

CONTRACT

This consultancy contract is made on this ____ day of _____ 2019.

by and between

Universal Service Fund, a company incorporated under the Companies Ordinance 1984 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 -----laws of -----having its registered office at _____, (hereinafter referred to as “Consultant”) of the Other Part

The expression “USF” and “Consultant” 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 Agreement 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 Ordinance 1984.

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

WHEREAS the USF invited proposals from firms and companies to conduct a study for Introducing New Technologies/Solutions for USF Programs and the Consultant has qualified for the Project through competitive bidding process and it 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 dated -----2019 to the Consultant and the Consultant's response to LOI through LOA dated-----2019.

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 Agreement, 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. **“Business Day”** means any day other than Saturdays and Sundays or the gazetted public holidays of the Islamic Republic of Pakistan.
- d. **“Consortium”** means an association of two or more companies/firms with the objective of participating in a bid or pooling their resources to achieve the objectives of this tender.
- e. **“Contract”** means the present Contract signed between USF and the Consultant and all schedule(s), annexure(s) attached herewith for the execution of the Services, which constitute the exhaustive description of obligations of the Parties unless otherwise provided under the law.
- 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 of PKR...------(-----), quoted by Consultant in its proposal and accepted by USF;
- i. **“Consultant”** means the Party/Consortium as defined in contract.
- j. **“Change Order”** refers to a written request either by USF or by the Consultant for changes to the scope of Services and such request is subject to the written acceptance of Consultant or USF, respectively.
- k. **“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.
- l. **“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;
- m. **“Company Law”** shall have the same meaning as assigned under section 2 (1) (18) of the Companies Act.
- n. **“Deliverables”** means the millstones/tasks which are to be achieved by Consultant within time lines fixed and provided by USF under this Contract and Annexures.
- o. **Effective Date”** means the effective date of this Agreement, as recorded on the first page hereof;
- p. **“Excused Delay”** shall mean any possible extension in project implementation schedule due to any delay, intentional or unintentional, caused by USF, Force Majeure or other relevant public authorities, under the Contract. An extension in the overall implementation schedule shall be granted accordingly and the duration of such extension shall be at the discretion of USF.
- q. **“Federal Government”** shall have the same meaning as assigned it under Law.
- r. **“Final Acceptance Certificate”** means the certificate issued by USF upon acceptance of all the tasks as per Annex-B.

- s. **“Force Majeure”** means 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.
- t. **“Liquidated Damages”** mean the monetary damages imposed upon the Consultant and payable to USF by the Consultant on account of its late delivery of whole as per agreed timelines or part of the Project.
- u. **“LOI”** means Letter of Intent issued to Consultant by USF.
- v. **“LOA”** means Letter of Acceptance submitted by Consultant in response of LOI communicating formal acceptance.
- w. **“Performance Guarantee”** means an irrevocable, unconditional and continuing Bank Guarantee (BG) issued in favour of USF that is to be procured by Consultant 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.
- x. **“Project Task”** means the task which is to be achieved by Consultant in accordance with the provisions of this Contract and Annexure(s) thereto.
- y. **“Project Tasks Implementation Certification”** mean the certificate issued by USF upon successful completion and achievement of all task as per Annexure-B and in case of completion of deliverables as per agreed timelines;
- z. **“Project Task Implementation Notice”** means the Notice submitted by Consultant upon completion of all Task as per Annexure-B;
- aa. **“Proposal”** means the proposal submitted by the Consultant in response to the RFP;
- bb. **“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;
- cc. **“Report”** means a Report required in accordance with Schedule B;
- dd. **“Services”** mean to conduct a study for Digital Inclusion in Pakistan and suggest strategies and plans for increasing digital adoption and inclusion as detailed in Annex-B.
- ee. **“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.

ff. “Term” means the term of the Contract identified in Section 3;

gg. “USF Policy” means Universal Service Fund policy, issued by the Federal Government.

hh. “USF Company” shall have the same meaning as assigned under Rule 2 (1) (xxv) of USF Rules;

ii. “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 Agreement will be interpreted as follows:

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

- k) Any technical term not specifically defined in this Agreement or RFP shall be construed in accordance with the general practice of those in that profession/industry/sector to which the term is used;
- l) A reference to an agreement, other than this Agreement, includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing; and
- m) Monetary references are references to the Pakistani Currency.

1. SCOPE OF WORK

1.1 The Consultant shall be responsible to provide Services (deliverables) 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 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 to 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
 - Annexure G : Performance Guarantee
 - Annexure H : Integrity Pact
 - Annexure I : Bid Clarifications
- iii) Subsequent Amendments (if Any)

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 -----2019.

4. CONFIDENTIALITY

- 4.1 The Consultant 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 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.
- 4.2 The Consultant 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 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.
- 4.4 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 Consultant'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 Consultant 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 Consultant as per applicable tax laws of Pakistan.
- 5.2 The Consultant 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 Consultant in lieu of the payments made against this Contract till the term and performance of the contract and later on.

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:

CTO
USF

5th Floor, HBL Tower, Jinnah Avenue, Islamabad
Ph:051-9212408-09 , Fax:051-9214261

CONSULTANT

Name: **XYZ**

Address: _____

Ph: **XXXX**

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 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, domains, design rights and trade marks by use of or possession of by the

Consultant, including any application or software in or under use of Consultant 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 Consultant under the Contract is made or in the Consultant's reasonable opinion is likely to be made, the Consultant may at their own 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 Consultant acknowledges and agrees that all patents, designs, trade names, trademarks, copyrights, trade secrets, codes, software, or other intellectual property prepared or developed by Consultant 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 Consultant 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 Consultant furnishes USF during or after the expiry of termination of the Contract.
- 7.5 USF may use the contents developed by Consultant 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 Consultant shall not indulge into correspondence with unconcerned offices and organizations within or outside USF prior to the award of the Contract or later. Officers authorized in this connection are given below:

CTO

5th Floor, HBL Tower, Jinnah Avenue, Islamabad

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

9. STANDARDS & SPECIFICATIONS

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

10. 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 Consultant declares and affirms that:

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

11. WARRANTIES AND COVENANTS

- 11.1 The Consultant 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 methodologies of the research shall be most recent or current models and incorporate all the latest improvements in work plan and methodology approaches unless provided otherwise in the Contract.
- 11.2 The Consultant further warrants that all deliverables/services provided under this contract shall have no defect and the Consultant shall be responsible for any act or omissions in performing of the Services the Consultant.
- 11.3 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 Service, the Consultant 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 Consultant.
- 11.5 The Consultant its respective extent, represent, warrant and covenant, as follows:
 - 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 applicable law, as the case may be, and is duly authorized and qualified to conduct transactions/business, 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 Consultant, enforceable against it in accordance with its terms;
- 11.5.4 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;
- 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 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
- 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 preparing reports including all necessary required items, if required, shall be with Consultant in accordance with Annexures and rest entirely with the Consultant.

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 Consultant 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 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.

14. CHANGE ORDER

14.1 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:

14.1.1 Over all scope of Services under the Contract.

14.1.2 Variation Services, if applicable.

14.2 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.

14.3 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.

15. TRANSPORTATION

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

15.2 The consultant shall take out and maintain or shall cause to maintain the insurance of its sub consultant (at its own cost).

16. DELIVERY OF SERVICES

- 16.1 The Services shall be provided by the Consultant 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 Consultant 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 Project Task Implementation 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 Consultant liable to be considered for liquidated damages or termination.
- 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 Tasks

- a. Original invoice of Consultant 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 additional document for approval of invoice.

18. IMPLEMENTATION AND PAYMENT SCHEDULE

- 18.1 The Consultant shall execute the Services covering all Tasks as per Annexure-B within time schedule prescribed under clause 6 of Annexure-B. The payments schedule will be followed after the award of the Contract to the successful Applicant. The consulting firm will submit a performance bond equal to the 10% of financial bid value before signing of the contract.
 - i. 5% payment on contract signing in the form of Mobilization Advance
 - ii. 75% upon submission of the Final Report subject to USF's acceptance
 - iii. 20% on final acceptance by USF
- 18.2 Implementation schedule shall be considered complete when the Provisional Acceptance Certificate is issued by USF.
- 18.3 The Consultant 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 Consultant's notice, USF shall

evaluate the situation and may at its discretion extend the Consultant's time for performance in which case the extension shall be rectified by the parties by amending the contract.

19. PERFORMANCE GUARANTEE

- 19.1 The Performance Guarantee submitted by Consultant will be valid for twenty (20) weeks 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.
- 19.2 Forfeit of Performance Guarantee is payable to USF as compensation for any loss resulting from the Consultant failure to complete its obligations under this Contract.
- 19.3 Performance guarantee shall be released upon successful completion of the agreement.

20. FINAL ACCEPTANCE CERTIFICATE

- 20.1 USF shall provide final acceptance certificate after fully execution of project and that will be issued to Consultant upon completion and acceptance of deliverables.
- 20.2 The Consultant shall provide the supervisory personnel, if desired by USF for audit of performance of the Consultant.
- 20.3 In case of inefficient results, after such audit, USF may require from Consultant to revise the Services, which shall be revised without and additional charges or times.
- 20.4 . Upon satisfying itself that the Services are, satisfactory entirely in all respects USF, shall issue the Provisional acceptance to 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 shall be responsible for any loss including damage, fines, suits, claims, expenses, etc arising from an act of consultant during the execution of the contract.

22. CONSULTANT NEGLIGENCE

- 22.1 The Consultant is responsible in respect of all losses, damages and expenses incurred by USF due to 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- contractor before whole of the project has been finally accepted.

23. AMICABLE SETTLEMENT

- 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, 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 by the party who invoke the arbitration clause.

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 ten (10) days after the receipt of such notice in from the date of issue of said notice thereof, it shall be lawful for USF forthwith to issue a show cause notice if the consultant fail to reply in five business days after the receipt of such notice or reply is unsatisfactory, USF may terminate the Contract with the reasons to be notified and communicated to the defaulter.

25. FORCE MAJEURE

25.1 The Consultant is not liable for forfeiture of its performance guarantee, 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.

25.2 The events qualified as FM are defined in article 1 (1.1(s)) of this contract. Party claiming FM shall give a written notice to the other party within three business days of the occurrence, excluding the date of event and notice, with reasons recorded and all necessary and substantive documentation to be attached with the notice of FM. Upon receipt of the notice and after determining the factual position, the other party shall decide.

- i. Whether to grant FM or not
- ii. If yes, for how many days

The decision shall be duly communicated to the applicant along with the reasons for the said decision in 15 business days to the applicant.

25.3 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.

25.4 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.

25.5 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.

25.6 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

Termination of Contract for Default

26.1 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 of the 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) business days (or such longer period as USF may authorize in writing) after receipt of the default notice from USF.

27. TERMINATION FOR INSOLVENCY

27.1 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.

28. LIQUIDATE DAMAGES

28.1 Subject to Clause 25 (Force Majeure), in case of delays in execution of services beyond milestone dates, the Liquidate Damages at the rate of 0.2% of total contract price per day for each day delayed beyond the final date will be imposed or delays exceeding eight (08) weeks beyond the final date, USF may terminate the contract after deduction of the said Liquidate Damages and USF will have the right to en-cash the Performance Guarantee.

28.2 Any liquidated damages if not paid in cash by Consultant shall be deducted from the invoice (s) submitted by Consultant performance guarantee. The imposition of liquidated damages 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.

29. INDEMNIFICATION

29.1 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.

29.2 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.

30. WAIVER

30.1 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.

31. AMENDMENT

31.1 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.

32. ENTIRE AGREEMENT

32.1 This Contract together with the attached Schedules, RFP, ToR, Technical and Financial Proposals 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.

33. SEVERABILITY

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

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

34. INDEPENDENT CONSULTANTS

34.1 The Consultant is and shall remain at all times an independent Consultant and shall be fully responsible for their own acts or defaults (including those of their employees or agents).

Neither the Consultant 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 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.

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

35. SURVIVAL

35.1 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.

36. COUNTERPARTS

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

IN WITNESS WHEREOF the Parties have caused this Contract to be signed on the Day and Year above written.

**FOR AND ON BEHALF
OF CONSULTANT**

FOR AND BEHALF OF USF

WITNESSES

CONSULTANT

USF

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	