

**SERVICE CONTRACT
(FOR HIRING THE SERVICES OF CONSULTANT)**

BY AND BETWEEN

**UNIVERSAL SERVICE FUND (USF)
AND
_____ (PVT) LTD**

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**CONTRACT
No. Proc.**

This Consultancy Service Contract for conducting the study, survey is made on this ____ day of -
-----2017

By and Between

Universal Service Fund, a company incorporated under the Companies Ordinance, 1984 having its office at fifth floor, HBL Tower, Jinnah Avenue, Islamabad (hereinafter the "USF"), 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 "Consultant" 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") to conduct the research study and survey regarding the Micro, Small and Medium Enterprises (MSMEs) in Pakistan for evaluating the factors which create bearers or affect MSMEs in adoption of Information and Communication Technology (ICT).
2. The Consultant 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 Consultant, subject to conditions which have been laid down in the LOI No. USF -----dated----- -2017 to the Consultant and the Consultant's response to LOI through Letter of Acceptance (LoA) _____ dated _____, 2017.
3. The Consultant 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 Definitions

In this Contract, except otherwise provided, the following words, expressions and/or phrases shall have the meanings as defined herein below. Words importing the singular only include the plural and vice versa where the context so requires.

"APPROVED" or "APPROVAL" means approved in writing by USF and/or the Consultant.

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

"CONTRACT" means the present Agreement signed between the Consultant and the USF with all the terms and conditions of the agreement, the scope of work, the specifications, price, and any amendments made therein and all annexure(s) attached herewith for the execution of the Services. This Contract and its attached annexure(s) constitute the exhaustive description of obligations of the Parties.

"CONSULTANT" means provider of Services under this Contract.

"CONTRACT PRICE" means the price that has been quoted given in schedule-D of the Contract.

"CONTRACT DOCUMENTS" includes but is 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.

"FOC" mean the Consultant's focal person who shall coordinate with USF to update regarding all Services

"DAY" means calendar day of the Gregorian calendar.

"DOCUMENTATION" includes but is not limited to instruction issued by USF to prospective Bidders, containing various Terms and conditions, Scope of work, any requirements etc either by hard copy or in electronic form or documentation specified in the relevant Article(s) in the contract, mutually agreed by both parties.

"EXCUSED DELAY" shall mean any possible extension in Delivery of Services and completion in scheduled time due to any delay, intentional or unintentional, caused by USF because of Force Majeure, 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.

“EMPLOYEE OR PERSONNEL OR HUMAN RESOURCE” shall mean employees of the Consultant that are deployed for the Project.

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

“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.

“LIQUIDATED DAMAGES” mean the monetary damages imposed on the Consultant and payable to USF by the Consultant on account of its late delivery of whole of the Services.

“L.O.I” means Letter of Intent issued to successful bidder.

“L.O.A” means Letter of Acceptance received by USF from successful bidder.

“MONTH” means calendar month of the Gregorian calendar.

“PERFORMANCE BOND” means an irrevocable bank guarantee issued by a scheduled bank located in Islamabad, Pakistan and acceptable to USF.

“SERVICES” means inception, conducting study, survey, implementation, analysis and final reporting as and in accordance to Annexure -B.

“TIME OF COMPLETION” means the time schedule within which Completion and Execution of the Services as a whole (or of a part of the Facilities where a separate Time for Completion of such part has been prescribed) is to be attained in accordance with the specifications and the relevant provisions of the Contract.

1.2 Interpretation

1.2.1. 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.
- c. A reference to an Article number is a reference to its sub-articles.
- d. 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.
- e. 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; and
- f. References to statutes or statutory provisions include references to any orders, or regulations made there under and references to any statute, provision, order or regulation include references to that statute, provision order or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date thereof.

- g. No rule of construction applies to the disadvantages of USF for preparing this Contract in whole or in part

2. SCOPE OF CONTRACT

2.1 The Consultant shall provide the Services as per Annexure-B against the full and valuable consideration of PKR -----(-----) which is the fixed Contract Price. The Consultant hereby acknowledged and accepted this Contract Price as full and fixed price whereby the Consultant, in timely manner, shall fully and faithfully deliver the Services in accordance with Annexure A through G, to the satisfaction of USF.

2.2 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 C: Technical Proposal & its clarifications
 - Annexure D: Financial Proposal & its clarifications
 - Annexure A: Request for Proposal
 - Annexure B: Terms of Reference
 - Annexure E: LOI
 - Annexure G: Performance Bond
 - Annexure H: Integrity Pact
- iii. Subsequent Amendments
- iv. Commercial Compliances
- v. Clarifications

3.EFFECTIVE DATE OF CONTRACT

3.1 This Contract shall come into force on its Effect Date.

4. CONFIDENTIALITY

4.1 The Consultant acknowledges that in the ordinary course of this Contract, Consultant will be exposed to information about the business and functions of USF, its projects and employees which amounts its operational secrets, confidential or commercially or politically sensitive and which may not be readily available to any other Party out of the USF or to the general public and if disclosed will be liable to cause significant harm to USF or its employees or its regulated businesses, the Consultant shall not use, copy, adapt, alter or part with possession of any information of the other which is disclosed or otherwise comes into its possession under or in relation to this Contract and which is of a confidential nature.

4.2 The Consultant shall not, without USF's prior written consent disclose the Contract, or any provision thereof, or information furnished by or on behalf of USF in connection therewith, to any person other than a person employed by the Consultant 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.

- 4.3 The Consultant shall not, without USF prior written consent, make use of any documents or information except for purposes of performing the Contract.
- 4.4 Upon becoming aware of any loss, unauthorized use or disclosure of USF's Information, the Consultant shall immediately notify USF of such loss, unauthorized use or disclosure. The Consultant 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.
- 4.5 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 Consultant's performance under the contract if so required by USF.
- 4.6 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 Consultant shall be sole responsible for any and all taxes, levies, duties from time to time being enforced by federal governments or any agency on its behalf including GST/or any other incidental charges etc. incurred or accrued until the final delivery of Services. Any increase or decrease in such taxes shall be to the cost and benefit of USFCo till the final delivery.
- 5.2 All amounts payable to the Consultant as per clause 21 are inclusive of all taxes, levies, duties, and any other deduction related thereto etc. and is acknowledged by the Consultant to be adequate and sufficient consideration for the rendition of Services by the Contractor.
- 5.3 All payments to be made by USF to the Consultant shall be subject to such deductions and withholding as are required by prevailing law which shall be to the account of the Contractor.
- 5.4 Withholding tax shall be deducted as per applicable tax laws of Pakistan.
- 5.5 The Consultant shall be aware and responsible of all Pakistani tax regulation and will pay all taxes; duties, tariffs and impositions lawfully assessed against the Consultant till the term and performance of the Contract.
- 5.6 The Consultant shall be sole responsible for all such taxes, Stamp duty or other duties, fees and other impositions levied under the applicable law, the amount of which is deemed to have been included in the financial bid.

6. NOTICES AND CORRESPONDENCE

- 6.1 All notices or communication/correspondence under this Contract shall be given at the respective registered offices of the Parties. Any and all communications required or permitted by this Contract shall be given in writing and shall be delivered by hand or sent

by registered mail/email, first class courier service or by valid facsimile transmission to the address/number of the respective Party as shown herein below.

i. If to USF
CFO USF
4th Floor, HBL Tower, Jinnah Avenue, Islamabad
Ph:051-9212408-09 , Fax:051-9214261

ii. If to CONSULTANT

Ph: _____ , Fax: _____

6.2 Any such notice, communication or correspondence shall be deemed to have been received, if delivered by hand, at the time of delivery or, if posted through registered mail or first class courier service, at the expiration of 03 (three) calendar days after the envelope containing the same shall have been deposited in the post/courier maintained for such purpose, postage prepaid, or, if sent by facsimile, or email at the date of transmission; if confirmation receipt is followed by postal notice. A party may change its address or fax number for notice under this Contract 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 this clause.

6.3 The Consultant shall not indulge into correspondence with unconcerned offices and organizations within or outside of USF prior to the award of the Contract or later, except the officers authorized in this connection and detailed herein above.

7. INTELLECTUAL PROPERTY RIGHT

7.1 The Consultant 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 in result of Services.

8. STANDARDS & SPECIFICATIONS

8.1 In this Contract "the Specifications or Standards of Service" means the specifications laid down in Contract and Annexures.

8.2 All Services supplied by the Consultant

9. AFFIRMATION

9.1 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.

9.2 The Consultant declares and affirms that:

- i. The Consultant 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 Consultant 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 Consultant undertakes not to engage in any of these or similar acts during the term of this Contract.
- ii. The Contract shall be liable for cancellation during any time of execution if such an act is proved.
 - iii. The Consultant shall sign a declaration to this extent on company letter head as per specimen annexed.

10. RESPONSIBILITY/WARRANTIES AND COVENANTS

- 10.1 The Consultant 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 Consultant are jointly and severely responsible. 14.2 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 Consultant for fulfillment of its obligation under this Contract.
- 10.2 The Consultant is committed to offering the best possible support to USF based on integrity.
- 10.3 The Consultant hereby warrants and undertakes that he will abide by all terms and conditions, commitments which have been made in bid documents and he will carried out and completed Services within stipulated time against quoted price of PKR_____. It is hereby agreed that no any extra or additional cost will be charged or claimed against such Services hereafter expiry of this Contract.
- 10.4 The Consultant and its respective representatives, warrant and covenant, as follows;
- a. 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;
 - b. 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;

- c. 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 Consultant, enforceable against it in accordance with its terms;
 - d. to the best knowledge of the Consultant 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 Consultant 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 Consultant;
 - e. 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;
 - f. It is the holder of all governmental consents, licenses, permissions and other authorizations and permits required to operate and conduct its business;
 - g. there is no pending controversy, legal action, arbitration proceeding, administrative proceeding or investigation instituted, or to the best of the Consultant'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
 - h. It has examined this Contract, including all Annexes attached hereto, thoroughly and become familiar with all its terms and provisions.
- 10.5 Schedule of Progress: The Consultant shall submit schedules for weekly updates and status of the project, survey results, analysis / report, presentation / Queries, Soft copy of Data. The Consultant shall submit biweekly, or any other need based periodic progress reports to the nominated representative of USF.
- 10.6 The Consultant shall employ only trained staff with good health and sound mind, not below the age of 18 years as on the date of appointment. All persons deployed shall be employees of Consultant at its sole risk and cost. The Consultant shall be responsible for all his employees in observing health, security and safety
- 10.7 In case of any loss of any nature on account of Consultant or his employees due to any reason, the Consultant shall be liable to make the loss good and in no way USF shall be responsible.
- 10.8 The Consultant shall not appoint any sub company or agency for the work assigned to him without the written permission of USF.
- 10.9 The Consultant's staff shall not be treated as the staff of USF for any purpose whatsoever. The Consultant shall be responsible for strict compliance of all statutory provisions of relevant worker/workman or employment laws applicable from time to time in carrying out the Project. USF shall not be liable, to any penalty under relevant employment rules, enactment or related regulations for which Consultant is responsible under the law.

- 10.10 The Service shall be responsible for fulfilling the requirements of all statutory provisions of the applicable statutes including but not limited to the Minimum Wages Act, Payment of Wages act, Industrial Disputes Act, Workmen Compensation Act, and all other labour and industrial enactment at his own risk and cost in respect of all staff employed by him. USF shall be indemnified for any action brought against it for any violation/ non-compliance of any of the provisions of any of the acts etc.
- 10.11 Statutory deductions applicable shall be deducted from all payments made to the Consultant as per rules and regulations in force and in accordance with applicable tax law.

11. ASSIGNMENT AND SUB-CONTRACT

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

12 CHANGE ORDER

- 12.1 USF may at any time, by a written order given to the Consultant, change within the general scope of the Contract any one or more of the following:
- 12.1.1 The increase decreases the aspect of study/research.
- 12.1.2 Nature of Services
- 12.2 If any such change causes an increase or decrease in the cost of, or the time required for the Consultant'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.
- 12.3 Any claims by the Consultant for adjustment under this paragraph must be asserted within ten (10) days from the date of Consultant's receipt of USF's change order.

13 DELIVERY

- 13.1 The Services shall be delivered by the Consultant in accordance with the terms specified by USF in the Annexures attached herewith and terms & condition of the Contracts. The Consultant shall arrange all necessary insurance policies to cover such risks at its own cost.
- 13.2 Services must be delivered according to the given timelines in RFP, TOR and the Contract. Failure to meet these timelines may result in USF applying liquidated damages as specified in clause 35.
- 13.3 Delivery shall be deemed to have been made;**
- 13.3.1** Delivery of Services shall be made by the Consultant in accordance with the terms specified by USF in its Schedule of Requirements and in the terms and conditions of the Contract. The Services shall remain at the risk of the Consultant until the project is

commissioned into service and provisional acceptance certificate is issued to Consultant.

13.3.2 Delivery or the performance of the Services shall be deemed to have been made, when the final competition certificate is issued by USF.

13.3.3 The delay or deficiency in performance of the Contract beyond the time scheduled will make the Consultant liable to be considered for termination or imposition of Liquidated Damages.

13.4 Normally no extension/relaxation will be granted for the supply of Services and performance of Services contrary to the schedules. However, extension/relaxation in special cases may be granted by USF due to Force Majeure and/or delay attributable to USF.

14 DOCUMENTS

14.1 Documentation for the Payment of phases, where applicable;

14.1.1 Original Commercial invoice and a GST Invoice (s) showing Services description, including Pre-GST, GST, Total), total amount;

14.1.2 Delivery/performance note duly verified/acknowledged by USF.

14.1.3 USF's certificate that the Services have been provided as per terms and condition of RFP and this Contract

14.1.4 Proof of GST payment;

14.1.5 Copy of duly acknowledged Performance Bond in case of 1st payment;

15 COMPLETION AND EXECUTION SCHEDULE

15.1 The Consultant shall execute the work covering all the Phases within following schedule from the date of signing of the Contract:

a. Phase-1 (Inception): No more than three (03) weeks from the date of signing the Contract.

b. Phase-2 (Implementation and Analysis) No more than five (05) weeks;

c. Phase-3 (Final Reporting) No more than two (02) weeks;

d. Delivery of the Services by the Consultant shall be completed within time frame mentioned in this Contract and its Annexures.

15.2 The Consultant shall promptly notify USF in writing of the fact of delay, if any; its likely duration and its causes. As soon as practicable after receipt of Consultant's notice, USF shall evaluate the situation and may at its discretion decide to extend or not the Consultant's time for performance in which case the extension shall be ratified by the parties by amending the contract.

16 PERFORMANCE SECURITY

16.1 The Consultant, before signing of the Contract shall furnish an irrevocable and unconditional Bank Guarantee (BG) , as Performance Bond as a security for the

performance of its obligations under this Contract. The BG shall be accepted by USF, only if it is issued by a scheduled bank licensed in Pakistan and from its branch located in Islamabad. The BG shall be for an amount equivalent to 10% [ten percent] of the total Contract Price.

16.2 The validity of the irrevocable Performance Bond will be Four--- months or for such extended period as necessitated by an amendment in the Time of Completion. The Performance Bond will be released upon successful discharge of warranty period obligations.

16.3 Performance Bond being unconditional and irrevocable undertaking to USF shall be independently confirmed by the bank before its discharge/encashment, especially before its expiry.

16.4 The Performance Bond shall be payable to USF as compensation for any loss resulting from the Consultant failure to complete its obligations under this Contract.

17 PROVISIONAL ACCEPTANCE

17.1 The Consultant shall submit a draft report for approval of USF, which shall include comprehensive information provided in as per annexures.

17.2 If USF considers that the Services are not to up to the level desired by USF or that the results at any phase of the project are inconclusive, the Consultant shall be responsible to improve the quality and standards of Services with immediate effect.

17.3 USF may approve the draft report provided under clause 18.1, or after such modifications as may be necessary for performance of the Contract.

17.4 Upon satisfying that the Services are completed in all respects, USF shall issue the Provisional acceptance to the Consultant.

18 FINAL ACCEPTANCE CERTIFICATE

18.1 Final acceptance certificate will be issued subject to submission of final report and acceptance by USF after its conclusive analysis.

19 TRAINING

N/A

20 PRICES AND PAYMENTS

20.1 Price: The total price of the Contract shall be as per clause 2.1

20.2 The Contract Price set forth in this Contract is full and final till the obligations under the Contract are fulfilled to the satisfaction of USF execution.

20.3 Payments

20.3.1 The method, conditions and schedule of payments as mentioned in the following clauses shall be applicable.

20.3.2 Payments for all three phases shall be upon completion within time

20.3.3 All payments shall be made in Pak Rupees.

20.3.4 The payment of Services shall be paid in Pak Rupees in form of bank instrument selected by USF to the Consultant, and shall comply with all applicable laws, rules, and regulations.

20.3.5 USF shall make prompt payment as per "Schedule of Payment", within thirty days after submission of Phase Invoice by the Consultant 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 Services replacement after confirmation from USF

20.4 The documents for the payment shall be provided, through banking channels if applicable. The documents for Services delivered and accepted duly verified by USF, for acceptance and arrangement of payment.

20.5 All Payments are subject to clearance of ATL status (Both Income & Sales tax) at the time of payment and deduction of all applicable taxes at prevalent rate from the relevant invoices of the Consultant and paid to the Tax Authorities, except those especially exempted by the authorities. USF will issue certificate of deductions to the Consultant to enable him to settle tax returns with the concerned authorities.

20.6 The Consultant's request for payment will be made to USF in writing accompanied by an invoice describing as appropriate, the services performed and other obligations stipulated in this Contract. Payment shall be made by the USF.

20.7 Schedule of Payment

20.7.1 Payments against the entire Contract will be made by USF in the following manner:

Milestone	PAYMENT TRIGGER	PAYMENT
Mile Stone 1	Upon Completion of Phase 1, and its acceptance by USF	20%
Milestone 2	Upon Completion of Phase 2 and 3, and its acceptance by USF	80%

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

21 CONSULTANT'S UNDERTAKING

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

22 CONSULTANT'S NEGLIGENCE

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

23 AMICABLE SETTLEMENTS

23.1 This Contract will be construed under and governed by The Laws of the Islamic Republic of Pakistan.

23.2 USF and the Consultant 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.

23.3 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.

23.4 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.

23.5 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.

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

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

23.8 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.

24 CONSULTANT'S DEFAULT

24.1 If the Consultant 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 Consultant to make good the failure, neglect or contravention complained of.

24.2 Should the Consultant 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 Consultant without prejudice to any rights which may have occurred under the Contract to either party prior to such termination.

24.3 If the Consultant fails to complete any of its obligations under the Contract, or under clause 18.3 within the time fixed communicated by USF or within any extension of time granted by USF under "FORCE MAJEURE", USF shall be entitled to deduct from the Contract, a penalty at the rate of (0.15%) one percent of Contract Price for each day of delay subject to a maximum deduction of 10% [ten percent] of the value of the Contract.

25 FORCE MAJEURE

25.1 The Consultant 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.

25.2 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.

25.3 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.

25.4 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.

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

26 TERMINATION OF CONTRACT

26.1 **Termination of Contract for Default** : USF may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Consultant terminate this Contract forthwith in whole or in part.

(a) If the Consultant fails to deliver any or all Services within the time period (s) specified in the Contract or any extension thereof granted by USF.

(b) If the Consultant fails to perform any other obligation under the contract.

(c) If the Consultant, 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.

26.2 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, Services similar to that part undelivered, and the Consultant is liable to USF for any excess cost for such Services.

However, the Consultant shall continue performance of the Contract to the extent not terminated.

26.3 Termination For Insolvency: USF may at any time terminate the Contract by giving written notice to the Consultant, without compensation to the Consultant if the Consultant 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.

27 LIQUIDATED DAMAGES

27.1 Subject to Clause 27 (Force Majeure), if the Consultant fails to deliver any part or all the Services as per desired standards by USF within or during the time period (s) specified in the Contract, USF, shall without prejudice to its other remedies under the contract, have the right to terminate the Contract forthwith or claim liquidated damages and Consultant shall pay to USF as liquidated damages (LD) at the rate of 0.15% of total contract price per day for each day delayed or not performed beyond the last date. USF may terminate the Contract after deduction of the said LD and USF will have the right to encash the Performance Bond/Bank Guarantee.

27.2 Any LD if not paid in cash by Consultant shall be deducted from the invoice (s) submitted by Consultant or from the Performance Bond. The imposition of LD upon the Consultant and its payment does not absolve the Consultant from its obligations to delivery or from any other liabilities or obligations under the Contract.

28 INDEMNIFICATION

28.1 The Consultant 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 Consultant or its agents or employees. Consultant agrees to give USF prompt notice of any possible liability.

28.2 If the Consultant 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 Consultant under this contract shall be limited to the Total Contract Price.

29 MISCELLANEOUS

29.1 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 Contract 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.

29.2 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.

29.3 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.

29.4 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.

29.5 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.

29.6 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.

30 INDEPENDENT CONSULTANT

30.1 All persons appointed by Consultant under this Contract shall be at the risk of Consultant; the Consultant is and shall remain at all times sole and exclusive responsible for its persons. USF and the Consultant shall be deemed to have the status of independent entities and nothing in this Contract shall be deemed to place the Parties in the relationship of employer-employee, principal-agent, partners or joint ventures.

30.2 The Contractor or its employees or agents or representatives shall not act or attempt to act, or represent itself, directly or by implication, as agent, joint venture, partner or representative of the USF, or in any manner assume or attempt to assume or create any obligation or liability of any kind, nature or sort, express or implied, on behalf of or in the name of USF. Neither the Consultant 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. This Contract shall not be deemed to constitute a partnership or other profit sharing arrangement between the Parties.

IN WITNESS WHEREOF the Parties have caused this Contract to be signed on the Day and Year above written. This Contract bearing No. -----against the consideration amounting PKR -----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
CONSULTANT**

FOR AND BEHALF OF USE

WITNESSES

1.....

2.....

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: Service Level Agreement