

No.1-11/2015-LFP-I/TPA

**Government of India
Ministry of Communications & IT
Department of Telecommunications**

Dated:30/09/2016

GUIDELINES FOR SIGNING OF TRIPARTITE AGREEMENT

In pursuance of the Unified Licence guidelines dated 19.08.2013 (as amended from time to time), which delinked the Access Spectrum from the License, and the decision of the DOT to allot the right to use the Access Spectrum **obtained through public auction/liberalisation/trading**, it has been decided by the competent authority to allow to keep the rights to use the Access Spectrum as security to obtain financial assistance from the lenders. This shall not only facilitate the financing of the Telecom Industries but also mitigate the stress of the banking sector while fulfilling the DOT's mandate regarding the spectrum management.

1. The TSP shall apply to DoT for signing of the TPA with non-refundable processing fee of Rs. 50,000.00 in the form of a Demand Draft/Pay Order/e-payment from a Schedule Bank payable at New Delhi issued in the name of Pay & Accounts Officer (Headquarter) DoT along with the prescribed Application Form (ANNEXURE-I) in duplicate with duly signed on each page.
2. The applicant will have to *inter alia* provide the following information i.e.
 - a) The details of all the Access Spectrum being held by the TSP as per the respective NIAs/ liberalisation guidelines/ trading guidelines.
 - b) The details of the equity holding of parent as well as subsidiary/associates/sister concerns.

- c) The details of the securitisation pledged to DoT (i.e. in the form of Bank Guarantees etc.) by the Applicant Company against its dues.
 - d) Details regarding loans already availed by the Applicant Company and their status.
 - e) The power of authority in favour of authorised signatory of the agent/lender for signing of the TPA.
 - f) Power of attorney in favour of the authorised signatory of the company.
 - g) Letter from the agent indicating their willingness to execute TPA for /on behalf of a consortium of lenders.
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- h) Certified copy of the resolution passed by the board of directors for the signing of the TPA.
 - i) Duly executed authority in favour of agent bank by the lenders for the execution of the TPA.
 - j) Copy of certified documents from RBI in case of an Indian NBFC.
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3. The total composite foreign holding shall be governed by the Foreign Direct Investment (FDI) policy of the Government of India as announced by the Department of Industrial Policy and Promotion from time to time.
 4. The terms and conditions of the respective NIAs for auction of the right to use the Access Spectrum shall be the guiding principle for the selection of the selectee. However, in case of liberalised spectrum/spectrum trading/spectrum sharing / merger and acquisition, the terms and conditions will be as per the extant guidelines/policy of the DoT.
 5. Access Spectrum cap during the selection of the selectee in case of default shall be applicable as per the extant policy of DoT.
 6. The DoT reserves the right to modify these guidelines if considered necessary in the public interest.

7. The detailed terms and conditions that shall govern TPA are in the TPA format (ANNEXURE-II)
8. As per extant guidelines, rights, licenses, authorizations, etc. are treated as tangible securities.

-Sd-

Director (LFP-I)
DoT, Sanchar Bhawan,
New Delhi

ANNEXURE-I

**GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATIONS AND INFORMATION
TECHNOLOGY
DEPARTMENT OF TELECOMMUNICATIONS
(WPF WING)
SANCHAR BHAWAN, 20 ASHOKA ROAD, NEW DELHI-
110 001**

APPLICATION FOR SIGNING OF TRIPARTITE AGREEMENT

1. Name of Applicant Company: _____
2. Complete postal address with Telephone/FAX Nos./E-Mail :
 - i. Corporate Office: _____
 - ii. Registered Office: _____
3. Name of Authorised contact person, his designation, address and Telephone/FAX No./Email : _____
4. Details of payment of processing fee: _____
5. Details of Promoters/Partners/Shareholders of the Company:
 - i. Name _____ of Promoters/Partners/Shareholders _____
 - ii. Details of the Indian/ Foreign equity holding percentage: _____ (Complete break-up of 100% of equity must be given. Equity holding up to 5% of the total equity shared among various shareholder can be clubbed but Indian and Foreign equity must be separate)
(FDI up to 100 % with 49% under automatic route and beyond 49% through FIPB route is permissible)

6. Net worth as per last audited statements:_____

(Certificate from Company Secretary/ Statutory Auditor countersigned by Director duly authorised by the company to be attached)

7. Paid-up capital as per last audited statements:_____

(Certificate from Company Secretary/ Statutory Auditor countersigned by Director duly authorised by the company to be attached)

8. Certified copy of approval of RBI for External Commercial Borrowings:_____

9. Details of the Access Spectrum being held (Service area wise)_____

S.No.	Name of the Service Area	Access Spectrum held

10. The details of the Agent/Lender for the proposed financial assistance :_____

11. Power of Attorney by Resolution of Board of Directors that the person signing the application is authorized signatory.

12. Certificates/undertaking:

i.We hereby certify that we have carefully read the guidelines and Tripartite Agreement. We undertake to fully comply with the terms and conditions therein.

ii.We understand that this application if found incomplete in any respect and/or if found with conditional compliance or not accompanied with the processing fee shall be summarily rejected.

iii.We understand that processing fee is non-refundable irrespective of any reason whatsoever.

- iv. We undertake to sign Tripartite Agreement, within the prescribed time notified to me, failing which my application shall be taken as rejected and processing fee forfeited.
- v. We understand that all matters relating to the Tripartite Agreement will be subject to jurisdiction of courts/Tribunal(s) in Delhi/New Delhi only.
- vi. We hereby unconditionally undertake that we shall have no claim on any sum generated out of the transfer / assignment of the access spectrum to a selectee in the event of default by us, within the context of the tripartite agreement, notwithstanding anything to the contrary contained in the tripartite agreement.
- vii. We have not questioned the legality of the NIA/ WoL/License agreement till date in any court of law.
- viii. We undertake that all the lenders / agent satisfy the conditions of the Tripartite agreement.
- ix. We undertake that we have affixed all the documents as prescribed in the TPA guidelines along with this application.

SIGNATURE
(With official stamp)

ANNEXURE-II

TRIPARTITE AGREEMENT FOR FINANCING TELECOM SECTOR

THIS TRIPARTITE AGREEMENT made at _____ on the _____ day of _____ 20____ amongst; THE PRESIDENT OF INDIA acting through Shri _____, The Deputy Director General (Licensing Finance Policy), Department of Telecommunications (DoT), Sanchar Bhawan, 20 Ashoka Road, New Delhi - 110 001 (hereinafter called "the DoT");

AND _____, a Company incorporated under the Companies Act, 1956/2013 bearing Corporate Identification Number _____ and having its registered Office at _____ acting through Shri _____ duly constituted attorney/authorised person pursuant to the General/Special Power of Attorney dated _____ executed as per the terms of the Board Resolution dated _____, (hereinafter called the TSP¹).

AND _____, acting for itself as Lender, and as Agent for the Lenders listed in Schedule (hereinafter referred to as "the AGENT") through Shri _____ duly constituted attorney/authorised officer pursuant to the General/Special Power of Attorney dated _____ executed as per the terms of the Board Resolution dated _____.

¹ Telecom Service Provider

WHEREAS:

- (i) In pursuance of NIA ² datedthe Department of Telecommunication has allocated right to use the Access Spectrum to the TSP through auction/liberalization/trading.
- (ii) The involvement of DoT in the TPA³ should be seen as part of spectrum management for ensuring spectrum use efficiency, universal affordable service, competition and overall economic growth.
- (iii) With a view to facilitate the financing of the telecom sector and to protect and secure the Lender's as well as DoT's interest, the parties hereto are desirous of recording the terms and conditions for transfer / assignment of right to use the Access Spectrum in case of default.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

CHAPTER-I

DEFINITIONS

For the purpose of this AGREEMENT, the following terms shall have the following meaning:

- 1.1. "Agent"** means an Indian scheduled bank/ an Indian Public Financial Institution/ an Indian majority controlled non-banking finance company engaged in financing in India and as Agent for other members of a consortium of Lenders who have consented to provide financial assistance to the TSP against the rights to use the Access Spectrum.
- 1.2. "Lender"** means someone who makes funds available to the TSP against its right to use the Access Spectrum. The lender makes such funds

² Notice Inviting Applications

³Tripartite Agreement

available in expectation that the loan will be repaid along with the interest in the due time. A lender can be a public or a private group.

1.3. “Event of Default” means occurrence of any of the following events:-

(i) A default by the TSP in payment of the Spectrum Usage Charges or other dues duly payable to the DoT under respective NIAs. (ii) A material default of the terms and conditions of Loan Agreement (Explanation: ‘Material Default’ shall mean a continuous default by the TSP for a minimum period of one month in payment of any two quarterly instalments or one half yearly instalment either of principal or interest or both under the Loan Agreement or any breach by the TSP of the terms & conditions of the Loan Agreement).

1.4. “Financial Assistance” means the financial assistance granted or agreed to be granted by or any money due to the Agents under the Loan Agreements.

1.5. “Access Spectrum” means the Radio Frequency Spectrum allotted for use to carry voice or non-voice messages from subscriber terminal to the Base Station/designated point of aggregation. For the purpose of TPA it will mean the spectrum allocated by DOT through public auction since 2010 under the respective Notice Inviting Applications (NIA). At present, such frequency bands are in 800/900/1800/2100/2300/2500 MHz bands.

1.6. ‘Project’ means a long term infrastructural, industrial or public service scheme, development or undertaking large in size, capital intensive, with a finite and long life, asset specific standalone entity with a high end operating margin with significant cash flows.

1.7. “Agent’s/ Lender’s Dues” means all monies owed by the TSP to the Agents/ Lenders in respect of the project fallen under the Loan Agreement or other respective agreement related to the project.

1.8. DoT’s dues means the dues payable by the TSP to the DoT till the date the TSP holds the rights to use the access spectrum including the license fee,

spectrum usage charges, penal dues, liquidated damages and other dues as per the extant policy on that date.

1.9. "Loan Agreement's" means the Agreement's entered/to be entered into by the TSP and the Agent or Lenders in respect of the Financial Assistance and referred to in Schedule hereto.

1.10. "Selectee" means an Indian company within the meaning of Companies Act, 1956/2013 selected by the Agents and proposed to the DOT for the purpose of assignment/transfer of the right to use the ACCESS SPECTRUM as provided in this AGREEMENT.

1.11. "TSP (Telecom Service Provider)" means a company who is involved in the business of Telecommunication activities as per Indian Telegraph Act, 1885 & rules there under.

1.12. "NIA (Notice Inviting Applications)" means the documents through which the DOT prescribes conditions for auction and allotment of spectrum. This includes the NIA referred to in case of liberalised spectrum.

CHAPTER-II

CONDITIONS FOR TRANSFER/ASSIGNMENT OF ACCESS

SPECTRUM

IN CASE OF DEFAULT

- 2.1. The DoT hereby agrees to transfer or assign the right to use the Access Spectrum by endorsement thereon in favour of the "selectee" selected by the "Agent" in accordance with the CHAPTER 1 and 2, hereunder, provided that nothing contained herein shall entitle the Agent to Use/Trade/Share the Access Spectrum themselves, in case of any material default.

2.2 (a) The Agent shall notify the TSP and simultaneously intimate the DoT about the material default and require the TSP to remedy the same within 30 days from the date of such notice.

(b) The Notice of default shall be the conclusive evidence of such material default and it shall be final and binding upon the TSP for the purpose of this AGREEMENT.

(c) The DoT and the TSP hereby agree that upon the expiry of the period of 30 days from the date of Notice of default, where the TSP has failed or been unable to remedy the default, the Agent may invite auction, privately negotiate and procure offers/tenders to transfer/assign the right to use the Access Spectrum of the TSP to a Selectee on such Selectee's submission of an undertaking for discharging the liabilities and obligations of the TSPs towards the DoT under the respective NIA for the Auction of Spectrum and towards the Agent / lender under their respective Loan Agreements.

2.3. The Selectee shall meet the following eligibility criteria for transfer of the right to use the ACCESS SPECTRUM:

(a) The selectee shall be capable of properly discharging the duties, obligations and liabilities towards the DoT under the respective NIAs/orders for the Auction of Spectrum/ liberalized spectrum/traded spectrum.

(b) Any other appropriate criteria, as may be prescribed by the DoT from time to time, to ensure continuity in the service.

(c) The TSP and Agent/Lender shall also satisfy the TPA guidelines as mentioned in ANNEXURE-I during the signing of the Tripartite Agreement as well as during selection of the Selectee.

2.4. The Agent shall seek the consent of DoT for the transfer/assignment of the right to use the Access Spectrum pursuant to Clause 3 of chapter III and clause 2.2 of chapter II, which the DoT shall take on record.

2.5. Before transferring or assigning the right to use the Access Spectrum to the “Selectee” pursuant to this Agreement, the DoT shall satisfy itself as to the eligibility criteria under Clause 2.3 and the decision of the DoT in this regard shall be final.

CHAPTER-III

MODALITY OF TRANSFER/ASSIGNMENT OF ACCESS SPECTRUM

3.1. The modality for the Agent seeking the transfer / assignment of the right to use the Access Spectrum shall be as follows:

(i) **DoT shall have the first charge/right/precedence** for recovery of its dues from the amount received after auction/private negotiations/tendering to select the selectee.

(ii) The amount realised after the auctioning /private negotiations/tendering of the right to use the spectrum in case of ‘an event of default’, over and above the agent’s/lender’s dues and DoT’s dues, would accrue to the DoT.

(iii) After expiry of 30 days from the date of notice, the Agent may invite, procure and negotiate offers as per Clause 2.2 (c) under a transparent procedure either by negotiations or public auction or tenders for transfer/assignment of the right to use the Access Spectrum of the TSP to a Selectee. The agent lender may also request the DoT to conduct the auction.

(iii) In case the auction of the spectrum is conducted by the Agent/lender it shall recommend to the DoT, the name of the Selectee for its acceptance and shall request the DoT:

a) To transfer to the right to use the Access Spectrum to the Selectee in accordance with the terms agreed to between the Agent and the Selectee. This shall be in conformity with the terms and conditions of corresponding NIA as well as orders of the DOT in case of liberalised /traded spectrum for the residual period of validity.

b) Enter into Tripartite Agreement with the Agent and the Selectee on the same terms and conditions as are contained in this agreement.

c) Facilitate granting of WPC's, SACFA's and other approvals, clearance, permissions necessary for right to use the Access Spectrum upon the appropriate applications made by the Selectee.

(iv) If the DoT has any objection to accept the selectee for transfer of the right to use the access spectrum as proposed by the agent/lender, the same shall be communicated within the 15 days from the date of the receipt of the proposal. It shall be obligatory on the part of the agent / lender to reply to such communication within the 15 days from the date of the issue. The acceptance or otherwise of the selectee shall be decided by the DoT within 30 days from the date of the receipt of the clarification/reply from the agent / lender.

(v) Decision of DoT in selection of the Selectee shall be final and binding on the TSP and the Agent.

(vi) All actions of the Agent pursuant to this Agreement shall be for the benefit of the Lenders and be binding upon the Lenders.

3.2. Unless otherwise agreed to by the DoT, all processes as set out in Chapter-II for the selection of a Selectee, whether on first or subsequent occasions including the submission of the final proposal to the DoT for the transfer of right to use the Access Spectrum in favour of the Selectee shall be completed by the Agent, within

a period of four months or such other period as may be mutually agreed to by the DoT and the Agent/lender, from the date of the Notice of Default.

3.3. The TSP irrevocably agrees and waives any right to challenge the actions of the Agent or the Lenders or the DoT taken pursuant to this Agreement including the assignment/transfer of the right to use the Access Spectrum in favour of the Selectee. It is confirmed by the TSP that the right of the Agent/lender is irrevocable and shall not be contested in any proceedings before any Court or Authority and the TSP shall have no right or remedy to prevent, obstruct, injunction or restrain the DoT or the Agent or the Lenders from effecting or causing the transfer/assignment of the right to use the Access Spectrum to a Selectee. It would be open to the agent/lender to request the DoT to conduct the auction without prejudice to their rights.

3.4. If a Selectee is not found by the Agent / lenders, then the same may be intimated to the DoT for the selection of the selectee and DoT shall invite bids taking into account the Lender's Dues as well as the DoT's dues. Such Transferee or Assignee shall have the option of repaying the Lenders' debt in full or to execute a Tripartite Agreement similar to this agreement if Agent's/lender's dues remain outstanding and undischarged.

3.5. Further, nothing in this Agreement shall be interpreted to mean that the DoT has provided surety, guarantee or counter guarantee whether directly or indirectly for the recovery of Financial Assistance advanced or to be advanced by the Agent/Lenders to the TSP.

CHAPTER-IV
RIGHT TO COMPENSATION

4.1. In case of an event, which shall entitle the DoT to terminate the right to use the Access Spectrum, the DoT shall intimate the Agent prior to exercising of its decision to terminate the right to use the Access Spectrum, and on such intimation the Agent if so decide may cure such events within a period of 30 days from the date of the notice received from the DoT, failing which the DoT without any further notice to either the TSP or the Agent shall be entitled to terminate the allotment of right to use the Access Spectrum.

4.2. Upon receipt of the Notice as referred to in Clause 4.1, intimating occurrence of an event which can entail termination of right to use the Access Spectrum, the Agent/lender shall take immediate steps to consider such a notice as an Event of Default and may initiate steps to invite, negotiate and procure offers for transfer of right to use the Access Spectrum of TSP to a prospective Selectee in accordance with the procedure as provided in Chapter-II and III hereinabove.

4.3. The TSP hereby expressly authorises payment of such compensation as claimed by the DoT and the Agents, notwithstanding the pendency of any dispute or objection or claim that the TSP may have against the Agents/lenders/DoT.

4.4. The DoT shall be entitled to receive any balance amount of the compensation after the dues of the DoT/agents/lenders and charges connected with the transfer of rights to use the spectrum of the TSP to the Selectee, having been paid there from.

CHAPTER-V
GENERAL

5.1. The parties hereto expressly represent and warrant that they are duly empowered to sign and execute this Tripartite Agreement and the agent is fully authorised by Members of the Lender's Consortium to enter into this Tripartite Agreement for and on their behalf.

5.2. Notices under this Agreement shall be sent to the Addresses first hereinabove mentioned. Any change in the address of any party shall be duly notified by a Registered post/ speed post acknowledgement due and delivered to the other parties.

5.3. The expressions "The DoT", "The TSP", "The Lenders" and "The Agent" herein used before shall, unless there be anything repugnant to the subject or context, include their respective replacements, successors, legal representatives, administrators and permitted assignees.

5.4. This agreement shall not be affected by reorganisation of any Lender or Agent and the successor - in – interest of such Lender or Agent who shall have the benefit of this agreement.

5.5. Any variation or modification to this agreement shall take effect when such variation or modification is made in writing under the signatures of the concerned parties.

5.6. The TSP shall be bound to pay all Stamp Duty or other imposts, costs, charges and expenses as are applicable on this agreement or on any deed of assignment or transfer of right to use the Access Spectrum and in the event of the agent/lender's making such payment for the time being, such payment shall be deemed to be a part of the Lender's dues.

5.7. The parties hereby expressly agree that for the purpose of giving full and proper effect to this agreement, the respective NIAs for the Auction of right to use the Access Spectrum/orders of the DoT in case of the liberalized/traded spectrum, respective NIAs and this agreement shall be read together and construed harmoniously.

5.8. The consultation, recommendation or approval of the Agent under this agreement shall always be taken as a consultation, recommendation or approval of every concerned Lender.

5.9. Notwithstanding anything contained in this agreement, the rights and remedies available to the DoT under respective NIAs for the Auction of right to use the Access Spectrum shall remain protected and unaffected.

5.10. It shall not be obligatory for the Agents/lenders to invoke the provisions of this agreement before enforcing any other remedy available to them under any other act.

5.11 (i) Any dispute, difference or claim arising out of or in connection with or in relation to this agreement shall be decided by the arbitration and shall be subjected to the provisions of the Arbitration and Conciliation Act 1996 (of India) or any ,modification or re-enactment thereof and be governed by the laws of India. The venue of arbitration would be New Delhi and the Courts in Delhi shall alone have jurisdiction over the matters arising out of such arbitration agreement or award or protection of property or assets of the project.

(ii) Before resorting to arbitration, the parties shall attempt to settle in good faith any dispute, difference or claim referred to above, by negotiations between them and in the event of failure of such negotiation arbitration shall be resorted to.

(ii) Each party to the dispute, difference or claim, shall appoint one arbitrator and the arbitral tribunal thus appointed shall make the award within 30 days after appointment of the last arbitrator. In case the arbitrator thus appointed are of even number then such appointed arbitrators shall choose another arbitrator with mutual consent who will act as the presiding arbitrator of the arbitral tribunal.
