

**Answers to Bidder's Questions
Broadband CTR-1/2009
Issued On: 25th November 2009**

S/No	Document	Article/ Clause	Query	USF Co's Reply
1	Draft Services and Subsidy Agreement (SSA)	3.02	The Agreement specifies that Wateen shall require prior written consent of USFCo for effectuating any change in the Control of Wateen. Since a change in Control shall not impact the obligations of Wateen towards USFCo nor will it necessitate any revision in the arrangement between USFCo and Wateen (e.g. B.G, letter of lien etc.) it is requested that the clause may be modified to the extent of Wateen notifying the USFCo of the change instead of seeking its consent for change in control. Furthermore no consent or notification should be required in the event where Control of Wateen is being vested in an entity that is an associated company of Wateen. Finally similar obligation towards the PTA is already envisaged in rule 11 of the PTA Rules 2000 therefore there was no need for the same obligation to be captured in the SSA. Furthermore you are requested to substitute the words 'in place' (second line of 3.02) with the word 'valid' to remove any ambiguity.	Approval is necessary to ensure replacement of Bank Guarantee and Letter of Lien. It is also necessary to put new owner on notice regarding company's obligations towards USFCo.
2	Draft Services and Subsidy Agreement (SSA)	4.01 & 4.02	The penalties imposed under Article 4.01 and 4.02 should be kept proportionate to the extent of work that is outstanding. Also the Performance Guarantee ought to decrease (intermittently) in proportion to the amount of work successfully executed under the SSA. Wateen Furthermore USFCo has the option to invoke all remedies simultaneously for failure to meet the deadline specified in the SSA, which in essence entails double jeopardy Lastly, it is proposed that Wateen should be notified in writing in case of breach and given a period of thirty days to rectify the breach.	All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process was pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA can not possibly be attributed to USF Service Provider.
3	Draft Services and Subsidy Agreement (SSA)	4.04	The following additional article needs to be inserted after Article 4.03: "Notwithstanding anything contained hereof the total liability of the USF Service Provider under or in connection with the breach of this SSA, including direct breach due to failure in performance of respective obligations hereunder (whether in contract, tort (including negligence) or otherwise shall be limited the value of the USF Subsidy less the value of the work successfully executed by the USF Service Provider in terms of the SSA ."	No change deemed necessary.
4	Draft Services and Subsidy Agreement (SSA)	5.01	It should clearly state that the amount of subsidy to be provided to Wateen in terms of the SSA is exclusive of taxes and no deductions or withholdings shall be made from the payments.	The issue of taxation is related to Government of Pakistan and USFCo on its own cannot make any exclusions in this regard. Taxes, as and when made applicable by the Government of Pakistan, will be deducted.
5	Draft Services and Subsidy Agreement (SSA)	6.01	The Performance Guarantee should decrease (intermittently) in proportion to the amount of work successfully executed under the SSA	The Performance Guarantee serves as a security of continuity of provision of services for five years and therefore cannot be decreased intermittently
6	Draft Services and Subsidy Agreement (SSA)	6.02	Any Lien as required by USFCo over the equipment deployed by Wateen in the deployment of the USF Network for the entire term of the SSA should be subject to prior charges already created in favor of Financial Institutions pursuant to different financing arrangements.	USFCo will have the first charge on equipment deployed in USF network and therefore such equipment cannot be subjected to a charge by other financial institutions.

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7	Draft Services and Subsidy Agreement (SSA)	8.01(e)	Subject to what has been said above the replacement TA should be appointed within seven (7) days from the day the TA resigns, etc. Time is imperative here since Wateen's payments are contingent on the TA issuing the Project Implementation Milestone Certificate.	If required, TA will be reappointed as early as possible keeping in view the procurement guidelines set by PPRA.
8	Draft Services and Subsidy Agreement (SSA)	8.03	Access of TA to all USF Network facilities and system, etc shall be subject to a minimum 24 hour notice as pointed out in Article 16.01 (b) for other personnel of USFCo.	USF will give a minimum of 24 hours notice to the Service Provider prior to visit of USFCo personnel & Technical Auditor to inspect USF Network Facilities & Systems, as mentioned in Clause 16.01 (b) of the SSA.
9	Draft Services and Subsidy Agreement (SSA)	9.01(c)	The form of the Reports must be predetermined, prior to the execution of the Agreement to avoid any confusion and dispute. The Agreement states that the Report should be in a form 'satisfactory' to USFCo which is arbitrary and capricious.	Please refer article 9 of the SSA, wherein detailed description of reporting has been defined.
10	Draft Services and Subsidy Agreement (SSA)	12.01	It is proposed that the indemnification should be reciprocal. Furthermore Wateen shall indemnify USFCo against any claim, damages / losses etc provided the loss / damage etc has been caused solely on account of Wateen's actions.	The question of reciprocal indemnification does not arise here. The indemnification has to be arranged by USF Service Provider since it is his personal who will be executing the project. USFCo has no role in the execution of the project, therefore, indemnification by USFCo is out of question.
11	Draft Services and Subsidy Agreement (SSA)	13.04(a)	Article 13.04 (a) states that USFCo shall have no obligation to pay USF Service Provider for 'uncompleted work or any future work' if the Force Majeure Event lasts for more than six (6) months. The restriction on payment on future work is unreasonable as Force Majeure Events are beyond USF Service Provider Control. The Force Majeure Event should only extend the time for performance during which it is operative. Furthermore, the right of the USFCo under Article 13.04 (b) to terminate the SSA under Article 15.03 should also be given to USF Service Provider.	No change deemed necessary
12	Draft Services and Subsidy Agreement (SSA)	13.04(h) IV	It is requested to incorporate the following in the definition of Force Majeure Event: a. acts or omissions of government, b. judicial actions, c. delays in procuring the right of way, and d. de-routing	No change deemed necessary
13	Draft Services and Subsidy Agreement (SSA)	13.03(b)	While determining the adjustment of payment in terms of Article 13.03 (b), USFCo should give paramount importance to the costs incurred by Wateen on the partially completed works.	The concern is amply discussed in the said Article.

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14	Draft Services and Subsidy Agreement (SSA)	15.02 (a) (i)	The SSA proposes dismissal or discharge of petition in a court for bankruptcy, winding up etc within 30 days. The time period is proposed to be increased to 90 days Furthermore, it is proposed that petition for re-organization, arrangement or composition of Wateen should not constitute 'default' which give USFCo the right to terminate the Agreement.	Article 15.02 (a)(i) deals with a situation where a custodian or receiver or receiver and manager or any other official with similar powers has been appointed for the USF Service Provider or for the substantial portion of its properties or assets. In that case, the article provides that if such appointment has not been dismissed or discharged within 30 days thereof, the USFCo may terminate the agreement. We think that 30 days is not short period evidently because those aggrieved with the appointment order would not lose any time to go to the court to get the appointment dismissed or discharged.
15	Draft Services and Subsidy Agreement (SSA)	15.02 (a) (ii)	Considering the current socio-political climate, dismissal or discharge of petition in a court for bankruptcy, winding up etc within 30 days is impractical. It is suggested that the time period should be at least 90 days. No consequence of such notice of default has been specified in case where the default has been rectified. It should be drafted in way that pursuant to this notice if event of default has been rectified with ninety (90) days, the decision of termination served on Wateen shall be deemed to be withdrawn.	With regard to Article 15.02 (a)(ii) of the SSA, USFCo is of the view that the period of 30 days is not "short period", because the aggrieved party should, without any loss of time, get the petition dismissed or discharged
16	Draft Services and Subsidy Agreement (SSA)	15.03.a	The defaulting Party should have ninety days within which to remedy the breach the default.	No change is deemed necessary
17	Draft Services and Subsidy Agreement (SSA)	12.01.b	This would be applicable only when the contents of Article 12.01 are agreed upon.	Based on Answer 28, this clause will be kept
18	Draft Services and Subsidy Agreement (SSA)	13.04.a	Force Majeure time lines would not be under the control of the Service Provider, therefore, obligations, if any, arising as a result of such force majeure should be shared by both the Service Provider and the USFCO. Moreover, how can a Force Majeure be treated as a material breach leading to termination, in the sole discretion of USFCO?	This is for the purpose of ending a contract where force majeure event prolongs up to six month. There has to be a cut off date. Treating it material breach is only for the purpose of terminating the agreement but no other consequence of material breach would follow.
19	Draft Services and Subsidy Agreement (SSA)	13.04.b	Force Majeure time lines would not be under the control of the Service Provider, therefore, obligations, if any, arising as a result of such force majeure should be shared by both the Service Provider and the USFCo.	USFCo has nothing to share except requiring TA report and waiting for up to six months.
20	Draft Services and Subsidy Agreement (SSA)	15.02 (a) (i)	Re-organization of a Service Provider should not lead to termination. Thirty (30) days may be a short time to remedy default; therefore, the same may be extended to ninety (90) days. USFCo's discretion to terminate the Contract may be acceptable to the extent where a Receiver is appointed for the winding up purposes, however, including reference to re-organization and arrangement or composition of a company in the same context is uncalled for and, therefore, recommended to be deleted.	Article 15.02 (a)(i) deals with a situation where a custodian or receiver or receiver and manager or any other official with similar powers has been appointed for the USF Service Provider or for the substantial portion of its properties or assets. In that case, the article provides that if such appointment has not been dismissed or discharged within 30 days thereof, the USFCo may terminate the agreement. We think that 30 days is not short period evidently because those aggrieved with the appointment order would not lose any time to go to the court to get the appointment dismissed or discharged.

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21	Draft Services and Subsidy Agreement (SSA)	15.02 (a) (ii)	We maintain that 30 days is a short period to remedy default where court proceedings are involved. Despite best efforts by a party, court proceedings take longer and decisions are given in due course of time therefore, the same may be extended to ninety (90) days.	With regard to Article 15.02 (a)(ii) of the SSA, USFCo is of the view that the period of 30 days is not "short period", because the aggrieved party should, without any loss of time, get the petition dismissed or discharged.
22	Draft Services and Subsidy Agreement (SSA)	15.03 (a)	The defaulting Party should have ninety days within which to remedy the breach the default.	No change is deemed necessary
23	Draft Services and Subsidy Agreement (SSA)	15.04 (a)	USFCo shall not be entitled to terminate the Agreement if USFCo has decided to avail any of the remedies identified in 4.01 and 4.02.	No change is deemed necessary
24	Schedule "E 1 (a) iv " to the draft SSA	E 1(a) (iv)	In view of the reasons expressed with regards to Article 3.02 above please note that the need for terminating contract on this condition may be quite harsh. Please consider omitting this clause from the contract.	If a change occurs in the ownership or control of USF Network and if such change is contrary to Article 3, USFCo will consider this as a material event of default.
25	Schedule "E 1 (a) vi " to the draft SSA	E 1(a) vi	Article 1(a) vi of Schedule E should be removed since a minor incident involving the Service Provider's employees, agents etc could make the Service Provider susceptible to being in material breach of the SSA. It was proposed that this should instead feature in Article 11 (Representations).	No change deemed necessary as it is already explained in this clause that miss conductions in section 52 of the RFA shall amount to material breach.
26	Schedule "E 1 (a) vi " to the draft SSA	E 1(a) vi	Should be deleted	No change is deemed necessary