

**CONTRACT**

For Empowerment of SME/MSMEs Through e-Commerce: Developing, and Managing the Value Chain

by and between

**UNIVERSAL SERVICE FUND**

And

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Dated-----2018

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## CONTRACT

(For Empowerment of SME/MSMEs Through e-Commerce: Developing, and Managing the Value Chain)

This Contract is made and entered into at----- as of -----2018;

by and between

**Universal Service Fund**, a company incorporated under the Companies Act 2017 having its principal office at Fifth Floor, HBL Tower, Jinnah Avenue, Islamabad, (hereinafter referred to as “USF”) of the One Part

and

\_\_\_\_\_ a company incorporated under the Companies Act, 2017 having its registered office at \_\_\_\_\_, (hereinafter referred to as “Service Provider”) of the Other Part

Or

M/s....., a firm registered under Partnership Act, 1932, having its office at-----, through Mr....., authorized representative/partner (hereinafter referred to as “Service Provider”) of the Other Part

The expression “USF” and “Service Provider” herein used shall mean and include them, their, successors, legal representatives, administrators, executors, and permitted-assignees from any and all aspects.

(The Party of One Part and the Party of Other Part are hereinafter referred collectively to as the “Parties” and individually as the “Party” as the context of this Contract may require)

**WHEREAS** the USF is creation of the statutory rules titled Universal Service Fund Rules, 2006, promulgated by Federal Government of Islamic Republic of Pakistan in exercise of the powers conferred under clause (ab) of sub-section (2) of section 57 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the “Act”) read with Section 33-A thereof. The Rule 10 (1) of the USF Rules requires the Federal Government to cause incorporation of the USF Company Limited by guarantee in accordance with the Companies Act. Hence, USF was incorporated as a Guarantee Limited Company under section 42 of the Companies Act.

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**WHEREAS** the USF has mandate under PTA Act read with Telecom Policy, USF Policy and USF Rules to plan, develop, finance, facilitate and execute the special projects to provide access unserved and underserved areas of Pakistan.

**WHEREAS** the USF invited proposals from firms and companies for “Empowerment of Craft SMEs Through E-commerce: Developing, and Managing the Value Chain in Pakistan and the Service Provider has qualified for the Project through competitive process and it 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 dated -----2018 to the Service Provider and the Service Provider’s response to LOI through LoA dated-----2018.

**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 INTERPRETATION**

### **1.1 Definitions**

In this Contract, except as otherwise provided, the following words, expressions and/or phrases shall have the meanings as defined herein below;

- a. **“Act”** means Pakistan Telecommunication (Re-Organization) Act, 1996, enacted for reorganization of telecommunications system and any amendments made thereto from time to time.
- b. **“Affiliate”** means an entity which, at the time in question, directly or indirectly controls or is controlled by, or is under common control. The word “control” (including the word “controlling”, “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of an entity or the composition of its board of directors or equivalent body, whether through the ownership of shares, by contract, or otherwise.
- c. **“Authority” or “PTA”** means the Pakistan Telecommunication Authority established under section 3 of the Pakistan Telecommunication (Re-Organization) 1996, as (Amended) Act, 2006, and includes its successor organizations in the administration of telecommunications policy, law and regulation in the Islamic Republic of Pakistan.
- d. **“Business Day”** means any day other than Saturdays and Sundays or the gazetted public holidays of the Islamic Republic of Pakistan.
- e. **“Contract”** means the present Contract signed between USF and the Service Provider and all schedule(s), annexure(s) attached herewith for the execution of the Services, which

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constitute the exhaustive description of obligations of the Parties unless otherwise provided under the law.

- f. **“Calendar Day”** means any day of a calendar year, including Saturdays, Sundays and gazetted public holidays of the Islamic Republic of Pakistan.
- g. **“Companies Act”** means the Companies Act, 2017 as may be amended, or any successor legislation;
- h. **“Contract Price”** means the total amount PKR...------(-----), quoted by Service Provider in its proposal and accepted by USF;
- i. **“Change Order”** refers to a written request either by USF or by the Service Provider for changes to the scope of Services and such request is subject to the written acceptance of Service Provider or USF, respectively.
- j. **“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.
- k. **“Constating Instruments”** includes any certificate of incorporation, certificate of continuance, memorandum and articles of association, by-laws, regulations or other instrument by which a body corporate is incorporated or continued under the Company Law or that governs or regulates the affairs of a body corporate;
- l. **“Company Law”** shall have the same meaning as assigned under section 2 (1) (18) of the Companies Act.
- m. **“Customer or Beneficiary”** for the purposes of this Contract, means a person have been reached or approached by Service Provider and trained for and accessed to E-Commerce Portal;
- n. **“Customer Service Agreement”** means an agreement or set of rules, principles, or condition which defines the level of Services that shall be provided by Service Provider to Customers as per its code of commercial practice;
- o. **“Deliverables”** means the millstones/tasks which are to be achieved by Service Provider within time lines fixed and provided by USF under this Contract and Annexures.
- p. **Effective Date”** means the effective date of this Agreement, as recorded on the first page hereof;
- q. **“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

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shall be granted accordingly and the duration of such extension shall be at the discretion of USF.

- r. **“FAC”** means Final Acceptance Certificate issued by authorized officer of USF to contractor upon discharge of all duties under the Contract.
- s. **“Federal Government”** shall have the same meaning as assigned it under section 2 (fa) of Act.
- t. **“Force Majeure”** means includes 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.
- u. **“Liquidated Damages”** mean the monetary damages imposed upon the Service Provider and payable to USF by the Service Provider on account of its late delivery of whole or part of the Project.
- v. **“LoI”** means Letter of Intent issued to Service Provider By USF.
- w. **“LoA”** means letter of Acceptance submitted by Service Provider in response of LOI communicating formal acceptance.
- x. **“PAC”** means Provisional Acceptance Certificate issued by authorized officer of USF to Service Provider upon completion of a Milestone.
- y. **“Person”** shall have the same meaning as assigned it under Regulation 2 (1) (e) of the Pakistan Telecommunication Authority (Function & Powers) Regulations, 2006, as amended from time to time;
- z. **“Performance Guarantee”** means an irrevocable, unconditional and continuing Bank Guarantee (BG) issued in favour of USF that is to be procured by Service Provider 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.
- aa. **“Project Milestones”** means the milestones which are to be implemented by Service Provider in accordance with the provisions of this Agreement and Annexure(s) thereto.
- bb. **“Project Implementation Milestone Certification”** has the meaning ascribed thereto in Schedule D;
- cc. **“Project Implementation Milestone Notice”** has the meaning ascribed thereto in Schedule D;
- dd. **“Proposal”** means the proposal submitted by the Service Provider in response to the RFP;
- ee. **“Quarterly Report”** means a Quarterly Report required in accordance with Section 9.01;

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- ff. **“Relationship Manager”** has the meaning ascribed thereto in Section 10.01(b)(i);
- gg. **“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;
- hh. **“Report”** means a Report required in accordance with Section 9.01;
- ii. **“Reverse Auction” or “Negative Auction”** means the sale or offer the project by USF on lowest demand of subsidy by a Service Provider as per Rule 24 of the USF Rules or shall have the same meaning as assigned it under Policy 21 of USF Policy.
- jj. **“Telecom Policy”** shall include Telecommunication Policy, 2015, as amended from time to time, or any other policy promulgated by Government of Pakistan having impact or effect of USF.
- kk. **“Technical Amendment”** has the meaning ascribed thereto in Section 13.02(a);
- ll. **“Technical Auditor”** means the person appointed in accordance with Section 8.01(a);
- mm. **“Term”** means the term of the Agreement identified in Section 15.01;
- nn. **“USF Policy”** means Universal Service Fund policy, issued by the Federal Government.
- oo. **“USF Company”** shall have the same meaning as assigned under Rule 2 (1) (xxv) of USF Rules;
- pp. **“USF Rules”** means the Universal Service Fund Rules, 2006, as amended from time to time;

## 1.2 Interpretation

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

- a) The headings, whether of articles or other parts of the Contract, 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 Contract have a corresponding meaning;
- c) Any legal term not defined in this Contract 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 Contract 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.

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- f) Where any act, matter or thing is required by this Contract 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 Contract 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 Contract 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 Contract, 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 for preparing this

## **1. SCOPE OF WORK**

1.1 The Service Provider shall be responsible to provide Services as per terms and condition of this Contract and provisions of Annexures. The complete Services shall be provided against the full and valuable consideration of PKR \_\_\_\_\_ (\_\_\_\_\_) which is the fixed Contract Price. The Service Provider 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.

## **2. THE PRIORITY OF DOCUMENTS**

2.1 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 : Technical Proposal
  - Annexure D : Financial Proposal
  - Annexure E : LOI
  - Annexure F :LOA

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- Annexure G : Performance Guarantee  
Annexure H : Integrity Pact  
Annexure I : Bid Clarifications  
iii) Subsequent Amendments

### **3. EFFECTIVE DATE AND TERM**

3.1 This Contract shall be effective and come into force as of the date of its signature by the Parties (the “Effective Date”). Unless terminated earlier, in accordance with the terms and conditions of this Contract, this Contract shall expire on -----200-.

### **4. CONFIDENTIALITY**

- 4.1 The Service Provider 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 Service Provider 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.
- 4.2 The Service Provider shall not, without USF prior written consent, make use of any documents or information except for purposes of performing the contract.
- 4.3 Upon becoming aware of any loss, unauthorized use or disclosure of USF’s Information, the Service Provider shall immediately notify USF of such loss, unauthorized use or disclosure. The Service Provider 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.
- 4.4 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 Service Provider’s performance under the contract if so required by USF.
- 4.5 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.

### **5. TAXES AND DUTIES**

- 5.1 The Service Provider shall be responsible for all taxes time being enforced and all other incidental charges incurred or accrued until the final delivery of the Services or other obligations regarding services. Any increase or decrease in the rates of taxes (if any) shall be to the cost or benefit of the USF till final delivery. The applicable withholding tax shall be deducted from the payable invoices of Service Provider as per applicable tax laws of Pakistan.
- 5.2 The Service Provider shall have to be aware and responsible of all Pakistani tax regulations and will pay all taxes, duties, tariffs and impositions lawfully assessed against the Service Provider till the term and performance of the contract.

### **6. NOTICE**

- 6.1 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:



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**CTO**

**USF**

5<sup>th</sup> Floor, HBL Tower, Jinnah Avenue, Islamabad

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

**SERVICE PROVIDER**

6.2 All notices, demands, invoices or other communications required or permitted to be given or made under or in connection with this Contract shall be in writing and shall be sufficiently given or made if:

- (a) Delivered by hand, or courier service at the time of delivery;
- (b) Sent by pre-paid registered post, on the third Business Day after posting; or
- (c) Sent by legible facsimile transmission when receipt of such facsimile transmission is confirmed by the printing of a transmission report (a copy thereof shall be sent immediately thereafter by pre-paid registered post), addressed to the intended recipient at its address or facsimile number set out below. Either Party may from time to time notify the other Party of its change of address or facsimile number in accordance with this clause.

6.3 All notices, demands, invoices or other communication shall be sent/made to a nominated representative, one to be appointed by each Party for the purposes of correspondence and communication.

6.4 For purposes of smooth correspondence and continuity the Parties shall promptly inform each other of any change in name, address, and/or contact details, provided that such notification shall only be effective on:

- (a) The date specified in the notification as the date on which the change is to take place; or
- (b) If no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

**7. INTELLECTUAL PROPERTY RIGHT**

7.1 The Service Provider 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, domains, design rights and trade marks by use of or possession of by the Service Provider, including any application or software in or under use of Service Provider for providing the Services or developed in connection with this Contract.

7.2 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 Services supplied by the Service Provider under the Contract is made or in the Service Provider's reasonable opinion is likely to be made, the Service Provider may at their own

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expense modify or replace the Services, 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.

- 7.3 The Service Provider acknowledges and agrees that all patents, designs, trade names, trademarks, copyrights, trade secrets, codes, software, or other intellectual property prepared or developed by Service Provider in result of the Services under this Contract shall be and remain the sole property of USF, during/or after termination or expiry of this Contract.
- 7.4 The Service Provider grants the USF the exclusive ownership of Services and outcomes of Services to use any information, specifications, warranty information, data, images, and/or intellectual property which Service Provider furnishes USF during or after the expiry of termination of the Contract.
- 7.5 USF may use the contents developed by Service Provider and portals, websites, emails, and marketing or advertising campaigns. All rights shall be exclusively transferred without dispute to USF, upon successful completion of the Contract or any termination, if takes place before such completion.

## **8. CORRESPONDENCE**

- 8.1 The Service Provider 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

5<sup>th</sup> Floor, HBL Tower, Jinnah Avenue, Islamabad

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

## **9. STANDARDS & SPECIFICATIONS**

- 9.1 In this Contract “Specifications” means the specifications laid down in Contract and Annexures.

## **10.1 AFFIRMATION**

- 10.1 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.

- 10.2 The Service Provider declares and affirms that:

- a) The Service Provider 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 Service Provider 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 Service Provider 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.

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- c) The Service Provider shall sign a declaration on company letter head as per specimen annexed.

## **11. WARRANTIES AND COVENANTS**

- 11.1 The Service Provider warrants that the Services shall be provided truly in accordance with the terms and condition of this Contract and provisions of Annexure annexed herewith. The features of the portals shall be most recent or current models and incorporate all the latest improvements in designs unless provided otherwise in the Contract.
- 11.2 The Service Provider further warrants that all Services supplied under this contract shall have no defect and the Service Provider shall be responsible for any act or omissions in performing of the Services the Service Provider.
- 11.3 The Service Provider 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 Service, the Service Provider is jointly and severely responsible.
- 11.4 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 Service Provider.
- 11.5 The Service Provider its respective extent, represent, warrant and covenant, as follows

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- 11.5.1 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;
  - 11.5.2 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;
  - 11.5.3 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 Service Provider, enforceable against it in accordance with its terms;
  - 11.5.4 to the best knowledge of the Service Provider 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 Service Provider 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 Service Provider;
  - 11.5.5 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;
  - 11.5.6 It is the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business;
  - 11.5.7 there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of the Service Provider'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
  - 11.5.8 it has examined this Contract, including all Annexes attached hereto, thoroughly and become familiar with all its terms and provisions.

## **12. OVERALL TECHNICAL RESPONSIBILITY**

- 12.1 The overall technical responsibility for the Services and training to **Craft SME/MSMEs** including all necessary required items, if required, shall be with Service Provider in accordance with Annexures and rest entirely with the Service Provider.

## **13. ASSIGNMENT AND SUB-CONTRACT**

- 13.1 The parties shall not change or assign the Contract or any part thereof, without the prior written consent of other party.
- 13.2 The Service Provider 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 Service Provider from any liability or obligation under the Contract and it shall be responsible for the acts defaults and neglects of any sub-Service Provider, its agent, defaults or neglects of the Service Provider's servants or workmen.

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## **14. CHANGE ORDER**

- 14.1 USF may at any time, by a written order given to the Service Provider, change within the general scope of the Contract any one or more of the following:
- 14.2 Over all scope of Services under the Contract.
- 14.3 Variation Services, if applicable.
- 14.4 If any such change causes an increase or decrease in the cost of, or the time required for the Service Provider'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.
- 14.5 Any claims by the Service Provider for adjustment under this paragraph must be asserted within ten (10) days from the date of Service Provider's receipt of USF's change order.

## **15. TRANSPORTATION**

- 15.1 the Service Provider shall be responsible for payment of any/all charges and costs associated with the transportation in result of field visits or otherwise;

## **16. DELIVERY of SERVICES**

- 16.1 The Services shall be provided by the Service Provider in accordance with the terms specified by USF in the RFP/ToRs and the condition of Contract and shall remain at the risk of the Service Provider until accepted by USF.
- 16.2 Deliverables must be delivered according to the given timelines in RFP/TOR and the Contract. Failure to meet time lines of Deliverables may result in USF applying liquidated damages.
- 16.3 Delivery shall be deemed to have been made, when provisional acceptance certificate is issued by USF.
- 16.4 The total time frame for Deliverables shall be from the date of Signing of the Contract.
- 16.5 The delay in performance of the Contract beyond the time scheduled will make the Service Provider liable to be considered for termination or liquidated damages.
- 16.6 **Normally no extension/relaxation will be granted for the Services and Deliverables contrary to the schedules. However, extension/relaxation in special cases may be granted by USF, Force Majeure and/or delay attributable to USF.**

## **17. DOCUMENTS**

### **17.1 Documentation for the Payment of Milestones**

- a. Original invoice of Service Provider showing the description of Services provided (Pre-GST, GST, Total), total amount and valid for approval. USF may have the right to require any information or document for approval of invoice.

## **18. IMPLEMENTATION AND PAYMENT SCHEDULE**

- 18.1 The Service Provider shall execute the Services covering all mile stones within following schedule from the date of signing of the contract:

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MILESTONE	PAYMENT TRIGGER	PERIOD	PAYMENT
<b>Milestone1:</b> Submission of Business plan with all associated plans and market assessment	PAC (Provisional Acceptance Certificate) issued upon acceptance of completion of deliverables mentioned in ToRs.	Within 3 months of signing of contract	5%
<b>Milestone 2:</b> Development of e-Commerce Platform and launch with at least 100 SME/MSMEs on-boarded	PAC (Provisional Acceptance Certificate) issued upon acceptance of completion of deliverables mentioned in ToRs.	Within 6 months of the contract signing	5%
<b>Milestone 3:</b> 5% Cumulative increase in sales of at least 100 SME/MSMEs	PAC (Provisional Acceptance Certificate) issued upon acceptance of completion of deliverables mentioned in ToRs.	On achievement of target within contract duration	20%
<b>Milestone 4:</b> 10% Cumulative increase in sales of at least 400 SME/MSMEs	PAC (Provisional Acceptance Certificate) issued upon acceptance of completion of deliverables mentioned in ToRs	On achievement of target within contract duration	30%
<b>Milestone 5:</b> 20% Cumulative increase in sales of at least 1000 SME/MSMEs	FAC (Final Acceptance Certificate) issued upon acceptance of completion of deliverables mentioned in ToRs	On achievement of target within contract duration	40%

- 18.1 Implementation schedule shall be considered complete when the Provisional Acceptance Certificate is issued by USF . Monthly or any other periodic need based reports on request about the execution of the project shall be submitted to USF, as and when desired by USF.
- 18.2 The Service Provider 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 Service Provider's notice, USF shall evaluate the situation and may at its discretion extend the Service Provider's time for performance in which case the extension shall be rectified by the parties by amending the contract.

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## **19 PERFORMANCE GUARANTEE**

- 19.1 The Service Provider, before signing of the Contract shall furnish a Performance Guarantee equivalent to 5% of the signed contract value, as security for the performance of its obligations under this Contract within stipulated time mentioned in LOI in the form of a bank guarantee issued by a scheduled Pakistani bank located in Pakistan and acceptable to USF.
- 19.2 The Performance Guarantee submitted by Service Provider will be valid for thirty eight (38) months or any extended period, as the case may be; The date of expiry of Performance Guarantee shall be the same as the expiry date of the contract.
- 19.3 The Performance Guarantee shall be issued by a Pakistani commercial bank recognized by State Bank of Pakistan and that is otherwise acceptable to USF.
- 19.4 Performance Guarantee equivalent to 5% of the signed contract value is mandatory obligation. In case of non-submission by the bidder within the stipulated time as mentioned in LOI USF at its sole discretion can issue the LoI to the next lowest bidder.
- 19.5 Performance Guarantee being unconditional and irrevocable undertaking to USF shall be independently confirmed by the bank before its discharge/encashment, especially before its expiry.
- 19.6 Forfeit of Performance Guarantee is payable to USF as compensation for any loss resulting from the Service Provider failure to complete its obligations under this Contract.

## **20 PROVISIONAL ACCEPTANCE**

- 20.1 USF shall provide provisional acceptance certificate upon completion of each millstone and final acceptance certificate shall be issued after fully execution of project.
- 20.2 The Service Provider shall provide the supervisory personnel, if desired by USF for audit of performance of the Service Provider.
- 20.3 In case of inefficient results, after such audit, USF may require from Service Provider to revise the Services, which shall be revised without and additional charges or times.
- 20.4. Upon satisfying it that the Services are, satisfactory at entirety in all respects USF, shall issue the Provisional acceptance to the Service Provider.

## **21 DEFECTS AFTER PROVISIONAL ACCEPTANCE**

- 21.1 The Service Provider shall make good or revise services with all possible speed all defects, flaws or faults.
- 21.2 If any such defect shall occur, USF or its authorized representative[s] shall inform the Service Provider stating in writing the nature of the defect.
- 21.3 If any such defect as aforesaid be not made good within five (05) working days, USF may proceed to do the work at Service Provider's risk and expense.

## **22 FINAL ACCEPTANCE CERTIFICATE**

Final acceptance certificate will be issued to Service Provider upon delivery of seventh millstone.

## **23 SERVICE PROVIDER'S UNDERTAKING**

- 23.1 The Service Provider 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 Service Provider further

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undertakes to disclose to USF, all material facts regarding any and all conflict of interests if arises in terms of this Contract

## **24 SERVICE PROVIDER NEGLIGENCE**

24.1 The Service Provider is responsible in respect of all losses, damages and expenses incurred by USF due to injury to any person in employment of the Service Provider 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 Service Provider or any of its sub- contractor before whole of the project has been finally accepted.

## **25 AMICABLE SETTLEMENT**

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

25.2 USF and the Service Provider 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.

25.3 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.

25.4 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.

25.5 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.

25.6 The award of the arbitrator shall be final and binding on both parties.

25.7 The cost of the arbitrator shall be borne equally by both parties.

25.8 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.

## **26 SERVICE PROVIDER'S DEFAULT**

26.1 If the Service Provider 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 Service Provider to make good the failure, neglect or contravention complained of.

26.2 Should the Service Provider fail to comply with the said notice within five (05) days from the date of issue of said notice thereof, it shall be lawful for USF forthwith to terminate the



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Contract by notice in writing to the Service Provider without prejudice to any rights which may have occurred under the Contract to either party prior to such termination.

## **27 FORCE MAJEURE**

27.1 The Service Provider is not liable for forfeiture of its performance security, liquidated damages or termination for default, if and to the extent that, its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

27.2 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 no longer period and such cause shall as far as possible be removed with all reasonable speed.

27.3 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.

27.4 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.

27.5 If a Force Majeure situation arises, the Service Provider shall promptly notify USF in writing of such conditions and the cause thereof. Unless otherwise directed by USF in writing, the Service Provider 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.

## **28 TERMINATION OF CONTRACT**

29.1 USF may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Service Provider terminate this Contract forthwith in whole or in part.

- a. If the Service Provider fails to deliver any or all of the Services within the time period (s) specified in the Contract or any extension thereof granted by USF.
- b. If the Service Provider fails to perform any other obligation under the contract.
- c. If the Service Provider, 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.

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

## **29 TERMINATION FOR INSOLVENCY**

29.1 USF may at any time terminate the Contract by giving written notice to the Service Provider, without compensation to the Service Provider if the Service Provider 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.

## **30 LIQUIDATE DAMAGES**

30.1 Subject to Clause 28 (Force Majeure), the Service Provider shall ensure to complete the Milestone-1 within three (03) months of signing the contract, Milestone-2, within six (06) months of signing the contract, Milestone-3, 4, & 5 shall be achieved within time period of contract duration. In case any Milestone is delayed beyond its stipulated time, the Liquidated Damages at the rate of 0.5% of milestone value per week for each week delayed beyond the final date of completion a milestone will be imposed. In case such delay exceeding two (02) weeks beyond the final date of each Milestone, USF may terminate the contract after deduction of the said Liquidated Damages and USF will have the right to en-cash the Performance Guarantee.

30.2 In case of cumulative downtime of the online e-commerce portals for more than one (01) week in a year for which the installment of milestone x is being given, USF shall be entitled to deduct the proportionate amount on per day basis (for days exceeding 07 days of cumulative outage) from the current installment of milestone x. The method of calculation of per-day deduction shall be to divide the yearly installment of milestone x over a period of 365 days

30.3 Any liquidated damages if not paid in cash by Service Provider shall be deducted from the invoice (s) submitted by Service Provider performance security. The imposition of liquidated damages upon the Service Provider and its payment does not absolve the Service Provider from its obligations to delivery or from any other liabilities or obligations under the Contract.

## **31 INDEMNIFICATION**

31.1 The Service Provider 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 Service Provider or its agents or employees. Service Provider agrees to give USF prompt notice of any possible liability.

31.2 If the Service Provider 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 Service Provider under this contract shall be limited to the Total Contract Price.

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## **32 WAIVER**

32.1 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 Service Provider 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.

## **33 AMENDMENT**

33.1 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.

## **34 ENTIRE AGREEMENT**

34.1 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.

## **35 SEVERABILITY**

35.1 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, 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.

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**36 INDEPENDENT SERVICE PROVIDERS**

36.1 The Service Provider is and shall remain at all times an independent Service Provider and shall be fully responsible for their own acts or defaults (including those of their employees or agents). Neither the Service Provider 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 Service Provider 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.

36.2 Nothing in this Contract shall be deemed to constitute a partnership or other profit sharing arrangement between the Parties.

**37 SURVIVAL**

37.1 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.

**38 COUNTERPARTS**

38.1 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.

**FOR AND ON BEHALF**  
**OF SERVICE**  
**PROVIDER**

**FOR AND BEHALF OF USF**

***WITNESSES***

**SERVICE PROVIDER**

**USF**

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## ANNEXURES

Annexure A	: Request for Proposal
Annexure B	: Terms of Reference
Annexure C	: Technical Proposal
Annexure D	: Financial Proposal
Annexure E	: LOI
Annexure F:	LOA
Annexure G	: Performance Guarantee
Annexure H	: Integrity Pact
Annexure I	: Bid Clarifications
Subsequent Amendments	