

S/N	Document	Article	Query	USF Response
1	SSA	3.02	<p>The Agreement specifies that the Service Provider shall require prior written consent of USFCo for effectuating any change in the Control of the Service Provider.</p> <p>Since a change in Control shall not impact the obligations of the Service Provider towards USFCo nor will it necessitate any revision in the arrangement between USFCo and the Service Provider (e.g. B.G, letter of lien etc.) it is requested that the clause may be modified to the extent of the Service Provider 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 the Service Provider is being vested in an entity that is an associated company of the Service Provider. 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.</p> <p>Furthermore you are requested to substitute the words 'in place' (second line of 3.02) with the word 'valid' to remove any ambiguity.</p>	<p>In case of transfer or change in the ownership of USF Service provider USFCo's prior approval is necessary</p> <p>No change deemed necessary</p>
2	SSA	4.01 & 4.02	<p>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. the Service Provider 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 the Service Provider should be notified in writing in case of breach and given a period of thirty days to rectify the breach.</p>	<p>All remedies are reasonable, however there would be no exercise of the remedies while any dispute resolution process are pending. This clause is consistent with Rural Telecom RFA so no change is required. Failure of TA cannot possibly be attributed to USF Service Provider.</p>
3	SSA	4.04	<p>The following additional article needs to be inserted after Article 4.03:</p> <p><i>"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 ."</i></p>	<p>No change deemed necessary.</p>
4	SSA	5.01	<p>It should clearly state that the amount of subsidy to be provided to the Service Provider in terms of the SSA is exclusive of taxes and no deductions or withholdings shall be made from the payments.</p>	<p>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 Governemnt of Pakistan, will be deducted.</p>
5	SSA	6.01	<p>The Performance Guarantee should decrease (intermittently) in proportion to the amount of work successfully executed under the SSA</p>	<p>The Performance Guarantee serves as a security of continuity of provision of services for five years and therefore cannot be decreased intermittently</p>
6	SSA	6.02	<p>Any Lien as required by USFCo over the equipment deployed by the Service Provider in the deployment of the USF Network for the entire term of the SSA should be subject to prior charges already created in favour of Financial Institutions pursuant to different financing arrangements.</p>	<p>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.</p>

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7	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 the Service Provider'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	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	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	SSA	12.01	It is proposed that the indemnification should be reciprocal. Furthermore the Service Provider shall indemnify USFCo against any claim, damages / losses etc provided the loss / damage etc has been caused solely on account of the Service Provider's actions.	The question of reciprocal indemnification does not arise here. The indemnification has to be arranged by USF SP 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	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	SSA	13.01(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	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 the Service Provider on the partially completed works.	The concern is amply discussed in the said Article.
14	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 the Service Provider 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.

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15	SSA	15.02 (a) (ii)	<p>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.</p> <p>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 the Service Provider shall be deemed to be withdrawn.</p>	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	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	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
18	Schedule 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.
19	Schedule 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 misconducts in section 52 of the RFA shall amount to material breach.