Annex [6]

Draft of Proposed USF Services and Subsidy Agreement

UNIVERSAL SERVICE FUND

SERVICES and SUBSIDY AGREEMENT

BETWEEN

UNIVERSAL SERVICE FUND
(A company listed under Section 42 of the Companies Ordinance 1984)

AND
[•]

MADE AS OF
[•MONTH•] [•DAY•], 2008

TABLE OF CONTENTS

ARTICLE ONE - INTERPRETATION ..... - 1 -

1.01 Definitions ..... - 1 -
1.02 Headings ..... - 5 -
1.03 Extended Meanings ..... - 5 -
1.04 Currency ..... - 5 -
1.05 Schedules ..... - 5 -

ARTICLE TWO - PROVISION OF USF NETWORK AND USF SERVICES ..... - 5 -

2.01 General ..... - 5 -
2.02 Implementation of the USF Network ..... - 5 -
2.03 Provision of USF Services ..... - 6 -
2.04 Service Availability and Quality ..... - 6 -
2.05 Facilities Access and Sharing ..... - 6 -
2.06 USF Service Charges ..... - 7 -

ARTICLE THREE - OWNERSHIP AND CONTROL ..... - 7 -

3.01 Ownership and Operation of USF Network ..... - 7 -
3.02 Change of Control of USF Service Provider ..... - 7 -

ARTICLE FOUR - IMPLEMENTATION AND SERVICE FAILURES ..... - 8 -

4.01 Failure to Meet Project Implementation Milestone Schedule ..... - 8 -
4.02 Failure to Maintain Service Availability and Quality Specifications ..... - 8 -
4.03 Additional Penalties or Remedies ..... - 9 -

ARTICLE FIVE - PAYMENT OF THE USF SUBSIDY ..... - 9 -

5.01 Payment of USF Subsidy ..... - 9 -

ARTICLE SIX - PERFORMANCE SECURITY ..... - 9 -

6.01 Performance Bond ..... - 9 -
6.02 Equipment Lien ..... - 9 -

ARTICLE SEVEN - INSURANCE ..... - 10 -

7.01 Insurance ..... - 10 -
7.02 General ..... - 10 -
7.03 Changes in the Insurance Industry ..... - 11 -

ARTICLE EIGHT - TECHNICAL AUDITOR ..... - 11 -

8.01 Appointment of Technical Auditor ..... - 11 -
8.02 Role of Technical Auditor ..... - 12 -
8.03 Cooperation with Technical Auditor ..... - 12 -

ARTICLE NINE - REPORTING ..... - 13 -

9.01 Reports ..... - 13 -

ARTICLE TEN - DISPUTE RESOLUTION ..... - 14 -

10.01 Dispute Escalation Process ..... - 14 -
10.02 Referral to Appeal Committee ..... - 15 -
10.03 Arbitration or Court Proceedings ..... - 16 -
10.04 Dispute Resolution Costs ..... - 16 -
10.05 Exemption from Dispute Resolution Processes ..... - 16 -

ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTIES ..... - 17 -

11.01 Mutual Representations and Warranties ..... - 17 -
11.02 Representations and Warranties of USF Service Provider ..... - 17 -

ARTICLE TWELVE - INDEMNIFICATION ..... - 18 -

12.01 Indemnification ..... - 18 -

ARTICLE THIRTEEN - FORCE MAJEURE ..... - 18 -

13.01 Force Majeure ..... - 18 -
13.02 Technical Amendments ..... - 20 -
13.03 No Payment for Unperformed Services ..... - 21 -
13.04 Duration of Force Majeure Event Beyond Six Months ..... - 21 -

ARTICLE FOURTEEN - CONFIDENTIALITY ..... - 22 -

14.01 Confidentiality ..... - 22 -

ARTICLE FIFTEEN - TERM AND TERMINATION ..... - 22 -

15.01 Term ..... - 22 -
15.02 Termination – Bankruptcy, Winding Up, Etc. ..... - 22 -
15.03 Termination – Material Breach ..... - 23 -
15.04 Termination – Remedies ..... - 23 -

ARTICLE SIXTEEN - GENERAL ..... - 23 -

16.01 Records, Audit and Inspection ..... - 23 -
16.02 Time of the Essence ..... - 24 -
16.03 Expenses ..... - 24 -
16.04 Public Announcements ..... - 24 -
16.05 Benefit of the Agreement ..... - 24 -
16.06 Entire Agreement ..... - 24 -
16.07 Severability ..... - 24 -
16.08 Amendments and Waiver ..... - 25 -
16.09 Assignment ..... - 25 -
16.10 Subcontractors and Other Suppliers ..... - 25 -
16.11 Notices ..... - 25 -
16.12 Governing Law ..... - 26 -

ARTICLE SEVENTEEN - COMPLIANCE WITH ENVIRONMENTAL LAWS AND IMPLEMENTATION OF ENVIRONMENTAL MANAGEMENT FRAMEWORK (EMF). ... - 26 -

17.01 ..... - 26 -
17.02 ..... - 26 -

Schedule A – Telephony Services, Availability & Quality Specifications
Schedule B – Internet Access Services, Availability & Quality Specifications
Schedule C – USF Areas
Schedule D – USF Project Implementation and Subsidy Payment Schedule
Schedule E – Material Events of Default
Schedule F – Performance Bond
Schedule G – Environmental Management Framework

UNIVERSAL SERVICE FUND SERVICES AND SUBSIDY AGREEMENT

THIS AGREEMENT is made as of [•Month•] [•Day•], 2008;

B E T W E E N:

USF, a company listed under the Companies Ordinance 1984 having its principal office at Fifth Floor, HBL Tower, Jinnah Avenue, Islamabad through its Chief Executive Officer, (hereinafter referred to as "USFCo")

- and -

[•]

(hereinafter referred to as "USF Service Provider").

WITNESSES THAT:

WHEREAS USFCo wishes to ensure the supply of certain USF Services to certain unserved and under-served areas and to facilitate the implementation of a USF Network to provide such services;

AND WHEREAS the USF Service Provider has been selected by USFCo through competitive process to construct the USF Network and provide the USF Services in certain unserved and under-served areas;

AND WHEREAS the USF Service Provider wishes to construct the USF Network and to provide USF Services upon and subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, the parties hereto agree as follows:

ARTICLE ONE - INTERPRETATION

1.01 Definitions

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

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

"Business Day" means a day other than a Saturday, Sunday or statutory holiday in Pakistan;

"Companies Ordinance" means the *Companies Ordinance, 1984* as may be amended, or any successor legislation;

"Constating Instruments" includes any certificate of incorporation, certificate of continuance, memorandum and articles of association, by-laws, regulations or other instrument by which a body corporate is incorporated or continued under the Companies Ordinance or that governs or regulates the affairs of a body corporate;

"Control" of a Person that is not 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;

"Customer Service Agreement" has the meaning ascribed thereto in Section 2.03(d);

"Effective Date" means the effective date of this Agreement, as recorded on the first page hereof;

"**Final Implementation Date**" means the date identified in paragraph 3 of Schedule D;

"Force Majeure Certification" has the meaning ascribed thereto in Section 13.01(c)(i);

"Force Majeure Event" has the meaning ascribed thereto in Section 13.01(h);

"Force Majeure Notice" has the meaning ascribed thereto in Section 13.01(a);

"GoP" means the Government of Pakistan;

"Indemnification Notice" has the meaning ascribed thereto in Section 12.01(b);

"Internet Access Services" means the services that the USF Service Provider is obliged to provide under Section 2.03(a) and Schedule B;

"Internet Applications Service" has the meaning ascribed thereto in Schedule B;

"Licence" means any telecommunications licence granted by the PTA to the USF Service Provider, prior to the Effective Date, which authorizes it to provide the USF Services;

"Muza" means the smallest part of the revenue system recognized by the Population Census Organization;

"Optional USF Services" means services that the USF Service Provider is authorized but not required to provide pursuant to this Agreement and any Licence;

"Parties" means USFCo and the USF Service Provider, and **"Party"** means any one of them;

"Performance Bond" has the meaning ascribed thereto in Section 6.01;

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

"Private Internet Access Service" has the meaning ascribed thereto in Schedule B;

"Private Services" has the meaning ascribed thereto in Section 9.01(a)(v);

"Private Voice Telephony" has the meaning ascribed thereto in Schedule A;

"Project Implementation Milestones" means the milestones for the roll-out of the USF Network and provision of the USF Services, and related schedule for payment of the USF Subsidy, set out in Schedule D;

"Project Implementation Milestone Certification" has the meaning ascribed thereto in Schedule D;

"Project Implementation Milestone Notice" has the meaning ascribed thereto in Schedule D;

"Proposal" means the proposal submitted by the USF Service Provider, or the company or joint venture that incorporated the USF Service Provider, in response to the RFA;

"PTA" means the Pakistan Telecommunication Authority, a statutory body corporate established under section 3 of the Act, and its predecessors and successors;

"Public Call Office" means the Public Telephone facilities to be established by the USF Service Provider in accordance with Schedule A;

"Public Telephone" means any payphone, phone kiosk or other provisioning of telephones for public use in accordance with Schedule A;

"Public Voice Telephony" has the meaning ascribed thereto in Schedule A;

"Public Internet Access" has the meaning ascribed thereto in Schedule B;

"Relationship Executive Committee" has the meaning ascribed thereto in Section 10.01(d)(i);

"Relationship Liaison Committee" has the meaning ascribed thereto in Section 10.01(c)(i);

"Relationship Manager" has the meaning ascribed thereto in Section 10.01(b)(i);

"RFA" means the Request for Applications document issued by USFCo on 11 March, 2008, including all annexes thereto, as amended or modified by USFCo;

"Report" means a Report required in accordance with Section 9.01;

"Technical Amendment" has the meaning ascribed thereto in Section 13.02(a);

"Technical Auditor" means the person appointed in accordance with Section 8.01(a);

"**Telecenter**" means the telephone, Internet and data service facilities to be established by the USF Service Provider in accordance with Schedule B;

"Telephony Services" means the services that the USF Service Provider is obliged to provide under Section 2.03(a) and Schedule A;

"Term" means the term of the Agreement identified in Section 15.01;

"USF Areas" means the cities, towns, villages or Muzas identified in Schedule C as being mandatory for USF Network and USF Service coverage;

"USFCo" means the USF (Guarantee) Limited, a body corporate established by the Government of Pakistan, and its successors;

"USF Contributor" means any Person whose License includes identified USF Contribution requirements, and who is identified by PTA as being fully compliant with those requirements;

"USF Network" means the licensed telecommunication system consisting of the telecommunications network facilities to be deployed by the USF Service Provider to provide USF Services pursuant to this Agreement;

"USF Rules" means the Universal Service Fund Rules, 2006 (as amended);

"USF Services and Subsidy Agreement" or **"Agreement"** means this agreement and all amendments made hereto by written agreement between the parties;

"USF Service Provider" means the Party, other than USFCo, identified on the first page of this Agreement (referred to as the "Contractor" in the USF Rules);

"USF Services" means the Telephony Services and the Internet Access Services; and

"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.

1.02 **Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Schedules are to Articles and Sections of and Schedules to this Agreement.

1.03 **Extended Meanings**

In this Agreement words importing the singular number only include the plural and *vice versa*, words importing any gender include all genders.

1.04 **Currency**

All references to currency herein are to Pakistan rupees (PKR), unless stated otherwise in this Agreement.

1.05 **Schedules**

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule A – Telephony Services, Availability & Quality Specifications
Schedule B – Internet Access Services, Availability & Quality Specifications
Schedule C – USF Areas
Schedule D – USF Project Implementation and Subsidy Payment Schedule
Schedule E – Material Events of Default
Schedule F – Performance Bond
Schedule G – Environment Management Framework

ARTICLE TWO - PROVISION OF USF NETWORK AND USF SERVICES

2.01 **General**

Subject to the provisions of this Agreement, the USF Service Provider will construct the USF Network and provide the USF Services, and USFCo will provide the USF Subsidy to assist in meeting the costs of constructing the USF network for providing the USF Services in the USF Areas.

2.02 **Implementation of the USF Network**

(a) The USF Service Provider shall implement the USF Network in accordance with the Project Implementation Milestones, and Final Implementation Date, identified in Schedule D.

(b) In implementing the USF Network, the USF Service Provider shall comply with all planning and approvals processes, and applicable environmental guidelines including those identified in Article 17 and Schedule G.

2.03 **Provision of USF Services**

(a) The USF Service Provider shall provide the USF Services in accordance with the service specifications and requirements identified in Schedules A and B.

(b) The USF Service Provider shall provide the USF Services in the USF Areas identified in Schedule C as being mandatory for USF Network and USF Service coverage in accordance with the network and service roll-out requirements identified in Schedule D.

(c) In addition to the USF Services, the USF Service Provider may provide any other services authorized by the Licence or another PTA-issued licence held by the USF Service Provider in Pakistan.

(d) The USF Services shall be provided by the USF Service Provider pursuant to an agreement (the "Customer Service Agreement") with each subscriber or user of the USF Services. The Customer Service Agreement shall be in a form approved by the PTA.

2.04 **Service Availability and Quality**

The USF Service Provider shall provide the USF Services in accordance with the quality of service requirements identified in Schedules A and B any quality of service requirements identified in the USF Service Provider's Licence and any quality of service regulations issued by PTA.

2.05 **Facilities Access and Sharing**

(a) As required pursuant to Rule 27 of the USF Rules, the USF Service Provider shall share the USF Network infrastructure and facilities with at least one requesting USF contributor, on a first come first served basis and at cost based rates and at rates based on reasonable cost.

(b) Where the USF Service Provider and USF contributor requesting facilities access are not able to successfully negotiate the terms of access, following a reasonable period of good faith negotiation, either party may request the assistance of the PTA in resolving the disputed terms.

(c) In determining whether rates for infrastructure sharing are based on reasonable cost, or to assist in resolving any other dispute regarding the terms of facilities access, USFCo shall be entitled to disclose information obtained by it pursuant to Section 16.01 to the PTA.

(d) The USF Service Provider shall also comply with any facilities sharing requirements set out in regulations, guidelines, decisions or orders issued by the PTA.

2.06 **USF Service Charges**

(a) The USF Service Provider's charges for the USF Services 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. To determine compliance with this Section 2.06, reference shall be made to the PTA's then-current records of USF Service Provider tariffs.

(b) For Public Voice Telephony or Public Internet Access services (as those services are defined in Schedules A and B), or for any other USF Services which are not subject to a National or Regional tariff filed by the USF Service Provider, service charges in the USF Areas shall not exceed the maximum charges for equivalent services in the closest major population centre not included in the USF Areas.

ARTICLE THREE - OWNERSHIP AND CONTROL

3.01 **Ownership and Operation of USF Network**

(a) The USF Services shall be provided primarily over network transmission and access facilities (i.e. wires, fibre optic lines, cables, wireless base-stations, satellite stations, microwave repeaters, etc.) owned and operated by the USF Service Provider.

(b) The USF Service Provider may extend the reach or capability of its USF Network by acquiring facilities or services from another network operator on a resale basis, that is by transmission over the networks of other operators or by means of leased line services acquired from other telecommunications operators.

(c) Regardless of whether the USF Services are provided in accordance with Sections 3.01(a) or (b), the obligations hereunder to implement the USF Network and to provide the USF Services remain entirely those of the USF Service Provider.

3.02 **Change of Control of USF Service Provider**

For so long as the Performance Bond provided by the USF Service Provider pursuant to Section 6.01 remains in place, the prior written consent of USFCo will be required for any change of Control of the USF Service Provider.

ARTICLE FOUR - IMPLEMENTATION AND SERVICE FAILURES

4.01 Failure to Meet Project Implementation Milestone Schedule

(a) Unless a Force Majeure Certification has been issued to certify that a Force Majeure Event has caused the failure, then failure to meet the Final Implementation Date identified in Schedule D may, at the sole discretion of USFCo, result in the imposition of one or more of the penalties set out below:

(i) loss of eligibility for all or part of the USF Subsidy;

(ii) forfeiture of all or part of the Performance Bond;

(iii) payment of liquidated damages equal to one-half of one percent (0.5%) of the USF Subsidy amount payable for the work that is delayed, and such half percent shall be payable per every week the failure continues;

(iv) repayment of any USF Subsidy amounts previously paid to the USF Service Provider;

(v) payment of liquidated damages equal to all or part of USFCo's estimate of the costs of providing the USF Services in the USF Areas left unserved due to the failure, provided that the total amount of such liquidated damages shall not exceed the amount of the USF Subsidy payable to the USF Service Provider for the provision of the USF Services in the USF Areas.

(b) Such penalty or penalties shall be specified in a written notice delivered by USFCo to the USF Service Provider in accordance with Section 16.11. The penalty or penalties shall become effective in the manner specified in such notice.

4.02 Failure to Maintain Service Availability and Quality Specifications

(a) Unless a Force Majeure Certification has been issued to certify that a Force Majeure Event has caused the failure, then failure of the USF Service Provider to maintain the Service Availability and Quality Specifications for the USF Services as set out in Schedule A or B may, at the sole discretion of USFCo, result in the imposition of one or more of the penalties set out below:

(i) loss of eligibility for all or part of the USF Subsidy;

(ii) forfeiture of all or part of the Performance Bond;

(iii) repayment of any USF Subsidy amounts previously paid to the USF Service Provider;

(iv) taking possession of USF Network equipment and the exercise of any other remedies or rights by USFCo under the equipment lien created pursuant to Section 6.02.

(b) Such penalty or penalties shall be specified in a written notice delivered by USFCo to the USF Service Provider in accordance with Section 16.11. The penalty or penalties shall become effective in the manner specified in such notice.

4.03 **Additional Penalties or Remedies**

The penalties described in Sections 4.01 and 4.02 are in addition to any other penalties or remedies that may otherwise be available to USFCo under this Agreement or the laws of Pakistan.

ARTICLE FIVE - PAYMENT OF THE USF SUBSIDY

5.01 **Payment of USF Subsidy**

USFCo shall pay the USF Service Provider the USF Subsidy in accordance with the subsidy instalment payments identified in Schedule D.

ARTICLE SIX - PERFORMANCE SECURITY

6.01 **Performance Bond**

(a) The USF Service Provider shall furnish USFCo with an irrevocable bank guarantee in the form specified in Schedule F, or other form of performance guarantee acceptable to USFCo (the "Performance Bond").

(b) The maximum amount of the Performance Bond shall be 40% of the USF Subsidy to the USF service provider. The validity of the Performance Bond will be 5 years in accordance with Schedule "F".

(c) The Performance Bond shall be issued by a commercial bank recognised by State Bank of Pakistan, having a branch office in Pakistan, and that is otherwise acceptable to USFCo.

(d) The Performance Bond shall be maintained for the period identified in Schedule F, commencing from the Effective Date.

(e) The Performance Bond shall be forfeited, in whole or in part, by the USF Service Provider as provided for in Article Four.

6.02 **Equipment Lien**

As required pursuant to Rule 26(6) of the USF Rules, all equipment deployed by the USF Service Provider in implementing the USF Network shall be subject to a lien exercisable by USFCo pursuant to the documented terms of the lien and Section 4.02 (a) (iv). The equipment

lien shall have a maximum value equal to the total value of the USF Subsidy. The USF Service Provider shall execute any documents required to substantiate the lien or to support its enforceability.

ARTICLE SEVEN - INSURANCE

7.01 Insurance

The USF Service Provider shall maintain or cause to be maintained on behalf of itself and all subcontractors to whom the USF Service Provider has subcontracted (in relation to the implementation or operation of the USF Network or provision of the USF Services) at all times during the Term of this Agreement, in a form and with insurers acceptable to USFCo, the following types of insurance:

(a) **Commercial General Liability Insurance –** Commercial general liability insurance covering liability imposed by law or assumed under contract arising from bodily injury, death or property damage including loss of use, with minimum combined limits of not less than PKR 50,000,000/- [Rupees Fifty Million only] per occurrence. Such policy or policies shall be on an occurrence basis and shall provide coverage for full legal defence costs, premises and operational liability, and blanket broad form contractual liability and property damage coverage (including malicious property damage). The policy or policies shall name USFCo as additional insured.

(b) **Property Insurance –** Property insurance covering property and assets used to operate the USF Network and provide the USF Services on a blanket form basis for all risks of physical loss or damage, with minimum limits equal to the full replacement cost value of the property. The basis of loss settlement shall be replacement cost with like kind and quality.

7.02 General

(a) All insurance provided for in Section 7.01 shall be effected with valid and enforceable policies issued by insurance companies that are licensed to do business in Pakistan.

(b) All policies shall be endorsed to contain an agreement by the insurer that the coverage will not be cancelled or materially changed to the detriment of USFCo, without at least 30 days' prior written notice to USFCo.

(c) Within 30 days of the Effective Date, the USF Service Provider shall have the insurance specified herein in full force and effect and shall provide USFCo with certificates of insurance as evidence of such insurance in such form and scope acceptable to USFCo. Such proof of insurance shall be updated to maintain its accuracy, within 14 days of any change in coverage. The USF Service Provider shall notify USFCo promptly and in writing in the event of any termination, expiry, lapse or change in insurance coverage.

(d) The insurance requirements herein do not limit or modify any liability that would otherwise exist or create any liability that would otherwise not exist under this Agreement in the absence of such insurance requirements.

7.03 **Changes in the Insurance Industry**

The Parties agree that should any change in the insurance industry materially impact the USF Service Provider's ability to obtain the insurance and insurance coverage levels set forth in this Article Seven, the Parties will assess such impact and, if deemed necessary by the Parties, negotiate in good faith any amendments to this Article Seven to account for such insurance industry changes, provided however, that nothing herein shall require USFCo to approve of any such amendment.

ARTICLE EIGHT - TECHNICAL AUDITOR

8.01 **Appointment of Technical Auditor**

(a) Within 60 days following the Effective Date, USFCo shall appoint a person as the "Technical Auditor" under this Agreement.

(b) The Technical Auditor may be an external consultant who shall be a person of demonstrated telecommunications engineering expertise.

(c) Where the Technical Auditor is an external consultant, USFCo shall enter into an agreement (the "Technical Auditor Agreement") with the Technical Auditor. The Technical Auditor Agreement shall:

(i) define the role of the Technical Auditor in accordance with this Agreement;

(ii) prescribe the methodology, tests and reporting structure to be used by the Technical Auditor in performing his or her role;

(iii) set out the fees to be payable, and expenses to be reimbursable, to the Technical Auditor; and

(iv) contain any other provisions that USFCo determines necessary to give effect to the appointment and for the performance of the functions of the Technical Auditor identified in this Agreement.

Once executed, USFCo shall make a copy of the Technical Auditor Agreement available to the USF Service Provider.

(d) USFCo shall be solely responsible for the selection of Technical Auditor and for any fees to be payable, and expenses to be reimbursable, to the Technical Auditor.

(e) If the Technical Auditor resigns or otherwise ceases to perform the intended functions before the end of this Agreement, or if USFCo decides to replace the Technical Auditor at any time, USFCo shall appoint a replacement Technical Auditor who, for all purposes of this Agreement, shall from and after such appointment perform the functions of the Technical Auditor.

(f) If the Technical Auditor has been replaced during the execution of the project USFCo will inform the USF Service Provider about this change.

8.02 **Role of Technical Auditor**

The Technical Auditor shall perform the following functions, in accordance with this Agreement and the Technical Auditor Agreement:

(a) making a determination as to whether or not any of the USF Network Project Implementation Milestones identified in Schedule D have been met, which may include, but is not limited to, one or more of the following:

(i) making a determination as to whether or not the USF Services meet the service specifications and requirements identified in Schedules A and B;

(ii) issuing a Project Implementation Milestone Certification to the Parties to indicate that a Project Implementation Milestone has been completed in accordance with Schedule D; and

(iii) issuing an indication in writing to the Parties that a Project Implementation Milestone has not been completed in accordance with Schedule D; and

(b) making a determination as to whether or not a Force Majeure Event exists in accordance with Article Thirteen, which may include, but is not limited to, one or more of the following:

(i) issuing a Force Majeure Certification in accordance with Article Thirteen;

(ii) issuing an indication in writing to the Parties that a Force Majeure Event has not occurred in accordance with Article Thirteen; and

(iii) proposing a Technical Amendment made in accordance with Article Thirteen.

8.03 **Cooperation with Technical Auditor**

The USF Service Provider shall co-operate with the Technical Auditor, in performing his or her functions pursuant to this Agreement and the Technical Auditor Agreement, including by:

(a) providing access to all USF Network facilities and systems, including for equipment testing purposes, statistical data collection, reporting etc; and

(b) providing any information regarding the USF Network or the USF Services requested by the Technical Auditor, and related access to technical personnel of the USF Service Provider.

ARTICLE NINE - REPORTING

9.01 Reports

(a) The USF Service Provider shall provide to USFCo, within 60 days of the Effective Date and for each calendar quarter (three months) thereafter throughout the Term of this Agreement, a report (the "Report"), which shall include:

(i) a detailed USF Network implementation plan and network description;

(ii) detailed report on the achievement of the Project Implementation Milestones set out in Schedule D, which should also highlight the risks and bottlenecks during the implementation phase with their proposed measures and the forecasted project progress against the milestones set out in Schedule D;

(iii) a report on the achievement of the quality of service and other service requirements for the USF Services set out in Schedules A and B, including details regarding service maintenance and the time required to repair service outages;

(iv) a report on general demand for and usage of the USF Services, and the USF Service Provider's current charges for the USF Services;

(v) a report on demand for the Private Voice Telephony and Private Internet Access services (altogether the "Private Services"), indicating:

(I) technical capacity and readiness of the USF Network to provide the Private Services;

(II) the USF Service Provider's marketing and distribution plan for the Private Services;

(III) the number of requests received by the USF Service Provider for the Private Services;

(IV) the number of requests received by the USF Service Provider for the Private Services that remain outstanding; and

(V) the average time it takes for the USF Service Provider to fulfil a request for the Private Services; and

(vi) such other information as determined by the Relationship Liaison Committee.

(b) The Reports shall be filed by the USF Service Provider with USFCo within 30 days of the end of the relevant quarter.

(c) The Reports shall be in a form satisfactory to the USFCo. Any disputes regarding the form of the reports shall be handled in accordance with Article Ten.

ARTICLE TEN - DISPUTE RESOLUTION

10.01 Dispute Escalation Process

(a) The Parties shall act reasonably in interpreting this Agreement and the Schedules hereto. In the event of a dispute under this Agreement, the Parties will first engage in the dispute escalation processes identified in this Section 10.01. The Parties also agree to use reasonable good faith efforts to resolve all disputes.

(b) **Resolution by Relationship Managers**

(i) Each of the Parties will appoint managers (each a "Relationship Manager") within 30 days of the Effective Date. Each Relationship Manager will be familiar with this Agreement and related documentation. If a Party replaces or reassigns its Relationship Manager, that Party will immediately notify the other Party of the change.

(ii) Either Party may refer a dispute to the Relationship Managers by preparing a written notice describing the nature of the dispute and summarizing related information (the "Dispute Notice"). The Relationship Managers will meet within three Business Days of receipt of the Dispute Notice to review the information with the objective of resolving the dispute.

(c) **Resolution by Relationship Liaison Committee**

(i) A committee (the "Relationship Liaison Committee") will be formed by the Parties and shall consist of an equal number of representatives appointed by each of the Parties.

(ii) If the Relationship Managers are unable to resolve the dispute within ten Business Days of the receipt of the Dispute Notice, either Relationship Manager may refer the matter to the Relationship Liaison Committee by written notice to the other Relationship Managers. Within five Business Days of the Relationship Liaison Committee's receipt of such referral, the

Relationship Liaison Committee shall meet with the objective of resolving the dispute. A representative of each of the Parties shall co-chair each meeting. Minutes of each meeting will be taken.

(iii) The Relationship Liaison Committee will have the discretion to form additional committees or subcommittees for any purpose it deems appropriate, with the ultimate objective of resolving the dispute.

(iv) The Relationship Liaison Committee or any additional committees or subcommittees formed by the Relationship Liaison Committee in relation to the dispute will, at either Parties' reasonable request, meet as often as reasonably required with the objective of resolving the dispute. Minutes of all meetings will be taken.

(d) **Resolution by Relationship Executive Committee**

(i) A committee (the "Relationship Executive Committee") will be formed by the Parties and shall include USFCo's Chief Executive Officer and the USF Service Provider's [•]. **[*title of appropriate executive officer of winning bidder to be inserted*]**

(ii) If the Relationship Liaison Committee is unable to resolve the dispute within fifteen Business Days of the receipt of the Dispute Notice, either Party may refer the matter to the Relationship Executive Committee by written notice to the other Party. Within five Business Days of the Relationship Executive Committee's receipt of such referral, USFCo's Chief Executive Officer will meet with the USF Service Provider's [•] with the object of resolving the dispute. Minutes of the meeting shall be taken.

(iii) If the Relationship Executive Committee is unable to resolve the dispute within fifteen Business Days of the receipt of the Dispute Notice, then either Party may:

(I) refer the dispute to the Appeal Committee in accordance with Section 10.02; or

(II) commence arbitration or court proceedings in accordance with Section 10.03.

10.02 **<u>Referral to Appeal Committee</u>**

Any dispute that has not been resolved by application of the Disputes Escalation Process described in Section 10.01 may be referred to the Appeal Committee to be constituted pursuant to Rule 31 of the USF Rules.

10.03 **Arbitration or Court Proceedings**

Any dispute that has not been resolved by application of the Disputes Escalation Process described in Section 10.01, or that is not pending before the Appeal Committee pursuant to Section 10.02, may become the subject of arbitration or court proceedings commenced by either Party in accordance with applicable rules and procedures.

10.04 **Dispute Resolution Costs**

The Parties shall be responsible for their own dispute resolution costs, unless the arbitrator or court orders otherwise.

10.05 **Exemption from Dispute Resolution Processes**

Notwithstanding anything to the contrary in this Agreement:

(a) Neither Party will be required to use the dispute escalation process described in Section 10.01 for disputes requiring injunctive relief or other urgent relief.

(b) The dispute resolution processes described in this Article Ten apply only to disputes arising under this Agreement. They do not apply to disputes arising under any licence, the Act or any other regulatory matters, which shall be dealt with by PTA in accordance with the Act and applicable PTA regulations and procedures.

(c) Nothing in this Article Ten derogates from PTA's rights or powers under the Act. The provisions of Article 10 are subject to the Act and any regulations made there under. For greater certainty, if and to the extent there are conflicts in the interpretation or application of any of the provisions of this Article 10 with the provisions of the Act or related regulations, the Act and regulations shall prevail.

ARTICLE ELEVEN - REPRESENTATIONS AND WARRANTIES

11.01 Mutual Representations and Warranties

Each of the USF Service Provider and the USFCo represents and warrants to the other that:

(a) it is duly organized and validly existing under the laws of Pakistan;

(b) that it has all right and authorization, and has obtained all consents necessary or desirable to execute, deliver and perform this Agreement;

(c) nothing in this Agreement, nor the performance of any obligations thereunder, will conflict with such party's Constating Instruments, any law or any other person's rights; and

(d) to the best of its knowledge, there are no pending suits threatened against such party that would affect the USF Services or the performance of obligations under this Agreement.

11.02 Representations and Warranties of USF Service Provider

The USF Service Provider further represents and warrants to USFCo that:

(a) unless the USF Service Provider obtains USFCo's prior written approval, all telecommunications facilities and equipment installed by the USF Service Provider in its USF Network shall be new when first installed and shall comply with Pakistani type-approval requirements and internationally recognized standards;

(b) the USF Network constructed by it and the USF Services provided by it shall at all times comply with all applicable Pakistani laws and regulations including, but not limited to, telecommunications, environmental, import and export regulations;

(c) all telecommunications facilities and equipment installed by the USF Service Provider in its USF Network will be maintained by the USF Service Provider in good working order, ordinary wear and tear excepted;

(d) the USF Network constructed by it and the USF Services provided by it will meet or exceed the specifications identified in the Proposal;

(e) it has, and will have (either by itself, or in conjunction with its affiliates, or its subcontractors), the skills, qualifications, expertise and experience necessary to construct and operate the USF Network and perform and manage the USF Services in accordance with this Agreement;

(f) all representations and warranties made in the Proposal as to facts materially related to the USF Network and USF Services, including facts pertaining to the USF Service Provider's corporate structure, organization, operations, general skills and capabilities relevant to the USF Network and USF Services, remain true and correct and will be observed by the USF Service Provider in all material respects; and

(g) the USF Service Provider is under no current obligation or restriction, nor will it knowingly assume any such obligation or restriction, that does or would in any way interfere or conflict with the operation of this Agreement.

ARTICLE TWELVE - INDEMNIFICATION

12.01 Indemnification

(a) The USF Service Provider hereby indemnifies and agrees to save harmless Universal Service Fund, USFCo and GoP from any and all claims, damages, judgments, liens, suits, costs and expenses of any nature or kind whatsoever that may be successfully claimed or asserted by any person against USFCo arising out of, or in connection with, the implementation or operation of the USF Network or the supply or failure to supply the USF Services.

(b) The USF Service Provider's obligation to indemnify and hold USFCo harmless is contingent on USFCo giving the USF Service Provider prompt notice of any event giving rise to such a claim (an "Indemnification Notice") and giving the USF Service Provider the authority to conduct the defence of any legal action arising therefrom, provided however that USFCo may assist the USF Service Provider in such defence at its own expense and retain additional counsel at its own expense to observe or participate in any such litigation.

ARTICLE THIRTEEN - FORCE MAJEURE

13.01 Force Majeure

(a) If and to the extent that a Party's performance of any of its obligations pursuant to this Agreement is prevented, hindered or delayed by reason of a Force Majeure Event and such non-performance, hindrance or delay could not have been prevented by reasonable foresight or precautions, and cannot reasonably be circumvented through the use of alternate sources, work-around plans or other means, then the non-performing, hindered or delayed Party may give written notice (a "Force Majeure Notice") to the other Party.

(b) A Force Majeure Notice shall contain reasonable particulars of the Force Majeure Event in question and the effect of such Force Majeure Event as it relates to the obligations of the non-performing, hindered or delayed Party hereunder.

(c) Within 10 Business Days of receipt of the Force Majeure Notice, the other Party shall either:

(i) certify in writing (a "Force Majeure Certification") to the non-performing, hindered or delayed Party that a Force Majeure Event has occurred; or

(ii) indicate in writing to the non-performing, hindered or delayed Party that a Force Majeure Event has not occurred, providing reasons for this conclusion.

(d) Where the other Party has issued a Force Majeure Certification in response to a Force Majeure Notice in accordance with Section 13.01(c), the Parties may agree to amend this Agreement in such a way that adapts to the circumstances of the Force Majeure Event while providing similar value for money as the original Agreement and achieving the objective of extending USF Network facilities and USF Services into rural communities that do not then have access to such types and capacities of telecommunications facilities and services.

(e) Where the other Party has not issued a Force Majeure Certification in response to a Force Majeure Notice in accordance with Section 13.01(c), the non-performing, hindered or delayed Party may give a copy of the Force Majeure Notice to the Technical Auditor, provided that it notifies the other Party in writing that it has elected to do so.

(f) Within 10 Business Days of receipt of the Force Majeure Notice, the Technical Auditor will either:

(i) issue a Force Majeure Certification indicating to the Parties that a Force Majeure Event has occurred and whether a Technical Amendment to this Agreement is required in accordance with Section 13.02; or

(ii) indicate in writing to the Parties that a Force Majeure Event has not occurred, providing reasons for this conclusion.

(g) Where a Force Majeure Certification has been issued in response to the Force Majeure Notice of either Party, such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event will not constitute a default hereunder by that Party for as long as such Force Majeure Event continues and such Party continues to use its reasonable commercial efforts to re-commence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means.

(h) For the purpose of this Agreement, "Force Majeure Event" means any of the following events beyond the control of the Parties:

(i) With respect to the obligations of both parties:

(I) lightning, storms, earthquakes, landslides, floods, tsunami, washouts and other Acts of God;

(II) strikes, lockouts or other industrial disturbances of the party;

(III) civil disturbances, sabotage, war, blockades, insurrections, terrorist actions, vandalism, riots, epidemics;

(IV) any law, order proclamation, regulation, ordinance, demand or requirement of any governmental authority;

(V) any other material event that could reasonably be considered to be force majeure by reason that it is beyond the control of the Party affected; and

(ii) With respect to the obligations of the USF Service Provider alone, substantial or material fires, explosions, breakage of or other accidents to plant, machinery, equipment or other facilities of the USF Service Provider;

but does not include the inability of either Party to obtain financing or any other financial inability on the part of either Party.

13.02 **Technical Amendments**

(a) Where the Technical Auditor issues a Force Majeure Certification to the Parties in accordance with Section 13.01, indicating that a Force Majeure Event has prevented the implementation, activation or operation of the USF Network or the provision of the USF Services in certain parts of the USF Areas described in Schedule C or in accordance with the implementation and payment schedule described in Schedule D, the Technical Auditor may prepare proposed amendments to one or more of Schedules C and D, and submit the proposed amendments (a "Technical Amendment") in writing to the Parties.

(b) If the Technical Auditor submits a Technical Amendment in accordance with Section 13.02(a), then one or more of the following Schedules to this Agreement may also be the subject of amendments to be proposed by the Technical Auditor, to the extent that, in the professional opinion of the Technical Auditor, such further amendments are required by the Technical Amendment:

(i) Schedule A – Telephony Services, Availability and Quality Specifications;

(ii) Schedule B – Internet Access Services, Availability and Quality Specifications;

(iii) Schedule F – Performance Bond.

(c) Notwithstanding any other provisions of this Article, any Technical Amendment must be prepared by the Technical Auditor in accordance with the following:

(i) the Technical Auditor shall consult with USFCo and the USF Service Provider prior to submitting the Technical Amendment;

(ii) the Technical Amendment shall, in the professional opinion of the Technical Auditor, provide similar value for money as the original Schedule C and other Schedules to this Agreement, and achieve substantially the same universal service objectives; and

(iii) the Technical Amendment shall not increase the costs of implementing the USF Network or providing the USF Services.

(d) Any dispute regarding a Technical Amendment submitted by the Technical Auditor shall be handled in accordance with Article Ten.

13.03 **No Payment for Unperformed Services**

(a) If the USF Service Provider fails to construct the USF Network or provide the USF Services in accordance with this Agreement due to a Force Majeure Event, any USF Subsidy payments will be adjusted in a manner such that USFCo is not responsible for any payment for a Project Implementation Milestone that the USF Service Provider fails to meet.

(b) Where a Project Implementation Milestone is only partially completed due to a Force Majeure Event for which a Force Majeure Certification has been issued, and the Force Majeure Event is likely to continue for a substantial period of time, the payment for such Project Implementation Milestone for the period of the Force Majeure Event will be adjusted on an equitable basis taking into account, among other things, the length of the resulting delay and the progress achieved towards the Project Implementation Milestone.

13.04 **Duration of Force Majeure Event Beyond Six Months**

Notwithstanding anything to the contrary in this Agreement, if a Force Majeure Event during which the USF Service Provider is unable to complete one or more Project Implementation Milestones in accordance with this Agreement, lasts for more than six months, then:

(a) subject to section 13.03(b), USFCo will have no obligation whatsoever to pay part of the USF Subsidy for the uncompleted work or any future work of the USF Service Provider under this Agreement; and

(b) the USF Service Provider may be deemed by USFCo to be in material breach of this Agreement in accordance with section 15.03, at USFCo's sole discretion; however, USFCo shall not be entitled to exercise any of the remedies identified in

Sections 4.01 and 4.02 in connection with the circumstances of the Force Majeure event.

ARTICLE FOURTEEN - CONFIDENTIALITY

14.01 Confidentiality

Except as specifically provided for in this Agreement or as required by applicable laws or regulation, or, neither USFCo nor the USF Service Provider, nor any of their respective employees, agents, servants or subcontractors may disclose any confidential or trade secret information provided by one to the other with respect to the USF Network or the USF Services or any other matter pertaining to this Agreement without the prior written consent of the other. Each party must retain such information in strict confidence for the benefit of the other party, provided that the foregoing will not apply to any information that either party establishes as being already in the public domain or already known to the party receiving the information, without violation of this Agreement.

ARTICLE FIFTEEN - TERM AND TERMINATION

15.01 Term

This Agreement commences on the Effective Date and continues for a term of ten (10) years ending on [•], 2018 (the "Term").

15.02 Termination – Bankruptcy, Winding Up, Etc.

(a) This Agreement and the rights and obligations of each Party contained herein may be terminated by USFCo giving notice to the USF Service Provider forthwith upon the happening of any of the following events of default:

(i) where the USF Service Provider takes any action in respect of liquidation or winding up, or makes an assignment for the benefit of creditors, or if a winding up, bankruptcy or similar petition under the Companies Ordinance is filed or presented by the USF Service Provider in respect of its properties or assets, or a judgment or order is entered by any court of competent jurisdiction approving any such petition or petition seeking the reorganization, arrangement or composition of or in respect to the USF Service Provider or its debts or obligations, or if a custodian or receiver or receiver and manager or any other official with similar powers be appointed for the USF Service Provider or a substantial portion of its properties or assets and such appointment is not dismissed or discharged within 30 days thereof; or

(ii) where a winding up, bankruptcy or similar petition with respect to an enforced liquidation of the USF Service Provider is presented or filed against it unless the same is dismissed or discharged within 30 days, during which grace period execution thereunder is effectively stayed.

(b) If an event of default pursuant to Section 15.02(a) occurs and USFCo wishes to terminate this Agreement, USFCo must give the USF Service Provider notice of its decision to terminate within 60 days of such default coming to its attention.

15.03 **Termination – Material Breach**

(a) Subject to Section 15.03(b), if any Party commits a material breach of this Agreement, the Parties agree that the other Party not in default has the right to terminate the Agreement; provided that the Party not in default gives the other Party who is in default not less than 30 days prior written notice of the default complained of during which period the Party alleged to be in default has an opportunity to cure the same and if the default is cured within such period, the other Party is not entitled to terminate the Agreement.

(b) Schedule E is a list of defaults which the Parties acknowledge as constituting material events of default and for which the other party should be entitled to terminate the Agreement pursuant to this Section 15.03.

15.04 **Termination – Remedies**

(a) On termination by the USFCo pursuant to Sections 15.02 or 15.03, the USFCo shall be entitled to exercise any of the remedies identified in Sections 4.01 and 4.02 that are applicable in the circumstances of the performance failure leading to the termination.

(b) On termination by the USF Service Provider pursuant to Section 15.03, the USF Service Provider shall be entitled to payment of all USF Subsidy instalments payable pursuant to Schedule D for Project Implementation Milestones achieved prior to the effective date of termination.

(c) The provisions of this Article Fifteen as to termination do not limit or restrict the rights of either party, to seek other remedies or take measures that may be otherwise available to it at law or equity in connection with the enforcement and performance of obligations under this Agreement.

ARTICLE SIXTEEN - GENERAL

16.01 **Records, Audit and Inspection**

(a) The USF Service Provider shall maintain all records required for preparation of the reports described in Section 9.01. The USF Service Provider shall also maintain complete records of its network plans, contracts entered into, expenses incurred in connection with the implementation of the USF Network and the provision of the USF Services, and any other records required for compliance with its obligations under this Agreement.

(b) USFCo shall have the right to send its auditors or other appointed representatives, on at least 24 hours prior notice, to the USF Service Provider's places of business for the purpose of auditing or otherwise inspecting the information and records of the USF Service Provider pertaining in any way to the performance of this Agreement.

16.02 **Time of the Essence**

Time is of the essence of this Agreement.

16.03 **Expenses**

Each of the Parties hereto will pay their respective legal and accounting costs and expenses incurred in connection with the preparation, execution and delivery of this Agreement and all documents and instruments executed pursuant hereto and any other costs and expenses whatsoever and howsoever incurred.

16.04 **Public Announcements**

No public announcement or press release concerning this Agreement will be made by the USF Service Provider without the prior consent and approval of USFCo.

16.05 **Benefit of the Agreement**

This Agreement will enure to the benefit of and be binding upon the respective heirs, executors, administrators, successors and permitted assigns of the Parties hereto.

16.06 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the Parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement.

16.07 **Severability**

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect. In the event of any such invalidity or unenforceability, the Parties agree to engage in good faith efforts to determine any amendments to the Agreement required to preserve its intended purpose and effect.

16.08 **Amendments and Waiver**

No modification of or amendment to this Agreement is valid or binding unless set forth in writing and fully executed by both of the Parties hereto and no waiver of any breach of any term or provision of this Agreement is effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, is limited to the specific breach waived.

16.09 **Assignment**

This Agreement may not be assigned by the USF Service Provider without the prior written consent of USFCo.

16.10 **Subcontractors and Other Suppliers**

Subject to Section 13.01, the USF Service Provider shall remain responsible for the due performance of this Agreement regardless of its engagement of subcontractors or other suppliers.

16.11 **Notices**

Any demand, notice or other communication to be given in connection with this Agreement must be given in writing and must be given by personal delivery or such other method as agreed to by the Relationship Liaison Committee, addressed to the recipient as follows:

To USFCo:

USFCo
Fifth Floor, HBL Tower, Jinnah Avenue,
Islamabad
Pakistan

Attention: Chief Executive Officer

To USF Service Provider:

[***insert corporate name and address***]

Attention: [***insert title***]

or to such other address or individual as may be designated by notice given by either Party to the other. Any demand, notice or other communication given by personal delivery will be conclusively deemed to have been given on the day of actual delivery thereof.

16.12 **Governing Law**

(a) This Agreement is governed by and construed in accordance with the laws of Pakistan.

(b) Notwithstanding anything to the contrary in this Agreement:

(i) nothing in this Agreement derogates from USFCo's rights or powers under the Act or any rules or regulations made thereunder;

(ii) the provisions of this Agreement are subject to the Act, any rules or regulations made thereunder, and any Licence; and

(iii) for greater clarity, if and to the extent there are conflicts in the interpretation or application of any of the provisions of this Agreement with the provisions of the Act, or any rules or regulations made thereunder, the provisions of the Act shall prevail.

ARTICLE SEVENTEEN - COMPLIANCE WITH ENVIRONMENTAL LAWS AND IMPLEMENTATION OF ENVIRONMENTAL MANAGEMENT FRAMEWORK (EMF).

17.01

It shall be the responsibility of the USF Service Provider to comply with all Federal, provincial or local environmental laws, rules and regulations applicable in Pakistan, including, without limitation, the laws referred to in the Environmental Assessment by the World Bank Consultant which is attached as Schedule G.

17.02

The USF Service Provider shall also comply with the Environmental Management Framework (EMF) and related processes described in Schedule G.

[end of Agreement]

IN WITNESS WHEREOF the Parties have executed this Agreement.

USFCo

Per: _____
[***insert name***], Chief Executive Officer
c/s

USF SERVICE PROVIDER

Per: _____
[***insert name and title***]
c/s

SIGNED, SEALED AND DELIVERED in the presence of:	)	
_____	)	_____
Witness for USFCo	)	[***insert name***]
_____	)	_____
Witness for USF Service Provider	)	[***insert name***]