

**CONTRACT**

*USF Special Project for Implementation of Telemedicine Network and Services*

*Tender No: USF/TM-Pilot/2010/01*

**BETWEEN**

**UNIVERSAL SERVICE FUND**

**(A company setup under Section 42 of the Companies Ordinance 1984)**

**(Fifth Floor, HBL Tower, Jinnah Avenue, Islamabad)**

**AND**

**[Name & Address]**

## I. Form of Contract

This CONTRACT (hereinafter called the “Contract”) is made the \_\_\_ *day of the month of* \_\_\_\_\_ 2010, between, on the one hand, the Universal Service Fund, a company setup under section 42 of the Companies Ordinance, 1984 (hereinafter called the “USF”) and, on the other hand, [Name],(hereinafter called the “Contractor”).

### WHEREAS

- (a) the USF has requested the Contractor to provide certain services as defined in this Contract (hereinafter called the “Services”);
- (b) the Contractor, having represented to the USF that it has the required professional skills, and personnel and technical resources, has agreed to provide the Services on the terms and conditions set forth in this Contract;

**NOW THEREFORE** the parties hereto hereby agree as follows:

1. The following documents attached hereto shall be deemed to form an integral part of this Contract:

- (a) The General Conditions of Contract;
- (b) The Special Conditions of Contract;
- (c) The following Schedules:

Schedule I: Project Portfolio providing the detailed proposal of the Contractor, description of services and implementation plan for the USF Special Project

Schedule II: Terms of Reference and Bills of Quantities providing detail of each of item of the USF Project Equipment

Schedule III: Project Implementation Schedule

Schedule IV: Procurement Procedure

Schedule V: Payment Schedule

Schedule VI: Performance Guarantee

2. The mutual rights and obligations of the USF and the Contractor shall be as set forth in the Contract, in particular:

- (a) the Contractor shall carry out the Services in accordance with the provisions of the Contract; and
- (b) the USF shall make payments to the Contractor in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day and year first above written.

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For and on behalf of USF  
*Pervez Iftikhar*  
*CEO*

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For and on behalf of Contractor  
*[Name]*  
*[Designation]*  
*[Company]*

*In the presence of:*

*Witness Name:*

*Title:*

*NIC:*

*Witness Name:*

*Title:*

*NIC:*

## II. General Conditions of Contract

### 1. GENERAL PROVISIONS

#### Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- (a) "Agreement" means the duly executed Agreement, Standard Conditions of the Contract, and Special Conditions along with all the Schedules hereto.
- (b) "Authority" means the Pakistan Telecommunication Authority established under the Pakistan Telecommunication (Re-organization) Act, 1996 and includes its successors.
- (c) "BOQ" means the priced bill of quantities attached hereto as Schedule-II [The BOQ would be priced by the selected Supplier and the priced BOQ will be replaced with the BOQ provided as Schedule to the Agreement];
- (d) "Designated Officer" means an officer of the USF or any other independent consultant or inspector designated, assigned, selected, appointed or engaged by the USF in order to perform such functions as specifically assigned to him/her pursuant to this Agreement and USF Rules.
- (e) "Effective Date" means the date on which the contract comes into force and meaning ascribed thereto in section 3 of this Agreement.
- (f) "GC" means these General Conditions of Contract.
- (g) "Intellectual Property Rights" means all form of intellectual property rights in relation to procurement, installation and use of telecommunication devices and equipment, , electronic devices including but not limited to computer hardware, computer software and any other equipment specified in the Project Portfolio , which the manufacturer and/or seller owns and is competent to transfer the same.
- (h) "Invoice" means the invoice(s) to be submitted by the Contractor, to the Designated Officer of USF for certification and confirmation as to its procurement and release of Subsidy/Funding in result thereof.
- (i) "Performance Security" or "Security Document" means the bank guarantee and letter of lien specified in Sections 5.7 and 5.8 respectively of the Standard Conditions provided and executed by the Contractor as guarantees for due performance of the obligations of the Contractor provided in the Agreement;
- (j) "Project Implementation Activity" means each of the activities, as detailed in the Project Portfolio, to be undertaken by the Contractor, including but not limited to the procurement, , installation, training, operating and maintaining of

USF Special Project Equipment described in the BOQ and the Project Implementation Schedule.

- (k) "Project Implementation Schedule" means time for performance of each of the project Implementation Activity attached hereto as Schedule III.
- (l) "Project Portfolio" means the detailed proposal of the Contractor in respect of the description and implementation plan for the USF Special Project approved for funding by the USF and attached to this Agreement as the Schedule I.
- (m) "Procurement Procedure" means the step-wise procedure to be adopted by the Contractor for procurement of the items mentioned in the BOQ, attached hereto as Schedule IV;
- (n) "Subsidy" means subsidy/funding to be provided by USF to the Contractor in respect of the USF Special Project pursuant to the provisions of Section 5 of this Agreement;
- (o) "SC" means the Special conditions of the contract forming an integral part of the Agreement.
- (p) "Supplier" means the supplier or suppliers so engaged by the Contractor for procurement and supply of USF Project Equipment.
- (q) "Term" means term of this Agreement as specified in Section 3.2;
- (r) "USF" means the Universal Service Fund as defined in the description of the Parties here above and established under Section 33-A of the Pakistan Telecommunication (Re-organization) Act, 1996;
- (s) "USF Board" means the board of directors of USF established pursuant to USF Rules;
- (t) "USF Project Equipment" has meaning ascribed to it in Section 4.1.1(a).
- (u) "USF Rules" mean the Universal Service Fund Rules, 2006 as amended from time to time.
- (v) "USF Special Project" or the "Project" means USF Special Project on '*USF Special Project for Implementation of Telemedicine Network and Services*'.

## **Rules of Interpretation**

In this Agreement:

- 1.1 the headings are for convenience only and shall be ignored in construing the Agreement;
- 1.2 other than where the context determines otherwise, the singular includes the plural and vice versa;
- 1.3 references to Sections and Schedules are, unless otherwise specified, references to Sections of, and Schedules and Recitals to, these Standard Conditions;
- 1.4 unless otherwise provided herein, whenever a consent or approval is required by one Party from the other Party, such consent or approval shall not be unreasonably withheld or delayed;
- 1.5 the words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take

- effect as, limiting the generality of any preceding words;
- 1.6 references to a Party are references to a party to this Agreement, including that Party's assigns or transferees and permitted assigns in accordance with the terms of this Agreement and its successors in interest ;
  - 1.7 in carrying out its obligations and duties under this Agreement, each Party shall have due regard to the purpose and object of the Subsidy and the Agreement and shall have an implied obligation of good faith;
  - 1.8 the Schedule to these Standard Conditions are as listed as the documents forming part of the Agreement, and capitalized terms and abbreviations used in the Schedules (and if any schedules thereto) which are not defined therein shall have the same meanings given to them in these Standard Conditions;
  - 1.9 except as otherwise indicated in this Agreement, references to time are references to time in Pakistan;
  - 1.10 any reference to a statute or law shall include that statute or law as amended, re-enacted or extended; and
  - 1.11 reference to 'day' shall be construed as any day of the week and reference to 'business day' shall be construed as any day of week excluding Saturday and Sunday.
  - 1.12 Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the USF or the Consultant may be taken or executed by the officials specified in the SC.
  - 1.13 Any notice, request or consent required or permitted to be given or made pursuant to this Contract shall be in writing. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the SC.
  - 1.14 A Party may change its address for notice hereunder by giving the other Party notice in writing of such change to the address specified in the SC.

## **2. Purpose and Scope of the Project**

- 2.1 Pursuant to the mandate of USF in accordance with the USF Rules, the underlined purpose of providing the Subsidy is that the;
- 2.2 Contractor shall setup telemedicine and telecommunication services and facilities at the prescribed locations at the lowest possible cost and the least possible difficulty in accordance with the Agreement and the Project Portfolio (Schedule I and II).
- 2.3 Subject to and in accordance with the terms of this Agreement:
  - a) the Contractor shall execute and implement the USF Special Project as fully described in Project Portfolio and shall perform its obligations in accordance with the Agreement;
  - b) USF shall disburse the Subsidy in accordance with Section 5 for the Project Equipment stated in the BOQ and monitor all the Project Implantation Activities to be performed by the Contractor and take all the necessary actions deemed appropriate by USF for the timely and successful Implementation of the USF Special Project in terms of the Agreement and USF Rules.

### **3. Effective Date, Term, Commencement, Completion and Termination of the Contract**

- 3.1 The Agreement shall become effective upon execution of all the documents forming part of the Agreement. This Contract shall come into effect on the date the Contract is signed by both Parties and such other later date as may be stated in the SC. The date the Contract comes into effect is defined as the Effective Date. Time is of the essence of this contract.
- 3.2 Subject to the provisions related to survival of obligations of the respective Parties, the Term of this Agreement shall be [16] months. The Contractor shall use its best endeavors to perform each of the Project Implementation Activity by or before respective time as provided in Project Implementation Schedule, attached hereto as the Schedule III.
- a) If, however, for any reason that is beyond the reasonable control of the Contractor, the achievement of an individual Project Implementation Activity is going to be delayed beyond the time stated in Schedule III, the Contractor shall no later than fifteen (15) business days approach USF for extension of time for the completion of that specific Project Implementation Activity and all the subsequent Project Implementation Activities as a result thereof. Each such request for extension of time shall be substantiated by all the relevant information and causes for the delay and the expected time for all the remaining Project Implementation Activities to be completed by the Contractor pursuant to the amended Schedule III.
- b) USF, upon receipt of a request for extension of time made pursuant to Section 3.2 (a) shall review the same and USF may, at its sole option, grant an appropriate extension of time in the achievement of a specific and/or all the remaining Project Implementation Activities. If USF agrees to grant an extension of time, the same shall be communicated to the Contractor in writing and the, Schedule III, shall be amended accordingly. The amended Schedule III shall become an integral part of this Agreement. For avoidance of doubt, it is clarified that no financial benefits in addition to the Subsidy provided herein shall be granted to the Contractor by USF for any extension of time allowed by USF in accordance with this Section 3.2(b).
- 3.3 Unless terminated earlier pursuant to Clause GC 9 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the SC.

### **4. Responsibilities of the Parties**

Subject to the provisions of the Agreement, the Parties shall have the following respective obligations and responsibilities.

#### **4.1 Responsibilities of the Contractor**

##### **4.1.1 Contractor's Procurement Responsibilities** The Contractor shall:

- a) procure, from local as well as international market, as the case may be, install, operate and maintain all the electronic, information technology and telecommunication equipment, listed in the BOQ (Schedule II) (the “USF Project Equipment”). The Contractor in procuring the USF Project Equipment shall ensure that the same are new, unused, fit for purpose, durable, free from any kind of defect(s) and with the requisite full replacement warranty•for[ months after delivery and/or installation of the same;
- b) all the USF Project Equipment shall be procured in strict accordance with the Procurement Procedure attached hereto as Schedule IV;
- c) the Contractor confirms that no procurement of the USF Project Equipment shall be done by the Contractor except as in strict accordance with the Procurement Procedures provided in Schedule IV; and
- d) the Contractor shall, within seven (7) days upon selection of the Supplier in accordance with the Procurement Procedure, submit with USF the priced BOQ based on the final prices and the final Project Implementation Schedule agreed with the Supplier for USF’s consent and approval. The consented and approved priced BOQ and the Project Implementation Schedule shall then form integral parts of the Agreement and be adhered to by the Parties for the purposes of their respective performance obligations.

4.1.2 Contractor’ General Responsibilities The Contractor shall;

- a) appoint and engage, in addition to the main Supplier, any sub-contractor(s), agent(s), authorized representative(s) or consultant(s) for the purposes of carrying out its obligation under this Agreement if required;
- b) appoint qualified and competent information technology and telecommunication experts having the requisite expertise as proposed to be provided pursuant to the USF Special Project in terms of the Project Portfolio;
- c) complete the USF Special Project and perform all its obligations within the time stipulated in the Project Implementation Schedule in terms of the Agreement;
- d) use its reasonable endeavors for the successful completion of the USF Special Project using the latest state of the art equipment and technologies which are amenable to any further developments for the better and cost effective services proposed to be provided pursuant
- e) to the Project Portfolio and the scope and purpose of the Agreement;
- f) prepare, maintain and deliver to USF, quarterly progress reports in relation to its obligations for the procurement, installation, training, operation, maintenance of the USF Project Equipment and provision of all the incidental and ancillary goods and services to be provided by the Contractor for the implementation of the Project in accordance with the Project Portfolio;
- g) to share the information and provide assistance to any licensee or third party(ies) who wishes to setup similar project as the USF Special Project in order to expand the network and enhance access of people with disabilities to utilize the telecommunication and e-services throughout Pakistan.



- h) keep detailed records of all acts and things done in relation to the USF Special Project and shall make all such records available for inspection and copies thereof as and when requested by USF;
- i) comply with all applicable laws including safety and security standards applicable to the activities and tasks covered under the USF Special Project;
- j) apply for, obtain and maintain at all times all permissions, consents, licenses, approvals, authorizations
- k) and the like requirements from any private or public body/authority for performance of its obligations under this Agreement and, where applicable, assign or transfer the same to the USF or its authorized representatives for the uninterrupted use, benefit and enjoyment of the Project during and/or after the Term in accordance with the provisions of this Agreement;
- l) ensure that all the data, information and briefs included, or relied upon, in the Project Portfolio are accurate to the best of its knowledge and any addition, modification and development in respect thereto is duly notified to USF in a timely manner. All measurements shall be made in accordance with the recognized quality assurance protocols, where applicable. In the event the Contractor obtains or relies on any data and/or information, it shall utilize reasonable and customary efforts to ensure the quality and information of such data and/or information;
- m) exercise due professional care, skill, experience, diligence, integrity, international standards and international electronic and telecommunication utility practices in performance of its obligations provided in the Agreement;
- n) upon completion of the USF Special Project, advertise and provide access to persons with disabilities who wish to utilize the services proposed to be provided through the Project without any restriction, hurdles, barriers,
- o) prejudices, priorities and or any other constrains on first come first served basis. In providing such access to the persons with disabilities, the Contractor shall provide all the necessary assistance and training to such users in such a manner that the intended users are able to fully and effectively utilize the services so offered; and

4.2 Responsibilities of USF shall:

- a) disburse the Subsidy upon receipt and confirmation of the Invoice pertaining to the USF Project in accordance with Section 5;
- b) appoint the Designated Officer no later than seven (7) business days after the Effective Date and delegate such powers to the Designated Officer as it may deem appropriate. USF may, at its sole option, remove, replace or change the Designated Officer so appointed subject to at least a seven (7) days written notice to the Contractor; and
- c) exercise all powers and discretion vested in it pursuant to the Agreement reasonably and with the objective of realization of the purpose and scope of the Agreement provided in Section 2.
- d)

## **5. Subsidy, Disbursement, Payments to the Contractor**

Payments will be made to the account of the Contractor and according to the payment schedule stated in Schedule V. Unless otherwise stated in the SC, the first payment shall be made against the provision by the Contractor of an advance payment guarantee for the same amount, and shall be valid for the period stated in the SC. Any other payment shall be made after the conditions listed in the SC for such payment have been met, and the Contractor has submitted an invoice to the USF specifying the amount due.

- 5.1 The Contractor or the Designated Officer shall submit the duly certified Invoice to USF and the payment for such Invoice shall be released from the immediately available funds available with USF within [15 business days from the receipt of the duly certified Invoice due for payment. All the payments for Invoices shall be subject to any withholding/fiscal/tax pursuant to the applicable laws of Pakistan.
- 5.2 All the disbursements/payments of the Subsidy shall be utilized exclusively for the purposes of USF Special Project.
- 5.3 The Contractor shall ensure that the financial estimates given in the Project Portfolio and BOQ in terms of the Subsidy are sufficient and account for all taxes, duties, imposts, charges, costs and/or payments required by the Contractor for timely and successful completion of the USF Special Project and the Contractor shall provide and arrange for all other costs, expenses, charges etc. that may be required for the implementation of the USF Special Project. No escalation to the Subsidy shall be admissible for any reason whatsoever after the Effective Date.
- 5.4 It is specifically agreed between the Parties that the Contractor shall submit to USF Performance Security in the form of an unconditional, irrevocable bank guarantee of an amount [ upto an amount of 20% of the contract price] in the form acceptable to USF.
- 5.5 In addition to the Contractor's obligation to provide bank guarantee pursuant to section 5.5 above, the Contractor shall execute letter of lien in the form prescribed by USF.
- 5.6 It is hereby expressly agreed between the Parties that the obligations of the Contractor to provide Performance Securities pursuant to sections 5.4 and 5.5 above shall be condition[s] precedent to disbursement of Subsidy/Funding.
- 5.7 The total payment due to the Consultant shall not exceed the Contract Price as stated in Clause 5.3, which is an all inclusive fixed lump-sum covering all costs required to carry out the Services described in Schedule 1. The Contract Price may only be increased above the amounts stated in Clause 5.8 if the Parties have agreed to additional payments in accordance with Clause 5.9.
- 5.8 The price payable in Pakistani Rupees is set forth in the SC.
- 5.9 Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.

- 5.10 Payments will be made to the account of the Contractor and according to the payment schedule stated in Schedule V.

## **6. Accounting and Financial**

- 6.1 The Subsidy/Funding agreed by USF hereunder, is a onetime payment for the USF Special Project payable to the Contractor in terms of the Agreement and the Project Portfolio whereby the Contractor agrees to be responsible for the successful establishment, completion and operation of the Project in such a manner that all the sums required in addition to the Subsidy for the successful establishment, completion and operation of the Project shall be borne by the Contractor from its own resources without jeopardizing the purpose and timely completion of the Project.

## **7. Intellectual Property Rights**

- 7.1 The Contractor shall obtain valid transferable intellectual property rights of all the software, electronic and telecommunication equipment, devices, goods etc. forming part of the USF Special Project in order to ensure that use of the USF Special Project/Equipment does not infringe any intellectual property rights.
- 7.2 In the event USF exercises its rights of enforcement of Security Document provided by the Contractor pursuant to this Agreement and as a result thereof the USF Project Equipment is transferred to USF, it shall be the responsibility of the Contractor to transfer valid Intellectual Property Rights in the name of USF in order to effectively enable USF to install, operate, maintain and utilize the same as the absolute owner thereof.
- 7.3 The Contractor shall be exclusively responsible to ensure compliance with the provisions of this Section 7 by its sub-contractors, employees, agents, licensees, officers and assigns and shall keep the USF fully indemnified and harmless against any breach thereof.

## **8. Monitoring of the Special Project**

- 8.1 The Designated Officer shall be responsible for, with the assistance of the Authority if so required, on-sight and off-sight monitoring of the USF Special Project, including but not limited to the procurement of USF Project Equipment, installation, operation and maintenance of the Project and provision of services to the intended users of the Project, to ensure that USF Special Project is being implemented and maintained in accordance purpose and scope of this Agreement.
- 8.2 In the event the Designated Officer is of the opinion that the Contractor is not performing his duties in accordance with the terms of this Agreement, he may refer the matter to the chief executive officer of the USF, who shall, without prejudice to the rights available to the USF under the USF Rules or any other law for the time being enforce, proceed in accordance with Section 9.

## 9. Termination

### 9.1 Termination

9.1.1 In the event either Party is in default of any of its obligations provided in the Agreement, the innocent Party shall serve a notice of default to the other Party, whereupon the Parties shall meet to resolve the dispute through mutual consultations within [30] days of receipt of notice of default or any other time which the Parties agree before initiating mutual consultations. If the Parties are unable to resolve the dispute within the specified time for mutual consultation, either Party may terminate the Agreement pursuant to the terms of these Standard Conditions. However, it is agreed between the Parties that the innocent Party may, solely on its own option, suspend its part of obligations during the notice and/or consultation period as provided aforesaid.

9.1.2 This Agreement shall terminate forthwith where both Parties mutually agree that the USF Special Project is no longer technically feasible and the USF Board confirms the same.

9.1.3 USF may, by issuing a written notice of termination, terminate this Agreement forthwith if the Contractor:

- a) is in breach of any of its obligations under this Agreement which breach, if capable of being cured, is not cured by the Contractor within a period of ten (10) business days after a notice of default by the USF to the Contractor identifying the breach and demanding cure thereof; or
- b) has delayed the performance by thirty (30) days of the due date thereof pursuant to the Project Implementation Schedule where such delay is not attributable to cause beyond the reasonable control of the Contractor and/or no extension of time has been granted to the Contractor pursuant to Section 3.2; or
- c) other than for the purposes of a voluntary reconstruction or amalgamation, makes any composition or arrangement or voluntarily or otherwise enters into liquidation, bankruptcy or alike proceedings whereby it is no more entitled to operate pursuant to the terms of this Agreement.

#### 9.1.4 Termination by the USF.

- a) The USF may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause GC 9.1.4. In such an occurrence the USF shall give a not less than fourteen (14) days' written notice of termination to the Consultant, and twenty eight(28) days' in the case of the event referred to in (e).
- b) If the Consultant does not remedy a failure in the performance of their obligations under the Contract, within fourteen (14) days after being notified or within any further period as the USF may have subsequently approved in writing.
- c) If the Consultant becomes insolvent or bankrupt.
- d) If the Consultant, in the judgment of the USF has engaged in corrupt or fraudulent practices in competing for or in executing the Contract.
- e) If, as the result of Force Majeure, the Consultant are unable to perform a material portion of the Services for a period of not less than Sixty (60) days.

- f) If the USF, in its sole discretion and for any reason whatsoever, decides to terminate this Contract.
- g) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GC 15 hereof.

#### **9.1.5 Termination by the Contractor**

The Contractor may terminate this Contract, by not less than twenty (20) days' written notice to the USF, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (c) of this Clause 9.1.5:

- a) If the USF fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GC 15 hereof within forty-five (45) days after receiving written notice from the Consultant that such payment is overdue.
- b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) days.
- c) If the USF fails to comply with any final decision reached as a result of arbitration pursuant to Clause GC 15 hereof.

### **9.2 Consequences of Termination**

#### **9.2.1** In the event of termination of this Agreement under Section 9.1.2:

- a) the obligation of USF to release any remaining disbursement to the Contractor pursuant to this Agreement shall immediately cease; and/or
- b) subject to clause (a) above, the Contractor shall forthwith refund any all sums disbursed under the Subsidy which has not been accounted towards USF Special Project; and
- c) USF may enforce security provided by the Contractor for due performance of its obligations pursuant to the Security Document(s). Upon enforcement of security as aforesaid, USF may take over all or part of the USF Special Project Equipment and all other goods and assets procured by the Contractor therefor by utilizing the Subsidy. The title and intellectual property rights in all such equipment and assets shall stand transferred to USF;
- d) the Contractor shall provide accurate and updated accounting records detailing all sums received under the Subsidy and their application towards the various activities for the implantation of the Project;
- e) the Contractor shall execute and transfer all licenses, assignments, deeds, novation and/or any other instruments as may be necessary and required by USF for taking over the USF Special Project and enabling USF to implement the Project itself or through any other person.

## **10. Warranties and Covenants**

### **10.1** The Parties hereto expressly covenant and warrant that:

each of the Parties is legally competent to enter into the Agreement on the terms and conditions set forth herein;

- a) the USF Special Project as proposed by the Contractor in the Project Portfolio is technically and financially feasible in accordance with the intended purpose and scope of the Agreement;
- b) the USF Project Equipment proposed to be procured, installed and operated by the Contractor is nationally/internationally recognized and accepted for these types of projects and is fully capable of being used in Pakistan for the intended benefits to the extent that the USF Project Equipment are fit for the Project and the

purpose thereof;

- a) the Contractor shall procure the USF Project Equipment from internationally reputable and recognized firms/companies/enterprises adopting the open-bidding formula provided in the Procurement Procedure and shall ensure the warranties of such equipment by the manufacturer and/or seller are enforceable;
- b) the Contractor shall, wherever applicable, obtain valid and transferable Intellectual Property Rights of the USF Project Equipment;
- c) the Contractor has got all the requisite capabilities, expertise, resources, arrangements and intention to execute the Project in terms of the Project Portfolio for the timely and successful implementation of the Project in order to benefit the intended users of the Project;
- d) the Parties shall use their best endeavors to successfully establish, complete, operate and maintain the USF Special Project and train the operator of the Project in order to provide the optimal benefits to the persons with disabilities without any delay and at the minimum cost for the same;
- e) the Security Document(s) provide a valid, enforceable and sufficient security for the due performance of the obligations of the Contractor; and

## **11. Insurance**

The Contractor shall ensure that the USF Project Equipment, upon the relevant payment having been made by USF, is duly insured with a reputable insurer in Pakistan and USF shall be named as the additional insured in any of the policy(ies) procured by the Contractor throughout the duration of the Term.

## **12. Survival of Obligations**

- 12.1 The duty to indemnify in terms of the Agreement will continue in full force and effect notwithstanding expiration or termination of this Agreement, with respect to any loss, liability, damage cost or other expense based on facts or conditions which occurred prior to such expiration or termination.
- 12.2 The provisions of Section 2 (Scope and Purpose), Section 4 (Obligations of the Contractor), Section 10 (Covenants and Warranties), Section 11 (Insurance) and Section 13 (Governing Law and Jurisdiction) of these Standard Conditions will

continue to be in full force and effect for a further term of five (5) years after expiration of the Term or termination of this Agreement.

### **13. Governing Law and Jurisdiction:**

The Agreement shall be governed by the laws of Pakistan and the Parties mutually agree that the courts in Islamabad, Pakistan shall have the exclusive jurisdiction in respect of any dispute arising out of this Agreement.

### **14. Miscellaneous**

14.1 Remedies Cumulative: The specific remedies detailed in the Agreement shall be in addition to and not in derogation of any other remedies provided in law or equity.

14.2 Notices: All notices and documents required to be given under this Agreement and all other communications between the Parties hereto with respect to the Agreement shall be in writing and may, at the option of the sender, be sent by hand, registered post, courier or other postal service, telex or facsimile at the addresses given above (or to such other addresses or numbers as notified by the parties hereto in accordance with this Section).

A notice or communication given pursuant to this Agreement shall be deemed to be served and received by the addressee:

- (a) if delivered by hand, at the time of delivery; or
- (b) if sent by registered post, courier or other postal service, within [7] days of dispatch or posting; or
- (c) if transmitted by telex or facsimile, the business day following transmission by telex or by facsimile.

14.3 Waiver: Any failure to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be considered a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Agreement.

14.4 Severability: In the event that any provisions of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable such provisions shall be deemed amended in such reasonable manner as would achieve the intention of the Parties as closely as possible to the original intent or at the discretion of the Party affected thereby may be severed from this Agreement and the remaining provisions shall remain in full force and effect.

14.5 Entire Agreement: The Agreement along with these Standard Conditions, Special Conditions and the Schedules hereto set forth the entire agreement and understanding between the Parties as to the subject matter of the Agreement and shall take precedence over all prior discussion between them and neither of the Parties shall be

- bound by any conditions, definitions, warranties or representations with respect to the subject matter of the Agreement other than as expressly provided in the Agreement.
- 14.6 Time of the essence: Time shall be of the essence for all performances by a Party where a time limit for the relevant performance is stipulated in the Agreement.
- 14.7 Further Assurances: Each Party shall do all things necessary (including, but not limited to, executing all documents) as may be required to give effect to the Agreement.
- 14.8 Assignment: Save as expressly provided in the Agreement, neither Party shall assign this Agreement and the rights and obligations arising out of the Agreement without prior consent in writing of the other Party.
- 14.9 Successors: The Agreement shall be binding on the heirs, personal and legal representatives, estate, successors-in-title and permitted assigns (where applicable) of the Parties.
- 14.10 Indemnity: Without prejudice to any other provision of the Agreement, the Contractor shall indemnify and hold USF, its officers, employees and agents harmless from and against any and all liability, loss, damage, expense, cost, penalty, injury, proceedings including reasonable attorney's fees arising out of this Agreement and or in connection with the Project including but not limited to the negligent or intentional acts or omissions of the Contractor, its officers, agents, or employees, sub-contractors in procuring, installation, training, maintaining and operating the USF Special Project. For avoidance of doubt it is specifically agreed that the Contractor shall indemnify USF against loss and injury including but not limited to by the users of the USF Special Project and/or any other third party.
- 14.11 Mutual Consultation: The Parties hereby mutually agree that at any time during or after the expiry of the Term of the Agreement, if there arises a matter, issue, dispute, development that goes to the roots of the Agreement, the Parties shall, without prejudice to their respective rights and obligations, mutually consult with each other and make any modification, amendments and additions to the Agreement as agreed between them in writing with prior confirmation from the USF Board.

## **15. SETTLEMENT OF DISPUTES**

### **15.1 Amicable Settlement**

The Parties agree that the avoidance or early resolution of disputes is crucial for a smooth execution of the Contract and the success of the assignment. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

### **15.2 Dispute Resolution**

Any dispute between the Parties as to matters arising out of or in connection with this Contract that cannot be amicably settled within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement through arbitration in accordance with the provisions of the Arbitration Act, 1940 (Act No.X of 1940) and the Rules made thereunder.



### **15.3 INDEMNITY**

15.3.1 Except where arising from the negligence of USF or USF's employees, the Consultant shall indemnify USF in respect of any costs or damages howsoever arising out of or related to breach of warranty or representation, contract or statutory duty, or tortuous acts or omissions by the Contractor or the Contractor's personnel or sub-contractors or any claims made against USF by third parties in respect thereof.

15.3.2 Clause 15.3.1 shall continue in force following the termination of this Contract.

### **15.4 LIMIT OF LIABILITY**

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel the Consultant's liability under this Contract shall be limited to the amount of the Contract Price.

### III. Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.12	The Authorized Representatives are: For the USF: <b>Syed Asif Kamal</b> For the Contractor:
1.13	<ul style="list-style-type: none"> <li>• <b>USFCO:</b> <div style="display: flex; justify-content: space-between; margin-left: 20px;"> <div style="width: 30%;">                     Attention: Telephone: Facsimile: Email:                 </div> <div style="width: 65%;">                     5<sup>th</sup> Floor, Habib Bank Tower, Jinnah avenue, Islamabad <b><u>Syed Asif Kamal</u></b> 051-921 2308-9 051-921 4261 <a href="mailto:asif.kamal@usf.org.pk">asif.kamal@usf.org.pk</a> </div> </div> </li> <li>• <b>Contractor:</b> <div style="margin-left: 20px;">                     Attention: Telephone: Facsimile: Email:                 </div> </li> </ul>
3.1	The effective date for the contract shall be
3.3	The time period for completion of this contract shall be 16 months, in case of delay in completion of project a penalty at the tune of 5% of the contract value, per week of delay shall be imposed. In case the delay is more than 4 weeks, USF may terminate the contract.
5.8	The amount in Pakistani Rupees is [XXX]
5.10	<i>“Payments will be made to the account of the Contractor and according to the payment schedule stated in Schedule V”</i>
11	<p>During the system integration period following insurance policies will be taken out by the contractor;</p> <ol style="list-style-type: none"> <li>a. EAR Insurance for full value of the contract</li> <li>b. Freight insurance for the value of equipment being transported to site</li> <li>c. Personnel insurance (For contractor’s own personnel working on the project and as per the contractor own policies)</li> <li>d. Fire and Theft insurance for the value of the equipment and software installed at sites.</li> <li>e. Third Party Liability Insurance with following values;                         <ol style="list-style-type: none"> <li>i. Property damage Rs. 5 Million per occurrence</li> <li>ii. Bodily Injury or loss of human life Rs 20 Million</li> </ol> </li> </ol> <p>During the Maintenance period following insurance policies will be taken out by the contractor;</p> <ol style="list-style-type: none"> <li>a. Fire and Theft insurance for the value of the equipment and software installed at sites.</li> <li>b. Commercial General Liability Insurance covering property and human life for a value of 20 million</li> </ol>

## **Schedule I**

Project Portfolio providing the detailed proposal of the Contractor, description of Services and implementation plan for the USF Special Project

**Schedule II**

Terms of Reference and Bill of Quantities providing detail of each of item of the USF Project Equipment

**Schedule III**  
Project Implementation Schedule

**Schedule IV**  
Procurement Procedure

**Schedule V**  
Payment Schedule

**Schedule VI**  
Performance Guarantee  
**Irrevocable Bank Guarantee**

**Issuing Bank:**

(insert name and address of issuing bank)

**Date of Issue:**

**Bank Guarantee No:**

**Maximum Amount of Bank Guarantee** \_\_\_\_\_ (15% of subsidy amount)

(insert amount, in PKR, in numbers and words)

**Applicant:** \_\_\_\_\_

(insert full legal name and address of the MCT Supplier)

**Beneficiary:**

Universal Service Fund

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

5th Floor, Habib Bank Tower

Jinnah Avenue

Islamabad

On behalf of our client (the “Applicant”) we hereby issue in your favour this Irrevocable Bank Guarantee (the “IBG”) for the maximum amount identified above.

The IBG is available with the Bank, and will be paid, against presentation of the following documents:

- 1) The Beneficiary’s demand on the Bank in the form attached hereto as Appendix “A”, signed by the CEO of the Beneficiary, indicating the amount to be drawn under this IBG, the number of this IBG, the date of issue of this IBG, and the name of our Bank.
- 2) This IBG for endorsement by us of the amount drawn and, on final drawing, for cancellation.

This IBG is irrevocable and shall remain valid for 16 Months up to and including the [date] day of [month], [year]

Partial drawings are permitted.



We will honour each drawing made in conformity with the terms of this IBG without enquiring whether you have, as between you and the Applicant, the right to make such drawing and without recognizing any claim of the Applicant.

This IBG shall be governed by and construed in accordance with the laws of Pakistan. We hereby irrevocably and unconditionally accept exclusive jurisdiction of the Courts at Islamabad.

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Issuing Bank

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Authorized Signing Officer