

CONTRACT

Technical Audit Services

BSD.-----

BETWEEN

**UNIVERSAL SERVICE FUND
(A Company Setup Under Section 42 of Companies Ordinance 1984)**

AND

M/S -----.

Made as of

[Date]

I. Form of Contract

This CONTRACT (hereinafter called the “Contract”) is made the ___th day of the month of October, 2018, between, on the one hand, the Universal Service Fund, a company limited by guarantee registered under section 42 of the Companies Ordinance, 1984 (hereinafter called the “USF”) 5th Floor HBL Tower Jinnah Avenue Islamabad, through its Chief Executive Officer.

And

Officer and, on the other hand, (Name of Company), Office (hereinafter called the “Consultant”) ,(---
----- through its Chief Executive Officer.

WHEREAS

- (a) the USF has requested the Consultant to provide certain consulting services as defined in this Contract (hereinafter called the “Services”);
- (b) the Consultant, having represented to the USF that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

NOW THEREFORE the parties hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The following Appendices:

Appendix A – Audit Methodology, RFP and ToR

Appendix B – Reporting Requirements

Appendix C – Key Personnel Staff

Appendix D – Inventory Equipment/Tools

Appendix E – USF Project details

Appendix F – Pricing Table (Inclusive of 15% GST)

Appendix G – Bank Guarantee

Appendix H – Bid Clarifications

2. The mutual rights and obligations of the USF and the Consultant shall be as set forth in the Contract, in particular:

- (a) the Consultants shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the USF shall make payments to the Consultants in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

For and on behalf of USF

Chief Executive Officer

For and on behalf of Consultant

Chief Executive Officer

In the presence of:

Witness Name:

Title:

NIC:

.

Witness Name:

Title:

NIC:

II. General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) “Applicable Law” means the laws and any other instruments having the force of law in the Islamic Republic of Pakistan, as they may be issued and in force from time to time.
- (b) “Consultant” means any person or private or public entity that will provide the Services to the USF under the Contract.
- (c) “Contract” means the Contract signed by the Parties and all the attached documents listed in its Clause 1, that is these General Conditions (GC), the Special Conditions (SC), and the Appendices.
- (d) “Contract Price” means the price to be paid for the performance of the Services, in accordance with Clause 5;
- (e) “Effective Date” means the date on which this Contract comes into force and effect pursuant to Clause GC 2.1.
- (f) “GC” means these General Conditions of Contract.
- (g) “Government” means the Government of the Islamic Republic of Pakistan.
- (h) “Party” means the USF or the Consultant, as the case may be, and “Parties” means both of them.
- (i) “Personnel” means persons hired by the Consultant or by any Sub-Consultants and assigned to the performance of the Services or any part thereof.
- (j) “SC” means the Special Conditions of Contract by which the GC may be amended or supplemented.
- (k) “Liquidated Damages” mean the monetary damages imposed upon the Contractor and payable to USF by the Contractor on account of its non-completion of field visits as per terms mentioned in the contract, Poor Quality of Reports, Unjustified Force Majeure Assessment Reports or Failure to submit timely Force Majeure Assessment Reports, Failure to do Re-Visits, or non-availability of dedicated field resources at the time of audit, delay in submission of other Reports of whole or part of the project
- (l) “Services” means the work to be performed by the Consultant pursuant to this Contract, as described in Appendix A hereto.
- (m) “Sub-Consultants” means any person or entity to whom/which the Consultant subcontracts any part of the Services.
- (n) “In writing” means communicated in written form with proof of receipt.

1.2 Law Governing Contract.

This Contract, its meaning and interpretation, and the relation **between** the Parties shall be governed by the Applicable Law.

1.3 Language.

This Contract has been executed in English language, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

1.4 Notices.

1.4.1 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC.

1.4.2 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.

1.5 Location

The Services shall be performed at such locations as are specified in Appendix E hereto and, where the location of a particular task is not so specified at such locations as the USF may approve.

1.6 [Omitted]

1.7 Authorized Representatives.

Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the USF or the Consultant may be taken or executed by the officials specified in the SC.

1.8 Taxes and Duties.

The Consultant, Sub-Consultants, and their Personnel shall pay all such taxes, Stamp duty or other duties, fees and other impositions levied under the applicable law till the execution of the contract, the amount of which is deemed to have been included in the contract price.

1.9 Fraud and Corruption

1.9.1 Definitions

- (i) “corrupt practice” means the offering, receiving, or soliciting, directly or indirectly, of any thing of value to influence the action of an employee of the USF in the selection process or in contract execution;
- (ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;

- (iii) “collusive practices” means a scheme or arrangement between two or more consultants, with or without the knowledge of the USF, designed to establish prices at artificial, non competitive levels;
- (iv) “coercive practices” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract;

1.9.2 Measures to be taken.

- (a) USF will cancel the Contract if it determines at any time that the Consultant or his/her representatives were engaged in corrupt, fraudulent, collusive or coercive practices during the selection process or the execution of that contract, without the Consultant having taken timely and appropriate action satisfactory to the USF to remedy the situation;
- (b) USF will sanction a Consultant, including declaring the Consultant ineligible, either indefinitely or for a stated period of time, to be awarded a USF contract if it at any time determines that the Consultant has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for, or in executing the contract.

2. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

2.1 Effectiveness of Contract.

This Contract shall come into effect on the date the Contract is signed (effected date) by both Parties or such other later date as may be stated in the SC.

2.2 Commencement of Services.

The Consultant shall begin carrying out the Services from the Effective Date or from such other Date specified in the SC.

2.3 Expiration of Contract.

Unless terminated earlier pursuant to Clause GC 2.6 hereof or extended pursuant to clause 2.5.3, GC this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

2.4 Modifications or Variations.

Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

2.5 Force Majeure

2.5.1 Definition.

or the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible or so impractical as to be considered impossible under the circumstances.

2.5.2 No Breach of Contract.

The failure of a Party to fulfil any of its obligations under the contract (clause 2.5 Force Majeure) shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event

(a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and

(b) has informed the other Party as soon as possible about the occurrence of such an event.

2.5.3 Extension of Time.

Any period within which a Party shall, pursuant to this Contract, complete any action or task, may be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure or otherwise at the sole discretion of the USF.

2.5.4 Payments

During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant shall be entitled to continue to be paid under the terms of this Contract.

2.6 Termination

2.6.1 By the USF.

The USF may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 2.6.1. In such an occurrence the USF shall give a not less than thirty (30) days' written notice of termination to the Consultant, and sixty (60) days' in the case of the event referred to in (e).

- (a) If the Consultant does not remedy a failure in the performance of their obligations under the Contract, within thirty (30) days after being notified or within any further period as the USF may have subsequently approved in writing.
- (b) If the Consultant becomes insolvent or bankrupt.
- (c) If the Consultant, in the judgment of the USF has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- (d) If, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (e) If the USF, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- (f) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 7 hereof.

2.6.2 By the Consultant.

The Consultant may terminate this Contract, by not less than thirty (30) days' written notice to the USF, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause 2.6.2:

- (a) If the USF fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 7 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.

- (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- (c) If the USF fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 7 hereof.

2.6.3 Payment upon Termination

Upon termination of this Contract pursuant to Clauses GC 2.6.1 or GC 2.6.2, the USF shall make the following payments to the Consultant:

- (a) payment pursuant to Clause GC 5 for Services satisfactorily performed prior to the effective date of termination;
- (b) except in the case of termination pursuant to paragraphs (a) through (c), and (f) of Clause GC 2.6.1, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract.

3. OBLIGATIONS OF THE CONSULTANT

3.1 General

3.1.1 Standard of Performance.

The Consultant shall perform the Services and carry out their obligations hereunder with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as faithful advisers to the USF, and shall at all times support and safeguard the USF's legitimate interests in any dealings with Sub-Consultants or third Parties.

3.1.2 Performance Guarantee.

- a. Performance Guarantee equivalent to 10% of the signed contract value in shape of Irrevocable Performance Bank Guarantee will be submitted by the Technical Auditor/consultant
- b. Failure to fulfil the assigned tasks in accordance with the terms and conditions of the contract shall impose Liquidated Damages @ 0.15%(PKR) per day on the Technical Auditor/consultant till the restoration of such delay/default and up to maximum deduction of 10% [ten percent] of total contract value. Once the maximum is reached, USF shall have the right to en-cash the Performance Guarantee and terminate the Contract.
- c. Any liquidated damages if not paid in cash by Contractor shall be deducted from the invoice (s) submitted by Contractor or performance bond. The imposition of liquidated damages

upon the Contractor (if not terminated) and its payment does not absolve the Contractor from its obligations to delivery or from any other liabilities or obligations under the Contract.

3.2 Conflict of Interest

The Consultant shall hold the USF's interest's paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.

3.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.

The payment of the Consultant pursuant to Clause GC 5 shall constitute the Consultant's only payment in connection with this Contract or the Services, and the Consultant shall not accept for their own benefit any trade commission, discount, or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of their obligations under the Contract, and the Consultant shall use their best efforts to ensure that the Personnel, any Sub-Consultants, and agents of either of them similarly shall not receive any such additional payment.

3.2.2 Consultant and Affiliates not to be Otherwise Interested in Project

The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultants and any entity affiliated with such Sub-Consultants, shall be disqualified from providing goods, works or services (other than consulting services) resulting from or directly related to the Consultant's Services for the preparation or implementation of the project.

3.2.3 Prohibition of Conflicting Activities

The Consultant shall not engage, and shall cause their Personnel as well as their Sub-Consultants and their Personnel not to engage, either directly or indirectly, in any business or professional activities which would conflict with the activities assigned to them under this Contract.

3.3 Confidentiality

Except with the prior written consent of the USF, the Consultant and the Personnel shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Personnel make public the recommendations formulated in the course of, or as a result of, the Services. This Clause shall continue in force following the termination of this Contract.

3.4 Insurance to be taken out by the Consultants

The Consultant shall take out and maintain and shall cause any sub-consultants at their (or the Sub-Consultants', as the case may be) own cost but on terms and conditions approved by the USF, insurance against the risks, and for the coverage, as shall be specified in the SC; and at the USF's request, shall provide evidence to the USF showing that such insurance has been taken out and maintained and that the current premiums have been paid.

3.5 Consultant's Actions Requiring USF's Prior Approval

The Consultant shall obtain the USF's prior approval in writing before taking any of the following actions:

- (a) entering into a subcontract for the performance of any part of the Services,
- (b) appointing such members of the Personnel not listed by name in Appendix C, and
- (c) any other action that may be specified in the SC.

3.6 Reporting Obligations

- (a) The Consultant shall submit to USF the reports and documents specified in Appendix B hereto, in the form, in the numbers and within the time periods set forth in the said Appendix.

- (b) Final reports shall be delivered in CD ROM in addition to the hard copies specified in said Appendix.

3.7 Documents Prepared by the Consultant to be the Property of the USF

- (a) All plans, drawings, specifications, designs, reports, other documents and software submitted by the Consultant under this Contract shall become and remain the property of the USF, and the Consultant shall, not later than 30 days upon termination or expiration of this Contract, deliver all such documents to the USF, together with a detailed inventory thereof. (where applicable)
- (b) The Consultant may retain a copy of such documents and software. Restrictions about the future use of these documents, if any, shall be specified in the SC.

3.8 Accounting, Inspection and Auditing

The Consultant

- (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time changes and costs, and the bases thereof, and
- (j) (ii) shall periodically permit the USF or its designated representative and up to two years from the expiration or termination of this Contract, to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the USF, if so required by the USF.

4. CONSULTANT'S PERSONNEL

4.1 Description of Personnel

The Consultant shall employ and provide such qualified and experienced Personnel as are required to carry out the Services. The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Consultant's Key Personnel are described in Appendix C. The Key Personnel listed by title as well as by name in Appendix C are hereby approved by the USF.

4.1.1 Removal and/or Replacement of Personnel

- (a) Except as the USF may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultant, such as retirement, death, medical incapacity, among others, it becomes necessary to replace any of the Key Personnel, the Consultant shall provide as a replacement a person of equivalent or better qualifications.
- (b) If the USF finds that any of the Personnel have
 - i. committed serious misconduct or have been charged with having committed a criminal action, or

- ii. have reasonable cause to be dissatisfied with the performance of any of the Personnel, then the Consultant shall, at the USF's written request specifying the grounds thereof, provide as a replacement a person with qualifications and experience acceptable to the USF.
- (c) The Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

5. PAYMENTS TO THE CONSULTANT

5.1 Lump-Sum Payment

The total payment due to the Consultant shall not exceed the Contract Price which is an all inclusive fixed lump-sum covering all costs required to carry out the Services described in Appendix A. The Contract Price may only be increased above the amounts stated in Clause 5.2 if the Parties have agreed to additional payments in accordance with Clause 2.4.

5.2 Contract Price

The total contract price payable in Pakistani Rupees is XXXXXX/- (inclusive of 15% GST). The contract price may fluctuate, as given in the Special Conditions

5.3 Terms and Conditions of Payment

Payments will be made to the account of the Consultant and according to the payment terms as stated in ToRs. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Consultant of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SC. Such guarantee shall be in the form set forth in Appendix G hereto, or in such other form, as the USF shall have approved in writing. Any other payment shall be made after the conditions listed in the SC for such payment have been met, and the Consultant has submitted an invoice to the USF specifying the amount due.

6. GOOD FAITH

6.1 Good Faith

The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the objectives of this Contract.

7. SETTLEMENT OF DISPUTES

7.1 Amicable Settlement

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

7.2 Dispute Resolution

Any dispute between the Parties as to matters arising out of or in connection with this Contract that cannot be amicably settled within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement through arbitration in accordance with the provisions of the Arbitration Act, 1940 (Act No.X of 1940) and the Rules made there under.

8. Indemnity

8.1 Except where arising from the negligence of USF or USF's employees, the Consultant shall indemnify USF in respect of any costs or damages howsoever arising out of or related to breach of warranty or representation, contract or statutory duty, or tortuous acts or omissions by the Consultant or the Consultant's personnel or sub-contractors or any claims made against USF by third parties in respect thereof.

8.2 Clause 8.1 shall continue in force following the termination of this Contract.

9. Limit of liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel the Consultant's liability under this Contract shall be limited to the amount of the Contract Price.

10. Assignment

The Consultant shall not, without the prior written consent of USF, assign or transfer or cause to be assigned or transferred, whether actually or as the result of takeover, merger or other change of identity or character of the Consultant, any of its rights or obligations under this Contract or any part, share or interest therein.

III. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.4	<p style="text-align: center;"> USF: 5th Floor, Habib Bank Tower, Jinnah avenue, Islamabad </p> <p style="text-align: center;"> Attention: <u>Syed Asif Kamal</u> Telephone: 051-921 2308-9 Facsimile: 051-921 4261 Email: asif.kamal@usf.org.pk </p> <ul style="list-style-type: none"> • Consultant <p style="text-align: center;"> Attention: Telephone: Email: </p>
{1.6}	Not Applicable
1.7	The Authorized Representatives are: For the USF: Syed Asif Kamal For the Consultant: -----
2.1	The effective date for the contract shall be the contract signing date.
2.2	The date for the commencement of Services is [Date]
2.3	The time period shall be 24 months from the effective date.

3.4	The risks and the coverage shall be as follows: (a) Third Party liability insurance, with a minimum coverage of (PKR XXXXX) ; (b) professional liability insurance, with a minimum coverage of (PKR XXXXX);
{3.7 (b)}	The Consultant shall not use these documents and software for purposes Unrelated to this Contract without the prior written approval of the USF.
5.2	The amount in Pakistani Rupees is XXXXXX/- (inclusive of 15% GST). The total price of the contract may be decreased or increased within 15 %, based upon a change in the Scope of Work. The decrease and/or increase in the price will depend on a change in the number of Muzas' and/or BTS's and/or Repeater to be audited by the TA The current number of these units and their corresponding unit prices are given in Appendix F.