTNL including Civil/Electrical, if there is to be an Arbitration Agreement then such Arbitration agreement shall be an agreement to refer the dispute to the Permanent Machinery of Arbitration in the aegis of the Ministry of DPE, Government of India. The draft agreement to this effect will be as follows:

**ARBITRATION**

“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, 1996 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”.

**15. Set off:**

Any sum of money due and payable to the Service provider (including security deposit refundable to him) under this SLA agreement may be appropriated by the MTNL or any other person(s) contracting through the MTNL and set off the same against any claim of the MTNL or such other person or person(s) for payment of a sum of money arising out of this agreement or under any other agreement made by the Service Provider with the MTNL or such other person(s) contracting through the MTNL.

In case of Set off the claims by MTNL from dues of Service provider against any other agreement, the MTNL reserves the right to recover the claims from the Invoices raised by the Service provider for which the Credit Note shall be issued by the Service provider, failing which the MTNL shall adjust the amount to be recovered from the pending payments by issuing an invoice/debit note for the corresponding amount, at the risk and cost to the Service provider including applicable GST, if any.

**16. GST Invoice** :

Tax Invoice terms:

All the details of Service provider (name, address, GSTIN/ unregistered supplier, place of supply, SAC/ HSN code etc.) and other mandatory details shall be mentioned on the invoice.

Invoice/DN/CN/Supplementary invoice/Receipt Voucher need to be issued in compliant format and timely within the time prescribed under GST law.

In case of any deficient supply, MTNL shall convey the same within a reasonable time to enable the Service provider to issue credit note and take tax adjustment. In case Service provider fails to raise credit note in time then MTNL shall be authorised to raise a debit note against such L.D. charges plus applicable GST. Such credit/debit note shall be issued before September 30th of following end of financial year in which such supply was made.

It would be the responsibility of the Service provider to declare correct information on invoice and GSTN viz. the amount, the place of supply, rate of tax etc. In case, the eligibility of input tax credit is questioned or denied to MTNL on account of default by the Service provider, the same would be recovered by MTNL from the Service provider along with the applicable interest and penalty, if any.

Registered location of the both the parties i.e. MTNL and Service provider should be mentioned in the agreement with GSTIN No. Further, Service provider should raise invoices at the registered premise of MTNL for availing the credit.

MTNL could at any time instruct the Service Provider to raise its invoices at a particular location of MTNL. Service provider should raise invoices at the registered premise of MTNL for availing the credit and ensure that the place of supply as per GST law is same as registered premise. It shall be the responsibility of Service provider to raise invoice within the prescribed timelines.

**17.** **Falls Clause:**

If at any time during the contract:

It comes to the notice of MTNL regarding reduction of price for the same or similar service;

And/Or

The prices received in a new EOI for the same or similar service are less than the prices chargeable under the contract.

The MTNL, for the purpose of delivery period extension, if any, will determine and intimate the new price, taking into account various related aspects such as quantity, geographical location etc. and the date of its effect for the balance service to the vendor. In case the Service provider does not accept the new price to be made applicable during the extended delivery period and the date of its effect, the MTNL shall have the right to terminate the contract without accepting any further services. This termination of the contract shall be at the risk and responsibility of the Service provider and the MTNL reserves the right to purchase the balance unsupplied service at the risk and cost of the defaulting Service provider besides considering the forfeiture of his Performance security.

The Service provider while applying for extension of time for delivery of services, if any, shall have to provide an undertaking as “We have not reduced the sale price, and/or offered to sell the same similar service to any person/organization including Department of central/state Government or any central/state PSU at a price lower than the price chargeable under the contract for scheduled delivery period.”

**18. GST Compliances:**

It is the responsibility of the Service provider to ensure that outward supply return (GSTR-1) would be filed correctly. If not, then cost i.e. taxes, interest and/or penalty would be borne by Service provider.

Reporting of correct outward supply by Service Provider in the outward return (GSTR-1) is the responsibility of the Service Provider. Service Provider needs to ensure the following points:

Uploading appropriate invoice details on the GSTN within the stipulated time;

Issuing GST compliant invoice / CN/ DN.  WO issued by MTNL should be referred by Service Provider for capturing information on the invoice.

Service provider needs to pay the entire self-assessed tax on timely basis.

Where invoice not uploaded or incorrect upload of invoicing detail on GSTN by Service Provider then credit on such invoice will be given provisionally subject to matching. So, acceptance of changes made by MTNL on GSTN on account of non-upload or incorrect upload of details on GSTN w.r.t. the mis-match are required to be accepted by Service Provider within the time limit prescribed under the GST law. It should be noted that in case Service provider does not accept such changes within the time limit prescribed under GST law, the loss of input tax credit, interest paid and penalty levied ,if any would be recovered from the Service provider.

In case of mismatch because of Service provider’s fault, prompt amendments must be made by the Service provider else Service Provider would be required to indemnify MTNL for the losses of credit and interest paid due to mis-match.

Service provider to issue all necessary documentation and perform all necessary compliances for MTNL to be eligible to claim the input tax credit of GST tax to them. In case MTNL is unable to claim the input tax credit, the amount w.r.t. GST charged by the Service provider would be recovered from the Service provider along with any applicable interest and/or penalty, if any as applicable by GST law.

A self-declaration along with evidence that the Service provider is not black listed by GST authorities. In case the Service Provider gets black-listed during the tenure of MTNL contract, then indemnity clause shall be applicable to ensure that no loss of credit is borne by MTNL due to a default of Service Provider.

**19. Tax indemnity clause.**

MTNL has the right to recover tax loss suffered by it due to any mis-declaration on invoice by the Service Provider along with any applicable interest and/or penalty, if any as applicable by GST law.

Signed on behalf of MTNL

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

Witness –

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Signed by Authorised Signatory of Service Provider

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

Witness –

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2.

**ANNEXURE-III**

**PERFORMA FOR**

**PERFORMANCE BANK GUARANTEE**

1. In consideration of the ED Delhi, MTNL (hereinafter called ‘MTNL’) having agreed to exempt \_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called ‘the said contractor(s)’) from the demand under the terms and conditions of an agreement/Advance Purchase Order No \_\_\_\_\_\_\_\_\_\_ dated \_\_\_\_\_\_\_\_\_ made between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the supply of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter called “the said agreement ”), of security deposit for the due fulfillment by the said contractor (s) of the terms and conditions contained in the said Agreement, on production of the bank guarantee for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_we, (name of the bank) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_( hereinafter refer to as “the bank”) at the request of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(contractor(s)) do hereby undertake to pay to the MTNL an amount not exceeding \_\_\_\_\_\_\_\_\_\_\_\_\_\_against any loss or damage caused to or suffered or would be caused to or suffered by MTNL by reason of any breach by the said Contractor(s) of any of the terms or conditions contained in the said Agreement.

2. We (name of the bank) \_\_\_\_\_\_\_\_\_\_\_ do hereby undertake to pay the amounts due and payable under this guarantee without any demure, merely on a demand from the MTNL by reason of breach by the said contractor(s)’ of any of the terms or conditions contained in the said Agreement or by reason of the Service Providers(s)’ failure to perform the said Agreement. Any such demand made on the bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee where the decision of MTNL in these counts shall be final and binding on the bank. However, our liability under this guarantee shall be restricted to an amount not exceeding \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

3. We undertake to pay to MTNL any money so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any court or tribunal relating thereto our liability under this present being absolute and unequivocal. The payment so made by us under this bond shall be valid discharge of our liability for payment there under and the contractor(s)/supplier(s) shall have no claim against us for making such payment.

4. We (name of the bank)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the MTNL under or by virtue of the said Agreement have been fully paid and its claims satisfied or discharged or till \_\_\_\_\_\_\_\_\_\_\_\_\_(office/Department) MTNL certifies that the terms and conditions of the said Agreement have been fully or properly carried out by the said contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before the expiry of TWO YEARS from the date hereof, we shall be discharged from all liabilities under this guarantee thereafter.

5. We (name of the bank)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_further agree with the MTNL that the MTNL shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the MTNL against the said Contractor(s) and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor(s) or for any forbearance, act or omission on the part of the MTNL or any indulgence by the MTNL to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

6. This guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s).

7. We (name of the bank) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ lastly undertake not to revoke this guarantee during its currency except with the prior consent of the MTNL in writing.

Dated the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_

for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Indicate the name of bank)

## ANNEXURE- IV

## INTEGRITY PACT:

**Between**

**Mahanagar Telephone Nigam Limited (MTNL) hereinafter referred to as “The Principal”**

**And**

**……………………………………………….hereinafter referred to as “The Service Provider/Contractor”**

# Preamble

The Principal intends to award, under laid down organizational procedures, contract/s for ………………….. The Principal values full compliance with all relevant laws of the land, rules, regulations, economic use of resources and of fairness/transparency in its relations with its Service Provider(s) and/or Contractor (s).

In order to achieve these goals, the Principal has appointed an Independent External Monitor (IEM), who will monitor the EOI process and the execution of the contract for compliance with the principles mentioned above.

### Section 1 - Commitments of the Principal

(1) The Principal commits itself to take all measures necessary to prevent corruption and to observe the following principles:

* 1. PRINCIPAL is committed to have most ethical and corruption free business dealings with Service Provider(s)
	2. No employee of the Principal, personally or through family members, will in connection with the EOI for, or the execution of a contract, demand, take a promise for or accept, for self or third person, any material or immaterial benefit which the person is not legally entitled to.
	3. The Principal will, during the EOI process treat all Service Provider (s) with equity and reason and will deal with them in a fair and transparent manner.The Principal will in particular, before and during the EOI process, provide to all Service Provider(s) the same information and will not provide to any Service Provider(s) confidential/additional information through which the Service Provider(s) could obtain an advantage in relation to the EOI process or the contract execution.
	4. The Principal will exclude from the process all known prejudiced persons.
	5. PRINCIPAL will honour its commitments and make due payments to the Service Provider(s) in a timely manner.
	6. PRINCIPAL will initiate action and pursue it vigorously whenever unethical behavior occurs or is suspected to have occurred.
		+ 1. If the Principal obtains information on the conduct of any of its employees which is a criminal offence under the IPC/PC Act, or if there be a substantive suspicion in this regard, the Principal will inform the Corporate Vigilance Office and in addition can initiate disciplinary actions.

**Section 2 - Commitments of the Service Provider(s)/Contractor(s)**

(1) The Service Provider(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the EOI process and during the contract execution.

* + - * 1. The Service Provider(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal’s employees involved in the EOI process or the execution of the contract or to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the EOI process or during the execution of the contract.
				2. The Service Provider(s) will not enter with other Service Providers into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelisation in the bidding process.
				3. The Service Provider(s) will not commit any offence under the relevant IPC/PC Act; further the Service Provider(s) will not use impropriety, for purposes of competition or personal gain, or pass on to others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.
				4. The Service Provider(s) will, when presenting his bid, disclose any and all payments he has made, is committed to or intends to make to agents, brokers or any other intermediaries in connection with the award of the contract.
				5. The Service Provider(s) will not make any false or misleading allegations against the principal or its associates.
				6. The Service Provider will not bring any Political, Governmental or Diplomatic influence to gain undue advantage in its dealing with PRINCIPAL.
				7. The Service Provider(s) will promote and observe best ethical practices within its organization.
				8. The Service Provider(s) will promptly inform the Independent Monitor (of PRINCIPAL) If he receives demand for a bribe or illegal payment/benefit and

If comes to know of any unethical or illegal practice in PRINCIPAL.

If he makes any payment to any PRINCIPAL Associate.

(2) The Service Provider(s)/Contractor(s) will not instigate third persons to commit offences outlined above or be an accessory to such offences.

**Section 3 - Disqualification from EOI process and exclusion from future contracts.**

If the Service Provider(s) before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Service Provider(s) from the EOI process or take action as per the procedure mentioned in the “Guidelines on Banning of business dealings”. Copy of the “Guidelines on Banning of Business Dealings” is annexed and marked as Part-H.

#### Section 4 - Compensation for Damages

#### If the Principal has disqualified the Service Provider(s) from the EOI process prior to the award according to Section 3, the Principal is entitled to demand and recover the damages equivalent to Earnest Money Deposit/Bid Security.

#### (ii) If the Principal has terminated the contract according to Section 3, or if the Principal is entitled to terminate the contract according to Section 3, the Principal shall be entitled to demand and recover from the Contractor the amount equivalent to Security Deposit/Performance Bank Guarantee in addition to any other penalties/recoveries as per terms and conditions of the EOI.

**Section 5 - Previous transgression**

(i) The Service Provider declares that no previous transgressions occurred in the last 3 years with any other Company in any country conforming to the anti corruption approach or with any other Public Sector Enterprise in India that could justify his exclusion from the EOI process.

(ii) If the Service Provider makes incorrect statement on this subject, he can be disqualified from the EOI process or action can be taken as per the procedure mentioned in “Guidelines on Banning of business dealings”.

**Section 6 – Equal treatment of all Service Providers/Contractor(s)/Sub Service Providers**

(i) The Principal will enter into agreements with identical conditions as this one with all Service Providers.

1. The Service Provider(s) undertake(s) to demand from all sub Service Providers a commitment in conformity with this Integrity Pact.
2. The Principal will disqualify from the EOI process all Service Providers who do not sign this Pact or violate its provisions.

**Section7-Criminal charges against violating Service Provider(s)/Contractor(s)/ Subcontractor(s)**

If the Principal obtains knowledge of conduct of a Service Providers, or of an employee or a representative or an associate of a Service Provider, which constitutes corruption, or if the Principal has substantive suspicion in this regard, the Principal will inform the same to the Corporate Vigilance Office and may initiate criminal proceedings against the violating Service Provider(s).

**Section 8 – Independent External Monitor/Monitors**

1. The Principal has appointed competent and credible Independent External Monitor for this Pact. The task of the Monitor is to review independently and objectively, whether and to what extent the parties comply with the obligations under this agreement.
2. The Monitor is not subject to instructions by the representatives of the parties and performs his functions neutrally and independently. He reports to the CMD, MTNL.
3. The Service Provider(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the Principal including that provided by the Contractor. The Service Provider will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to SubService Providers. The Monitor is under contractual obligation to treat the information and documents of the Service Provider(s)/Contractor(s)/Subcontractor(s) with confidentiality.
4. The Principal will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the Principal and the Service provider. The parties offer to the Monitor the option to participate in such meetings.
5. As soon as the Monitor notices, or believes to notice, a violation of this agreement, he will so inform the Management of the Principal and request the Management to discontinue or take corrective action, or to take other relevant action. The monitor can in this regard submit nonbinding recommendations. Beyond this the Monitor has no right to demand from the parties that they act in a specific manner, refrain from action or tolerate action.
6. The Monitor will submit a written report to the CMD, MTNL within 8 to 10 weeks from the date of reference or intimation to him by the principal and, should the occasion arise, submit proposals for correcting problematic situations.
7. If the Monitor has reported to the CMD, MTNL, a substantiated suspicion of an offence under relevant IPC/PC Act, and the MTNL has not, within the reasonable time taken visible action to proceed against such offence or reported it to the Corporate Vigilance Office, the Monitor may also transmit this information directly to the Central Vigilance Commissioner.
8. The word **‘Monitor’** would include both singular and plural.

**Section 9 – Pact Duration**

This pact begins when both parties have legally signed it. It expires for the Service providers 12 months after the last payment under the contract, and for all other Service Providers 6 months after the contract has been awarded.

If any claim is made / lodged during this time, the same shall be binding and continue to be valid despite the lapse of this pact as specified above, unless it is discharged / determined by CMD, MTNL.

**Section 10 – Other provisions**

1. This agreement is subject to Indian Law, place of performance and jurisdiction is the Registered Office of the Principal, i.e. New Delhi. The arbitration clause provided in the EOI document/contract shall not be applicable for any issue/dispute arising under Integrity Pact.
2. Changes and supplements as well as termination notice need to be made in writing.
3. **If the Service Provider is a partnership firm or a consortium, this agreement must be signed by all partners or consortium members.**
4. Should one or several provisions of this agreement turn out to be invalid, the remainder of this agreement remains valid. In this case, the parties will strive to come to an agreement to their original intentions.

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**(For & On behalf of the Principal) (For & On behalf of Service Provider /Contractor)**

**(Office Seal) (Office Seal)**

**Place -------------------**

**Date -------------------**

Witness 1:

(Name & Address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness 2:

(Name & Address) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Note: If the Service Provider is a partnership firm or a consortium, this agreement must be signed by all partners or consortium members.**