

Infrastructure Usage Agreement

BETWEEN

BSES Rajdhani Power Limited (BRPL)

AND

_____ “Cable Operator”

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(Permission Letter on the letter head of the Cable Operator)

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(Reply on the letter head of BRPL)

Infrastructure Usage Agreement

This agreement, hereinafter referred to as the “Agreement”, is executed at New Delhi on this ____ day of _____ 2007.

BETWEEN

BSES Rajdhani Power Limited (BRPL), a company incorporated under the Companies Act, 1956, having its registered office at _____, New Delhi, through its representative _____, who is duly authorized and competent vide Power of Attorney/ Letter of Authority dated _____, to execute the instant Agreement, hereinafter referred to as “BRPL”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns.

AND

_____, a company incorporated under the Companies Act, 1956 / a partnership firm / a sole proprietorship firm, having its office at _____, New Delhi, hereinafter referred to as the “Cable Operator”, which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns.

BRPL and Cable Operator are hereinafter individually referred to as the “Party” and collectively as the “Parties” respectively.

RECITALS

Whereas in compliance of a Public Notice dated _____, 2007 issued by BRPL pursuant to Hon’ble DERC’s (Delhi Electricity Regulatory Commission), Order dated 06.10.2006 in Petition No.04/2005/2750 titled “North Delhi Power Limited Vs. MTNL & Ors.”, pertaining to unauthorized use of electricity poles of NDPL by Cable Operators for laying cable TV wires, and further, in consideration of Hon’ble High Court’s Orders passed in WP(C) Nos.4731 of 1996, 2107 of 1995 it has been held that the Cable TV Operators can use poles other than the Central Verge and the HT poles for laying cable TV network by way of an Agreement between the Cable Operator and the Licensee.

AND Whereas the Cable TV Operator has approached BRPL for seeking permission and entering into an Agreement in compliance of aforesaid Orders of Hon’ble DERC for the utilization of its network infrastructure including LT poles at different locations within BRPL areas.

AND Whereas BRPL has agreed to permit partial use of its network infrastructure to the Cable Operator, limited only to utilization of LT Poles of BRPL for laying its network of cables TV wires and related equipment.

Now therefore in consideration of the foregoing and mutual covenants contained herein, it is agreed as follows :

1. GOVERNING LAWS

The construction, validity and performance hereof shall be governed by and construed in accordance with the Laws of India. The Parties agree to submit to the exclusive jurisdiction of the Courts at New Delhi alone.

The Parties recognize that this Agreement is subject to the applicable laws and regulations, including but not limited to the Orders of the Hon'ble High Court and Hon'ble DERC.

The Parties agree that no action for damages etc. shall lie for early termination or modification of this Agreement for giving effect to any statutory order or direction of the Court or the policy of the Government subsequent to the execution of this Agreement. Further, the Parties do hereby agree that this Agreement shall stand revoked immediately, if so ordered by the DERC and/or by any other Statutory Authority with the power to order to such revocation under applicable laws and regulations.

2. TERM AND EFFECTIVE DATE

This Agreement, subject to the approvals required under applicable laws and regulations, shall be for a term of 5 years commencing from the date of execution of this Agreement, unless lawfully terminated earlier during the term for the reasons aforesaid.

All the cable TV wires and related equipment shall be removed by the Cable Operator from BRPL's poles immediately upon termination of this Agreement under any circumstances whatsoever. On the failure or any delay on the part of the Cable Operator to remove the said cable TV wires and equipment, BRPL shall be entitled to get the same removed at the risk and cost of the Cable Operator. The Cable Operator shall have no right over the functioning, operation or maintenance of the electricity poles and lines of BRPL consequent to the termination of this Agreement or pursuant to the expiry of the term of this Agreement.

3. COMPLIANCE BY CABLE OPERATOR

The Cable Operator shall abide by the laws, rules, regulations etc., if any, formulated by the Delhi Government or by the Government of India, as applicable from time to time. It shall be the sole responsibility of the Cable Operator to obtain the requisite permission(s) from the Government/ Local Authorities/ any other competent authorities in this regard. Apart from the above, the Technical Specifications & Safety Measures enumerated in this Agreement shall be strictly complied with by the Cable Operator interalia in the light of the Hon'ble DERC's observations that the provisions of the Indian Electricity Rules, 1956 shall be observed in letter and spirit.

4. INDEMNIFICATION

The Cable Operator would ensure that its cable TV wires shall be of appropriate technical specifications which should be able to suitably resist any flow of current in the event the electricity wires come into contact with the cable TV wires. In case of any accidents involving men, equipment or third party property occurring due to snapping of electric conductor over the cable TV wires or on account of the cable TV wire coming into contact with any part of electrical installation(s) which have become live for any reason or on account of any other reason whatsoever, BRPL shall not be responsible. No compensation whatsoever shall be claimed from BRPL on account of damages suffered by the Cable Operator or any of its employees or subscribers or other third parties. The Cable Operator alone shall be held responsible for any loss or damages caused to the Cable Operator or any of its employees or subscribers or third parties and in such circumstances the Cable Operator shall indemnify BRPL in respect of any such claims from the aforesaid parties.

The Cable Operator shall indemnify BRPL in respect of all liabilities including but not limited to any claims under the Workmen's Compensation Act, 1923 or otherwise by the employees of BRPL or its contractors, consequent to any accident or otherwise, if the same is in any way connected with (howsoever remotely) the existing cable TV wires on BRPL's electricity transmission infrastructure.

The Cable Operator shall indemnify and keep the BRPL indemnified against any social or legal problems which may arise due to subleasing of its network to prospective users/ agencies.

BRPL shall not be responsible for any damages to the cable TV network of the Cable Operator due to tilting/ falling or damage to LT Poles of BRPL during heavy rains/ gale/ cyclonic storms or any damage to the cable TV

network or any of the property of the Cable Operator for any reason whatsoever, irrespective of the negligence on the part of BRPL or any of its employees or contractors.

5. INFRASTRUCTURE UTILIZATION CHARGES

The Cable Operator shall pay the infrastructure utilization charges (IUC) to BRPL on the basis of the number of LT poles used. No extra charges shall be payable by the Cable Operator for using the electricity guys or any infrastructure other than the LT poles belonging to BRPL.

IUC at the rate of Rs.1569/- per annum per LT pole of BRPL for the year 2007-08 being utilized by the Cable Operator shall be payable by the Cable Operator to BRPL, in advance.

The subsequent payments on yearly basis shall be paid within 15 days of the due date with an escalation of 10% to usage charges of last year. Any statutory levies / taxes, if applicable will be extra including service taxes.

The first payment at the above mentioned rate shall be computed on the basis of number of LT poles being used or to be used on the date of execution of this Agreement and the amount so computed shall be paid at the time of signing of this Agreement. In respect of each subsequent year, the Cable Operator shall pay the requisite amount of IUC to BRPL prior to the beginning of the relevant year. In case of delay in payment of IUC by the Cable Operator, BRPL shall be entitled to levy a late payment surcharge at the rate of ½% of the amount due per week of delay or part thereof. Further, if the payment is delayed beyond 4 weeks from the due date, then BRPL reserves the right to terminate this Agreement and take necessary action as deemed fit, including but not limited to removal of the cable TV wires/ equipment laid over of the electricity transmission infrastructure of BRPL.

The rate of IUC may be varied by BRPL at its sole discretion (subject to the guidelines/ orders of the Hon'ble DERC) once in every year and the Cable Operator agrees to pay the IUC to BRPL at such varied rates without any demur or protest.

In the event, during the currency of a particular year, the Cable Operator intends to vary the number of LT poles under its utilization, it may submit an application to BRPL in the format at **Annexure A** hereof for seeking permission. The said application shall be accompanied with the appropriate amount of IUC computed at the rate applicable at the relevant point of time. Pursuant to considering the application, BRPL may at its sole discretion grant permission by issuance of a permission letter in the format at **Annexure B**. All such applications and permission letters shall be deemed to constitute an integral part of this Agreement.

6. TECHNICAL SPECIFICATIONS & SAFETY MEASURES

The following Technical Specifications & Safety Measures shall be strictly adhered to during installation and subsequent maintenance :

- a. Any rearrangement/ refurbishing of BRPL's LT poles or other infrastructure necessary to accommodate the cable TV wires or equipment of the Cable Operator shall be subject to BRPL's written approval. The cost of such rearrangements/ refurbishing shall be borne by the Cable Operator at the rate determined by BRPL.
- b. The Cable Operator shall lay its cable TV wires on BRPL's LT poles conforming to BRPL's specifications (as annexed).
- c. All cables must be attached to the same side of the pole.
- d. Amplifier or distribution cables may be mounted directly on the pole (or suspended from the cable suspension stand.) Pole mounted cabinets and service entrance equipment shall not be installed on junction poles where BRPL primary line runs in three or more directions and on distribution transformer structures. only one cabinet only shall be permitted for installation on one pole.
- e. A minimum ground clearance of 5 meters shall be maintained for the cable laid on poles along the streets.
- f. A minimum clearance of 1.38 meters shall be maintained between the cable and the lowest conductor of BRPL distribution lines i.e. any functional conductor including that of the street main or earthed conductor.
- g. When cables are taken across the streets, the minimum ground clearance to be maintained is 5.8 meters. If this is not possible, the cable shall be taken underground across streets at road crossing after duly obtaining approval of the local authority concerned/or road owning agency.
- h. A vertical run of cable attached to pole's surface shall be covered with suitable insulating material such vertical are run are permitted only at either and of street / road crossing, where the crossing is done under ground .
- i. The Cable Operator while attaching BRPL's pole shall guy unbalanced loads imposed on the pole by dead-ending or changes in direction of the cable and strand. Dead-end and large angle change in cable direction construction must be guyed though similar routes.
- j. When cable is being added to an unguyed angle pole, BRPL will determine the need for guying and the Cable Operator shall install the guys as specified by BRPL.
- k. The Cable Operator shall install and maintain an electrical bond using suitable copper between the cable guy wire and cable suspension strand.
- l. Only insulated bearer wires shall be drawn along with the cables and properly clipped at regular intervals and these should be firmly fixed to the poles using suitable clamps, brackets or reeled insulator. At no point, the cable should be allowed to come into direct contact with the poles. No bare conductor either in the

- form of GI wire or support wires shall be drawn along the insulated cable. In case the insulated GI wire or other support wire is to be strung to building structures or other electricity conducting materials, necessary plastic or porcelain insulator should be provided for the wire.
- m. In order not to allow leakage of the current passing into the conductor of the TV cable consequent to any snapped power line falling on it, the insulation of the TV cable as well as for the insulated bearer wires shall be graded for voltage not less than 650V.
 - n. The Cable Operator shall make it compulsory for its employees/ representatives to wear protective head gear and other safety related accessories so as to avoid any accident such as electrocution etc..
 - o. The cable and the supports of the cable network shall be subject to inspection by the BRPL officials whenever necessary and the Cable Operator shall carry out any improvements and modifications pointed out to confirm with the safety procedures, as required for the power lines.
 - p. The officers and/ or workmen of BRPL shall have the right to dismantle/disconnect any TV cable while doing maintenance work of electrical lines and prior intimation shall be given to Cable Operator or its authorized representative in this regard. Reconnection shall be carried out by cable operator. In case the TV cable in any part is required to be removed permanently for any bonafide purpose of BRPL, BRPL shall be within its right to do so and the Cable Operator or its subscribers shall not be eligible for any compensation or other claims on this account.
 - q. BRPL shall not be responsible for any interruption and/ or interference caused to the quality of the video/ audio signals due to proximity of 11 KV, 33 KV or other E.H.T. line to the TV cables or due to any other reasons whatsoever.
 - r. No maintenance of the TV cables shall be done on BRPL's poles from 6 P.M. to 10 A.M. except in case of emergencies when prior consent of the concerned officials of BRPL shall be obtained before carrying out any maintenance work.
 - s. Any deteriorated/ snapped cable shall be immediately replaced by the Cable Operator. On the failure or delay in the replacement, BRPL shall reserve its right to dislodge the cable from its network.
 - t. Under no circumstances, shall the Cable Operator shall interfere with the smooth functioning of electrical distribution system of BRPL.
 - u. The Cable Operator may use its network for specified purpose of subleasing its network to prospective users/ agencies, under intimation to BRPL. The Cable Operator shall, however, satisfy itself about the social standing of the lessee before extending the facility. It would be the responsibility of the Cable Operator to comply with and fulfill all the applicable legal and Government formalities in this regard.
 - v. The Cable Operator shall be responsible for poles and cables in the service area against damage, theft, vandalism, etc., due to neglect or other avoidable reasons and will immediately bring into BRPL's notice any instance of such loss or damage. BRPL reserves the right to claim from the Cable Operator, any loss or damage to the Poles and lines in the service area for reasons attributable to the Cable Operator or its sub-lessee.

The above Technical Specifications & Safety Measures are the minimum required from BRPL's perspective and shall in no way limit the Cable Operator's liability for safety/ maintenance of its TV cables and related equipment.

7. ASSIGNMENT

The Cable Operator shall not have any right to assign or sub-contract any of its rights and obligations hereunder.

8. EARLY TERMINATION

Either Party can terminate this Agreement without assigning any reason for such termination by serving one month's advance notice in writing on the other Party. In such an event, a joint inspection of the service area shall be conducted by the representatives of the Cable Operator and BRPL at least 15 days before the date of termination.

This Agreement shall be liable for termination by serving a written notice of seven days by one Party on the other Party, in case of violation of any of the provisions of this Agreement by any of the Parties. In such an event, a joint inspection of the service area shall be conducted by the representatives of the Cable Operator and BRPL within 7 days after the date of termination.

9. ARBITRATION

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Delhi in accordance with the provisions of the Arbitration & Conciliation Act, 1996. The arbitration proceedings shall be conducted by a sole arbitrator who shall be nominated by the Chief Executive Officer (CEO) of BRPL. The award of the arbitrator shall be final and binding on the Parties.

10. NOTICES & COMMUNICATIONS

Any notice, invoice, statement, approval, advice, report or any other communication required to be sent to a Party hereunder shall be addressed and delivered to the place of business of such Party as set out below or at such other address as may be communicated by such Party to the other Party from time to time for this purpose. All notices, requests, demands, instructions and other communications required to be given hereunder shall be in writing and shall be delivered personally or by courier or sent by registered post acknowledgement due or by facsimile transmission, provided

that, in the case of facsimile transmission, the notice is confirmed by being delivered by hand or sent by registered speed post within forty eight (48) hours thereafter or dispatched by certified mail, postage prepaid and return receipt requested, as under :

If to the Cable Operator :

If to BRPL :

11. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties and supersedes all prior agreements, writings, understandings and negotiations of the Parties with respect of the contents hereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers and representatives thereunto duly authorized the day and year first above written.

Signed, sealed and delivered by _____---

For and on behalf of BRPL

For an on behalf of Cable Operator

Name : _____

Name : _____

Designation : _____

Designation : _____

Witnesses :

Annexure A

(On the letter head of the Cable Operator)

To,

Date : _____

BSES Rajdhani Power Ltd.,
New Delhi

**Subject : Request for permission for variation
in the number of LT poles under utilization**

Ref. : Infrastructure Usage Agreement no. _____ dated _____

Dear Sir,

In the context of the above referred Infrastructure Usage Agreement, we intend to vary the number of LT poles under our utilization for the purpose laying our cable TV wires/ equipment.

The particulars of the additional LT poles we intend to utilize are as under :

The particulars of the LT poles we intend to release/ surrender are as under :

Subject your approval, we propose to make the above variations effective from _____, 2007. The IUC for the first one year, at the applicable rate i.e. Rs. _____ per additional LT pole per year, amounting to a total of Rs. _____ are being paid herewith by way of cash/ cheque/ demand draft no. _____ dated _____.

You are kindly requested to grant the permission/ approval in respect of the variations proposed above at the earliest.

Yours sincerely,

for Cable Operator

Annexure B

(On the letter head of BRPL)

To,

Date : _____

(The Cable Operator)

New Delhi.

**Subject : Request for permission for variation
in the number of LT poles under utilization**

Ref. : Your Application dated _____ in Annexure A

Dear Sir,

BRPL hereby approves/ disapproves your above referred Application with the following observations :

Yours sincerely,

for BRPL