

**No.8/06/2007-BP&L. Vol.II**  
**GOVERNMENT OF INDIA**  
**MINISTRY OF INFORMATION AND BROADCASTING**  
**‘A’ WING, SHASTRI BHAWAN, NEW DELHI-110 001.**

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**Dated, the 03 December, 2009**

**ORDER**

As per the requirements contained in Article 6.4 of the DTH License Agreement this Ministry has been receiving requests from the DTH Licensees for assignment of their License Agreement as security to the banks/financial institutions for receiving financial loan/assistance for the setting up/operation of DTH services. No procedure has been prescribed earlier as to under what terms & conditions such a request will be considered by the Ministry.

2. The matter has been examined in the light of the provisions contained in Article 2.2 & 6.4 of the DTH License Agreement and the procedure followed in the Telecom sector. It has now been decided that all DTH Licensee(s) desirous of assigning their License Agreement as security to the banks/financial institutions for receiving financial loan/assistance for the setting up/operation of DTH services shall be required to execute a Tripartite Agreement as per the enclosed Format between the Licensor, the Licensee and the Lenders before grant of permission for assignment of the License Agreement as security to the lenders for receiving financial loan/assistance for the setting up/operation of DTH services. The DTH Licensee will also be required to furnish copies of the respective loan agreements entered into by the Licensee with the respective lenders.

**( Zohra Chatterji )**  
**Joint Secretary to the Government of India**  
**Tel.No.: 2338 2597**

**Encl.: As above**  
**Copy to:**

1. Secretary, D/o Telecom.
2. Secretary, Ministry of Home Affairs
3. Secretary, Department of Revenue.
4. Secretary, TRAI.
5. M/s. ASC Enterprises Ltd. (Dish TV India Ltd.), FC-19, Sector 16-A Noida-201301.
6. M/s. Tata Sky Pvt. Ltd., Bombay Dyeing A. O. Building, Pandurang Budhkar Marg, Worli, Mumbai –400025
7. M/s. Sun Direct TV Pvt. Ltd., 367/369, Anna Salai, Teynampet, Chennai.
- 8.. M/s. Reliance Blue Magic Pvt. Ltd., 3<sup>rd</sup> Floor, Reliance Energy Centre, Santa Cruz (E), Mumbai-400055
9. M/s Bharat Business Channel, Mittal Court, 171/C Wing, 17<sup>th</sup> Floor, Nariman Point, Mumbai-400 021.
10. M/s Bharati Telemedia Ltd., Unitech World Cyber Park, Tower A, 4<sup>th</sup> Floor, Sector-39, Gurgaon, Haryana-122 001.

## TRIPARTITE AGREEMENT

THIS TRIPARTITE AGREEMENT made at \_\_\_\_\_ on this the \_\_\_\_\_ day of 2009 amongst;

THE PRESIDENT OF INDIA acting through Shri \_\_\_\_\_, the Director (Broadcasting Policy & Legislation) Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi - 110 001 (hereinafter called "the LICENSOR");

AND

\_\_\_\_\_, a company incorporated under the Companies Act, 1956 having its Registered Office at \_\_\_\_\_ acting through Shri \_\_\_\_\_ duly constituted attorney/authorised person pursuant to the General Power of Attorney dated \_\_\_\_\_ executed as per terms of the Board Resolution dated \_\_\_\_\_, (hereinafter called the LICENSEE).

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/authorized officer pursuant to the General Power of Attorney dated \_\_\_\_\_ executed per terms of the Board Resolution dated \_\_\_\_\_.

WHEREAS:

(i) By the LICENCE AGREEMENT dated \_\_\_\_\_ entered into between the LICENSOR and the LICENSEE, the LICENSOR has granted the LICENCE to the LICENSEE for a DTH Broadcasting Service envisaging establishment, maintenance and operation of Broadcasting Service on the terms, conditions and covenants agreed to between them and incorporated therein.

(ii) With a view to help and facilitate the financing of the DTH Project by the LICENSEE pursuant to the LICENCE referred to above, the parties hereto are desirous of recording the terms and conditions to provide transfer/assignment of LICENCE as hereinafter provided in this AGREEMENT to protect and secure the Lender's interest arising out of grant of financial assistance to the LICENSEE.

(iii) The Lenders have agreed to grant Financial Assistance to the LICENSEE to the extent mutually agreed between them on the terms, conditions and covenants set out in the respective Loan AGREEMENTs entered into by the LICENSEE with the respective Lenders.

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS :

### ARTICLE-1 – DEFINITIONS

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

1.1 "Agent" means (give name of the Agent) an Indian scheduled bank/ an Indian Public Financial Institution/ an Indian majority controlled, non-banking finance company engaged in financing of infrastructural projects in India acting for itself and as Agent for other members of a consortium of Lenders who have consented to provide Financial Assistance to the LICENSEE for the project.

{Explanation: Only Indian Financial Institution or a Scheduled Bank participating in the financial assistance to the LICENSEE will act as the Agent}

1.2. "Event of Default" means occurrence of any of the following events:-

- (i) A default by the LICENSEE in payment of the LICENCE Fee or other dues duly payable to the LICENSOR, under the LICENCE AGREEMENT.
- (ii) A material default of the terms and conditions of Loan AGREEMENTs.

{Explanation: 'Material Default' shall mean a continuous default by the LICENSEE 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 LICENSEE of the terms & conditions of the Loan AGREEMENT or any other document duly executed by the LICENSEE in favour of the Lenders which in the considered opinion of the Agent is likely to affect adversely and substantially the ability of the LICENSEE to work or operate the project}.

- 1.3 "Financial Assistance" means the financial assistance granted or agreed to be granted by or any money due to the Lenders under the Loan AGREEMENTs and/or any other respective AGREEMENTs in respect of the projects referred to in Schedule hereto.
- 1.4 "LICENCE" means the LICENCE under the LICENCE AGREEMENT dated \_\_\_\_\_ entered into between the LICENSOR and the LICENSEE in respect of DTH Broadcasting Service including any amendments made thereto from time to time, for operation of DTH broadcasting service by the LICENSEE.
- 1.5 "Lenders" means the parties referred to in the Schedule hereto and includes any syndicate members or participant lender in any syndicate /participation financing.
- 1.6. "Lender's Dues" means all monies owed by the LICENSEE to the Lenders in respect of the project whether fallen due or not under the Loan AGREEMENT or other respective AGREEMENTs related to the project.
- 1.7. "Loan AGREEMENTs" means the AGREEMENTs entered/to be entered into between the LICENSEE and the Lender or Lenders in respect of the Financial Assistance and referred to in Schedule hereto.
- 1.8 "Project" means the LICENSEE's DTH broadcasting services project for establishment, maintenance and operation of DTH Broadcasting service in India.
- 1.9. "Selectee" means an Indian company within the meaning of Companies Act, 1956, selected by the Lenders and proposed to the LICENSOR for the purpose of assignment/transfer of the LICENCE as provided in this AGREEMENT.

## ARTICLE 2

### TRANSFER OR ASSIGNMENT OF LICENCE AS SECURITY FOR FINANCIAL ASSISTANCE

- 2.1. The LICENSOR hereby agrees to transfer or assign the LICENCE by endorsement thereon in favour of the selectee selected by the Lenders in accordance with the Articles 2 and 3 hereunder provided that nothing contained herein shall entitle the Lenders to operate the Service under LICENCE themselves as a LICENSEE either individually or collectively.
- 2.2 (a) The Agent shall notify the LICENSEE and simultaneously intimate the LICENSOR about the occurrence of any event of material default and require the LICENSEE to remedy and cure the same within 30 days from the date of such notice.  
  
(b) The Notice of event of Default, shall be the conclusive evidence of such Event of Default under the Loan AGREEMENT and it shall be final and binding upon the LICENSEE for the purpose of this AGREEMENT.

(c) The LICENSOR and the LICENSEE hereby agree that upon the expiry of the period of 30 days from the date of Notice of Event of Default where the LICENSEE has failed or been unable to remedy or cure the default, the Lenders may invite, negotiate and procure offers or tenders for the take over and transfer of the project together with all the assets pertaining to the Project of the LICENSEE including the LICENCE to the Selectee upon such selectee's assumption of the liabilities and obligations of the LICENSEE towards the LICENSOR under the LICENCE AGREEMENT and toward the Lenders under their respective Loan AGREEMENTS.

(d) However till an eligible SELECTOR is approved by the LICENSOR as provided herein, the existing LICENSEE shall continue to discharge its obligations as per the LICENCE AGREEMENT including management of the project together with all its assets.

2.3. The Selectee shall meet the following eligibility criterion for transfer of the assets of the Project to it.

(a) the Selectee shall be capable of properly discharging the duties, obligations and liabilities under the LICENCE AGREEMENT.

(b) the Selectee shall be capable and shall provide adequate security to the satisfaction of the Lenders for the Financial Assistance.

(c) the Selectee shall have the capability and shall give necessary consent to assume the liability of the LICENCE Fee including the other dues of the LICENSOR and the Lenders' Dues;

(d) the Selectee shall satisfy at the time of formulation of transfer proposal, all the requisite eligibility and other criteria as per the DTH Guidelines as amended from time to time.

(e) The selection should not be of such a company or its sister concern who was/has been granted any LICENCE and became/has become defaulter.

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

2.4. The Agent shall notify the LICENSOR of the accrual of right to seek transfer/assignment of the LICENCE pursuant to Article 2.3 which the LICENSOR shall take on record.

2.5. Before transferring or assigning the LICENCE to the Selectee pursuant to this AGREEMENT, the LICENSOR shall satisfy itself as to the eligibility criteria under Article 2.3 and the decision of the LICENSOR in this regard shall be final.

### ARTICLE - 3

#### MODALITY OF TRANSFER / ASSIGNMENT AND ENDORSEMENT OF LICENCE

3.1. The modality for the Agent seeking the transfer / assignment /endorsement of the LICENCE shall be as provided below:

(i) the Agent after expiry of 30 days from the date of notice as per Article 2.2 may, invite, procure and negotiate offers under a transparent procedure either by private negotiations or public auction or tenders for transfer or takeover of the assets including the LICENCE of the LICENSEE pertaining to the project by the Selectee together with the Lenders' Dues and the dues of the LICENSOR.

(ii) The Agent on behalf of the Lenders shall recommend to the LICENSOR, the name of the Selectee for its acceptance and shall request the LICENSOR to:

- a) accede to transfer to the Selectee the right to operate the network of the Project in accordance with the terms agreed to between the Lenders and the Selectee.
  - b) Endorse and transfer the LICENCE to the Selectee on the same terms and conditions, for the residual period of the original LICENCE.
  - c) Enter into Tripartite AGREEMENT with the lenders and the Selectee on the same terms and conditions as are contained in this AGREEMENT.
  - d) Facilitate granting of WPC, SACFA and other approvals, clearance, permissions necessary for operating the service upon the appropriate applications made by the Selectee.
- (iii) The LICENSOR subject to satisfaction of criterion set out and determined in accordance with Article 2.3 & 2.5 and upon assumption of the liabilities by the Selectee as provided in Article 2.2 (c), shall proceed to transfer/assign by endorsement the existing LICENCE to the Selectee on the same terms and conditions as are contained in the LICENCE AGREEMENT for the residual period in favour of the Selectee.
- (iv) If the LICENSOR has any objection to the transfer of LICENCE in favour of the Selectee in terms of this AGREEMENT, it shall within 90 days from either the date of LICENSOR's receipt of the proposal made by the Agent, or the last date of any clarification called for by LICENSOR from the Agent, whichever date is later, give a reasoned order after hearing the Agent, for its refusal or delay in acceptance of the proposal. If no objection is raised within the above mentioned time limit, by the LICENSOR for the selection of the Selectee, the Selectee shall be deemed to have been accepted except in cases of accidental or wilful omission or suppression of material facts in this connection or refusal of security clearance at a later date. The LICENSOR thereupon shall transfer /assign/endorse the LICENCE within 15 days of its acceptance /deemed acceptance of the Selectee.

Provided, however, that in the event of a refusal as stated above, the Agent may propose another Selectee whereupon the process outlined in this AGREEMENT for such acceptance shall once again be repeated and followed.

- (v) Decision of LICENSOR in selection of the Selectee shall be final and binding on the LICENSEE and Lender/Agent.
  - (vi) All actions of the Agent pursuant to this AGREEMENT shall be for the benefit of the Lenders, and be binding upon Lenders. The Agent is authorised to receive payments on account of compensation or consideration for transfer of the Project in accordance with this AGREEMENT and give valid discharge for and on behalf of all Lenders. All monies so received by the Agent shall be held by it in trust for and made over to the Lenders to be distributed in accordance with their respective rights under the Loan Agreements as modified by any interse arrangement among the Lenders.
- 3.2. Unless otherwise agreed to by the LICENSOR, all actions as set out in Article 3.1 for the selection of a Selectee whether on first or subsequent occasions and the Submission of the final proposal to the LICENSOR for the transfer of the LICENCE in favour of the Selectee shall be completed by the Agent within a period of six months or such other period as may be mutually agreed by the LICENSOR and the Agent, from the date of the Notice of Event of Default.
- 3.3 The LICENSEE irrevocably agrees and waives any right to challenge the actions of the Agent or the Lenders or the LICENSOR taken pursuant to this AGREEMENT including the assignment/transfer of the LICENCE in favour of the Selectee. The LICENSEE agrees, and confirms that it shall not have any right to seek re-valuation of assets of

the Project or the LICENSEE's Shares. It is confirmed by the LICENSEE that the right of the Lenders is irrevocable and shall not be contested in any proceedings before any Court or Authority and the LICENSEE shall have no right or remedy to prevent, obstruct, injunct or restrain the LICENSOR or the Lenders from effecting or causing the transfer/assignment /endorsement of the LICENCE as requested by the Lenders through the Agent. Notwithstanding anything contained herein, the provisions of Article 7.11 shall continue to prevail.

- 3.4 If the LICENSOR decides to transfer the LICENCE to any person other than the Selectee, it shall take into account the Lenders' Dues as well as the LICENSOR's dues while inviting bids from the prospective transferees or assignees and shall include a suitable condition as agreed to by the Lenders for payment or take over of Lender's dues by such transferee or assignee. Such Transferee or the assignee shall have the option of repaying the Lenders' debt in full or to execute a Tripartite AGREEMENT similar to this AGREEMENT if lenders' dues remain outstanding and undischarged.
- 3.5. If a Selectee (new/alternate LICENSEE as provided in Article 3.4 above) is not found, then the LICENCE AGREEMENT shall stand terminated and the assets/infrastructure of defaulting LICENSEE shall have to be disposed off with LICENSOR having the first charge/right/precedence for recovery of its dues from proceeds of such disposal. Remainder of the proceeds of such disposal, if any, shall go to offset the dues of Lender(s) to the extent possible and balance left, if any, will go to the defaulting LICENSEE. The defaulting LICENSEE shall be liable to the LICENSOR for costs of all corrective efforts as per prevailing market forces and the decision of LICENSOR shall be final in all respects.
- 3.6. Provided always that nothing in this AGREEMENT shall be interpreted to mean that the LICENSOR has provided any guarantee or surety and it is expressly agreed that the LICENSOR has not provided any surety, guarantee or counter guarantee whether directly or indirectly for the recovery of Financial Assistance advanced or to be advanced by the Lenders to the LICENSEE.

#### ARTICLE 4

##### INTERIM PROTECTION OF SERVICE AND PRESERVATION OF SECURITY

4. On the Agent issuing the Notice of Event of Default (and the LICENSEE has not cured the default for a period of 30 days) as hereinabove provided or in other circumstances which in the considered opinion of the Agent is likely to affect adversely and substantially the Lenders' security, the Lenders shall be entitled to institute protective legal proceedings for a receivership to preserve and protect their security. In the first instance, the Agent shall notify the LICENSOR, to assume such receivership and operate the service, pending the transfer/assignment /endorsement of the LICENCE as provided herein but in the event LICENSOR declines to assume receivership, the Lenders shall be entitled to the appointment of a Receiver, with or without the intervention of the Court, of the Project and the receivables pending the transfer/ assignment/endorsement of the LICENCE in accordance with this AGREEMENT by the LICENSOR. The receivership shall be co-terminus with the transfer/assignment/ endorsement of the LICENCE to a Selectee. The Receiver shall be responsible for protecting the assets in receivership and rendering a true and proper account of the receivership to the Agent in accordance with the terms of its appointment. The Receiver shall make best efforts to protect the subscriber base of the Network and continue the Service, in accordance with the LICENCE obligations. Such a Receiver can be appointed by consent of the LICENSOR and the Lenders as herein contained, or in a legal proceeding for appointment of a Receiver, notwithstanding that no recovery or mortgage suit or any suit or proceeding for enforcement of the Lenders' Security is instituted by the Lenders. Such an action for

appointment of the Receiver or Court Receiver as above shall be without prejudice to the other rights and remedies of the Lenders under the Loan Agreements.

## ARTICLE 5

### TERMINATION OF THE LICENCE BY THE LICENSOR

- 5.1. If under the LICENCE AGREEMENT, an event occurs which shall entitle the LICENSOR to terminate the LICENCE AGREEMENT, the LICENSOR shall intimate the Agent prior to exercising of its decision to terminate the LICENCE, and on such intimation the Lenders if so decide may cure such events within a period of 30 days from the date of the notice received from the LICENSOR failing which the LICENSOR without any further notice to either the LICENSEE or the Agent be entitled to terminate the LICENCE AGREEMENT, subject to Lenders' right to receive compensation (after setting off LICENSOR's dues if any),
- 5.2. Upon receipt of the Notice as referred to in Article 5.1, intimating occurrence of an event which can entail termination of LICENCE, the Agent 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 the take over and transfer of the Project of the LICENSEE by a prospective Selectee in accordance with the procedure as provided in Articles 2 and 3 hereinabove.

## ARTICLE 6

### LENDERS' RIGHT TO COMPENSATION

- 6.1 The LICENSEE hereby expressly authorises payment of such compensation to the Lenders, notwithstanding the pendency of any dispute or objection or claim that the LICENSEE may have against the Lenders/LICENSOR. The payment of compensation to the Lenders directly in accordance with this Article, made or caused to be made by the LICENSOR shall constitute a valid discharge of the LICENSEE to the extent of such payment received by the Lenders. All such payments shall be in favour of and shall be receivable by the Lenders to the exclusion of any receiver or Liquidator appointed for the assets of the LICENSEE.
- 6.2. The LICENSEE shall be entitled to receive any balance amount of the compensation after the dues of the LICENSOR, and the Lenders and other direct Fees or charges connected with the transfer of network of the LICENSEE to the Selectee, having been paid therefrom.

## ARTICLE 7

### GENERAL

- 7.1. 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.
- 7.2. 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 acknowledgement due and delivered to the other parties.
- 7.3. The expressions "the LICENSOR" and "The LICENSEE" and "The Lenders" and "The Agent" herein before used shall unless there be anything repugnant to the subject or context include their respective replacements, successors, legal representatives, administrators and permitted assigns.

- 7.4. This AGREEMENT shall not be affected by reorganisation of any Lender or Agent and the successor - in - interest of such Lender or Agent, shall have the benefit of this AGREEMENT.
- 7.5 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.
- 7.6. The LICENSEE 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 the project and in the event of the Lenders making such payment for the time being, such payment shall be deemed to be a part of the Lenders' Dues.
- 7.7. The parties hereby expressly agree that for the purpose of giving full and proper effect to this AGREEMENT, the LICENCE AGREEMENT and this AGREEMENT shall be read together and construed harmoniously.
- 7.8. 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.
- 7.9. Notwithstanding anything contained in this AGREEMENT, the rights and remedies available to the LICENSOR under LICENCE AGREEMENT shall remain protected and unaffected.
- 7.10 It shall not be necessary for the Lenders to enforce or exhaust any other remedy available to them before invoking the provisions of this AGREEMENT.
- 7.11 (i) Any dispute, difference or claim arising out of or in connection with or in relation to this AGREEMENT shall be decided by arbitration and shall be subject 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 for arbitration shall be New Delhi and the Courts in New Delhi shall alone have jurisdiction in 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 negotiation between them and in the event of failure of such negotiation, the arbitration shall be resorted to.
- (iii) 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 arbitrators 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.



SCHEDULE

LIST OF LENDERS AND PARTICULARS OF LOANS

A. List of Lenders and Loan Amounts/Financial Assistance.

Name of Lenders	Amount of Loan	Date of Loan AGREEMENT

B. Particulars of Syndication/Participation in the Loans.

C.

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE SET THEIR HANDS AND SEAL ON THE DATE, MONTH AND YEAR HEREINABOVE MENTIONED

SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF THE PRESIDENT OF INDIA BY :

Director (BP&L) IN PRESENCE OF

AND

SIGNED AND DELIVERED BY SHRI -----,

CONSTITUTED ATTORNEY

DULY AUTHORISED OFFICER OF.....

FOR AND ON BEHALF OF .....

ACTING FOR ITSELF & AS AGENT FOR OTHER LENDERS.  
IN PRESENCE OF

AND

(.....)

THE COMMON SEAL OF ....

.....

LIMITED HAS PURSUANT TO THE RESOLUTION OF ITS BOARD OF DIRECTORS PASSED  
IN THAT BEHALF ON THE .... DAY OF ..... 2009, HEREUNTO BEENAFFIXED IN THE  
PRESENCE OF  
SHRI .....

AND SHRI ..... WHO HAS/HAVE SIGNED/COUNTERSIGNED THESE  
PRESENTS IN TOKEN THEREOF.