

## **Universal Service Fund**

(A company set up under Section 42 of the Companies Ordinance 1984)

### **REQUEST FOR APPLICATIONS TO PROVIDE UNIVERSAL SERVICE FUND BROADBAND SERVICES**

**Project ID:** Broadband FTR-1/2008

Issued at Islamabad

01/09/2008

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**USFCo**  
**Request for Applications to provide**  
**Universal Service Fund Broadband Services**

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## **Part I: Introduction**

### **1. Purpose of the RFA Process**

- 1.1 All telecommunications licences issued by the Pakistan Telecommunications Authority (“PTA”) subsequent to the De-Regulation Policy 2003 and the Mobile Cellular Policy 2004 provide for contribution by licensees to a Universal Service Fund (“USF”) except some Class licenses for Value Added Services (CVAS licenses).
- 1.2 The Pakistan Telecommunications Authority (“PTA”) has not issued any specific licences for the delivery of broadband services but several licensees are authorised to provide data services without a mandatory requirement to provide Broadband Services or any upper limit on data speed. However, the USF Policy envisages the use of USF for modern telecommunications services including Broadband Services.
- 1.3 The purpose of this Request for Applications (“RFA”) is to invite holders of licences with an obligation to make contribution to USF (“USF Contributors”) to submit Proposals, either individually or as part of a consortium, for providing Broadband Services to a committed number of subscribers and establish Shared Access Points with a specified minimum data speeds (“USF Broadband Services”), in defined areas (“USF Areas”) in Pakistan pursuant to a 5 year SSA.
- 1.4 This RFA is part of a universal service program initiated by the Government of Pakistan (“GoP”), which is also aimed at increasing access to Broadband services in unserved and under-served areas of Pakistan in a manner consistent with fair competition, international best practices, and existing sector policies and GoP commitments.
- 1.5 GoP has created a not-for-profit Federal Government owned and controlled Universal Service Fund, a company set up under Section 42 of the Companies Ordinance 1984 (“USFCo”) to administer the USF, including the process initiated by this RFA (“RFA Process”). It is GoP’s intent that USFCo apply part of the USF toward payment of a one-time subsidy (the “USF Subsidy”) to be paid pursuant to the SSA to assist in meeting the costs of provision of USF Broadband Services in the USF Areas.
- 1.6 Further information on the proposed USF Broadband Services and USF Areas is set out in this RFA.
- 1.7 It is the intention of GoP to act quickly to implement its policy of extending access to Broadband services in unserved and under-served areas in Pakistan especially to the educational institutions in these areas.

## 2. Source of Funds

Pursuant to Section 33A of the Act, the sources of funding USF shall consist of:

- (a) prescribed contribution by licensees;
- (b) sale proceeds from the auction of the right to use radio spectrum;
- (c) grants made by the Federal Government and the Provincial Governments;
- (d) loans obtained from the Federal Government; and
- (e) grants and endowments received from other agencies.

## 3. Current Legal, Regulatory, and Market Regime

- 3.1 Before 1996, Pakistan's telecommunications markets including internet were governed by the Telegraph Act, 1885 and Wireless Telegraphy Act, 1993. Most telecommunications services were provided by the GoP's Telegraph and Telephone Department. That Department was converted into a statutory corporation in 1990 as the Pakistan Telecommunication Corporation ("PTC") and later in 1996 it was converted into a public limited company Pakistan Telecommunication Company Limited ("PTCL"). Competitive mobile telephone service was launched in 1991. Payphone service was launched in 1993. But of these competitors, only PTC and then PTCL had a formal duty to serve cities, towns, villages and Muzas in all areas of Pakistan.
- 3.2 Additional mobile, Wireless Local Loop (WLL), fixed-line Local Loop ("LL") and Long Distance International ("LDI") licensing since 2004 has increased competition substantially. Use of telecommunications services has expanded rapidly in this increasingly competitive environment. Mobile subscribership has grown from 70,000 in 1996 to nearly 88 million in June 2008<sup>1</sup>. WLL subscribership increased to nearly 2.2 million, whereas fixed-phone subscribers are 4.5 million by June 2008<sup>2</sup>. Combined tele-density rose from 2.3 per 100 in 2002 to 58.9 in June 2008<sup>3</sup>. However, broadband and internet services have not yet had the benefit of increased penetration, currently internet dial-up subscribers are 3.5 million and broadband connections are 130,128 by end March 2008.
- 3.3 Making modern telecommunications services (which include broadband services) available country-wide is a GoP priority.

<sup>1</sup> [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=650&Itemid=603](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=650&Itemid=603)

<sup>2</sup> [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=649&Itemid=602](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=649&Itemid=602)

<sup>3</sup> [http://www.pta.gov.pk/index.php?option=com\\_content&task=view&id=648&Itemid=600](http://www.pta.gov.pk/index.php?option=com_content&task=view&id=648&Itemid=600)

- 3.4 In a competitive sector, it is not appropriate to impose universal service obligations on a single operator. Accordingly, the De-Regulation Policy (2003) at section 5, the Mobile Cellular Policy (2004) at section 8, and the Pakistan Telecommunications (Re-organisation) Act, 1996 at section 33A, respectively, require that PTCL and all subsequent fixed and mobile licensees pay into the USF.
- 3.5 Persons who enter into a SSA as a result of the RFA Process (“USF Service Providers”) will receive a subsidy payment from the USF to extend Broadband services to USF areas, increasing Broadband penetration. The amount of the USF subsidy payment will be established in accordance with sections 12 and 43 of this RFA. The subsidy payment will be made in one or more installments, against identified Project Implementation Milestones, in accordance with the SSA.

#### **4. USF Policy**

- 4.1 The Universal Service Fund Policy (“USF Policy”) is the policy framework guiding the RFA Process. It sets out goals, objectives, and guidelines for using USF funding to meet certain basic telecommunication and ICT services needs in areas of Pakistan which would otherwise remain unserved.
- 4.2 The USF Policy’s goals include making Broadband services available to progressively greater proportions of Pakistan’s population.
- 4.3 The USF Policy’s objectives for 2010 include a nationwide average of 1% Broadband penetration throughout Pakistan. This RFA and similar USFCo initiatives are intended to meet these objectives by introducing USF Service in defined USF Areas.
- 4.4 The USF Policy will guide the actions of USFCo in administering the Universal Service Fund. That administration includes the use of the SSA, with compliance monitoring and penalties for non-performance, including forfeiture of bank guarantees. Technological features of the USF Policy include technological neutrality and an emphasis on shared access points. Economic features include capping USF service prices at nationally available retail prices, and a “negative auction” RFA Process to use bidding competition among eligible licensees to minimize the amount of any particular USF Subsidy, and to maximize overall benefits from the USF. Together, these features establish a USF regime to extend Broadband services to un-served and underserved locations in a sustainable manner consistent with fair competition.

#### **5. USF Areas**

The geographic locations that are the subject of this RFA and related USF Subsidy (the “USF Areas”) are identified in detail in Schedule C of SSA enclosed as Annex 6.

## 6. USF Broadband Service Requirements

The service requirements to be met by the successful Applicant(s) selected pursuant to this RFA are identified in Schedules A and B of the SSA enclosed as Annex 6.

## 7. USF Contributors and Eligibility

- 7.1 Persons whose Local Loop (“LL”) Wireless Local Loop (“WLL”), Long Distance and International (“LDI”) or Telecommunication Infrastructure Provider (“TIP”) Licence was issued after adoption of the Deregulation Policy (2003), and persons whose mobile cellular licence was issued or renewed after adoption of the Mobile Cellular Policy (2004), (collectively, “USF Contributors”) have an obligation to contribute 1.5% of annual gross revenues to the Universal Service Fund, less inter-operator fees and related payments mandated by the PTA or Frequency Allocation Board (“FAB”).
- 7.2 Any other licensee who has had its licence issued, re-issued or amended to include Universal Service Fund contribution payment requirements will, on satisfaction of those requirements, be recognized as a USF Contributor as well.
- 7.3 Eligibility to participate in the RFA process is limited to USF Contributors under the Universal Service Fund Rules, 2006 (the “Rules”)<sup>4</sup>.
- 7.4 Rule 24(12) sets out the following further restriction:

*No single licensee may accumulate more than fifty per-cent of the total amount of USF subsidies awarded by the USF Company in multiple auctions. The period during which a licensee’s accumulation and proportion of USF subsidy amounts will be defined in guidelines or statements of auction procedures to be issued by the USF Company from time to time.*

USFCo has developed guidelines under Rule 24(12), which can be amended from time to time. Applicants should consider the potential application of this restriction in considering their bidding strategy, particularly where multiple USF Projects are being offered.

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<sup>4</sup> See Rule 24(12) of the USF Rules 2006 as amended.

## 8. Time Schedule

- 8.1 The timetable for the RFA events, beginning with publication of the pre-auction notice, is set out below.

Estimated Time Schedule	
Event	
Publication of Specific Procurement notice	Sept 1, 2008
Distribution of RFA document & Start of Registration	Sept 1, 2008
Deadline for submission of questions by bidders	Sept 13, 2008
Pre-proposal meeting	Sept 18, 2008
Minutes of meeting and answers to questions	Sept 22, 2008
Deadline for Registration of Applicants	Oct 31, 2008
Deadline for submission of Proposals	Nov 14, 2008
Opening of the Qualifications & Service Proposal	Nov 14, 2008
Complete evaluation of Qualifications & Service Proposals and announcement of Qualified Applicants	Dec 1, 2008 (Tentative)
Opening of USF Subsidy Proposals of Qualified Applicants	Dec 8, 2008
Issue of LOI to the Successful Applicant(s) with lowest subsidy or matching lowest subsidy Offer	Dec 12, 2008 (Tentative)
Receipt of Performance Bond	22, 2008 (Tentative)
Execution of SSA and Related transaction documents	Dec 30, 2008 (Tentative)

- 8.2 If the scheduled day of an event falls on a gazetted holiday in Pakistan, the day of the event will be the next working day following the holiday.

## 9. Project Administration and Correspondence

- 9.1 All correspondence relating to this RFA should be addressed to:

Mr. Syed Asif Kamal,  
GM Projects & Technology, USFCo.  
Fifth Floor, HBL Tower, Jinnah Avenue,  
Islamabad,  
Pakistan

Telephone: 051-9212308-09  
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E-mail: [broadband@usf.org.pk](mailto:broadband@usf.org.pk)

**End of Part I**



## **Part II: Rights and Obligations of USF Service Provider**

### **10. Exclusivity**

A USF Service Provider will not have any exclusive rights to provide USF Broadband Services in the USF Areas.

### **11. Roll-out of USF Network and Supply of USF Broadband Services**

The USF Network may be constructed and/or otherwise rolled out to mandatorily provide services as per Schedule C of the SSA. Once the USF Network has been rolled out, the USF Broadband Services shall be supplied by the USF Service Provider in accordance with the Project Implementation Milestones in Schedule D of SSA.

### **12. USF Subsidy Payments**

In order to promote GoP's policy of expanding Broadband services and access in unserved/underserved areas, a USF Subsidy, based on providing Broadband Services to identified number of Subscribers, establishing and maintaining Community and Educational Broadband Centers, shall be paid to the USF Service Provider. The USF Subsidy payments shall be made in accordance with the SSA enclosed as Annex 6.

### **13. Service Availability and Quality Specifications**

- 13.1 Applicants must demonstrate that the USF Networks they propose will provide services to the identified numbers of Subscribers, Community and Educational Broadband Centers in Areas identified in Schedule C of the SSA.
- 13.2 The USF Service Provider must roll-out and operate the USF Network substantially in accordance with the plans submitted and the technology described in its accepted Proposal.
- 13.3 The USF Service Provider must also roll-out and operate the USF Network so that the USF Broadband Services meet all applicable quality of service measures and requirements, including those set out in applicable Licence(s) and SSA enclosed as Annex 6.
- 13.4 Quality of service reports for the USF Broadband Services shall be filed by the USF Service Provider with USFCo in accordance with the SSA.

## 14. Scope of Service

- 14.1 **USF Broadband Services** – The USF Broadband Services, including Broadband Service and Shared Access Points, shall be provided in the USF Areas in accordance with SSA.
- 14.2 **Optional Services** – In addition to the USF Broadband Services, a USF Service Provider may provide other optional services in the USF Areas, to the extent the USF Service Provider is authorized to provide such services under applicable Licence(s) without compromising on the quality of the USF Broadband Services. Further the USF Service Provider shall not force the customers in USF Areas to mandatorily take his optional service(s) with the USF Broadband Services. A USF Service Provider shall be free to apply for additional licences to provide other telecommunications services in accordance with the PTA's then-current licensing practices and procedures.

## 15. Regulation of Operators

USF Service Providers will remain subject to all other regulatory requirements established, from time to time by the PTA, including the terms of all previously granted Licences.

## 16. Interconnection and Facilities Sharing

- 16.1 Interconnection between a USF Service Provider's network and other licensed telecommunications networks in Pakistan is governed by:
- (a) the Act;
  - (b) the Pakistan Telecommunication Rules, 2000;
  - (c) all applicable licences;
  - (d) the Interconnection Regulations; and
  - (e) the SSA.
- 16.2 A USF Service Provider's network must be technically compatible with all existing data networks to ensure properly functioning interconnection. For interconnection purposes, technical compatibility includes, but is not limited to, compatible numbering, signaling, routing, synchronization and network interfaces, as applicable.

## **17. Numbering and Electronic Addressing**

- 17.1 Any numbers or electronic addresses used in Pakistan by a USF Service Provider shall be in accordance with the Act and any applicable numbering or electronic addressing plans established by the PTA pursuant to the Act.
- 17.2 For the purposes of section 17.1, “electronic addressing” shall be interpreted as including ENUM, Distributed Universal Number Discovery (“DUNDi”) and other systems for mapping telephone numbers to IP addresses; but does not include domain name management related systems or functions.

## **18. Type Approval**

Any Broadband equipment or facilities used in Pakistan by a USF Service Provider shall be subject to the type approval requirements of the Act and any type approval processes established by the PTA pursuant to the Act.

## **19. Regulation of USF Broadband Service Charges**

- 19.1 The tariffs charged by a USF Service Provider for the USF Broadband Services are subject to requirements under the SSA, including that those charges shall not exceed the USF Service Provider’s National or Regional tariffs for the same or equivalent services provided in urban locations that are not included in the USF Areas<sup>5</sup>.
- 19.2 USF Service Providers remain subject to any other tariff regulation by the PTA pursuant to the Act.

## **20. Authority to Construct and Use Facilities**

- 20.1 Subject to the terms of the SSA, a USF Service Provider will be authorized to construct or otherwise procure all telecommunications facilities required to provide the USF Broadband Services including customer premises equipment.
- 20.2 A USF Service Provider may utilise any appropriate wireless or wireline technologies, subject to any limitation in its Licence, in the provision of the USF Broadband Services that meet the USF Broadband Service requirements identified in the SSA.
- 20.3 All telecommunications facilities and equipment installed by a USF Service Provider as part of the USF Network shall be:

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<sup>5</sup> See section 2.06 of SSA.

- (a) new when first installed;
- (b) field-proven (in accordance with section 42.7); and
- (c) compliant with internationally recognized standards.

20.4 Any permissions or authorizations required from authorities or operators<sup>6</sup> in the USF Areas, in connection with the installation of the USF Network facilities and equipment and provision of USF Broadband Service, shall be the responsibility of the USF Service Provider.

## **21. Requirement to Procure and operate the USF Network**

A USF Service Provider shall be required to own or procure and operate the USF Network in accordance with the SSA.

## **22. Transfer or Change of Control**

Transfers and changes in the ownership or control of a USF Service Provider, during the validity of SSA, will be subject to USFCo approval in accordance with the SSA.

## **23. Access to Public and Private Lands**

A USF Service Provider shall have access to public and private lands, including ongoing rights of inspection and entry, in accordance with the Act and all other applicable laws, regulations and rules.

## **24. Force Majeure**

A USF Service Provider shall be excused, in accordance with the SSA, from certain failures to perform its obligations under the SSA if an event of force majeure has prevented the performance of the obligations.

## **25. Dispute Resolution**

The SSA includes a number of mechanisms to facilitate resolution of disputes, including the appointment by USFCo of a disputes committee consisting of appropriately qualified persons. Where disputes cannot be resolved by application of these mechanisms, parties will continue to have recourse to legal options in accordance with the laws of Pakistan.

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<sup>6</sup> In case of LLUB.

## **26. Technical Auditor**

A Technical Auditor shall be appointed by USFCo in accordance with the SSA and other applicable processes. The Technical Auditor(s) may be an appropriately qualified employee(s) of USFCo and/or expert consultant(s), and will perform identified functions in accordance with the SSA including:

- (a) certification that Project Implementation Milestones have been achieved and that USF Subsidy payments are therefore due;
- (b) certification that events of force majeure have prevented the performance of certain obligations under the SSA; and
- (c) proposing amendment of the USF Areas, and any related amendments to the SSA, upon the occurrence of a certified event of force majeure.

## **27. Compliance with Law**

A USF Service Provider shall be required to comply with all laws of Pakistan applicable to its USF Broadband Services activities at all times, including the Act, all Regulations, Rules, Orders, decisions and guidelines issued under the Act.

## **28. Term of SSA**

The SSA shall have a term of five (5) years, commencing from the effective date of SSA.

## **29. Other Obligations under SSA**

The SSA contains specific obligations of the USF Service Provider, including obligations regarding the roll-out of the USF Network and provision of the USF Broadband Services. The SSA also includes specific remedies for non-performance, including drawing on the Performance Bond or exercising the lien on USF Network assets, as well as insurance requirements, indemnification, and USF Service Provider's representations and warranties.

## **30. Fees Payable by the USF Service Provider**

A USF Service Provider will be responsible for paying any fees, taxes or charges otherwise applicable to the USF Service Provider in relation to its provision of the USF Broadband Services, in accordance with the Act and other laws of Pakistan and regulations made thereunder.

### **31. Frequency Spectrum**

- 31.1 A USF Service Provider may use wireless or satellite technology to provide USF Broadband Services in accordance with all legal and regulatory provisions governing spectrum authorizations.
- 31.2 Proposals shall provide details of the frequency spectrum (including spectrum used in backhaul systems or facilities) to be used by the USF Service Provider in providing the USF Broadband Services, including the frequency spectrum bands, numbers of channels, radio-communications equipment and anticipated type of use.
- 31.3 Applicants should note that the frequency spectrum bands currently available in Pakistan are described in the Spectrum Management Guidelines and other documents available on the PTA website.
- 31.4 It is the sole responsibility of the Applicant to ensure that it has the frequency spectrum required for delivery of the USF Broadband Services.

**End of Part II**

## **Part III: Instructions to Applicants**

### **32. Selection of Successful Applicant**

USFCo plans to execute SSA with the Applicant(s) whose Proposal meets the following selection criteria:

- (a) the Proposal demonstrates that the Applicant is a “Qualified Applicant”, meeting the requirements of sections 34, 35, 36 and 37 of this RFA;
- (b) the Proposal is “responsive”, meeting the requirements identified in section 40.1 of this RFA;
- (c) the Applicant proposes the lowest USF Subsidy for the Broadband Services to be provided in the defined USF Area(s); and
- (d) the Applicant, whose Subsidy Proposal is not the lowest, but willing to execute SSA by matching the lowest USF Subsidy subject to the provisions of Clause 48.4.

### **33. Pre-proposal Meeting**

- 33.1 USFCo shall conduct a “pre-proposal meeting” at the office of USFCo unless otherwise directed. The purpose of the meeting will be for USFCo to provide answers to the written questions posed and comments made by potential Applicants (see sections 56.5 and 56.6 regarding the submission of questions and comments), and to otherwise clarify or amend the RFA Process and related documentation. All authorised representatives of potential Applicants shall be entitled to attend the meeting.
- 33.2 USFCo will keep record of all those who are present at the pre-proposal meeting. All representatives from the Applicants and USFCo attending the meeting shall sign the record.
- 33.3 USFCo will prepare minutes of the pre-proposal meeting. The minutes, and the text of any written questions and answers from Applicants, will be published by USFCo on the USFCo website.
- 33.4 Responses to the written questions and results of the pre-proposal meeting shall not constitute an amendment to the RFA documents or the RFA Process unless USFCo re-issues the affected RFA documents with a specific identification of the resulting amendments.
- 33.5 Any amended RFA documents thus issued shall become the applicable statement of the RFA Process, and shall be communicated in writing to all Applicants. Applicants shall

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promptly acknowledge receipt of any amended documents by email to the USFCo project administrator identified in section 9.1.

- 33.6 USFCo may extend the deadline for submission of Proposals as required to give Applicants reasonable time in which to take account of any amended RFA documents

### **34. Qualification Criteria**

- 34.1 USFCo will determine whether an Applicant qualifies as a Qualified Applicant for the purposes of the award of a SSA.
- 34.2 For the purpose of this RFA the qualification criteria are described in sections 35, 36, and 37.

### **35. Financing Capacity**

- 35.1 The Applicant must satisfy USFCo that the proposed USF Service Provider has sufficient financing capacity for the investments required to construct and/or otherwise rollout the USF Network and to provide the USF Broadband Services. The criteria to determine whether an Applicant has sufficient financing capacity for a project of this size are:
- (a) A net worth of not less than PKR 30,000,000 (Pak Rupees Thirty million only); or
  - (b) Possession or access to a line of credit equal to PKR 30,000,000 (Pak Rupees Thirty million only).
- 35.2 The net worth of any shareholder in the proposed USF Service Provider may be included in the calculation of the net worth of the proposed USF Service Provider for the purposes of sections 35.1 and 42.5 if:
- (a) the shareholder holds or will hold a minimum of 1/3 (one third) of the ownership interest (including all forms of ownership interest) in the USF Service Provider; and
  - (b) the shareholder indicates that it is willing to guarantee the performance of the USF Service Provider and provides a written undertaking to this effect for inclusion in the Proposal.

### **36. Operational Experience**

- 36.1 The Applicant must have operated a telecommunications network for a minimum of one (1) year at the time of registration.
- 36.2 In complying with section 36.1 above, the Applicant may rely on:



- (a) the operational experience of the USF Service Provider it proposes; or
- (b) the experience of any Person that is a member of the Applicant's bidding consortium, and that Person:
  - (i) is licensed by the PTA; and
  - (ii) is a shareholder in the proposed USF Service Provider, or
  - (iii) has committed in a binding agreement to become a shareholder in the proposed USF Service Provider,

provided that the Person holds or will hold a minimum of 1/3 (one third) of the ownership interests (including all forms of ownership interests) in the USF Service Provider.

### **37. Applicant Eligibility**

- 37.1 The Applicant must demonstrate that the proposed USF Service Provider is eligible to receive the USF Subsidy.
- 37.2 As indicated elsewhere in this RFA, the Applicant must be a USF Contributor.
- 37.3 The Applicant must also not have any "conflict of interest", this meaning any association with consultants or other advisors retained by USFCo or GoP to advise on the design or implementation of the RFA Process; or participating in more than one Proposal in this RFA Process.
- 37.4 The USF Service Provider proposed by the Applicant must be incorporated under the Companies Ordinance, 1984.
- 37.5 The Applicant must possess valid Licence(s) for the relevant region and telecommunication services (i.e, has license to provide commercial internet/data services), issued by PTA. The Applicant must satisfy USFCo that the proposed USF Service Provider is in substantial compliance with the conditions of its Licence(s). In complying with this requirement, the Applicant may rely on the Licence(s) of any shareholder in the USF Service Provider that meets the requirements of section 35.2.

### **38. Consortium Applicant**

- 38.1 Any USF Contributor leading a consortium may bid for any USF Subsidy on behalf of that consortium ("Consortium Applicant") under conditions similar to those set out for an individual USF Applicant, provided that the consortium's composition and Proposal materials satisfy the consortium requirements identified below:

38.1.1 There shall be no limit on the number of members of the consortium, except that:

- (a) the consortium shall include at least one USF Contributor; and
- (b) the consortium shall include at least one LL, WLL or Cellular Mobile licence holder; but shall include no more than one LL, WLL, Cellular Mobile or LDI licence holder.

38.1.2 One member of the consortium shall be identified as the consortium leader. The consortium leader shall also enter into all contracts on behalf of the consortium and shall otherwise be responsible for consortium performance.

38.1.3 Notwithstanding section 38.1.2, all members of the consortium shall be jointly and severally liable to USFCo in respect to the performance of the SSA.

### **39. Bid Bond**

39.1 The Bid Bond shall remain valid for a minimum period of 180 days from the closing date identified in section 46.3. USFCo will not be obligated or liable to pay any accumulated interest on the Bid Bond.

39.2 The Bid Bond of all unsuccessful Applicants will be released not later than 30 days after the execution of the SSA(s). However the bid bond of the Applicants willing to match the lowest bid shall remain with USFCo till; i) the execution of the SSA; and ii) furnishing of the Performance Bond pursuant to section 54.

39.3 The Bid Bond of the Applicant proposing the lowest subsidy will be released not later than 30 days after: i) the execution of the SSA; and ii) furnishing of the Performance Bond pursuant to section 54.

39.4 Notwithstanding section 39.3, the Bid Bond of the Applicant proposing the lowest subsidy shall be forfeited in any of the following cases:

- (a) the Applicant withdraws its Proposal prior to execution of the SSA;
- (b) where the Applicant has received from USFCo a Letter of Intent to execute the SSA and the USF Service Provider proposed by the Applicant fails or refuses to submit the Performance Bond in accordance with sections 53 and 54 of this RFA;
- (c) if after the issuance of the Letter of Intent USFCo determines that Applicant is disqualified pursuant to section 51.1 of the RFA; and
- (d) the USF Service Provider proposed by the Applicant does not execute SSA within 20 days of the issuance of LOI.

#### 40. Responsiveness of Proposals

- 40.1 A Proposal will be considered responsive only if all of the following requirements are met:
- (a) The Proposal is submitted by an Applicant (or any company or other Person identified in the Proposal as a member or participant in a Consortium Applicant) that has registered with USFCo and purchased an official copy of the RFA in accordance with the Notice of Request for Applications document issued by USFCo.
  - (b) The Proposal is complete and submitted in accordance with all the requirements of this RFA, including the content requirements identified in sections 41, 42 and 43 and the submission requirements identified in sections 45 and 46.
  - (c) The Proposal is received before the closing date and time for submission identified in section 46.3.
- 40.2 Proposals that do not comply substantially with the above requirements will be rejected as non-responsive.

#### 41. Content and Format of Proposals

- 41.1 Each Proposal shall be assembled in two separate parts, contained in separate and clearly marked envelopes, as follows:
- (a) Part 1 - **“Qualifications and Service Proposal”**, setting out information about the Applicant, the USF Service Provider proposed by the Applicant, the USF Network and the USF Broadband Service proposal of the Applicant; and
  - (b) Part 2 - **“USF Subsidy Proposal”**, which shall set out the proposed USF Subsidy amount separately for each Area within the USF Areas as mentioned in Schedule C of SSA.
- 41.2 The required content and form of each Part of the Proposal are outlined in more detail below. All parts of the Proposal must be printed using indelible ink.

## **42. Part 1 Structure Requirements – Qualifications and Service Proposal**

Part 1 of the Proposal shall include the following documents and information:

### **42.1 Cover Letter and Attachments**

- (a) The cover letter and each page of the attached proposal materials must be signed by a person or persons duly authorised to act on behalf of the Applicant. Where the Applicant is a Consortium, the cover letter and attachments must be signed by a person or persons duly authorised to act on behalf of each member of the Consortium.
- (b) The cover letter must provide a summary description of the Applicant, including the members of any Consortium Applicant, and of the USF Service Provider proposed by the Applicant.
- (c) The cover letter must indicate a firm commitment to engage in final negotiation of the SSA promptly and in good faith.
- (d) The cover letter must confirm that the Proposal is open for acceptance by USFCo for 180 (one hundred and eighty) days from the bid closing date identified in section 46.3 of this RFA.
- (e) Attached to the cover letter must be one or more Powers of Attorney or notarised certificates that clearly evidence the authority of the signatory/(ies) of the cover letter and other documents submitted with the Proposal which require signature on behalf of the Applicant, a shareholder of the Applicant, the members of the Applicant Consortium, if applicable, or the USF Service Provider proposed by the Applicant.
- (f) Also included with the cover letter, must be the Bid Bond in the form of Annex 2 to this RFA, in accordance with the following requirements:
  - (i) The Applicant shall furnish a Bid Bond in the minimum amount of PKR 750,000 (Pak Rupees Seven hundred and fifty thousand only) in the form of Annex 2 to this RFA and issued by a reputable bank located in Pakistan that is acceptable to USFCo.
  - (ii) The Applicant shall complete the Bid Bond in the form included in Annex 2. The form must be completed without alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.
  - (iii) The Bid Bond of a Consortium must be in the name of the lead member of the consortium.

## 42.2 Information and Documentation on the Applicant

- (a) The name, legal status, registered office address and a description of the business of the proposed USF Service Provider.
- (b) The name, legal status, registered office address and a description of the business of all shareholders in the proposed USF Service Provider.
- (c) The name, legal status and registered office address of any Person who Controls the proposed USF Service Provider.
- (d) The name, legal status and registered office address of all Persons who own, directly or indirectly, any ownership interest in a shareholder of the proposed USF Service Provider.
- (e) The name, country of citizenship and address of each Person who is a director of the proposed USF Service Provider.
- (f) A chart:
  - (i) showing the ownership structure of the proposed USF Service Provider;
  - (ii) illustrating the relationship among all Persons having a direct or indirect ownership interest; and
  - (iii) specifying the nature and level of such ownership interest.
- (g) A description of the legal status of the proposed USF Service Provider, including:
  - (i) a certified copy of its certificate of incorporation, Memorandum and Articles of Association;
  - (ii) a certified copy of a resolution of the Board of Directors of the USF Service Provider that authorizes the Applicant to submit the Proposal and propose the USF Service Provider for the SSA; and
  - (iii) any shareholder agreement, joint venture agreement or Memorandum of Understanding, or other arrangement of any kind between the shareholders of the proposed USF Service Provider.
- (h) In the case of companies with shares listed on a stock exchange, the information regarding shareholders required in sections 42.2(b), 42.2(d) and 42.2(f) must be provided only to the best of the Applicant's knowledge and only in respect of shareholders owning more than 10% (ten percent) of the issued shares.

#### 42.3 Information to be submitted by a Consortium Applicant –

In the case of a Consortium Applicant, the Consortium Applicant's Proposal shall also include:

- (a) the name, legal status, registered office address and a description of the business of all Persons with a direct or indirect ownership interest of more than 10% (ten percent) in the Consortium Applicant or in any member of the Consortium;
- (b) where a Consortium member is an individual, identification and proof of citizenship for that individual;
- (c) specific details of the structure of the Consortium, including identification of the lead member of the consortium; and
- (d) the agreement(s) establishing the Consortium, specifying at least:
  - (i) a clear allocation of responsibilities and confirmation that all members of the Consortium will be jointly and severally liable to USFCo in respect of performance of the SSA;
  - (ii) the duration of the Consortium agreement;
  - (iii) details of the ownership interests in the Consortium and the financial contributions of each member; and
  - (iv) arrangements governing managerial control by the Consortium over the operation of the USF Service Provider.

#### 42.4 Documentation on the Applicant's Licence(s)

To demonstrate substantial compliance with the conditions of existing Licence(s), the Applicant shall submit:

- (a) a copy of each Licence issued by the PTA to the proposed USF Service Provider, or to any shareholder of the USF Service Provider that meets the requirements of section 35.2;
- (b) a copy of the most recent renewal of any such Licence; and
- (c) a declaration in the form of Annex 4 to this RFA, representing that the Applicant is in compliance with all applicable licence conditions, and is otherwise in good standing with the PTA.

42.5 Documentation on Financial Resources of the Applicant

- (a) Financial statements of the proposed USF Service Provider for the preceding two years, including an income statement and balance sheet, prepared in accordance with internationally accepted accounting standards; or
- (b) If the proposed USF Service Provider has not existed, or has not received service revenues, for at least one year prior to the submission of the Proposal, the financial statements of any shareholder that meets the requirements of section 35.2 must be provided. The financial statements of said shareholder must be provided for the preceding one year and must be prepared in accordance with internationally accepted accounting standards.

42.6 Documentation on Operational Experience of the Applicant

- (a) Where the Applicant will rely on the experience of a Person identified in section 36.2, the Applicant must demonstrate that arrangements are in place to provide the proposed USF Service Provider with access to the technology, professional know-how and operational experience required to operate the USF Network and to provide the USF Broadband Services. Specifically, the Proposal must include:
  - (i) a statement that identifies the Person;
  - (ii) documentation that clearly demonstrates that the relationship between the proposed USF Service Provider and such Person meets the requirements of section 36.2(b);
  - (iii) a written commitment from said Person to participate in the USF Service Provider's operations;
  - (iv) a description of such proposed participation, which must clearly demonstrate to USFCo's satisfaction that the Person will have a significant and continuing participation in running the operations of the USF Service Provider for the life of the SSA; and
  - (v) approval in writing by the Person's Board of Directors of the commitment and description of the Person's proposed participation.
- (b) The Proposal shall include specific information regarding the telecommunications markets in which the proposed USF Service Provider (or, if its experience is relied upon, the Person identified in section 36.2) has operated in the manner described. Details should be provided concerning:
  - (i) number of years of operation;
  - (ii) Broadband management experience of the proposed USF Service Provider;

- (iii) types of Broadband services provided; and
- (iv) experience of the proposed USF Service Provider in rolling out a Broadband network.
- (c) The operational experience listed in section 36.1 above shall constitute experience of only one Person and not the aggregate experience of two or more Persons.

#### 42.7 Field Proven Equipment and Software

- (a) All proposed equipment and software shall have been satisfactorily field- proven in actual service. USFCo reserves the right to verify the quality of the equipment and software and its satisfactory performance in actual service.
- (b) The Applicant shall provide the technical specifications of the major types of equipment and software to be supplied, installed and operated in order to provide the USF Broadband Services, including modems, multiplexing equipment, routers, switches and method for connection to the global Internet.
- (c) In view of the rapid technological development in communications technology, hardware and software, Applicants may propose that the USF Service Provider will install updated versions of the equipment and software in actual service. Applicants shall provide full details of the technological changes introduced in the proposed equipment and software.

#### 42.8 Network Description

- (a) The Applicant must provide a concise description of the planned network of the proposed USF Service Provider. The description must demonstrate that the proposed USF Network will meet the requirements specified in the SSA, including, but not limited to, the USF Broadband Services specifications in Schedules A and B to SSA. The network description provided by the Applicant must also clearly demonstrate that the USF Service Provider will extend transmission and/or backhaul facilities into the USF Areas, with sufficient planned capacity to meet the requirements of the USF Broadband Services.
- (b) The network description shall include:
  - (i) a description of the model switching, routing and interface technology to be employed, including applicable technical standards, and a network map illustrating the intended network architecture and USF Network installations;



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- (ii) a summary description of the roll-out and service coverage plans for the USF Network and USF Broadband Services, that meet or exceed the Project Implementation Milestones;
- (iii) the frequency spectrum, if applicable, to be used by the USF Service Provider (including the frequency spectrum bands, numbers of channels, radio-communications equipment, characteristics and anticipated type of use);
- (iv) the specific USF Network bandwidth capacity estimated by the Applicant as required to meet traffic requirements in the USF Areas over the first five years of commercial operations, and how that capacity will be provided by the USF Service Provider;
- (v) proposed interconnection points: The Applicant should specify how it intends to connect its Broadband traffic to the Internet. The specification should include the backhaul capacity per community, and plans for local or national peering. Backhaul, interconnection and peering arrangements should make maximum use of existing services and facilities available from other service providers in order to minimize subsidy requirements; and
- (vi) the Applicant shall also provide the information identified in the “Design Parameters” included in Annex 5.

### 42.9 Operations Description - The Proposal must include:

- (a) a general description of the intended operations of the USF Service Provider, including its general approach to implementation of the USF Network and provision of the USF Broadband Services; and
- (b) a brief description of any land or rights in land (i.e., rights of way) that must be acquired for the operations, the estimated cost of acquiring such land or rights in land and the impact acquiring such rights might have on the Applicant’s network roll-out plan.

### 42.10 Quality of Service Description - The Proposal must include a summary of the methodology and processes that will be implemented by the proposed USF Service Provider to meet the service requirements and quality of service standards identified in Schedules A to the SSA, including performance monitoring, reporting and fault resolution processes.

### 42.11 Projected Financial Statements - The Applicant must provide projected financial statements for years one through five of the USF Service Provider, including an income statement, balance sheet and statements of sources and application of funds for the USF Service Provider prepared in accordance with internationally accepted accounting standards. For this purpose, the financial statements shall treat the USF Subsidy amount as

if it were part of the debt, equity or deferred income of the USF Service Provider<sup>7</sup>. The financial statements shall include projections of fee revenues from the USF Broadband Services and any Optional Services.

42.12 Tariffs and Charges - The Proposal must include a statement by the Applicant confirming that its tariffs and service charges for the USF Broadband Services will meet the tariff requirements identified in the SSA<sup>8</sup>.

42.13 Additional Information

- (a) The Applicant's comments on the draft SSA or any other transaction documents or requirements, including particularly any terms or conditions that the Applicant cannot or will not comply with; and
- (b) Any information that does not specifically respond to this RFA, but that the Applicant thinks is relevant to the Proposal.

### 43. Part 2 Subsidy Proposal

Information to be submitted by the Applicant in Part 2 of its Proposal:

- (a) **Subsidy Proposal** – The Applicant must provide a completed USF Subsidy Proposal Form prepared in accordance with Annex 1 to this RFA. As indicated in Annex 1, the amount of the proposed USF Subsidy shall be set out in words and numbers and in the event of any discrepancy between the words and numbers, the amount set out in words shall govern, and the currency of the proposed USF Subsidy shall be stated in PKR.
- (b) **USF Areas** – The Applicant's USF Subsidy Proposal must state the proposed amount of USF Subsidy for delivery of the USF Broadband Services as required under SSA for each of Area within USF Areas as indicated in Schedule C of the SSA. The Applicant shall separately state cost of:
  - (i) providing Broadband Service to a single subscriber, multiplied by the number of total subscribers;
  - (ii) establishing a single Community Broadband Center, multiplied by the number of total Community Broadband Centers; and
  - (iii) establishing a single Educational Broadband Center multiplied by total Educational Broadband Centers

<sup>7</sup> Applicants must take care that the USF Subsidy amount included in the financial statements is aggregated with other funds so that the amount of the Applicant's intended subsidy cannot be specifically identified.

<sup>8</sup> See Section 2.06 of SSA.

in a particular Area within USF Areas, as required in Schedule C of SSA.

- (c) **Calculation of Subsidy** – The Proposal must include a concise financial analysis detailing the calculation of the proposed USF Subsidy amount for each area separately identified within USF Areas as mentioned in Schedule C of the SSA. The information furnished in this regard will be kept strictly confidential by USFCo; however, and as indicated in section 47.2, USFCo shall be entitled to publicly announce the total amount of each Applicant’s USF Subsidy Proposal for each of the Areas with USF Areas. The financial analysis must clearly demonstrate the breakdown of projected USF Network costs, itemized to show the costs of the USF Network components identified pursuant to section 42.8, per community or population area served.

#### **44. Compliance Checklist**

- 44.1 A “Compliance Checklist” is attached as Annex 5 to this RFA. Applicants must include a completed Compliance Checklist in each copy of their Proposals.
- 44.2 When completing the Compliance Checklist, Applicants must identify the specific parts and page numbers of their Proposals that correspond to the documents and information required by the RFA sections identified in the Compliance Checklist. Applicants must also specifically identify and comment on any of the identified RFA sections for which their Proposals are either “Non-Compliant” or only “Partially Compliant”.
- 44.3 Without derogating from the provisions of sections 44.1 and 44.2, above, in the event of any discrepancy between the Proposal requirements described in this RFA and the Compliance Checklist, the terms and requirements of this RFA shall prevail.

#### **45. Submission of the Proposal**

- 45.1 The Applicant shall prepare three copies of the Proposal, clearly marking the first copy “Original Proposal” and each of the 2nd & 3rd, copies “Copy of Proposal”.
- 45.2 The Applicant shall also prepare one electronic copy of the Proposal (i.e., CD-ROM or DVD containing a copy of the Proposal that is in a format readable by Microsoft Office or Adobe Acrobat software).
- 45.3 All copies of the Proposal shall be clearly marked with the name of the Applicant.
- 45.4 In the event of any discrepancy between copies, the original shall govern.
- 45.5 As indicated in section 41, the Proposal consists of two separate parts: Part 1, the Qualification and Service Proposal; and Part 2, the USF Subsidy Proposal. Each part of the

Proposal shall be separated into clearly labeled envelopes, with each envelope containing the three hard copies and the CD-ROM or DVD copy of the applicable part of the Proposal. The envelopes containing the separate parts of the Proposal shall be packaged together in a single box or other container. The container shall be sealed; that is securely packed and closed, so that it is not possible to open it without visual evidence thereof.

- 45.6 Each Proposal package shall be clearly marked with the following information:

Proposal to Provide USF Broadband Services  
Name of Applicant:  
Local Contact Name, Phone Number and E-Mail Address:

*“DO NOT OPEN, EXCEPT IN PRESENCE OF USFCo EVALUATION COMMITTEE”*

- 45.7 USFCo will provide a written receipt confirming the delivery of each Proposal received prior to the closing date and time.
- 45.8 The Bid Bond should be enclosed in a separately sealed envelope clearly marked with the name of the Applicant and the text “Bid Bond”. This envelope should be included in the container that includes all Proposal contents (see section 45.5), and delivered with the assembled Proposal package.

#### **46. Delivery of the Proposal**

- 46.1 The Proposal packages shall be delivered to the following address before the closing date and time identified in section 46.3:

Mr. Syed Asif Kamal,  
GM Projects & Technology, USFCo.  
Fifth Floor, HBL Tower, Jinnah Avenue,  
Islamabad, Pakistan

- 46.2 If the Proposal container is not sealed and marked properly, USFCo will assume no responsibility for the Proposal or the disposition of its contents. Improperly marked or sealed packages may be rejected by USFCo.
- 46.3 **Closing Date for Submission of the Proposal** - The sealed Proposal package shall be delivered to USFCo at the address specified in section 46.1 no later than 11:00 am on 17/ 10/2008.
- 46.4 **Late Proposal** - Proposals received after the closing date and time identified in section 46.3 will be returned to the Applicant(s).

#### **47. Opening of Proposals**

- 47.1 USFCo will publicly open the duly received Proposals, in the presence of authorised representatives of any Applicants who desire to attend, commencing at 11:30 am on the closing date identified in section 46.3, in the conference room of USFCo, 5th Floor HBL Tower, Jinnah Avenue, Islamabad. The opening will proceed whether one or more representatives of Applicants are present or absent. Following opening of the Proposals, USFCo will proceed with evaluation of the Proposals in accordance with section 48.
- 47.2 All Proposals shall be opened one at a time, with a representative of USFCo reading out the name of the Applicants and any other Applicant information that USFCo may consider appropriate. Only Proposals opened and read out at the proposal opening shall be considered for further evaluation, irrespective of the circumstances. No Proposals shall be rejected at Bid opening except for late Proposals or any Proposals that are not accompanied by a Bid Bond.
- 47.3 USFCo shall prepare a record of the initial Proposal opening that shall include, at a minimum, the name of the Applicant, the presence or absence of a Bid Bond and identification of any Proposals rejected for late submission. The Applicants' representatives who are present shall be requested to sign an attendance sheet.

#### **48. Selection Process and Evaluation of Proposals**

- 48.1 Subject to any request for clarification submitted by USFCo pursuant to section 56.7, the information submitted by Applicants in response to this RFA will be the sole basis for the selection of the USF Service Provider. Provided that the Proposal is substantially responsive, GoP and USFCo reserve the right to request Applicants to provide additional information and documents to assist them in evaluating the Proposals. However, neither GoP nor USFCo, nor any other GoP body, will assist Applicants to supplement Proposals which are otherwise deficient or non-compliant. Failure to provide additional information within the identified timeframe may result in the Applicant's proposal being determined to be non-compliant.
- 48.2 USFCo will review each Applicant's "Qualifications and Service Proposal" (Part 1 of the Proposal) to determine whether or not each Applicant is a Qualified Applicant within the meaning of section 34 of this RFA. Applicants that fail to satisfy the criteria identified in section 34 for becoming a Qualified Applicant will be rejected. USFCo will identify the grounds for rejection in a letter to each Applicant that fails to qualify as a Qualified Applicant.
- 48.3 USFCo will open and review each Qualified Applicant's "USF Subsidy Proposal" (Part 2 of the Proposal). USFCo will identify the date and time of opening the USF Subsidy Proposals, and representatives of Qualified Applicants will be entitled to attend the opening of the USF Subsidy Proposals. The representatives of Qualified Applicants who are present at the opening shall be requested to sign an attendance sheet. A representative of USFCo shall read out or otherwise announce the amount of USF Subsidy proposed by

each Qualified Applicant for each Area within USF Areas. USFCo will prepare minutes for the USF Subsidy Proposal opening meeting. The minutes will be sent to all Qualified Applicants and will be published by USFCo on its website.

- 48.4 **Awarding SSA** – SSA shall be awarded to a maximum of five Applicants or two-third of total Applicants, whichever is less (a fraction being counted as one) in the following manner:
- (a) Subject to section 60, the SSA will be awarded to the Qualified Applicant that proposes the lowest USF Subsidy for an area within the USF Areas (hereinafter First Successful Applicant).
  - (b) The next four lower Applicants or remaining of the Applicants from the two-third of total Applicants (whichever is less), who participated in the auction and their subsidy proposal is opened, shall also be eligible to request for entering into SSA by matching the subsidy proposal of the First Successful Applicant on voluntary basis. For the purpose of this RFA such Applicant(s) shall also be considered as Successful Applicants (Hereinafter the Subsequent Successful Applicant(s)). In case any of the first four lower or remaining of two-third of Applicants, as the case may be, does not opt to enter into SSA, then the option will be given to the next lower Applicant and so on till either maximum of four or two-third Subsequent Successful Applicants, as the case may be, enter into SSA or it is determined that no other Applicant is willing to take the SSA by matching the subsidy proposal of the First Successful Applicant. For the sake of clarity it is reiterated that the Applicants, other than the First Successful Applicant, are not obliged to match the lowest Subsidy Proposal even if an LOI is issued to them by USFCo and they are free to make an independent decision to match the lowest Subsidy Proposal at their own will.
  - (c) In current Schedule C USFCo has prepared five sets of targeted number of subscribers and Shared Access Points for each of the Area within USF Areas to accommodate a maximum of five Applicants but in SSA of each Applicant only its set of number of subscribers and Shared Access Points shall be mentioned. However if there are less than five Successful Applicants then the remaining sets may be distributed among the available Successful Applicants as USFCo may deem fit. The targets mentioned in Schedule C are minimum targets and Successful Applicant(s) are encouraged to increase the number of subscribers and Shared Access Points before execution of SSA in order to meet the national Broadband penetration target quickly and claim more USF Subsidy.
  - (d) Since every Applicant is required to submit Subsidy Proposal for each of the Areas within USF Areas separately identified in current Schedule C, therefore it is possible that in different Areas, different Applicants are First and Subsequent Successful Applicants. Every effort shall be made by USFCo to enter into one SSA with each of the First and Subsequent Successful Applicant(s) stating all Areas falling to it.

48.5 **Ties** - In the event that there is more than one Qualified Applicant bidding the lowest USF Subsidy for one or more USF Areas, USFCo shall proceed as follows:

- (a) The tied Qualified Applicants will receive written notice of the tie and instructions for submission of second round bids.
- (b) The tied Qualified Applicants will proceed to a second round of bidding in which they will submit new USF Subsidy Proposals that comply with the requirements of sections 42 and 43.
- (c) The new USF Subsidy Proposal amount submitted by the tied Qualified Applicant must be smaller than or equal to the original USF Subsidy Proposal amount submitted by the Qualified Applicant.
- (d) The new USF Subsidy Proposals shall be delivered in a sealed envelope, that is, securely closed so that it is not possible to open it without visual evidence thereof, to the address identified in section 46 and before the date and time specified in the written notice referred to in section 48.5(a). New USF Subsidy Proposals will not be accepted after the date and time specified in the written notice referred to in section 48.5(a).

48.6 USFCo's determinations in the evaluation process shall be final and binding upon Applicants, subject to the laws of Pakistan.

#### **49. [Left Blank]**

### **50. Period of Validity of Proposal**

The Proposal shall remain valid for 180 days from the closing date identified in section 46.3 of this RFA.

### **51. Grounds for Rejection of Proposal**

51.1 USFCo shall reject Proposals and remove them from further consideration for any of the reasons set out below:

- (a) Failure to comply with any of the procedures or other requirements identified in sections 35, 36, 37, 40, 42, 43 and 45 of this RFA.
- (b) Failure to submit the Bid Bond amount specified in this RFA.



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- (c) Serious inaccuracy or misrepresentation of any material facts in any part of the Proposal.
- (d) The Applicant submitting the Proposal is determined by USFCo to have a conflict of interest (as that term is defined in section 37.3).

51.2 On the occurrence of any of the forfeiture events identified above in section 51.1, USFCo shall be entitled to select another Applicant as per section 53.2(c).

### **52. Subsequent Disqualification and Ineligibility**

- 52.1 If evidence of any of the activities referred to in sub-sections 51.1 (c) through (e) is disclosed after the SSA has been executed, USFCo may terminate the SSA without compensation. The provisions of this section are in addition to any criminal or civil legal action which may be available to or taken by any government or regulatory authority, including PTA and USFCo.
- 52.2 USFCo will declare an Applicant ineligible, either indefinitely or for a stated period of time, to be awarded a USFCo financed contract if, at any time, it determines that the Applicant has engaged in corrupt, fraudulent, collusive or coercive practices in applying for, or in performing, a USFCo financed contract.

### **53. Letter of Intent**

- 53.1 USFCo will issue a Letter of Intent (“LOI”) to the successful Applicant(s) to confirm USFCo’s intention to grant the SSA to the USF Service Provider proposed by the Applicant. The LOI will also require the USF Service Provider proposed by a successful Applicant to submit the required Performance Bond within 10 days of receipt of the LOI.
- 53.2 If the USF Service Provider proposed by the First Successful Applicant to whom the LOI is directed does not submit the required Performance Bond within 10 days from the date of issue of the LOI, USFCo may:
  - (a) cause the First Successful Applicant to forfeit the Bid Bond pursuant to section 39.4 above;
  - (b) disqualify the First Successful Applicant and the USF Service Provider proposed by the Applicant; and
  - (c) issue another LOI to the Qualified Applicant that has submitted the next lowest USF Subsidy proposal for the USF Areas.
- 53.3 A First Successful Applicant to whom a LOI is directed must accept the LOI by notice in writing (the “Letter of Acceptance”) to USFCo within a maximum of seven (7) days from the date of receipt of the LOI. The Subsequent Successful Applicant(s) to whom LOI is



directed may accept or reject the LOI within a maximum of seven (7) days from the date of receipt of the LOI, without any obligation. No response from Subsequent Successful Applicants within the stipulated period shall be considered as rejection of LOI.

- 53.4 It is the intention of USFCo that the SSA (the “Contract”) will be finally negotiated and signed within 20 days of the date of issue of the LOI. In the event that USFCo and the recipient of the LOI are unable to finalize the terms of the Contract within the 20 day period, USFCo shall be entitled to terminate negotiations, return the Performance Bond and issue another LOI to the next Qualified Applicant.
- 53.5 Once the SSA has been entered into with the USF Service Provider(s), USFCo shall publish the results of the RFA Process including at least the following information:
- (a) name of each Applicant who submitted a Proposal;
  - (b) name of Applicants whose Proposals were rejected, and the reason(s) for their rejection;
  - (c) the USF Subsidy Proposal amounts as read out at the subsidy proposal opening;
  - (d) the name of the winning Applicant;
  - (e) name(s) of the Applicant(s) agreed to match the winning lowest proposal; and
  - (f) a summary of the resulting Contract(s).

The information shall also be published on USFCo’s website and may be published in any other manner directed by USFCo or GoP.

#### **54. Performance Bond**

A USF Service Provider proposed by an Applicant to whom an LOI has been directed shall furnish the Performance Bond in accordance with this RFA Process and the SSA. The Performance Bond shall be prepared in the form of Schedule F to the SSA, and shall be furnished within ten (10) days of the date of issue of the LOI.

#### **55. Information Provided by USFCo**

- 55.1 The information contained in this RFA and any other information provided to Applicants during the Proposal process is intended to assist Applicants in the preparation of their Proposals. USFCo will ensure that all Applicants are provided with the same information during the Proposal process, in accordance with sections 33.5 and 33.6 of this RFA.
- 55.2 USFCo has made and will continue to make reasonable efforts to include accurate and current information in this RFA and in any other documentation provided to Applicants and potential Applicants. However, neither USFCo nor any of its agencies, employees, representatives, advisors or consultants shall have any liability whatsoever to any Applicant or any of its shareholders or members or any other Person resulting from use of or reliance on any of the information so provided. Applicants are encouraged to undertake

their own verification of any information supplied by USFCo prior to use of or reliance on that information.

## **56. Communications, Comments and Requests for Clarification**

- 56.1 All deliveries, notices or other communications made by USFCo to Applicants in connection with the Proposal process shall be sent by fax, e- mail or personal delivery to the registered office of the Applicant, as specified at the time the Applicant registered with USFCo pursuant to this RFA Process.
- 56.2 All deliveries, notices or other communications made by Applicants to USFCo in connection with the Proposal process, except for submission of the Proposal itself, shall be sent in writing by e-mail or personal delivery, unless otherwise specified by USFCo, to the contact person and address specified in section 9.1.
- 56.3 Subject to section 48.1, during the period between the deadline for submissions of Proposals and the award of the USF Subsidy, no Applicant, no USF Service Provider proposed by an Applicant and no party interested in a Proposal shall be permitted to discuss the merits of any Proposal with any representative of USFCo. Any communications, or attempted communications, in contravention of this section shall be grounds for immediate disqualification.
- 56.4 Applicants are expected to carefully examine all instructions, forms and annexes in this RFA. Failure to furnish all information required by this RFA or the submission of a Proposal that does not comply with the RFA in all respects may result in disqualification of the Proposal.
- 56.5 A prospective Applicant requiring any clarification of this RFA or the draft SSA may pose one or more questions to USFCo in writing by e-mail or personal delivery up to twenty one (21) days prior to the closing date for Proposals. USFCo will respond in writing to such written questions following the pre-proposal meeting described in section 33 above. Written questions received by USFCo less than twenty one (21) days prior to the closing date will not be answered.
- 56.6 A prospective Applicant may make comments on the structure and contents of this RFA or the draft SSA. Such comments should be sent in writing by e-mail or personal delivery to USFCo up to twenty one (21) days prior to the closing date for Proposals. USFCo will respond in writing to such written comments following the pre- proposal meeting described in section 33 above. USFCo will not respond to written comments received by USFCo less than twenty one (21) days prior to the closing date.
- 56.7 To assist in the examination and evaluation of Proposals, USFCo may, at its discretion, ask any Applicant for a clarification of its Proposal. Any clarification submitted by an Applicant in respect to its Proposal that is not in response to a request by USFCo shall not be considered. USFCo's request for clarification and any response shall be in writing.

## Request for Applications for USF Services

Subject to sub-section 48.5, no change in the proposed USF Subsidy amount shall be sought, offered or permitted, except to confirm the correction of arithmetic errors discovered by USFCo in the evaluation of the Proposals. In responding to any request for clarification, Applicants may not attempt to change their Proposals, and any response that USFCo determines constitutes a change to an Applicant's Proposal shall not be taken into account by USFCo in evaluating the Proposal.

### **57. Confidentiality of Proposals**

- 57.1 Except for the public opening of USF Subsidy Proposals pursuant to section 47, USFCo shall treat all Proposals received in relation to this RFA as confidential during the period before the award of the SSA.
- 57.2 USFCo and its agencies, employees, representatives, advisors or consultants shall take reasonable steps to protect Proposal related information from improper use or disclosure; however, liability for disclosure shall be subject to the limitation set out in section 61.3.
- 57.3 Information relating to the examination, evaluation, comparison, and qualification of Proposals, and any recommendation of Contract award, shall not be disclosed by any representative of USFCo or GoP to Applicants or any other Persons not officially concerned with such process except as specifically permitted by sections 47, 48, and 53.5 of this RFA.

### **58. USFCo Use of Proposals**

Subject to compliance with intellectual property laws of Pakistan, and section 57 above, USFCo shall have the right to use or reproduce ideas and information contained in a Proposal without notice or payment of any kind to the Applicant.

### **59. Cost of Proposal and Bidding**

The Applicant shall bear all costs associated with the preparation and submission of its Proposal and USFCo will in no case be responsible for any such costs, regardless of the conduct or outcome of the Proposal process.

## 60. Reservation of Rights

- 60.1 USFCo reserves the right, in its sole discretion, to take any action, including amendment of this RFA, which it considers necessary to ensure that the RFA Process proceeds in a fair, open and transparent manner, in accordance with the laws of Pakistan and to meet the objectives of USFCo.
- 60.2 USFCo reserves the right to modify or terminate the RFA Process at any time in its sole discretion.
- 60.3 USFCo is not legally obligated to execute the SSA. It may terminate the RFA Process or revoke an award of the SSA at any time before the SSA is executed.

## 61. Legal and Formal Requirements

- 61.1 **Governing Law** - This RFA and any SSA executed pursuant to this RFA shall be exclusively subject to, and interpreted in accordance with, the laws of Pakistan.
- 61.2 **Settlement of disputes** - Any dispute, controversy or claim arising out of or in connection with this RFA document, or the breach, termination or invalidity thereof, shall be subject to the dispute resolution terms and processes set out in Annex 5 7 to this RFA.
- 61.3 **Limitation of Liability** - Neither GoP nor any of its Ministries, agencies, employees, representatives, advisors or consultants, including USFCo and its officers, employees and contractors, shall incur any liability whatsoever to any Applicant or any USF Service Provider proposed by an Applicant, or any of their respective shareholders or members or any other Person, in connection with any damages, losses, expenses or injury whatsoever, including but not limited to loss of revenue, opportunity, or goodwill, resulting from participation in the RFA Process, including reliance of any person on the information set out in this RFA; it being understood and agreed that USFCo's or GoP's liability for damages shall, in any event, be limited to such amount as may have been actually paid by an Applicant or other person to participate in the RFA Process.
- 61.4 **Language** - The Proposal, the accompanying documents, and all correspondence relating to this RFA shall be submitted in the English language.

## 62. Misc.

- 62.1 All USF Service Providers are encouraged to develop and provide local content to the users in general and users in USF Areas in particular. They may also establish their separate or a common web portal for the purpose.
- 62.2 All USF Service Providers are expected to employ people from USF Areas and generate local employment by supporting and engaging local labor and industry.

## Part IV: Definitions

### 63. Definitions

In this Request for Applications (RFA), unless the subject matter or context otherwise requires, the following terms shall have the following meanings:

**“Act”** means the Pakistan Telecommunication Act (Re-Organization) Act, 1996, XVII of 1996, as amended, and any successor legislation;

**“Applicant”** means any Person that registers itself with USFCo as an Applicant for purposes of this RFA, having obtained a copy of this RFA from USFCo;

**“Bid Bond”** means the financial security for the bid, including any pay order or demand draft in the name of USFCo, which an Applicant must furnish to USFCo in accordance with section 39 of this RFA;

**“Broadband Service”** has the meaning set out in Schedule A of the SSA;

**“Compliance Checklist”** means the form set out in Annex 5 to this RFA that Applicants must complete in accordance with section 44 of this RFA;

**“Consortium Applicant”** means a group of Persons, including a joint venture, that submits a Proposal on behalf of its members, and that meets all eligibility requirements identified in section 38.1 of this RFA;

**“Contract”** means the SSA signed with one or more successful Qualified Applicants on successful conclusion of the RFA Process;

**“Control”** of a Person other than an individual means the ownership of at least 51% (fifty-one percent) of the voting interests in the subject Person; or the possession, directly or indirectly, of the power to direct or cause the direction of the management of that Person, whether through the ownership of shares, voting, securities, partnership or other ownership interests, agreement or otherwise;

**“GoP”** means the Government of Pakistan;

**“Interconnection Regulations”** means any interconnection regulations, rules or guidelines that may be issued by PTA from time to time;

**“Internet Services”** means the services that a USF Service Provider is obliged to provide under Schedule A of the SSA;

**“Letter of Acceptance”** means the letter described in section 53.3 of this RFA;

**“Letter of Intent”** or **“LOI”** means the letter described in section 53.1 of this RFA;

**“Licence”** means any telecommunications licence granted by the PTA to the USF Service Provider, or to any shareholder of the USF Service Provider that meets the requirements of section 35.2, which authorizes it to provide the USF Services, as that Licence may be amended;

**“Net worth”** for the purposes of sections 35 means total assets minus total liabilities (including accumulated losses).

**“Optional Services”** means services that a USF Service Provider is authorized but not required to provide pursuant to the SSA and any Licences held by a USF Service Provider;

**“Performance Bond”** means the financial security for performance a USF Service Provider must furnish in accordance with section 54 of this RFA;

**“Person”** means any individual, firm, company, corporation, partnership, joint venture or other consortium, government or governmental entity;

**“Point of Interconnection”** or **“POI”** means a connection point between the networks of two telecommunications service providers;

**“Project Implementation Milestones”** means the milestones for the roll-out of the USF Network and provision of the USF Broadband Services identified in Schedule D of the SSA;

**“Proposal”** means a proposal submitted by an Applicant in response to this RFA;

**“PTA”** means the Pakistan Telecommunication Authority, a statutory body corporate established under Section 3 of the Act, and its predecessors and successors;

**“Qualifications and Service Proposal”** means Part 1 of the Proposal, that Applicants must prepare in accordance with section 41.1(a) of this RFA;

**“Qualified Applicant”** has the meaning ascribed thereto in section 34 of this RFA;

**“RFA”** means this Request for Applications, including all annexes hereto, as amended or modified by USFCo;

**“Shared access points”** means the Community Broadband Centers and Educational Broadband Centers mentioned in Schedule B of the SSA as Annex 6.

**“SSA”** means the agreement, a draft of which is annexed as Annex 6 to this RFA, for the construction and roll-out of the USF Network, provision of the USF Broadband Services and payment of the USF Subsidy to be granted pursuant to this RFA;

**“Technical Auditor”** means the Person appointed in accordance with the SSA;

**“USF Areas”** mean the areas identified in Schedule C of the USF Broadband SSA as being mandatory for USF Network and USF Broadband Services;

**“USF Contributor”** means any Person whose Licence includes identified USF Contribution requirements, and is fully compliant with those requirements;

**“USF Network”** means the licensed telecommunication system to be constructed by a USF Service Provider to provide USF Services pursuant to SSA;

**“USF Rules”** means the Universal Service Fund Rules, 2006 (as amended);

**“USF Service Provider”** means the Person put forward by an Applicant that will provide the USF Broadband Services in accordance with the SSA;

**“USF Broadband Services”** means the services to be provided by a USF Service Provider pursuant to the SSA;

**“USF Subsidy”** means the subsidy to be paid by USFCo to the USF Service Provider on the USF Service Provider achieving the Project Implementation Milestones;

**“USF Subsidy Proposal”** means Part 2 of the Proposal that Applicants must prepare in accordance with section 43 of this RFA;

**“USF Subsidy Proposal Form”** means the form attached at Annex 1 of this RFA; and

**“USFCo”** means the Universal Service Fund, a company setup under Section 42 of the Companies Ordinance 1984 and its successors.

**End of Part IV**

## Annex 1: USF Subsidy Proposal Form

### RFA TO PROVIDE USF BROADBAND SERVICES

To:  
 The Chief Executive Officer  
 USFCo  
 Fifth Floor, HBL Tower, Jinnah Avenue,  
 Islamabad  
 Pakistan

#### **Applicant's USF Subsidy Proposal:**

The Applicant, *[insert name of Applicant]*, hereby commits to assume all of the USF Broadband Service obligations identified in the RFA and SSA in consideration for the award of the SSA and payment of the amount of USF Subsidy indicated in the following table:

<p>For each area separately within USF Areas:</p>  <p><i>As identified in Schedule C of SSA.</i></p>	<p>Amount of Proposed USF Subsidy based on per subscriber, community and Broadband center basis and multiplied by the total numbers mentioned in the Schedule C of SSA (in Pakistan rupees):</p> <p><i>[Enter amount of USF Subsidy proposed for the USF Areas. The amount must be set out in both words and numbers.]</i></p>
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1. In the event of any discrepancy between the USF Subsidy amount set out in words and numbers, the amount set out in words shall govern.
2. This USF Subsidy Proposal shall remain valid in accordance with section 50 of the RFA.

**Signature:**      Print Name:

in the capacity of *[insert title/position of individual signing]* duly authorized to sign for and on behalf of *[insert name of Applicant]*.

Dated this [dd], day of [mm], 20[yy].

**Witness Signature:**      Print Name:

Dated this [dd] day of [mm], 20[yy].



## **Annex 2: Bid Bond Form**

To:  
The Chief Executive Officer  
USFCo  
Fifth Floor, HBL Tower, Jinnah Avenue,  
Islamabad  
Pakistan

WHEREAS the Universal Service Fund (Guarantee) Limited, hereinafter called the “USFCo”, has issued the Request for Applications to Provide Universal Service Fund (USF) Broadband Services, hereinafter called the “RFA”, dated [insert date];

AND WHEREAS the USF Broadband services, hereinafter called the “SERVICES”, shall be provided in accordance with a service agreement, hereinafter called the “AGREEMENT”, to be executed in accordance with the RFA, and any licence, hereinafter called the “LICENCE”, issued by the PTA that authorizes provision of the SERVICES;

AND WHEREAS [insert name of Applicant], hereinafter called the “APPLICANT”, is submitting a proposal, hereinafter called the “PROPOSAL”, dated [insert date of Proposal] to provide the “SERVICES”;

KNOW ALL PEOPLE by these presents that we [insert name of bank] having our registered office at [insert address of bank], hereinafter called the “BANK”, are bound unto the USFCo by the amount of PKR [750,000] willingly and truly to be paid out to the said USFCo upon entering any of the conditions specified below. The BANK binds itself, its successors and assigns by these presents sealed with the common seal of the BANK this [insert day] day of [insert month], 20[yy].

The conditions of this obligation are:

1. If the APPLICANT withdraws its PROPOSAL prior to execution of the AGREEMENT;
2. If the APPLICANT being the First Successful Applicant, having been notified of the acceptance of the PROPOSAL by the USFCo during the period of validity of the PROPOSAL, fails or refuses to furnish the Performance Bond of the specified amount and correct validity and the Letter of Acceptance in accordance with the instructions given in the Letter of Intent issued by the USFCo;
3. If after the issuance of the Letter of Intent the USFCo determines that APPLICANT is disqualified pursuant to section 51.1 of the RFA; or

4. The APPLICANT does not execute the AGREEMENT within any identified time period after completing final AGREEMENT negotiations.

We undertake to pay to the USFCo up to the above amount upon receipt of its first written demand without the USFCo having to substantiate its demand, provided that in its demand the USFCo will note that the amount claimed by it is due to the occurrence of one or more of the aforementioned conditions, specifying the condition or conditions that have occurred.

This guarantee will remain valid for 180 days from the closing date of submission of the PROPOSAL (i.e. until [insert expiry date]) and any demand in respect thereof should reach the BANK not later than the above date.

Signature and Seal of BANK:

Date :

**Annex 3: Registration Form for USF Broadband Areas**

**Universal Service Fund**

(A company set up under Section 42 of the Companies Ordinance 1984)

*“Every Pakistani has the right to modern telecommunication services and we strive to provide that.”*

**REGISTRATION FORM FOR USF BROADBAND AREAS #**

Name of Applicant: \_\_\_\_\_

Registered Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Contact Person for correspondence: \_\_\_\_\_

Person authorized for Registration:  
(attach copy of authorization) \_\_\_\_\_

Nature of applicant's License  
(copy attached): \_\_\_\_\_

Telecom services authorized under  
the License: \_\_\_\_\_

Date of Expiry of License: \_\_\_\_\_

Licensed territory: \_\_\_\_\_

Audited/Unaudited Report of USF Contributions  
as payable & paid to-date:  
(summarize and attach copy of full report) \_\_\_\_\_

Amount of any USF contributions  
outstanding to-date: \_\_\_\_\_

Proof of payment: \_\_\_\_\_

## Annexures to RFA for USF Services

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List of Consortium members, if registration  
is for consortium:

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Applicant declared eligible by PTA/MoIT<sup>9</sup>:  
(Attach copy of eligibility letter from PTA/MoIT)

☐ Yes

☐ No

Pay Order/DD of PKR 25,000 registration  
fee attached:

☐ Yes

☐ No

### **Certificate:**

Certified that the information set out above is correct to the best of my information and belief, and  
nothing material has been concealed therefrom.

\_\_\_\_\_  
(Signature of Authorized Representative)

NIC/Passport #: \_\_\_\_\_

Date: [dd/mm/yy]

\_\_\_\_\_  
<sup>9</sup> Ministry of Information Technology, Government of Pakistan

**Annex 4: Form of Letter Regarding Compliance with Licence(s)**

[Month] [Day], 20[yy]

The Chief Executive Officer  
USFCo  
Fifth Floor, HBL Tower, Jinnah Avenue,  
Islamabad  
Pakistan

Dear Sir:

Re: *[insert name of proposed USF Service Provider or Person falling within one of the categories listed in section 36.2(b) of the RFA]*

**Compliance with Conditions of Telecommunications Licence(s)**

*[insert name of proposed USF Service Provider or Person falling within one of the categories listed in section 36.2(b) of the RFA]* is the holder of the following telecommunications licences issued by the PTA:

*[list all PTA issued licences, including appropriate licence identification and date]*

*[insert name of proposed USF Service Provider or Person falling within one of the categories listed in section 36.2(b) of the RFA]* remains in substantial compliance with all terms and conditions of the licence(s) issued by the PTA, and otherwise remains in good standing with the PTA.

Yours very truly,

*[insert name of proposed USF Service Provider or Person falling within one of the categories listed in section 36.2(b) of the RFA]*

Per:

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(Signature)

*[insert name and title of person signing letter]*

*[insert phone number of person signing letter]*

*[insert postal and e-mail address of person signing letter]*

cc: Director General (Licensing), Pakistan Telecommunication Authority

## Annex 5: Compliance Checklist

### 1. Compliance Sheet

A complete compliance sheet for each clause of RFA/SSA/Annexes/Schedules shall be provided as softcopy and as signed hardcopy in the following format

Document	Clause No.	Compliance (Cross appropriate)	Proposal Page Reference	Remarks in case of Partially or Not Complied
RFA		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
SSA		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
Schedules		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
Annexes		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		
		<input type="checkbox"/> FC <input type="checkbox"/> PC <input type="checkbox"/> NC		

Note: FC- Fully Complied, PC – Partially Complied, NC – Not Complied

### 2. Design Parameters

Following table of design parameters shall be filled up, wherever applicable, for the proposed solution

Item	Value
Access Technology	
Proposed Capacity of Access Node	
No. of BTSs per site (if any)	
Bandwidth per BTS (if any)	
Core Network Capacity	
Spectrum (if any)	
Vendor of Access and Network (Modem, multiplexer, routers, switches, software, radio etc.)	
Existing or proposed Backhaul technology and capacity for USF Areas	

### 3. Additional Information

- Specifications of proposed Access Technology, its reach versus data rates, coverage area per Access Node/BTS;
- Specifications of Access Node, its proposed capacity, maximum capacity, expandability options and interface details;
- Core Network Details, Packet Prioritization/bandwidth management, QoS Implementation details, authentication, authorization and accounting methodology; and
- Specifications of the Customer Premises Equipment, its capabilities and features.

“**Access Node**” is a Piece of Hardware that provides last mile access services such as DSLAM, PON Gateway, WiMax/CDMA BTS,CMTS etc.

## **Annex 6: Draft of Proposed SSA**



### **Annex 7: Dispute Resolution Terms and Processes**

- (1) USFCo and Applicant shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with participation in the RFA Process.
- (2) Neither party to the disagreement or dispute shall commence any appeal or other legal proceedings for at least, twenty-eight (28) days after any unresolved disagreement or dispute has been formally notified to the Chief Executive Officer of USFCo and a similarly senior officer of the Applicant. These senior officers shall engage in further discussions in an effort to resolve the disagreement or dispute within the 28 day period.
- (3) If the parties have failed to resolve their disagreement or dispute using the processes described in paragraphs (1) and (2), then either party may give notice to the other party of its intention to commence appeal, or action in accordance with the laws of Pakistan and applicable procedures.