

TO BE PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY,

PART III, SECTION 4

TELECOM REGULATORY AUTHORITY OF INDIA

**NOTIFICATION**

New Delhi, the 10<sup>th</sup> December, 2014

**No.311-35/2014-QoS-** In exercise of powers conferred by section 36, read with sub-clause (v) of clause (b) and clause (c) of sub-section (1) of section 11, of the Telecom Regulatory Authority of India Act, 1997 (24 of 1997), the Telecom Regulatory Authority of India hereby makes the following regulations to further amend the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010), namely:-

**THE TELECOM COMMERCIAL COMMUNICATIONS CUSTOMER  
PREFERENCE (SIXTEENTH AMENDMENT) REGULATIONS, 2014  
(13 OF 2014)**

1. (1) These regulations may be called the Telecom Commercial Communications Customer Preference (Sixteenth Amendment) Regulations, 2014.  
(2) These regulations shall come into force from the date of their publication in the official Gazette.
2. In regulation 2 of the Telecom Commercial Communications Customer Preference Regulations, 2010 (6 of 2010) (hereinafter referred to as the principal regulations), ...
  - (a) in clause (m), after the words "alpha numeric" and before the word "identifier", the words "or numeric" shall be inserted; and
  - (b) in clause (ab), after sub-clause (iii), the following sub-clauses shall be inserted, namely :-
    - "(iiiA) information sent by e-commerce agencies in response to ecommerce transactions made by their customers;
    - (iiiB) information sent by a company or a firm or depository participant, registered with Securities and Exchange Board of India or Insurance Regulatory Development Authority or Association of Mutual Funds in India or National Commodity & Derivative Exchange Ltd. or Multi Commodity Exchange of India Ltd. to its clients pertaining to the account of the client;
    - (iiiC) information sent by a registered company to its employees or agents or customers pertaining to goods or services provided by it;
    - (iiiD) information sent by a registered company or charitable trust or society or telecom service provider, pertaining to its services or activities to the telecom subscriber in response to a verifiable request of such subscriber;
3. In regulation 17 of the principal regulations,---
  - (a) in sub-regulation (4), the following proviso shall be inserted, namely:-

"Provided that a telemarketer, who intends to receive reply from the recipient of the transactional message, in response to the transactional message sent by him, shall enter into an agreement with the Access Provider under Schedule VII to these regulations.";

  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002

(b) in sub-regulation (10), the following proviso shall be inserted, namely:-

*“Provided that the telecom resources provided to a telemarketer, who enters into an agreement with the Access Provider as specified in Schedule VII, may have facility of receiving incoming SMS”.*

4. In regulation 19 of the regulations, in sub-regulation (8), in clause (a), after the words “Schedule V” and before the words “to these regulations”, the words “or Schedule VII” shall be inserted.

5. In regulation 20 of the principal regulations, in sub-regulation (2) ---

(a) in clause (b),---

(i) after the word “Schedule V” and before the word “to these regulations”, the words “or Schedule VII” shall be inserted;

(ii) in the proviso, after the word “Schedule V” and before the words “and every agreement”, the words “or Schedule VII” shall be inserted;

(iii) in clause (e), after the words, bracket and letter “in clause (a) “, the words, bracket and letter “and clause (b)” shall be inserted.

6. After Schedule-VI of the principal regulations, following Schedule-VII shall be inserted ---

#### **Schedule-VII**

**Agreement between Access Provider and Transactional message sending entity seeking telecom resources having facility to carry reply message (SMS) from the recipient of the transactional message.**


This Agreement is executed on the \_\_\_\_\_ day of \_\_\_\_\_, 20..... between.....(Name of Access Provider) having its office at .....(hereinafter referred to as the “Originating Access Provider” or the first party, which term shall include its successors and assignees), through .....(Name and designation) who is duly authorised to sign and execute the present agreement on behalf of the first party

AND

M/s .....(Name of the Telemarketer)having its office at .....(hereinafter referred to as the Transactional Message sending entity or the second party, which expression shall include all its executors, administrators, successors, assignees and legal representatives), through Shri/Ms/Smt----- (Name and designation) who is duly authorized to sign and execute the present agreement on behalf of the second party.

Whereas the second party intending to obtain telecom resources for the purposes of sending Transactional message with the facility to receive message (SMS) from the recipient of Transactional message, has approached M/s.....(name of the Originating Access Provider);

And whereas the second party having represented to the first party that it intends to send Transactional message to the person with whom it has certain transactions and receive message in response from such person and such Transactional message does not fall within the definition of promotional message as defined under the Telecom Commercial Communications Customer Preference Regulations, 2010 (6

  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002



of 2010) (hereinafter referred to as the regulations) and has requested for allotment of telecom resources for the said purpose.

Now the present agreement witnesses as follows: -

(1) The second party hereby declare that it has registered with the Telecom Regulatory Authority of India (hereinafter referred to as TRAI) vide application No.....and the registration number granted by TRAI to it is \_\_\_\_\_.

(2) The second party has agreed to obtain separate telecom resources from the Access Provider for the purposes of sending transactional message with the facility to receive message in response.

(3) The second party has agreed to bring only through International long distance operator the transactional message originated by an entity based outside the country.

(4) The second party shall be responsible in case of any misuse of telecom resources allotted to it for sending Transactional message.

(5) The second party shall maintain complete confidentiality of the customer information.


(6) The second party has agreed not to send any unsolicited commercial communication and not to mix any promotional communications with its Transactional message sent to a subscriber through telecom resource allotted to it for the purposes of sending Transactional message.

(7) The second party shall use number allocated by the first party, from its short codes starting with '5', which should be used as header for sending Transactional message.

(8) The second party has agreed that while sending information, pertaining to its services and activities, to the subscribers, it shall,

- (a) sends information to the subscriber only after receipt of a verifiable request from him;
- (b) inform the subscriber through SMS that the information requested for will be provided for a maximum period of six months, unless renewed and also the procedure for the subscriber to opt out at any time during the six months period from receiving such information;
- (c) obtain a fresh request from the subscriber every six months for continuing to receive such information;
- (d) intimate to the subscriber at least once in 180 days about the procedure to opt out from receiving such information;
- (e) provide details regarding procedure to opt out from receiving such information in every advertisement wherein the details of its services and activities are published
- (f) maintain a record of the request made by the subscriber for receiving such information for at least three months and provide such record as and when required by the Authority;
- (g) not send any objectionable, obscene, unauthorized content, message or communication which is against public interest or national security or which infringes any copyright, intellectual property right etc, and or law of the land;

(9) The second party has agreed to deposit with the Originating Access Provider an amount of rupees one lakh only (Rs. 1,00,000/-) as refundable security deposit as specified in this agreement. The

  
सुधीर गुप्ता/SUDHIR GUPTA  
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भारतीय दूरसंचार विनियामक प्राधिकरण  
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Originating Access Provider shall be entitled to deduct from such security deposit, on issue of each notice for sending or allowing unsolicited commercial communication by the second party, an amount as provided under this agreement.

(10) If the second party makes or permits any unsolicited commercial communication, through the telecom resources allotted to it by the first party for sending Transactional message, to any subscriber whose telephone number appears in the National Customer Preference Register, the second party agrees that-

- (a) on the issue of first notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees fifty thousand only (Rs. 50,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;
- (b) on the issue of second notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees one lakh fifty thousand only (Rs. 1,50,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;
- (c) on the issue of third notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees one lakh sixty thousand only (Rs. 1,60,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;
- (d) on the issue of fourth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees two lakh forty thousand (Rs. 2,40,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;
- (e) on the issue of fifth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees three lakh only (Rs. 3,00,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time;
- (f) On the issue of sixth notice by the Access Provider to the second party for sending such unsolicited commercial communication, a sum of rupees five lakh only (Rs. 5,00,000/-) shall be deducted from the security deposit of the second party and deposited in the account as may be specified by TRAI, from time to time.

(11) The second party has agreed that on issue of first notice by the Access Provider to the second party for sending or permitting unsolicited commercial communication to the subscriber whose telephone number appears in the National Customer Preference Register, the second party shall deposit additional security amount of rupees two lakh only (Rs. 2,00,000/-). The second party has also agreed that on issue of second notice by the Access Provider to the second party for sending or permitting similar unsolicited commercial communication, the second party shall deposit additional security amount of rupees three lakh only (Rs. 3,00,000/-) and on issue of third notice by the Access Provider to the second party for sending similar unsolicited commercial communication, the second party shall deposit an additional security of amount of rupees eight lakh only (Rs. 8,00,000/-).

(12) The second party has agreed that in case the second party fails to deposit the additional security deposit or the amount sufficient to meet the deductions agreed to under clause (9) is not available in the security deposit of the second party due to deductions made under clause (9) of this Agreement or for any other reason, the telecom resources allotted to the second party for the purposes of sending

  
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सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002



Transactional message shall be disconnected and the name of second party shall be intimated by the Access Provider to the agency maintaining the National Telemarketer Register for entering the name of the second party in the black list and the name of second party shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the second party shall be cancelled by TRAI under the provisions of the regulations. In case second party is an entity, which is authorized to bring the transactional message from outside India for the customers of first party, then, the first party shall also terminate all the agreements for bringing the international Transactional message by second party originated from outside India for its customers.

(13) The second party has agreed that in case of issue of sixth notice by the Access Provider to the second party for sending unsolicited commercial communication as provided under clause 11(f) of this Agreement, without prejudice to the amount which shall be deducted from the security deposit of the second party under clause 11(f), the telecom resources allotted to the second party shall be disconnected without any further notice or on receipt of instructions for disconnection of telecom resources from National Telecom Register. The Access Provider shall intimate the name of the second party to the agency maintaining the National Telemarketer Register for entering the name of the second party in the black list and the name of the second party shall not be removed from the black list before the completion of the period of two years from the date of entering his name in such black list and the registration of the second party shall be cancelled by TRAI under the provisions of the regulations.

(14) The second party has agreed that the telecom resources allotted to the second party shall be disconnected without any further notice on receipt of the instruction for disconnection of telecom resources from National Telemarketer Register or TRAI.

(15) The second party has agreed to pay the amount provided in clause 9 of this agreement in case the second party sends unsolicited commercial communications or mixes telemarketing or promotional SMSs with the transactional SMS.

(16) The second party has agreed that in case it brings the transactional message from outside India for the customers of the first party, it shall ensure that the transactional message sending entity shall comply with the provisions of the regulations and other regulations/ directions/ orders issued by licensor or TRAI from time to time. In case any violations is observed on part of such entity, the second party shall be liable to pay financial disincentive not exceeding rupees five lakh per violation as may be decided by TRAI. First party shall deposit, such financial disincentive, into an account specified by TRAI.

(17) The second party has also agreed to abide by all the regulations, orders and directions issued by the Telecom Regulatory Authority of India regarding Transactional message, from time to time, including the header to be used for sending transactional SMSs.

**Signature of subscriber/ Authorised Signatory**

(Name of subscriber/ Authorised Signatory)

Address

Seal, if any.

Date:

  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002

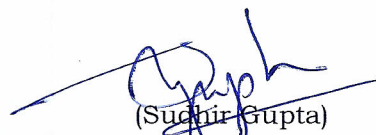
**Signature of Access Provider Representative/ Authorized Signatory**

**(Name of Access Provider Representative / Authorized Signatory)**

**Address**

**Seal, if any.**

**Date:”**

  
(Sudhir Gupta)  
**SECRETARY**  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002

Note1: The principal regulations were published in the Gazette of India, Extraordinary, Part III, Section 4 vide notification No. 305-17/2010-QoS dated 1<sup>st</sup> December, 2010.

Note 2: The principal regulations were amended vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14<sup>th</sup> December, 2010.

Note 3: The principal regulations were further amended (second amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28<sup>th</sup> December, 2010.

Note 4: The principal regulations were further amended (third amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 31<sup>st</sup> January, 2011.

Note 5: The principal regulations were further amended (fourth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 28<sup>th</sup> February, 2011.

Note 6: The principal regulations were further amended (fifth amendment) vide notification No. 305-17/2010-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 18<sup>th</sup> March, 2011.

Note 7: The principal regulations were further amended (Sixth amendment) vide notification No. 352-4/2011-CA (QoS) Pt. and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 05<sup>th</sup> September, 2011.

Note 8: The principal regulations were further amended (Seventh amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 25<sup>th</sup> October, 2011.

Note 9: The principal regulations were further amended (Eighth amendment) vide notification No. 352-4/2011-CA (QoS) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 1<sup>st</sup> November, 2011.

Note 10: The principal regulations were further amended (Ninth amendment) vide notification No. 305-24/2011-QoS(SP) and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 14<sup>th</sup> May, 2012.

Note11: The principal regulations were further amended (Tenth amendment) vide notification No. 311-13/2012-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 5<sup>th</sup> November, 2012.



Note12: The principal regulations were further amended (Eleventh Amendment) vide notification No. 311-23/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24<sup>th</sup> May, 2013.

Note13: The principal regulations were further amended (Twelfth amendment) vide notification No. 311-23/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 24<sup>th</sup> May, 2013.

Note14: The principal regulations were further amended (Thirteenth amendment) vide notification No. 311-27/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 22<sup>nd</sup> August, 2013.

Note 15: The principal regulations were further amended (Fourteenth amendment) vide notification No. 311-28/2013-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 3<sup>rd</sup> December, 2013.

Note 16: The principal regulations were further amended (Fifteenth amendment) vide notification No. 311-33/2014-QoS and published in the Gazette of India, Extraordinary, Part III, Section 4 dated 7<sup>th</sup> April, 2014.

Note 17: The Explanatory Memorandum explains the objects and reasons of Telecom Commercial Communications Customer Preference (Sixteenth Amendment) Regulations, 2014 (XX of 2014).

  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
Telecom Regulatory Authority of India  
नई दिल्ली-110002/New Delhi-110002

## EXPLANATORY MEMORANDUM

1. The Telecom Regulatory Authority of India issued the Telecom Commercial Communications Customer Preference Regulation, 2010 (6 of 2010) (TCCCP Regulation) dated the 1st December, 2010 to provide an effective mechanism for curbing Unsolicited Commercial Communications (UCC). These regulations have been amended from time to time to tighten the regulatory framework.
2. One of the provisions of The TCCCP Regulations, 2010, is that service providers are not allowed to provide the incoming call or SMS facility on the telecom resources being used for sending the transactional message.
3. There have been a number of representations from various stakeholders requesting Authority for allowing a two way communication facility for transactional messages. The stakeholders have claimed that they have developed many applications, which requires two -way or interactive communication through SMS between users or between users and application. Various ILD service providers have also requested the Authority to allow carrying international transactional messages from international entities.
4. As per the existing provisions of the regulations, header for sending the transactional message has been specified in form of "XY-ABCDEF" (all alpha characters). Due to limitation of existing systems two way communications through alpha headers is not feasible and it has to be numeric header to support such two-way messaging.
5. The Authority has considered all such requests of all application providers, access providers, ILD operators and users and decided that there is a definite requirement for a two-way interactive SMS transactional communication because of various user friendly applications. Hence, there is a need to review the existing provisions of the regulations to allow such two way interactive SMS with sufficient safeguards.
6. The Authority is also of the view that telemarketers and ILD operators registered as telemarketers will be able to make two way communications if access providers allocate short codes starting with 5 as an header for such transactional messages. Accordingly, the regulations have been amended.
7. To ensure suitable safeguards, the penalties for such transactional messages with two way communications are double than that for normal transactional messages. Also in case of transactional messages by international entities carried by various entities, provisions have been made for additional penalties on these entities for violations.

  
सुधीर गुप्ता/SUDHIR GUPTA  
सचिव/Secretary  
भारतीय दूरसंचार विनियामक प्राधिकरण  
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