

CONTRACT

FOR

**Provision of Maintenance Services for USF IT
Infrastructure**

Tender ID: “USF/TDRS/IT/2022-23/02”

BY AND BETWEEN

UNIVERSAL SERVICE FUND

AND

M/S _____

MADE AS OF

__Day of _____, 2022

At Islamabad

**UNIVERSAL SERVICE FUND MAINTENANCE SERVICES FOR USF IT
INFRASTRUCTURE CONTRACT**

This Maintenance Services for USF IT Infrastructure is made at Islamabad on this ____ Day of _____, 2022.

By and Between

Universal Services Fund a company incorporated under Section 42 of Companies Act 2017 (Previously known as the Companies Ordinance,1984), having its registered office at 3rd Floor, Evacuee Trust Complex, Agha Khan Avenue, Islamabad, Pakistan (hereinafter referred to as “USF” which expression shall, unless repugnant to the context and contrary to the meaning thereof shall include its successors-in-interest, administrators, legal representatives, executors and assigns) of the FIRST PART.

AND

M/S _____, company incorporated under Companies Act 2017 (Previously known as the Companies Ordinance,1984), Having its registered office @ _____, Islamabad., Pakistan (hereinafter referred to as the “Contractor” which expression shall where the context so allows include his/its successors-in-interest, executors, administrators, heirs and permitted assigns) of the Other Part.

(USF and the Contractor shall hereinafter be collectively referred to as ‘Parties’ and individually as ‘Party’ as the context of this Contract requires or permits).

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

WHEREAS:

- A. USF invited bids for Maintenance Services for USF IT Infrastructure to USF vide Tender No “USF/TDRS/IT/2022-23/02.
- B. The Contractor being engaged in the business for provision of Maintenance Services for USF IT Infrastructure, made its final offer to USF for provision of Maintenance Services for USF IT Infrastructure and USF has accepted the offer of the Contractor subject to conditions which have been laid down in the LOI No. _____ issued by USF dated _____ 2022 to the Contractor and the Contractor’s response to LOI through Letter of Acceptance (LoA) bearing Reference _____ dated _____,
- C. The Contractor represents that it has the requisite expertise and resources to provide required as per the satisfaction of USF and in accordance with highest industry standards, and undertakes that all related services shall be provided only through the staff who have the requisite expertise and experience in this regard.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants and promises hereinafter set forth and for other good and valuable consideration the adequacy of which is hereby

acknowledged by the parties and the mutual benefits to be derived therefrom, the representations and warranties, covenants, conditions and promises contained herein below and intending to be legally bound, the parties hereto agree as follows:

1. GENERAL PROVISIONS

1.1 DEFINITIONS AND INTERPRETATION

The following words and expressions shall have the meaning assigned to them as defined hereunder:

“**CONTRACT**” means the present contract signed between the USF and the Contractor and all annexures attached herewith for provision of Network & Security Up-gradation equipment to USF. This Contract and its attached annexure(s) constitute the exhaustive description of obligations of the Parties.

“**CONTRACTOR**” means the Party signed this Contract for provision of for provision of Network & Security Up-gradation equipment to USF.

“**CONTRACT PRICE**” means in Pak Rupees on DDP basis summarized Contract Amount.

“**FORCE MAJEURE**” means without limitation, acts of God, Government restrictions, war and hostilities, invasion, act of foreign enemies, rebellion, revolution, riot, industrial disputes, commotion, natural disasters and other similar risks that are beyond the control of Parties.

“**EQUIPMENT**” means for provision of Network & Security Up-gradation equipment with warranty as per specifications detailed in Annexure-A (ToR).

“**EFFECTIVE DATE**” means the date of signing of the Contract.

“**FAC**” means Final Acceptance Certificate issued by authorized officer of USF to contractor upon discharge of all contractual obligations, including warranty period;

“**LIQUIDATED DAMAGES**” means the monetary damages imposed upon the Contractor and payable to USF by the Contractor on account of its late delivery/delayed services;

2. TERM OF THE CONTRACT

2.1 The Term of the Agreement shall be Twelve (12) months (inclusive of Two (02) months delivery time) commencing from the date of signing (“Effective Date”) of this Contract. However the Contractor shall notify USF at least one (01) month prior to expiry of subscription

3. SERVICES

3.1 The Contractor shall ensure the delivery/supply of Equipment to USF as per terms and conditions set forth in this Contract and following documents which form the entire Contract and be read and construed as integral part of this Contract.

Annexure-A Request for Application (RFA), Terms of Reference (TORs)

Annexure-B Technical Proposal/ Technical Specifications;

- Annexure-C Financial Proposal/ Bid submitted by the Bidder;
- Annexure-D Payment Terms
- Annexure-E Bid Clarification (communication/correspondence between Parties)
- Annexure-F Letter of Intent (LoI) and Letter of Acceptance (LoA)
- Annexure-G Integrity Pact

4. STANDARDS & SPECIFICATIONS

- 4.1 In this Contract “Specifications” means technical specifications laid down by USF in Annexure-A (TORs) of this Contract.
- 4.2 All Equipment supplied by the Contractor shall be fully in accordance with terms and conditions of this Contract and annexures attached herewith.
- 4.3 All Equipment/Goods that the Contractor has undertaken to supply shall be brand new and original with latest version (if applicable) and complete in all aspects.
- 4.4 If and where applicable, headings and part number names on every piece of Equipment shall be written in English and all Equipment to be supplied with its serial numbers.

5. PROVISIONAL ACCEPTANCE:

- 5.1 The offer of the Contractor shall be deemed provisional until, Final Acceptance Certificate (FAC) shall be issued by USF on discharge of all contractual obligations by the Contractor.

6. FINAL ACCEPTANCE

- 6.1 Final Acceptance Certificate (FAC) shall be issued to the Contractor after Twelve (12) months from the Effective Date subject to satisfactory performance.

7. PRICES AND PAYMENTS

- 7.1 The total price of the Contract shall be _____/- only All payments shall be made in Pak Rupees and on DDP basis.
- 7.2 The Contract Price and the Payment Terms set forth in this Contract is firm and final till execution of this Contract and no variation whatsoever is acceptable to USF with the exception of any price adjustment authorized by the conditions of this Contract.
- 7.3 The payment for the subject procurement will be made as per the following plan:-

MILESTONE	PAYMENT TRIGGER	Payment Due	Remaining Payment
License Subscription with OEM (Principle)	GIRN (Goods Inspection & Receipt Note issued upon completion & acceptance of license subscriptions	100%	100%
1 st Quarter SLA Payment	Upon completion of satisfactory Maintenance support for 1 st Quarter	25%	75%
2 nd Quarter SLA Payment	Upon completion of satisfactory Maintenance support for 2 nd Quarter	25%	50%
3 rd Quarter SLA Payment	Upon completion of satisfactory Maintenance support for 3 rd Quarter	25%	25%
4 th Quarter SLA Payment	Upon completion of satisfactory Maintenance support for 4 th Quarter	25%	0 %

- 7.4 Payments shall be subject to deduction of all applicable taxes & Liquidated Damages (if any) at prevalent rate from the relevant invoices of the Contractor and paid to the tax authorities, except those especially exempted by the tax authorities. USF will issue certificate of deductions to the Contractor to enable him to settle tax returns with the tax authorities.
- 7.5 The Contractor's request for payment will be made to USF in writing accompanied by an invoice demonstrating complete delivery/supply and other obligations stipulated in this Contract.

8. TAXES AND DUTIES

- 8.1 The Contractor shall be responsible for all taxes time being enforced under prevailing laws of Pakistan including GST, duties, license fees, Insurance and other incidental charges etc. incurred or accrued until the completion of term of the Contract upon satisfactory performance of deployed Services/Deliverables.
- 8.2 Any increase or decrease in the rates of applicable taxes including GST (if any) shall be to the cost and the benefit of the USF.
- 8.3 Withholding tax shall be deducted as per applicable tax laws of Pakistan as amended from time to time.

9. DOCUMENTS FOR PAYMENT OF INVOICES

- 9.1. The Contractor shall submit following documents for receiving of payments.
- (a) Copies of the Contractor's invoice (s) showing details of Delivered Goods, quantity, unit price (Pre-GST, GST, Total), total amount and valid for refund of GST.
 - (b) USF's FAC.
- 9.2. The Contractor shall have to be aware and responsible for payment of all applicable taxes and will pay all taxes, duties, tariffs and impositions lawfully assessed against the Contractor for execution and performance of the Contract.

10. CONTRACTOR'S UNDERTAKING

- 10.1. The Contractor undertakes that no officer / official has been gratified / benefited during the tender opening to Contract signing date. The Contract is liable for cancellation during any time of execution if such default is reported, detected and noticed.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Contractor shall fully indemnify USF against any and all actions, claims, demands, proceedings, damages, costs, charges and expenses arising from or incurred by reason of any

infringement or alleged infringement of any intellectual property rights by Contractor including but not limited to copyright, patent rights, design rights and trade marks in Pakistan.

11.2 If at any time infringement of any intellectual property rights is claimed against the Contractor by any Party the Contractor at its own cost and expenses shall defend and rectify such infringement.

13 AMICABLE SETTLEMENT

13.1 This Contract will be construed under and governed by THE LAWS OF THE ISLAMIC REPUBLIC OF PAKISTAN.

13.2 In case of any difference which may arise connection with this Contract, USF and the Contractor shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with this Contract.

13.3 In case any difference, dispute or question arising out of or with reference to this Contract which cannot be settled amicably shall within thirty (30) days from the date that either party informs the other in writing that such difference, dispute or question exists be referred to arbitration.

13.4 Within thirty [30] days of the aforesaid notice, both parties shall nominate and agree upon a sole arbitrator, preferably retired Judge of High Court or Supreme Court, for commencement of the arbitration proceedings.

13.5 The arbitration shall be conducted in accordance with the rules of procedure set forth in the Pakistan Arbitration Act, 1940 as amended. The arbitration shall have its seat in Islamabad. The award of the arbitrator shall be final and binding on both parties.

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

13.7 In the event, an arbitrator resigns or becomes incapable or unable to act, the party nominating such arbitrator shall be entitled appoint another in the place of the outgoing arbitrator. Proceeding shall continue without recommencing as if such arbitrator had been originally nominated.

14. CONTRACTOR'S DEFAULT

14.1. If the Contractor neglects to perform the Contract with due diligence and expedition or refuse or neglect to comply with any reasonable orders given to him in writing by USF or any of its authorized representative in connection with the performance of the Contract or contravene the provisions of the Contract, USF may give notice in writing to the Contractor to make good the failure, neglect or contravention complained against thereof.

14.2. Should the Contractor fail to comply with the said notice within seven (07) days from the date of issue of said notice, USF may forthwith to terminate the Contract by notice in

writing to the Contractor without prejudice to any rights which may have occurred under the Contract to either party prior to such termination.

15.FORCE MAJEURE

- 15.1. The Contractor is not liable to forfeit liquidated damages or termination for default, if and to the extent that, it's delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 15.2. If either party is temporarily rendered unable wholly or in part by Force Majeure to perform its duties or accept performance by the other party under the Contract it is agreed that on such party giving notice with full particulars in writing of such Force Majeure to the other party within three (03) days after the occurrence of the cause relied on, then the duties of such party as far as they are affected by such Force Majeure shall be suspended during the continuance of any inability so caused but for no longer period and such cause shall as far as possible be removed with all reasonable speed.
- 15.3. Neither party is responsible for delay caused by Force Majeure. The term of this Contract shall be extended for such period of time as may be necessary to complete the work which might have been accomplished but for such suspension.
- 15.4. If either party is permanently prevented wholly or in part by Force Majeure for period exceeding fourteen (14) days from performing or accepting performance, the party concerned has the right to terminate this Contract immediately giving notice with full particulars for such Force Majeure in writing to the other party, and in such event, the other party is entitled to compensation for an amount to be fixed by negotiations and mutual agreement.
- 15.5. If a Force Majeure situation arises, the Contractor shall promptly notify USF in writing of such conditions and the cause thereof. Unless otherwise directed by USF in writing, the Contractor shall continue to perform its obligations under the Contract as far as is reasonably possible, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

16.LIQUIDATED DAMAGES

- 16.1 Subject to Clause 15 (Force Majeure), if the Contractor fails to deliver any or all of the Goods or perform the services within the time period (s) specified in the contract, USF, shall without prejudice to its other remedies under the contract, have the right to terminate the Contract forthwith and claim Liquidated Damages.
- 16.3 The Contractor shall ensure delivery within Eight (08) weeks. In case the full delivery is delayed beyond Eight (08) weeks, Liquidated Damages at a rate @0.5% of total contract price per day for each day delayed beyond the final date of delivery will be imposed.
- 16.4 In case full delivery delay exceeds Two (02) weeks beyond the Eight (08) weeks specified for delivery, USF may terminate the contract after deduction of the Liquidated Damages and USF will have the right to en-cash the Performance Guarantee.

17. TERMINATION OF CONTRACT

- 17.1. Termination of Contract for Default: USF may, without prejudice to any other remedy for breach of contract, by written notice of default sent to the Contractor terminate this Contract forthwith in whole or in part.
- (a) If the Contractor fails to perform any other obligation under the contract.
 - (b) If the Contractor, in either of the above circumstances does not cure its failure within a period of seven (07) days (or such longer period as USF may authorize in writing) after receipt of the default notice from USF.
- 17.2. Termination For Insolvency: USF may terminate the Contract, by giving written notice to the Contractor , without compensation to the Contractor if the Contractor becomes bankrupt, insolvent enters into winding up whether voluntary or compulsory. Such termination shall not prejudice or affect any other right of action or remedy which has accrued or will accrue to USF thereafter.

18.NOTICES

- 18.1 Any notice given by one party to the other, pursuant to this Contract shall be sent in writing or by fax/telex or cable and confirmed in writing to the addresses given below:

USF **Mr. Amir Saeed**
Manager IT & Networks
Universal Service Fund
3rd Floor, Evacuee Trust Complex,
Agha Khan Road, F-5/1, Islamabad
Telephone: 051-9212308-09 Ext: 210
Email: aamir.saeed@usf.org.pk

Vendor **Mr.** _____
M/s _____.
Address; _____,
Islamabad.

Notices shall be deemed served when received by the addressee.

19.ENTIRE AGREEMENT & AMENDMENT

- 19.1 No modification, amendment, waiver or change in any of the terms of this Contract will be effective unless made in writing and duly executed by an authorized officer or representative of each of the Party.
- 19.2 This Contract together with all its attached Annexes constitutes the entire agreement between the Parties.

20.SEVERABILITY

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

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

21. COUNTERPARTS

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

IN WITNESS WHEREOF, the parties hereto have set their respective hands and seals on the day, month and year first hereinabove written.

Signed by

Signed by

For and on behalf of

For and on behalf of

Universal Service Fund

M/S _____

Witnesses:

Witnesses:

1. _____

1. _____

Name: _____

Name: _____

CNIC No: _____

CNIC No: _____

ANNEXURES

- Annexure-A Request for Application (RFA), Terms of Reference (TORs)
- Annexure-B Technical Proposal/ Technical Specifications;
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