

Draft CONTRACT

FOR

Establishment of Computer Labs in Six Girls Educational Institutes

Tender ID: USF/SP/CL@6EI/2018/01

BETWEEN

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

AND

**MADE AS OF
_____ 2018**

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CONTRACT

This Contract is made at Islamabad on this ____ day of ____, 2018

BY AND BETWEEN:

Universal Service Funds (USF) incorporated under the Companies Ordinance, 1984 having its office at fifth floor, HBL Tower, Jinnah Avenue, Islamabad (hereinafter the “USF”), through its Chief Executive Officer, of the One Part;

AND

-----a company duly incorporated and existing under the laws of the Islamic republic of Pakistan and having its registered office at ----- (hereinafter referred to as "the “Contractor” which shall, where the context so permits mean and include its successors-in-interest and permitted assigns) of the Other Part;

(The Party of the One Part and Party of the Other Part shall hereinafter be collectively referred to as ‘Parties’ and individually as ‘Party’ as the context of this Contract may require).

PREAMBLE

1. The USF is registered under section 42 of the Companies Ordinance, 1984 with aim and object for providing access to telecommunication services to people in the un-served, under-served, rural and remote areas of Pakistan. It has initiated Special Project (the “Project”) for equipping selected girls institutions of Islamabad Capital Territory with information, communication and technology (ICT). USF desires to establish ICT/Computer labs in such selected institutions within the territory of Islamabad.
2. The Contractor being engaged in the business of providing such Services made its final offer to USF for providing the Services and USF has accepted the offer of the Service Provider, subject to conditions which have been laid down in the LOI No. USF -----dated----- --2018 to the Service Provider and the Service Provider’s response to LOI through Letter of Acceptance (LoA) _____dated_____, 2018.
3. The Contractor hereby represents that it has the requisite expertise and resources to provide top quality Services to USF in accordance with highest industry standards and satisfaction of the USF.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises hereinafter set forth and for other good and valuable consideration the adequacy of which is hereby acknowledged by the parties and the mutual benefits to be derived therefrom, the representations and

warranties, covenants, conditions and promises contained herein below and intending to be legally bound, the parties hereto agree as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definition

The following words and expressions shall have the meaning assigned to them as defined hereunder:

“APPROVED” or **“APPROVAL”** means approved in writing by USF and/or the Contractor.

“BOQ ” stands for Bill of Quantities of each job/work as mentioned in this Contract and its annexes according to which the Contractor supply equipment & services and subject to change by agreement of parties.

“BUSINESS DAY” means any day other than Saturdays and Sundays or the gazetted public holidays of the Islamic Republic of Pakistan.

“CALENDAR DAY” means any day of a calendar year, including Saturdays, Sundays and gazetted public holidays of the Islamic Republic of Pakistan.

“CHANGE ORDER” refers to a written request either by USF or by the Contractor for changes to the scope of work and such request is subject to the written acceptance of Contractor or USF, respectively.

“CONTRACT” means the present Contract signed between USF and the Consultant and all schedule(s), annexure(s) attached herewith for the execution of the Services, which constitute the exhaustive description of obligations of the Parties unless otherwise provided under the law.

“CONTRACT PRICE” means the total amount of PKR -----(------), quoted by Contractor in its proposal and accepted by USF;

“CONTRACT DOCUMENTS” includes but not limited to bid documents, annexure(s), Schedule(s), form of contract, clarifications and responses to clarifications Letter of Intent, Integrity Pact, Performance Guarantee or any instruction or communication regarding the subject matter either through hard copies/forms or in electronic form/means or any amendment hereto.

“D.D.P.” means Delivered Duty Paid as specified in INCOTERM 2000 with unloading responsibility of seller. For the purpose of clarification D.D.P. price means that costs, expenses, duties and taxes, incurred or payable on Goods by the Contractor up to the point the Goods are, installed, tested, commissioned and handed over to consignee/ultimate consignee, are included in the price of the Goods.

“DELIVERY CHARGES” means local transportation, handling, insurance and other charges incidental to the delivery of Goods to their final destination.

“DOCUMENTATION” means documentation specified in the relevant Article(s) in the contract, mutually agreed by both parties.

“EFFECTIVE DATE” means the date of Signing of the Contract.

“EQUIPMENT” means all hardware, software, wooden items/ work and all physical items mentioned in the BOQ to be provided under the Contract.

“EXCUSED DELAY” shall mean any possible extension in project implementation schedule due to any delay, intentional or unintentional, caused by USF, Force Majeure or other relevant public authorities, under the Contract. An extension in the overall implementation schedule shall be granted accordingly and the duration of such extension shall be at the discretion of USF.

“FORCE MAJEURE” means without limitation, Acts of God, Government restrictions, war and hostilities, invasion, act of foreign enemies, rebellion, revolution, riot, industrial disputes, commotion, natural disasters and other similar risks that are beyond the control of Parties.

“GOODS” means all things, items, movable property which is necessary and ancillary for establishment of Computer Labs.

“LIQUIDATED DAMAGES” mean the monetary damages imposed upon the Contractor and payable to USF by the Contractor on account of its late delivery of whole or part of the project. Monetary damages shall be payable for the delayed portion beyond the overall completion date of the project.

“L.O.I” means Letter of Intent issued to successful bidder communicating formal acceptance by USF of the offer/bid.

“MONTH” means calendar month of the Gregorian calendar.

“ORIGIN” means the place where the Goods are mined, grown or produced from which ancillary services are supplied, Goods are produced, when through manufacturing, processing or substantial and major assembling of components, a commercially recognised product results that is substantially different in basic characteristics or in purpose or utility from its components.

“PERFORMANCE GUARANTEE” means an irrevocable, unconditional and continuing Bank Guarantee (BG) issued in favour of USF that is to be procured by Contractor from any one or more of the Scheduled Banks of Pakistan. The format, language, terms, conditions and text of the guarantee shall be in accordance with the template provided by USF.

“PROPOSAL(S)” means the proposals submitted by the Consultant in response to the RFP.

“RFP” means the Request for Proposal document issued by USF for the Project and attached including all annexed thereto, as amended or modified by USF.

“SERVICES” means electrical supply, electrical outlets, network infrastructure, network cabling, furniture, internet connections, supply installation, testing and commissioning of/for computer labs at defined sites

“SITES” means the locations defined and annexed with Annexure-B

“LABS/SYSTEM ADMINISTRATORS” means the persons, staff nominated by Capital Administration and Development Division and National History & Literacy Heritage Division Government of Pakistan

“TECHNICAL SUPPORT” is defined in RFP attached in Annex “A”.

“TECHNICAL TRAINING” is defined in RFP attached in Annex “A”.

“TIME OF COMPLETION” means the time schedule prescribed in RFP;

“WARRANTY PERIOD” shall mean the period (s) of Thirty six (36) months or any extended period starting from the date of issuance of PAC.

1.2 Interpretation

Except where the context requires otherwise, this Agreement will be interpreted as follows:

- a) The headings, whether of articles or other parts of the Agreement, are for ease of reference only and do not affect the interpretation or construction thereof.
- b) Words in the singular include the plural and vice versa, and words importing any gender include every gender. Other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- c) Any legal term not defined in this Agreement shall have meaning assigned them in relevant statute or RFA.
- d) A reference to an Article, sub-articles, a Clause, Sub-clause, Schedule, Annexure or Attachment is a reference to Article, sub-articles, a Clause, Sub-clause, Schedule, Annexure or Attachment of this Agreement and a reference to a thing (including, but not limited to, a chose- in-action or other right) includes a part of that thing;
- e) Where the context so requires, reference to a person shall be construed as including references to an individual, firm, company, corporation, unincorporated body of persons or any State or agency thereof.
- f) Where any act, matter or thing is required by this Agreement to be performed or carried out on a certain day and that day is not a Business Day then that act, matter or thing shall be carried out or performed on the following Business Day;
- g) A reference to a law includes a constitutional provision, treaty, decree, order, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable regulatory authority or stock exchange and is a reference to that law as amended, modified, consolidated, re-enacted, repealed, or replaced from time to time whether before or after the date thereof;
- h) A reference to a document includes all, addendums, amendments, revisions, restatements

- and/or supplements to that document;
- i) A reference to Parties shall mean the Parties to this agreement and includes their successors and permitted assigns;
 - j) Any reference to “approval” or “consent” or “sanction” shall mean approval or consent or sanction in writing by the competent person/authority on behalf of a Party;
 - k) Any technical term not specifically defined in this Agreement or RFP shall be construed in accordance with the general practice of those in that profession/industry/sector to which the term is used;
 - l) A reference to an agreement, other than this Agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing; and
 - m) Monetary references are references to the Pakistani currency or any other currencies, if mutually agreed upon by the Parties;
 - n) No rule of construction applies to the disadvantages of either Party

2. SCOPE OF WORK

- 2.1 The Contractor shall be responsible for complete set up and operations of computer labs with all required (*hardware, software, furniture, provide technical support as specified in terms of reference, and internet connectivity*), and shall be further responsible for providing any items, parts, equipment missed in BOQ but necessary for proper and efficient functioning of the supplied system.
- 2.2 The Contractor shall also provide all software licenses for smooth operation of the System as per terms of reference.
- 2.3 The Contractor shall provide completer services against the full and valuable consideration of PKR -----(-----) which is the fixed Contract Price. The Contractor hereby acknowledged and accepted this Contract Price as full and fixed price whereby the Service Provider, in timely manner, shall fully and faithfully deliver the Services in accordance with Annexure-A through-I, to the satisfaction of USF.

3. THE PRIORITY OF DOCUMENTS

- 3.1 The preamble and the following documents, in order of priority, form an integral part of this Contract. In case of any conflict between the terms of these documents and provisions of this Contract, such conflict shall be resolved with reference to the provisions of this Contract:
 - i) The Contract
 - ii) Its attached annexure and appendixes:
 - Annexure A : Request for Proposal
 - Annexure B : Terms of Reference
 - Annexure C : Bill of Quantities
 - Annexure D : Technical Proposal
 - Annexure E : Financial Proposal
 - Annexure F : LOI

Annexure G	: Performance Bond
Annexure H	: Integrity Pact
Annexure I	: Complaint Board
Annexure J	: Bid Clarification

- iii) Subsequent Amendments
- iv) Commercial Compliances
- v) Clarifications

4. EFFECTIVE DATE OF CONTRACT

4.1 This Contract shall become effective from the date of Signing of the Contract.

5. COUNTRY OF ORIGIN

5.1 All Goods supplied under the Contract shall have their origin as specified in BoQ and Technical specifications.

6. CONFIDENTIALITY

- 6.1 The Contractor shall not, without USF prior written consent disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample or information furnished by or on behalf of USF in connection therewith, to any person other than a person employed by the Contractor in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 6.2 The Contractor shall not, without USF prior written consent, make use of any documents or information except for purposes of performing the contract.
- 6.3 Upon becoming aware of any loss, unauthorized use or disclosure of USF's Information, the Contractor shall immediately notify USF of such loss, unauthorized use or disclosure. The Contractor agrees to take reasonable steps to assist USF in remedying such unauthorized use or disclosure and to indemnify USF, jointly and/or severally, for the same.
- 6.4 Any documents, other than the contract itself, shall remain the property of USF and shall be returned (in all copies) to USF on completion of the Contractor's performance under the contract if so required by USF.
- 6.5 The Parties agree that, notwithstanding expiration or termination of this Contract for any reason whatsoever, the provisions relating to Confidential Information shall survive the expiration or termination of this Contract and shall be continuing obligations unless the Parties agree to discontinue its effect.

7. EXPORT/IMPORT LICENSE

- 7.1 The Contractor is responsible for obtaining Export/Import Licenses as required by law. Any delay in shipment caused due to Export/Import Licenses shall not be considered as “Force Majeure”.

8. TAXES AND DUTIES

- 8.1 For DDP Prices; The Contractor shall be responsible for all taxes time being enforced including GST, duties, license fees, Insurance, freight charges, local transportation, handling and other incidental charges etc. incurred or accrued until the final delivery of the Goods or other obligations regarding services.
- 8.2 Any increase or decrease in the rates of GST (if any) shall be to the cost or benefit of the USF till final delivery.
- 8.3 Withholding tax shall be deducted as per applicable tax laws of Pakistan.
- 8.4 The Contractor shall be aware and responsible of all Pakistani tax regulation and will pay all taxes; duties, tariffs and impositions lawfully assessed against the Contractor till the term and performance of the contract.

9. NOTICES

- 9.1 Any notice given by one party to the other, pursuant to this Contract shall be sent in writing or by fax/telex or cable and confirmed in writing to the addresses given below:

CTO

USF

5th Floor, HBL Tower, Jinnah Avenue, Islamabad

Ph:051-9212408-09 , Fax:051-9214261

CONTRACTOR

Ph:_____ , Fax:_____

- 9.2 Shall be deemed given as follows: In case of personal delivery or registered mail, on seventh day of receipt by addresses; In case of courier, on the day of receipt or the second day after dispatch, whichever is earlier; and in case of facsimile, on ok report of delivery and shall deemed to be served if within business hours on the same day or the next working day in case of after business hours.
- 9.3 A party may change its address or fax number for notice under this Agreement by giving the other party written notice of the same. The notification of the change of address shall be effective once it is received by the other Party pursuant to Clause 9.2 above.

10. INTELLECTUAL PROPERTY RIGHT

- 10.1 The Contractor shall fully indemnify USF against any and all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred

by reason of any infringement or alleged infringement of any intellectual property rights including copyright, patent rights, design rights and trade marks in Pakistan by use or possession of the Service, Software and Equipment supplied by the Contractor.

- 10.2 If at any time any allegation of infringement of any intellectual property rights including copyright, patent rights, design rights and trade marks by the use or possession of the Service, Software and Equipment supplied by the Contractor under the Contract is made or in the Contractor's reasonable opinion is likely to be made, the Contractor may at their own expense modify or replace the service, Software and Equipment, without detracting from overall performance, and shall make good to USF, jointly and/or severally, any loss of use during modifications or replacement and/or any other losses arising out of such infringement or anticipated infringement.
- 10.3 The Contractor's indemnity shall not apply to the extent such claims arise if the software has been used otherwise than in accordance with the terms of the Contract or instructions provided by the Contractor.

11. CORRESPONDENCE

- 11.1 The Contractor shall not indulge into correspondence with unconcerned offices and organizations within or outside USF prior to the award of the Contract or later. Officers authorized in this connection are given below:

CTO

5th Floor, HBL Tower, Jinnah Avenue, Islamabad

Ph:051-9212408-09 , Fax:051-9214261

12. STANDARDS & SPECIFICATIONS

- 12.1 In this Contract "The Specifications" means the specifications laid down in Contract and annexure. Annexure
- 12.2 All equipment materials etc. supplied by the Contractor (if any) and the performance of the offered System shall be in accordance with Contract and annexure.
- 12.3 All equipment materials etc. (if any) that the Contractor has undertaken to supply shall be brand new, of the latest version, the origin as specified in Contract and annexure. and complete in all aspects.
- 12.4 Headings and part number names on every piece of equipment or rack, bays, control boards etc. shall be written in English. All items of equipment to be supplied with its serial numbers. The Contractor shall provide proof of all such items.

13. WARRANTY

- 13.1 The Contractor warrants that the deliverables supplied under the contract are brand new, un-used, of the most recent or current models and incorporate all the latest improvements in design and materials unless provided otherwise in the contract.

- 13.2 The Contractor further warrants that all deliverables supplied under this contract shall have no defect arising from design, material or workmanship (except insofar as the design or material is required by USF specifications) or from any act or omission of the Contractor, that may develop under normal use to the supplied deliverables in the conditions prevailing in the country of final destination.
- 13.3 This warranty shall remain valid for 36 (Thirty Six) months for equipment only and furniture will have 12 months warranty or any extended period after issuance of acceptance by authorized officer from USF.
- 13.4 USF shall promptly notify the contractor in writing of any claims arising under this warranty.
- 13.5 Upon receipt of such notice, the contractor shall, with all reasonable speed, repair or replace, at USF's installation site and / or consignee's store as the case may be at that time, the defective deliverables or part thereof, without costs to USF.
- 13.6 If the contractor, having been notified, fails to remedy the defect(s) within 15 days, USF may proceed to take such remedial actions as may be necessary, at the contractor's risk and expense and without prejudice to any other rights which USF may have against the Contractor under the contract.
- 13.7 The Contractor shall promptly correct at no cost to USF, any defect in any work of correction executed previously, upon receipt of written notice of defect within Thirty six (36) months warranty period from the acceptance of the corrected defect.
- 13.8 The warranty and support provisions shall not apply to the defects/faults in Goods if they are a result of use otherwise than in accordance with terms of the Contract.
- 13.9 The Contractor shall provide a (36) months complete hardware warranty for equipment mentioned in Annexure B, and furniture will have 12 months warranty.
- 13.10 The Contractor shall provide complete Technical Support for software's and software licenses and provide all the Major & Minor releases of software that shall be released during entire length of contract.

14. AFFIRMATION

- 14.1 No official or employee of USF shall be admitted to any share or part of this Contract or to any benefit that may arise there-from.
- 14.2 The Contractor declares and affirms that:
 - a) The Contractor and its shareholders, directors, officers, employees, and agents have not paid nor undertaken to pay, any bribe, pay-off, kick-back or unlawful commission. The Contractor and its shareholders, directors, officers, employees, and agents have not in any way or manner paid any sums, whether in Rupees or a foreign currency and whether in Pakistan or abroad, given or offered to give any such gifts and presents in Pakistan or abroad, to any official or employee of the USF or any other person to procure this Contract. The Contractor undertakes not to engage in any of these or similar acts during the term of this Contract.

- b) The Contract shall be liable for cancellation during any time of execution if such an act is proved.
- c) The Contractor shall sign a declaration on company letter head as per specimen annexed.

15. RESPONSIBILITY/ WARRANTIES AND COVENANTS

- 15.1 The Contractor shall conform with and abide by the provisions of all Federal, Provincial and Local Laws, Regulations and any other Laws for the time being in force in Pakistan including all regulation's or by-laws of any local or other duly constituted authority within Pakistan which may be applicable to the performance of the contract and the rules and regulations of public bodies and companies whose property or rights are affected or may be affected in any way by the works (here in after referred to as "state laws") and shall give all notices and pay all fines required to be given or paid thereby and shall keep USF indemnified against all penalties of every kind for breach of any of the same. For the execution of work as mentioned in Annex-B , the Contractor are jointly and severely responsible.
- 15.2 For the term of the contract, as far as reasonably practicable and without liability on its part, USF shall provide such information as may be required by the Contractor.
- 15.3 The Contractor its respective extent, represent, warrant and covenant, as follows
- i. it has the full corporate power and authority to enter into this Contract and perform its obligations hereunder as a body corporate/corporation, duly formed, validly existing and in good standing under the laws of the Islamic Republic of Pakistan, as the case may be, and is duly authorized and qualified to conduct transactions/business in Pakistan, as the case may be;
 - ii. it has all requisite power and authority to conduct its business, own its properties and execute and deliver this Contract and perform its obligations hereunder in accordance with the terms hereof;
 - iii. the execution, delivery, and performance of this Contract has been duly authorized by all requisite corporate/administrative action and this Contract constitutes the legal, valid and binding obligation of the Contractor, enforceable against it in accordance with its terms;
 - iv. to the best knowledge of the Contractor neither the execution, delivery nor performance of this Contract conflicts with, or results in a violation or breach of the terms, conditions or provisions of, or constitutes a default under, its organizational documents or any agreement, contract, indenture or other instrument under which the Contractor or its assets are bound, nor violates or conflicts with any applicable

- law or any judgment, decree, order, writ, injunction or award applicable to the Contractor;
- v. It is not in violation of any applicable law, which violations, individually or in the aggregate, would affect its performance of its obligations under this Contract;
 - vi. It is the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business;
 - vii. there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of the Contractor's knowledge threatened, against or affecting, or that could affect, the legality, validity and enforceability of this Contract, nor does it know of any basis for any such controversy, action, proceeding or investigation; and
 - viii. It has examined this Contract, including all Annexes attached hereto, thoroughly and become familiar with all its terms and provisions.

Calculations

- 15.4 The Contractor shall, if applicable, furnish detailed technical specification data, graphs, tables, sheets and other standard methods used by the manufacturer for system analysis and dimensioning of the offered System.

Schedule of Progress

- 15.5 The Contractor shall submit schedules for supply, testing, commissioning & training to Labs/System Administrators
- 15.6 The Contractor shall submit monthly, or any other need based periodic progress reports to the Project Director nominated by USF.

16. OVERALL TECHNICAL RESPONSIBILITY

- 16.1 The overall technical responsibility for the SUPPLY, INSTALLATION, TESTING, COMMISSIONING & Training of Labs/System Administrators, including all necessary required items and its allied equipment supplied by the Contractor in accordance with Annexure **B** shall rest entirely with the Contractor.

17. CONTRACT FOR COMPLETE SYSTEM

- 17.1 The Contractor is responsible for the supply and installation of the System in accordance with Annexure B. Any equipment, parts and/or services required for complete and successful functioning of the supplied system shall be the responsibility of the Contractor. Any integration, correlations or network desegregation required for the efficient and satisfactory performance of the system shall be provided by the Contractor.

18. ASSIGNMENT AND SUB-CONTRACT

- 18.1 The parties shall not change or assign the Contract or any part thereof, without the prior written consent of other party.
- 18.2 The Contractor shall not sub-Contract the whole or any part of the work, without the written consent of USF, and such consent, if given, shall not relieve the Contractor from any liability or obligation under the Contract and it shall be responsible for the acts defaults and neglects of any sub-Contractor, its agent, defaults or neglects of the Contractor's servants or workmen.

19. CHANGE ORDER

- 19.1 USF may at any time, by a written order given to the Contractor, change within the general scope of the Contract for any one or more of the following:
- a) The place of delivery; if applicable, it will be communicated.
 - b) Variation in quantity and services, if applicable.
- 19.2 If any such change causes an increase or decrease in the cost of, or the time required for the Contractor's performance of any part of the work under the Contract, whether changed or not changed by the order, an equitable adjustment shall be made in the Contract price or delivery schedule, or both, and the Contract shall accordingly be amended.
- 19.3 Any claims by the Contractor for adjustment under this paragraph must be asserted within ten (10) days from the date of Contractor's receipt of USF's change order.

20. TRANSPORTATION

- 20.1 For all goods, the Contractor is responsible for payment of all charges and Costs associated with the transportation; insurance of equipment, delivery and installation of the equipment at site and the price thereof is included in the Contract price.

21. DELIVERY

- 21.1 Contract works/deliverables shall be made by the Contractor in accordance with the terms specified by USF in the RFP and the condition of contracts and all Goods/equipment/system shall remain at the risk of the Contractor until accepted by USF.
- 21.2 Deliverables must be delivered according to the given timelines in RFP and the Contract. Failure to meet these milestones may result in USF applying liquidated damages as specified in Clause 44.
- 21.3 Delivery shall be deemed to have been made;

In case of (DDP), when Goods have been delivered to the consignee at designated site/s and documents mentioned in the contract have been furnished to USF.

Contractor shall bear all costs and charges including delivery, transportation, insurance, taxes and all other incidental charges for bringing the Goods to project site.

- 21.4 Delivery of the Goods and services shall be made by the Contractor in accordance with the terms specified by USF in its Schedule of Requirements and the conditions of the Contract and Goods shall remain at the risk of the Contractor until the System is commissioned into service and provisional acceptance certificate is issued to Contractor.
- 21.5 The total time frame for deliveries, installation, testing and commissioning of the System is as per clause 27.1 from the date of Signing of the Contract.
- 21.6 Delivery shall be deemed to have been made, when evidence of that delivery of the Goods and services in full has taken place in accordance with terms of contract, together with its installation, testing, commissioning, training and submission of invoice (s) and all such other documentation as have been specified in the relevant clause of the contract, have been submitted to USF.
- 21.7 The delay in performance of the Contract beyond the time scheduled will make the Contractor liable to be considered for termination or liquidated damages.
- 21.8 Normally no extension/relaxation will be granted for the supply of Goods contrary to the schedules. However, extension/relaxation in special cases may be granted by USF, Force Majeure and/or delay attributable to USF.

22. DOCUMENTS

22.1 Documentation for the Payment of Milestones

- 22.1.1 Original o Contractor's invoice (s) showing Goods description, quantity, unit price (Pre-GST, GST, Total), total amount and valid for approval..
 - 22.1.2 Delivery note duly verified/acknowledged by the Consignee.
 - 22.1.3 Manufacturer's / Contractor's warranty certificate.
 - 22.1.4 Consignee's certificate that the Goods have been received in good order and condition.
 - 22.1.5 Proof of GST payment.
 - 22.1.6 Copy of duly acknowledged Performance Bond in case of 1st payment.
 - 22.1.7 Proof of import, custom duty paid /bill of lading etc.

23. INSURANCE

- 23.1 Goods/equipment shall be fully insured by the Contractor in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage, delivery, installation and commissioning in the manner specified in this section of Conditions of Contract.
- 23.2 All Goods including imported goods shall remain insured till the issuance of acceptance by USF covering all risks including but not limited to theft, pilferage, damage, deterioration, breakage etc.
- 23.3 The Contractor shall maintain insurance or cause to be maintained on behalf of itself and all subcontractor to whom the Contractor has subcontracted (in relation to the implementation or operation of the USF Network or provision of the USF Service) at all times during the Term of this Agreement.

24. PACKING & MARKING

- 24.1 The Contractor shall provide such packing of the Goods & Equipment as is required to prevent damage or deterioration during transit to their final destination as indicated in the Contract.
- 24.2 The packing shall be of sufficient strength to withstand, without limitation, rough handling during transit and exposure to extreme temperature, salt and precipitation during transit and upon storage. Packing case size and weight shall take into consideration, where appropriate, the remoteness of the Goods final destination and the absence of heavy handling facilities at all points in transit.
- 24.3 In case of any damage to the materials the Contractor shall make good such damages free of charge to USF.
- 24.4 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract or any subsequent instructions by USF.
- 24.5 Each packing shall be clearly and legibly marked in English with the name of the Contractor, the consignee, Contract No. and date and quantity of material.

25. IMPLEMENTATION SCHEDULE

- 25.1 The contractor shall execute the work covering all the tasks i.e. supply of equipment, installation, testing and commissioning, Technical support and Training within following schedule from the date of signing of the contract:
- a. Milestone 1 (Delivery of Equipment and Furniture/ Installation and Commissioning of Labs) No more than eight (12) weeks from Contract signing

- b. Milestone 2 (Technical Support/ Completion of Warranty Period for three (03) years after the acceptance of Milestone 1)
- 25.2 Delivery of the goods by the Contractor including pre-shipment inspection (if any) shall be completed within time frame mentioned in clause 27.1.
- 25.3 However the implementation schedule shall be considered complete when the equipment is offered Ready for Service. Monthly or any other periodic need based reports on request about the execution of the project shall be submitted to USF and project director regularly.
- 25.4 Delivery of goods/services shall be made by the contractor in accordance with the time schedule specified in the Contract.
- 25.5 The contractor shall promptly notify USF in writing of the fact of delay, if any, it's likely duration and its causes. As soon as practicable after receipt of contractor's notice, USF shall evaluate the situation and may at its discretion extend the contractor's time for performance in which case the extension shall be rectified by the parties by amending the contract.

26. PERFORMANCE SECURITY

- 26.1 The Contractor, before signing of the Contract shall furnish One Performance Bond as security for the performance of its obligations under this Contract within 14 [fourteen] days from the date of Issuance of LOI i.e. _____ in the form of a bank guarantee issued by a scheduled Pakistani bank located in Pakistan and registered with State Bank of Pakistan and acceptable to USF.
- 26.2 The validity of the Performance Bond will be 3 years and 4 months; The date of expiry of Performance Bond shall be the same as the expiry date of the contract.
- 26.3 The Performance Bond shall be issued by a Pakistani commercial bank recognized by State Bank of Pakistan and that is otherwise acceptable to USF.
- 26.4 Performance Bond equivalent to 10% of the signed contract value will be submitted by the successful bidder, which is mandatory. In case of non-submission by the bidder within the stipulated time as mentioned in Letter of Intent (LoI), USF at its sole discretion can issue the LoI to the next lowest bidder.
- 26.5 50% of the Performance Bond submitted will be released after the issuance of Provisional acceptance certificate (PAC) by USF. While remaining 50 % Performance Bond will be reduced proportionately after each year upon successful discharge of yearly warranty period obligations.

- 26.3 Performance Bond being unconditional and irrevocable undertaking to USF shall be independently confirmed by the bank before its discharge/encashment, especially before its expiry.
- 26.4 Proceeds of performance security is payable to USF as compensation for any loss resulting from the Contractor failure to complete its obligations under this Contract.

27. TIME PERIOD

- 27.1 Contractor shall complete all task as given in Annex-B within the given timeframe. The contractor shall complete these tasks as the timelines as given below:
- a. Milestone 1 (Delivery of Equipment and Furniture/ Installation and Commissioning of Labs) No more than eight (12) weeks from Contract signing
 - b. Milestone 2 (Technical Support/ Completion of Warranty Period for three (03) years after the acceptance of Milestone 1)

28. SPARES

- 28.1 The Contractor undertakes to supply all necessary spares of delivered hardware and software to run this System during warranty period at no additional cost to USF.

29. TOOLS AND TEST EQUIPMENT FOR INSTALLATION AND TESTING

- 29.1 The Contractor shall import the requisite tools and test equipment, at its cost, to supplement the tools and test equipment procured by USF under this Contract for the purpose of successful Installation and acceptance tests.

30. PROVISIONAL ACCEPTANCE TESTING

- 30.1 The Contractor shall submit an acceptance test procedure for approval of USF this shall include comprehensive schedule of test to demonstrate that the SUPPLY, INSTALLATION, TESTING & COMMISSIONING is in accordance with Annexure B.
- 30.2 The Contractor shall provide the supervisory personnel and equipment necessary for performance test as required in the Specifications. Failure to meet such tests or any test required by USF to show compliance with the Specifications is sufficient cause for rejection and such test or tests shall be repeated after modification or replacements to the satisfaction of USF.
- 30.3 If USF considers that the performance is marginal or that the results of any phase of test are inconclusive, further testing shall be performed as required by USF. Any such

re-work or re-testing is at the cost of Contractor. Upon satisfaction that the Sites are ready for cut-over and their performance complies with the Specifications and that the equipment are complete in working order and in place, USF shall provide the Contractor with a certificate of offering the Site/Equipment for acceptance testing the Contractor shall propose acceptance test procedure, for USF 's approval. USF will issue provisional acceptance certificate within 45 days from the date of offer of mile stone.

- 30.4 USF may approve the procedure as proposed, or after such modifications (subject to such modifications being agreed in writing by the Contractor) as are deemed necessary for proof of performance.
- 30.5 Upon satisfying itself that the System is complete in all respects and successfully tested, meeting the laid down specifications, and training is satisfactorily completed, USF, shall issue the acceptance to the Contractor.

31. PROOF OF PERFORMANCE

- 31.1 The Contractor guarantees the performance of the proposed solution as per Annex-B for a period of thirty six (36) months after issuance of provisional acceptance certificate. Failure to meet technical requirements as specified in Annexure B, which do not conform to the Specifications shall be sufficient cause for USF to require further testing at the cost of Contractor.
- 31.2 Failure to meet acceptance tests or any test required by USF to show compliance with the specifications in the Bid Documents shall be sufficient cause for rejection and such test or tests shall be repeated after modifications or replacements as deemed necessary for USF.
- 31.3 If performance is found to be marginal or that the results of any phase of the tests are inconclusive, further testing shall be performed as required by USF. Any such re-work or re-testing shall be at the cost of Contractor.
- 31.4 In the event that the results of the test indicate that the equipment proposed by the Contractor is not at a satisfactory level to provide the services, systems and features defined in the Bid Documents, then USF reserves the right to terminate the contract signed with the Contractor, withhold any outstanding payments and seek appropriate damages.
- 31.5 Upon satisfying USF that the computer Labs are ready for service and their performance complies with the specifications laid down in the Bid Documents, and that the training as applicable has been completed as required from the Contractor, USF shall provide the Contractor with a Certificate of Acceptance.
- 31.6 At least two weeks before offering the systems for acceptance testing, the Contractor shall propose acceptance test procedure, for USF's approval. USF may approve the procedure as proposed, or after such modifications as are deemed necessary for proof of performance.

32. DEFECTS AFTER ACCEPTANCE

- 32.1 The Contractor shall make goods with all possible speed all defects arising from defective design, material or workmanship or from any act or omission of the Contractor and those which may develop under the conditions provided for by the Contract and under proper use of the System or any portion during Thirty Six (36) months or any extended warranty period after issuance of provisional acceptance certificate.
- 32.2 If any such defect shall occur, USF or its authorized representative[s] shall inform the Contractor stating in writing the nature of the defect.
- 32.3 If the Contractor replaces or renews any part of the equipment, the part so replaced or renewed shall be subject to the substitution of the words will have remaining warranty period of initial 36 months.
- 32.4 The Contractor shall supply freight prepaid of defective part[s]to USF of the System or a part in replacement thereof shall constitute fulfillment by the Contractor of its obligation under this clause in respect of that defective part.
- 32.5 If it is reasonably practicable for a defective part to be returned to the Contractor and the Contractor shall call for its return, USF/its authorized representative[s] shall cause it to be returned to the Contractor freight collect , and the defective part shall become the property of the Contractor.
- 32.6 If any such defect as aforesaid be not made good within fifteen (15) working days, USF may proceed to do the work at Contractor's risk and expense.

33. FINAL ACCEPTANCE CERTIFICATE

- 33.1 Final acceptance certificate will be issued subject to the following: -

“Thirty Six (36) months of satisfactory operation/performance after issuance of Provisional Acceptance Certificate, replacement of defective parts and material and removal of all discrepancies”.

34. TRAINING

- 34.1 The Contractor shall arrange training as per Annex-B. Contractor shall have to bear all costs associated to the training.

35. PRICES AND PAYMENTS

Price

- 35.1 The total price of the Contract shall be: **PKR -----**

- 35.2 The Contract Price set forth in this Contract is firm and final till execution of this Contract and receipt of total quantity of Goods by USF in good order and acceptable condition.
- 35.3 The prices are on DDP basis.
- 35.4 No variation whatsoever is acceptable to USF with the exception of any price adjustment authorized by the conditions of this Contract.

Payments

- 35.5 The method, conditions and schedule of payments as mentioned in the following clauses shall be applicable.
- 35.6 Payments for the goods and services (DDP), shall be in Pak Rupees.
- 35.7 The payment of goods and services shall be paid in Pak Rupees by a form of bank instrument selected by USF to the contractor, and shall comply with all applicable laws, rules, and regulations.
- 35.8 USF shall make prompt payment as per “Schedule of Payment”, within thirty days after submission of mile stone certificate by the Contractor subject to availability of pre requisite documents specified under the contract and adjustment of penalty (if any) on account of late delivery and/or defective Goods replacement after confirmation from Project Director.
- 35.10 all Payments are subject to clear ATL status at the time of payment and deduction of applicable tax at prevalent rate from the relevant invoices of the Contractor and paid to the Tax Authorities, except those especially exempted by the authorities. USF will issue certificate of deductions to the Contractor to enable him to settle tax returns with the concerned authorities.
- 35.11 The Contractor’s request for payment will be made to USF in writing accompanied by an invoice describing as appropriate, the Goods delivered and the services performed along with other documents as mentioned in clause 22 and other obligations stipulated in this Contract. Payment shall be made by the USF.
- 35.12 all payments shall be made after verification of documents by Project Director and deduction of liquidated damages (if any) for late delivery and / or replacement of defective Goods as confirmed by USF.

Schedule of Payment

- 35.14 Payments against the entire Contract will be made by USF based on the Contractor’s meeting payment milestones in the following manner:

MILESTONE	PAYMENT TRIGGER	PAYMENT DUE	REMAINING PAYMENT
Milestone 1: Delivery of Equipment & Furniture; and Installation & Commissioning of LABs	PAC (Provisional Acceptance Certificate) issued upon acceptance of Installation & Commissioning of Labs including Broadband Internet, Documentation and Trainings.	90%	10%
Milestone 2: Completion of Warranty Period (3Years)	Payable in three equal yearly installments at the end of each year of service obligation. The last installment shall be issued after issuance of FAC* by USFCo.	10%	0%

*FAC (Final Acceptance Certificate): to be issued upon discharge of all contractual obligations by the successful bidder.

36. CONTRACTOR'S UNDERTAKING

36.1 The Contractor undertakes that no officer / official has been gratified / benefited during the tender opening to Contract signing date. The Contract is liable for cancellation during any time of execution if such default is reported, detected and noticed the Contractor further undertakes to disclose to USF, all material facts regarding any and all conflict of interests if arises in terms of this Contract

37. CONTRACTOR NEGLIGENCE

37.1 The Contractor is responsible in respect of all losses, damages and expenses incurred by USF and injury to any person in employment of the Contractor or damage to any property and in respect of all activities, suits, claims, demands, charges and expenses arising in connection with which is caused by the fault or breach of statutory duty of the Contractor or any of its sub-Contractors before whole of the project has been finally accepted.

38 AMICABLE SETTLEMENTS

38.1 This Contract will be construed under and governed by THE LAWS OF THE ISLAMIC REPUBLIC OF PAKISTAN.

38.2 USF and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with this Contract. In event of failure to resolve the dispute, the dispute shall be referred to Mediator as a precondition to any legal action. The parties shall agree upon the terms for engagement of Mediator within two weeks of the referral. The cost and expenses shall be equally shared by the parties.

- 38.3 Except as otherwise provided in this Contract, any difference, dispute or question arising out of or with reference to this Contract which cannot be settled amicably shall within thirty (30) days from the date that either party informs the other in writing that such difference, dispute or question exists be referred to arbitration.
- 38.4 Within thirty [30] days of the aforesaid notice, both parties shall nominate and agree upon a sole arbitrator, preferably retired Judge of High Court or Supreme Court, for commencement of the arbitration proceedings.
- 38.5 The arbitration shall be conducted in accordance with the rules of procedure set forth in the Pakistan Arbitration Act, 1940 as amended. The arbitration Tribunal shall have its seat in Islamabad.
- 38.6 The award of the arbitrator shall be final and binding on both parties.
- 38.7 The cost of the arbitrator shall be borne equally by both parties.
- 38.8 In the event of an arbitrator resigning or becoming incapable or unable to act, the party nominating such arbitrator shall be entitled appoint another in the place of the outgoing arbitrator. Proceeding shall continue without recommencing as if such arbitrator had been originally nominated.

39. CONTRACTOR'S DEFAULT

- 39.1 If the Contractor neglects to perform the Contract with due diligence and expedition or refuse or neglect to comply with any reasonable orders given to him in writing by USF or any of its authorized representative in connection with the performance of the Contract or contravene the provisions of the contract, USF may give notice in writing to the Contractor to make good the failure, neglect or contravention complained of.
- 39.2 Should the Contractor fail to comply with the said notice within fifteen (15) days from the date of issue of said notice thereof, it shall be lawful for USF forthwith to terminate the Contract by notice in writing to the Contractor without prejudice to any rights which may have occurred under the Contract to either party prior to such termination.
- 39.3 If the Contractor fails to complete any of its obligations under the clause titled "DEFECTS AFTER PROVISIONAL ACCEPTANCE" within the time fixed in the Contract or within any extension of time granted by USF under "FORCE MAJEURE", USF shall be entitled to deduct from the Contract (01%) one percent of Contract value of the System which cannot be in consequence of the said failure be put to the use intended for such work for each week between the time fixed in the Contract (except as aforesaid) and the actual date of completion, subject to a maximum deduction of 15% [ten percent] of the value of the Contract.

40. FORCE MAJEURE

- 40.1 The Contractor is not liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 40.2 If either party is temporarily rendered unable wholly or in part by Force Majeure to perform its duties or accept performance by the other party under the Contract it is agreed that on such party giving notice with full particulars in writing of such Force Majeure to the other party within seven (07) days after the occurrence of the cause relied on, then the duties of such party as far as they are affected by such Force Majeure shall be suspended during the continuance of any inability so caused but for not longer period and such cause shall as far as possible be removed with all reasonable speed.
- 40.3 Neither party is responsible for delay caused by Force Majeure. The term of this Contract shall be extended for such period of time as may be necessary to complete the work which might have been accomplished but for such suspension.
- 40.4 If either party is permanently prevented wholly or in part by Force Majeure for period exceeding 01(one) month from performing or accepting performance, the party concerned has the right to terminate this Contract immediately giving notice with full particulars for such Force Majeure in writing to the other party, and in such event, the other party is entitled to compensation for an amount to be fixed by negotiations and mutual agreement.
- 40.5 If a Force Majeure situation arises, the Contractor shall promptly notify USF in writing of such conditions and the cause thereof. Unless otherwise directed by USF in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably possible, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

41. TERMINATION OF CONTRACT

Termination of Contract for Default

- 41.1 USF may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Contractor terminate this Contract forthwith in whole or in part.
- a). If the Contractor fails to deliver any or all of the Goods within the time period (s) specified in the Contract or any extension thereof granted by USF.
 - b). If the Contractor fails to perform any other obligation under the contract.
 - c). If the Contractor, in either of the above circumstances does not cure its failure within a period of ten (10) days (or such longer period as USF may authorize in writing) after receipt of the default notice from USF.

- 41.2 In the event USF terminates the Contract in whole or in part., USF may procure, upon such terms and in such a manner as it deems appropriate, Goods and services similar to those undelivered, and the Contractor is liable to USF for any excess cost for such similar Goods and services. However, the Contractor shall continue performance of the Contract to the extent not terminated.

42. TERMINATION FOR INSOLVENCY

- 42.1 USF may at any time terminate the Contract by giving written notice to the Contractor , without compensation to the Contractor if the contractor becomes bankrupt, insolvent enters into winding up whether voluntary or compulsory. Such termination shall not prejudice or affect any other right of action or remedy which has accrued or will accrue to USF thereafter.

43. TERMINATION FOR CONVENIENCE

- 43.1N/A

44. LIQUIDATED DAMAGES

- 44.1 Subject to Clause 40 (Force Majeure), if the Contractor fails to complete the first milestone within eight (08) weeks, Liquidated Damages at the rate of 0.15% of total contract price per day for each day delayed beyond the final date of completion will be imposed. In case completion of milestone 1 delays exceeding four (04) weeks beyond the final date, USF may terminate the contract after deduction of the said Liquidate Damages and USF shall have the right to en-cash the Performance Guarantee.
- 44.2 The Contractor shall ensure compliance with the completion of warranty period of the three (03) years, detailed as Milestone 2. USF shall file its claim against any warranted item within reasonable time and the bidder shall repair or replace that item, as the case may be, within ten (10) calendar days. In case of failure by bidder to repair or replace such item within aforesaid time period, USF shall be entitled to impose Liquidated Damages @ the rate of %1 of the value of that item for each day delayed beyond the ten (10) days period. Provided that maximum Liquidated Damages shall be up to the total value of item against which warranty has been claimed.
- 44.3 The value of all Goods/services or part supply of Goods made which are incomplete and therefore not utilized by USF in its operations shall also be added for the purpose of liquidated damages.
- 44.4 Any liquidated damages if not paid in cash by Contractor shall be deducted from the invoice (s) submitted by Contractor performance security. The imposition of liquidated damages upon the Contractor and its payment does not absolve the

Contractor from its obligations to delivery or from any other liabilities or obligations under the Contract.

45. INDEMNIFICATION

- 45.1 The Contractor shall indemnify and hold harmless USF from and against all losses and all claims, demands, payments, suits, actions, recoveries and judgment of every nature and description made and related cost and expenses brought or recovered against the USF related to the work done under this Contract, by reasons of any act, omission to act or status of liability of Contractor or its agents or employees. Contractor agrees to give USF prompt notice of any possible liability.
- 45.2 If the Contractor is in breach of any obligations under this Contract (or any part of it) to USF or if any other liability is arising (excluding liability for personal injury, death or breach of statutory duty) then the maximum liability of the Contractor under this contract shall be limited to the Total Contract Price.

46. WAIVER

- 46.1 No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Contractor shall any waiver by either Party of any breach of Contract operate as a waiver of any subsequent or continuing breach of Contract. Any waiver of a Party's rights, powers or remedies under the Contract must be in writing and must be dated and signed by an authorized representative of the Party granting such waiver and must specify the right and the extent to which it is being waived.

47. AMENDMENT

- 47.1 No alteration, waiver or change in any of the terms of this Contract will be effective unless made in writing and duly executed by an authorized officer or representative of each of the Party.

48. ENTIRE AGREEMENT

- 48.1 This Contract together with the attached Annexes contains the entire terms and conditions and constitutes the entire agreement between the Parties and cancels and supersedes any previous oral or written agreements, representations or arrangements, express or implied, by the Parties with respect to the subject matter of this Contract.

49. SEVERABILITY

- 49.1 If any one or more of the provisions of this Contract should be ruled wholly or partly invalid or unenforceable by a court or other government body of competent jurisdiction, then:

- (a) the validity and enforceability of all provisions of this Contract not ruled to be invalid or unenforceable shall be unaffected;
- (b) the effect of the ruling shall be limited to the jurisdiction of the court or other government body making the ruling;
- (c) the provision(s) held wholly or partly invalid or unenforceable shall, if possible, be deemed amended, and the court or other government body is authorized to reform the provision(s), to the minimum extent necessary to render them valid and enforceable in conformity with the Parties intent as manifested herein; and
- (d) if the ruling and/or the controlling principle of law or equity leading to the ruling is subsequently overruled, modified, or amended by legislative, judicial, or administrative action, then the provision(s) in question as originally set forth in this Contract shall be deemed valid and enforceable to the maximum extent permitted by the new controlling principle of law or equity.

50. INDEPENDENT CONTRACTORS

- 50.1 The Contractor is and shall remain at all times an independent Contractor and shall be fully responsible for their own acts or defaults (including those of their employees or agents). Neither the Contractor is authorized nor their employees, agents or representatives shall at any time attempt to act or act on behalf of USF to bind any other Party in any manner whatsoever to any obligations. Neither the Contractor nor its employees, agents or representatives shall engage in any acts which may lead any person to believe that such Party is an employee, agent or representative of USF.
- 50.2 Nothing in this Contract shall be deemed to constitute a partnership or other profit sharing arrangement between the Parties.

51. SURVIVAL

- 51.1 All accrued rights of a Party shall survive the expiry or termination of this Contract as shall all Clauses that by their nature are intended to do so, including, without limitation, obligations of Indemnity, Confidentiality and Dispute Resolution.

52. COUNTERPARTS

- 52.1 This Contract may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Parties have caused this Contract to be signed on the Day and Year above written. This Contract bearing No. **USF/SP/CL@SE/2018/01** worth amount:

Contract Amount _____ **/- on DDP Pak Rs.**

has been signed by the Parties in two identical copies (each of which will be deemed an original and all of which will constitute one and the same instrument) which the Parties have taken one (1) each.

**FOR AND ON BEHALF
OF CONTRACTOR**

FOR AND BEHALF OF USF

WITNESSES

CONTRACTOR

USF

ANNEXURES

- Annexure A : Request for Proposal
- Annexure B : Terms of Reference
- Annexure C : Bill of Quantities
- Annexure D : Technical Proposal
- Annexure E : Financial Proposal
- Annexure F : LOI
- Annexure G : Performance Bond
- Annexure H : Integrity Pact
- Annexure I : Complaint Board
- Annexure I : Bid Clarification