

USAC Terms & Conditions

I. DEFINITIONS

"Purchase Order" or "Order" shall mean this legally binding written and signed agreement between USAC and Contractor, which consists of, in descending order of priority, the Purchase Order, the Synopsis, the General Terms and Conditions, any attachments referred in the Synopsis or these terms and conditions, and any other exhibits or appendices, including if applicable Contractor's proposal and any license agreements. "Contractor" means the person or entity to which this Purchase Order is addressed.

"Materials" means the materials, items, products, components or services described on the face of this Purchase Order. "Data" means recorded information, regardless of form or the media on which it may be recorded, and includes, but is not limited to, technical data and Software. "Software" means computer programs that allow or cause a computer to perform a specific operation or series of operations, together with all modifications to, or enhancements (derivative works) thereof.

II. INSPECTION/ACCEPTANCE

Contractor shall only tender for acceptance Materials that conform to the requirements of this Order. USAC will, following Contractor's tender inspect or test the Materials and: (i) accept the Materials; or (ii) reject the Materials and advise Contractor of the reasons for the rejection. If rejected, Contractor must repair, correct or replace nonconforming Materials at no increase in Order price. If repair, correction, or replacement will not cure the defects or is not possible, USAC may reduce the Order price to deduct amounts for the defective Materials.

III. NEW MATERIALS

Contractor shall provide USAC with the specified support services as described in **Attachment 1** and quantities of the Materials identified on the face of this Purchase Order. Contractor must provide the most recent commercially available versions and releases of the Materials. New items only must be provided; no re-furnished, grey market or previously used, items will be accepted. Grey market is defined as trade of a commodity through distribution channels which are legal but are unofficial, unauthorized, or unintended by the original manufacturer.

IV. ENTIRE ORDER/BINDING EFFECT.

This Order, including any attachments identified on the face of this Order constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. Any waiver of any provision of this Order will be effective only if in writing and signed by the party granting the waiver. This Order shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assignees.

V. PRICE/TAXES

Prices stated on the Contract are firm and shall remain firm until USAC's acceptance of all Services and Deliverables unless otherwise expressly agreed to in writing by both parties. All prices specified herein include all charges for labeling, packing, packaging, loading, storage, inspection, and insurance. The total firm fixed price for the Services and Deliverables provided under this Contract includes applicable federal, state, or local sales, use, or excise taxes.

VI. CHANGES

The terms of this Order shall not be modified other than in writing signed by the parties. USAC may modify the Order as necessary to fulfill its requirements.

VII. SHIPMENT/DELIVERY.

Terms of shipping are F.O.B. USAC's delivery location unless otherwise noted on the face of this Purchase Order. All Materials purchased hereunder must be packed and packaged to ensure safe delivery in accordance with recognized industry-standard commercial practices. If, in order to comply with the required delivery date, Contractor must ship by a more expensive means than that specified in this Order, Contractor shall bear the increased transportation costs resulting therefrom unless the necessity for such shipment change has been caused by USAC. If any Materials are not delivered by the date specified herein, USAC reserves the right, without liability, to cancel this Order as to any Materials not yet shipped or tendered, and to purchase substitute Materials and to charge Contractor for any loss incurred. Contractor shall notify USAC in writing promptly of any actual or potential delays (however caused) which may delay the timely performance of this Order. If Contractor is unable to complete performance at the time specified for delivery hereunder, by reason of causes beyond Contractor's reasonable control, USAC may elect to take delivery of Materials in an unfinished state and to pay such proportion of the Order price as the work then completed bears to the total work hereunder and to cancel this Order without liability as to the balance of the Materials covered hereunder.

VIII. PRICE/TAXES

Prices stated on the Order are firm and shall remain firm until deliveries have been completed unless otherwise expressly agreed to in writing by both parties. Contractor agrees that any price reduction made with respect to Materials covered by this Order subsequent to placement will be applied to this Order. All prices specified herein include all charges for labeling, packing, packaging, loading, storage, inspection, and insurance. The total firm price for the Materials provided under this PO includes applicable federal, state, or local sales, use, or excise taxes. Assignment/Subcontracting

IX. WARRANTIES

Contractor warrants that any Materials supplied hereunder shall conform to the generally recognized manufacturing and safety standards of Contractor's industry in the United States and shall meet or exceed Contractor's specifications on performance as detailed in Contractor's brochures, sales literature and other specifications as may be available to USAC. In addition Contractor warrants that Materials furnished pursuant to this Order will be: (a) free from defects in title, workmanship, and material; (b) free from defects in design except to the extent that such items comply with detailed designs provided by USAC; and (c) will be New Materials in accordance with Section 3, above. If any Materials covered by this Order are found not to be as warranted, USAC may, by written notice to Contractor: (a) rescind this Order as to such non-conforming Materials; (b) accept such Materials at an equitable reduction in price; (c) reject such nonconforming Materials and require the delivery of suitable replacements. Cost of replacement, rework, inspection, repackaging and transportation of such corrected Materials shall be at Contractor's expense. This warranty provision shall survive any delivery, inspection, acceptance, payment, expiration or earlier termination of this Order. Rights granted to USAC in this Section 8 are in addition to any other rights or remedies provided elsewhere in this Order or provided under the law. Contractor shall pass through to USAC all rights and warranties provided by the manufacturer. Limitations of Damages

X. MALICIOUS SOFTWARE

Contractor represents and warrants that it shall use its best efforts to prevent the introduction into USAC's network, software or systems ("USAC IT Systems") of any Software, program, routine, device, or other undisclosed feature that is designed to delete, disable, deactivate, interfere with or otherwise harm USAC's IT Systems or Data, or that is intended to provide unauthorized access or modifications ("Malicious Software"). Contractor agrees that if it introduces, or allows the introduction of Malicious Software into USAC's IT Systems intentionally, negligently or by failure to maintain available safeguards, Contractor must, at no additional cost to USAC, eliminate, or reduce to the greatest extent possible, the effects of the Malicious Software, including restoring Data, and, if the Malicious Software causes a loss of operational efficiency, loss of data or other damages, to mitigate and restore such losses, and to indemnify USAC for any damages Proprietary Rights

XI. PATENT INDEMNITY

Contractor shall indemnify, hold harmless and defend USAC and its directors, officers, employees and agents against any and all claims and liability, including attorney's fees and other costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, or misappropriation of, any patent, trademark or copyright, arising out of or related to Contractor's performance of this Order.

XII. ASSIGNMENT / SUBCONTRACTING

Contractor shall not assign this Order, any rights under this Order, or any monies due or to become due hereunder, nor transfer or subcontract any rights, obligations or work hereunder, without obtaining USAC's prior written consent. Any proposed subcontractor or assignee must agree to the terms and conditions of the Contract, must not be debarred or proposed for debarment, must not be listed on the Excluded Parties List System in the System for Award Management, and must be determined by USAC, in its sole discretion, to have adequate financial, technical and organizational resources, and a satisfactory record of integrity and business ethics. USAC consent to subcontract does not relieve Contractor from any of its obligations hereunder.

XIII. TERMINATION/RESCHEDULING/STOP WORK

USAC may terminate this Order for convenience in whole or in part, or reschedule to a later date the scheduled delivery date appearing on the face of this Purchase Order for any reason or no reason, upon written notice, effective when sent, provided such notice is sent at least seven (7) days prior to such delivery date. USAC may terminate this Order in whole or in part at any time for cause by written notice, effective when sent or, if USAC decides, effective after a reasonable opportunity to cure, in the event of any default by the Contractor, including Contractor's failure to comply with any term or condition of this Order. In the event of termination for cause, USAC shall not be liable to Contractor for any amount for Materials or Services not accepted. The Contractor shall be liable to USAC for any and all rights and remedies provided by law. If it is determined that Contractor improperly terminated this Order, such termination shall be deemed a termination for convenience. Upon receipt of notice of termination, Contractor shall immediately take the following actions as specified in the notice: (a) stop all work on the Order; and (b) transfer and deliver to USAC all Materials, Data, Software, USAC/Confidential Information, Deliverables, whether partially or fully delivered, and any other

materials or items, including all interest in, and title, ownership and possession of the foregoing, produced in connection with, or acquired for, the work terminated. Insurance

XIV. LIMITATIONS OF DAMAGES

Notwithstanding any other provision of this Order (or any other Order related hereto) to the contrary, in no event shall either Party be liable to the other or entitled to recover incidental, consequential, special, indirect, multiple, statutory, exemplary or punitive damages. All exclusions or limitations of damages contained in this Order, including, without limitation, the provisions of this Section 14 shall survive its expiration or termination. 14. USAC Confidential Information/Advocacy. All USAC information, Data and materials obtained by Contractor from USAC in connection with this Order is considered proprietary and confidential information (“Confidential Information”) and shall remain the property of USAC, shall be used by Contractor only to the extent necessary for performance of this Order, shall not be disclosed or transferred to any third parties without the prior written consent of USAC, shall be subject to the same safeguards and protection used by Contractor for its own confidential information, and shall be returned to USAC upon completion or termination of this Order. USAC Information includes all Data provided by USAC to Contractor for use in the performance of this Order, or Data that is collected, developed or recorded by Contractor in the performance of the Order. USAC shall own all deliverables provided in connection with this Order, including intellectual property. Notwithstanding anything herein to the contrary, USAC may, without notice to Contractor, provide this Contract, including Contractor’s proposal information, and any information or Data delivered, prepared or developed by Contractor in the performance of the Agreement to the FCC or other governmental or judicial body, and may publicly disclose basic information regarding this Contract, e.g., name of Contractor, price, basis for selection, description of services/deliverables and, in cases where it is necessary for USAC to justify actions taken with respect to the Contract, any other applicable provisions.

XV. INFORMATION SECURITY

In addition to the specific system and data security requirements of this Order, the Contractor shall establish and maintain safeguards to protect the confidentiality, integrity, and restricted availability of USAC Confidential Information, including Personally Identifiable Information, in its possession according to industry best practice standards. This includes all information that is sent to and received from USAC and USAC Stakeholders. The Contractor and its subcontractors shall ensure that their respective local area networks, servers, and personal computers are secure from unauthorized access from within or outside their respective organizations. The Contractor shall not store or otherwise maintain any USAC Confidential Information in the Cloud without first obtaining USAC’s written consent, which may be granted or withheld in USAC’s sole discretion. Severability
The invalidity or unenforceability of any provisions of this Contract shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

XVI. PROPRIETARY RIGHTS

Contractor agrees that all Materials, as well as all modifications and improvements thereto, are USAC property and USAC shall be the sole and exclusive owner for all purposes for the use, distribution, exhibition, advertising and exploitation of such Materials or any part of them in any way and in all media and by all means throughout the universe in perpetuity.

XVII. INDEPENDENT CONTRACTOR

Contractor acknowledges and agrees that Contractor is an independent contractor to, not an employee of USAC. USAC shall not withhold taxes or provide employee benefits to Contractor. Contractor shall not hold herself/himself out as an employee of USAC and Contractor has no authority to bind USAC except as expressly permitted hereunder. 18. Responsibility for Contractor Personnel. Contractor personnel working on USAC premises may be required to sign and agree to the terms of a Visitor’s Form provided by USAC. Contractor is responsible for any actions of its personnel that violate law, are negligent, or that constitute a breach of the Visitor Form and/or this Order. A copy of the Visitor Form is available upon request.

XXVIII. PAYMENTS / INVOICES

USAC will pay invoices for accepted Materials within 30 calendar days of receipt of invoice, provided the Materials have been delivered and accepted by USAC and the support services have been performed and accepted by USAC. Payment of an invoice shall not constitute acceptance of Materials ordered and shall be subject to appropriate adjustment if Contractor failed to meet the requirements of the Order. Contractor shall submit invoices to: Universal Service Administrative Company, Attn: Accounts Payable, 2000 L St. NW, Suite 200 Washington, DC 20036. An invoice must include: a) Name and address of Contractor; (b) Invoice date, number and period of performance; (c) Contract number, contract line item number); (d) Description, quantity, and unit price for services identified on invoice; (e) Terms of any discount for prompt payment offered; (g) Name and address of official to whom payment is to be sent; (h) Name, title, and phone number of person to notify in event of defective invoice; and (j) Electronic funds transfer (EFT) banking information. Contractor shall include EFT banking information on the first invoice. USAC shall not be liable for uncompleted or erroneous transfers which occur as a result of Contractor’s providing incorrect or out of date EFT information. XIX. Notices.

- i. All notices, consent, approval or other communications required or authorized by this Contract shall be given in writing and shall be: personally delivered,
- ii. mailed by registered or certified mail (return receipt requested) postage prepaid,
- iii. sent by overnight delivery service (with a receipt for delivery), or
- iv. sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such party at the following address: Senior Manager of Purchasing Universal Service Administrative Company, 2000 L Street, NW, Suite 200 Washington, DC 20035.

XXX. INSURANCE

If any part of this Order involves Contractor's performance at any place where USAC conducts operations, or with material or equipment furnished to Contractor by USAC, Contractor shall take all necessary precautions to prevent injury to persons or property. Contractor shall maintain sufficient insurance in amounts required by law, USAC General Terms and Conditions or appropriate for the industry, whichever is greater, to protect and compensate USAC from all risks and damages/injuries that may arise under this Order, including as appropriate, public and commercial general liability, personal injury, property damage and employer's liability and worker's compensation insurance. Contractor shall produce evidence of such insurance upon request by USAC.

XXXI. CONFLICT OF INTEREST

It is essential that any Contractor providing Materials in support of USAC's administration of the Universal Service Fund (USF) maintain the same neutrality, both in fact and in appearance, and avoid any conflict of interest or even the appearance of a conflict of interest. To the extent that Contractor, or any of its principals, has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect, there may be actual, potential and/or apparent conflict(s) of interest. Contractor shall promptly notify USAC in writing of any actual or potential conflicts of interest involving Contractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which Contractor proposes to avoid, neutralize, or mitigate such conflicts. By its execution hereof, the Contractor represents and certifies that it has not paid or promised to pay a gratuity, or offered current or future employment or consultancy, to any USAC or governmental employee in connection with the award. In order to maintain the required neutrality, Contractor must not advocate any policy positions with respect to the Programs or the Universal Service Fund (USF) during the term of the Order.

XVIII. WAIVER

Any waiver by either party of a breach of any provision of this Order shall not operate or be construed as a waiver of any subsequent breach by either party.

XIX. SEVERABILITY.

The invalidity or unenforceability of any provisions of this Order shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

XX. CHOICE OF LAW/CONSENT TO JURISDICTION.

This Order shall be governed by and construed in accordance with the laws of the District of Columbia (the term "laws" is to be construed as broadly as possible to include case law, statutes, regulations, orders, etc.) without regard to any otherwise applicable principle of conflicts of laws. Contractor agrees that all actions or proceedings arising in connection with this Order shall be litigated exclusively in the State and, if applicable, Federal courts located in the District of Columbia ("Courts"). This choice of venue is intended to be mandatory and the parties' waives any right to assert forum non conveniens or similar objection to venue. The parties consent to in personam jurisdiction in the Courts. Contractor must submit all claims or other disputes to the Contracting Officer for informal resolution prior to initiating any action in the Courts and must work with USAC in good faith to resolve any disputed issues. A dispute over payment or performance, whether informal or in the Courts, shall not relieve Contractor of its obligation to continue performance of the Order and Contractor shall proceed diligently with performance during any dispute over performance or payment.

XXI. PUBLIC STATEMENTS.

Neither the Contractor nor its subcontractors shall issue any public statement relating to or in any way disclosing any aspect of this Contract without the prior written consent of USAC. Both the Contractor and any subcontractors must refrain from advocating policy positions with respect to federal universal service matters.

XXII. NON-EXCLUSIVITY.

Nothing herein shall be deemed to preclude USAC from retaining the services of other persons or entities undertaking the same or similar functions as those undertaken by Contractor hereunder or from independently developing or acquiring goods or services that are similar to, or competitive with, the goods or services, as the case may be, contemplated under this Agreement.

XXIII. RIGHTS IN THE EVENT OF BANKRUPTCY.

All licenses or other rights granted under or pursuant to this Order are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code, or any replacement provision therefore (the "Code"), licenses to rights to "intellectual property" as defined in the Code. The Parties agree that USAC, as licensee of such rights under this Contractor, shall retain and may fully exercise all of its rights and elections under the Code. The Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor under the Code that USAC shall be entitled to retain all of its rights under this Order and shall not, as a result of such proceedings, forfeit its rights to any Material, license, Software, Data or works made for hire.

XXIV. NOTICES.

All notices, consent, approval or other communications required or authorized by this Order shall be given in writing and shall be: (i) personally delivered, (ii) mailed by registered or certified mail (return receipt requested) postage prepaid, (iii) sent by overnight delivery service (with a receipt for delivery), or (iv) sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such party at the following address.

XXV. SURVIVAL.

All provisions that logical should survive the expiration or termination of this Order shall remain in full force and effect.

XXVI. COUNTERPARTS/TRANSMISSION/AUTHORITY.

This Order may be executed by either of the parties hereto on any number of separate counterparts and counterparts taken together shall be deemed to constitute one and the same instrument. A signature sent via facsimile or PDF shall be as effective as if it was an original signature. Each person signing this Order represents and warrants that they are duly authorized to sign this Order on behalf of their respective party and that their signature binds their party to all provisions hereof.