

ATTACHMENT 2
TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions.

“Added Service”	A service that is not included in the Services before an amendment or new statement of work is executed between the parties.
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<p>“Affiliate”</p>	<p>With reference to any Person, means any Person controlling, controlled by, or under common control with such Person. “Control” and the correlative terms “controlling”, “controlled by” and “under common control with” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or by contract, or otherwise; but only during the period of such ownership or control. “Person” for these purposes means any individual, partnership, firm, association, trust, estate, corporation or any other legal or business entity.</p>
<p>“Authorizations”</p>	<p>Any notice, consent or authorization from any regulatory, governmental or other authority necessary, required or customary for a Party to enter into or perform its obligations under these Terms and Conditions.</p>

“Commissioned Work”	As defined in Section 14.7.
“Confidential Information”	All information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either Party that (a) in the case of Vendor, has been labeled in writing as “confidential information” by Vendor or, (b) in the case of USAC, that is disclosed by USAC or any Data Supplier to Vendor under these Terms and Conditions, together with all information derived from either of the foregoing, but excluding any information (i) independently developed by the receiving Party without access to the Confidential Information, (ii) publicly disclosed by an entity other than the recipient under no duty of confidentiality, or (iii) is already lawfully in the possession of the recipient Party prior to the receipt of such information. The terms of these Terms and Conditions and all USAC Data shall be deemed the Confidential Information of USAC.
“Consents”	Any notice or consent required (a) for USAC, to permit Vendor to Use any USAC Software under these Terms and Conditions; and (b) for Vendor to permit Vendor to transfer to USAC any Third Party Agreements in accordance with Section 14.4 or to permit USAC to Use any Vendor Software in accordance with these Terms and Conditions.
“Contract”	As defined in the Request for Proposal # ____.
“Contract Staff”	The Key Vendor Personnel and any other employee of Vendor or its Subcontractors that perform the Services.

“Contract Term”	Initial Term plus any executed Optional Renewal Terms.
“Critical Service Level” or “CSLA”	Critical metrics prescribed for the performance and quality of the Services, as defined in Attachment 3.
“Cutover Date”	As defined in Attachment 10.
“Data Breach”	The loss of control, compromise, unauthorized disclosure, unauthorized movement, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses USAC’s sensitive information (including PII, Data, Confidential Information, USAC Data) and/or USAC’s IT System or (2) an authorized user accesses or potentially accesses USAC’s sensitive information (including PII, Data, Confidential Information, USAC Data) and/or USAC’s IT System for any unauthorized purpose. Types of Data Breaches include, but are not limited to, Data Loss, Data Theft, and Exfiltration.
“Data Loss”	The result of unintentionally or accidentally deleting data, forgetting where it is stored, or exposure to an unauthorized party.
“Data Safeguards”	As defined in Section 16.5.
“Data Security Incident”	(a) The theft, loss or misuse (by any means) of USAC Data, other USAC Confidential Information and/or PII; (b) the inadvertent, unauthorized, and/or unlawful Processing, disclosure, access, alteration, corruption, transfer, sale, rental, destruction, or use of USAC Data, other USAC Confidential Information and/or PII; or (c) any other act or omission that compromises or may compromise the security, confidentiality, availability or integrity of USAC Data, other USAC Confidential Information and/or PII.
“Data Security Laws”	As defined in Section 16.1.

“Data Supplier”	Any third party that supplies Data Supplier Data to USAC and has entered into a Data Supplier Agreement.
“Data Supplier Agreement”	An agreement with USAC regarding the provision and use of Data Supplier Data.
“Data Supplier Data”	Any data supplied to USAC, directly or indirectly, for the purpose of implementing or operating any of the Programs.
“Data Theft”	The deliberate or intentional act of stealing of information.
“Dispute”	Any dispute, controversy or claim of any kind or nature arising under or in connection with the Contract (including but not limited to disputes as to the creation, validity, interpretation, breach or termination of the Contract.
“Effective Date”	The date the Contract is executed.
“Exfiltration”	The unauthorized transfer of information from USAC’s IT System.
“Exit Plan”	The plan for transferring to USAC or to another vendor the services and operations provided to USAC by Vendor.
“Exit Transition”	As defined in Section 13.7.
“Exit Transition End Date”	As defined in Section 13.7.
“FCC”	The Federal Communications Commission of the United States of America.
“FCC Orders”	All orders issued by the FCC relating to the Programs.
“FedRAMP-Authorized Designation”	A cloud product or service that satisfies the security assessment, authorization, and continuous monitoring requirements of the Federal Risk and Authorization Management Program.
“Fees”	All charges to be paid by USAC to Vendor for Services described in Attachment 8.
“FIPS”	Federal Information Processing Standard

“FISMA”	The Federal Information Security Management Act, 44 U.S.C. §3541, <i>et seq.</i> , as amended by the Federal Information Security Modernization Act of 2014, and their implementing and successor regulations.
“FOIA”	As defined in Section 15.2.
“Force Majeure Event”	As defined in Section 25.1.
“Impact Assessment”	As defined in Section 5.6.
“Improvements”	Any modifications made to any Intellectual Property.
“Indemnified Item”	As defined in Section 22.1.
“Indemnified Party”	As defined in Section 22.1.
“Initial Term”	As defined in Section 13.1.

“Intellectual Property”	All (a) patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, reexamination, utility model, certificate of invention and design patents, patent applications, registrations, and applications for registrations; (b) trademarks, service marks, trade dress, Internet domain names, logos, trade names and corporate names and registrations, and applications for registration thereof; (c) literary works or other works of authorship (including, without limitations, any training materials prepared by Vendor), copyrights and registrations, and applications for registration thereof; (d) mask works and registrations, and applications for registration thereof; (e) computer software, data, and documentation; (f) procedures, ideas, inventions, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans, and customer and supplier lists and information; and (g) copies and tangible embodiments of any of the foregoing.
“Intellectual Property Rights”	Intellectual Property Rights means any third party's trade secret, trademark, service mark, copyright, patent, or other intellectual property right, whether or not registered.
“Interest”	Interest at the lesser of (a) the prime rate established by Citibank of New York on the date that a sum first became due plus two percent (2%) and (b) the maximum rate of interest allowed by applicable law.
“Key Performance Indicator” or “KPI”	Each of the metrics prescribed for the performance and quality of the Services pursuant to the Contract, as defined in Attachment 3.
“Key Vendor Personnel”	The full-time employees of Vendor that fill the key Vendor positions identified in Attachment 3.

“Knowledge Transfer”	As defined in Section 5.4.
“Law”	Any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, common law, guidance, or other binding restriction or requirement of or by any governmental authority related to the Services or a Party’s performance of its obligations under the Contract, and includes without limitation the FCC Orders; the rules, regulations and policies of the FCC; the Privacy Act; the Computer Matching and Privacy Protection Act of 1988; the Americans with Disabilities Act of 1990; Section 508 of the Rehabilitation Act of 1973; FISMA NIST guidelines which provide the requirements that the federal government must follow regarding use, treatment, and safeguarding of data; and OMB Guidelines pertaining to privacy, information security, and computer matching; and federal and state laws regarding the monitoring, wiretapping or recording of calls.
“Losses”	Any and all loss, liability, damage or expense, including without limitation reasonable attorney fees and expenses incurred in investigation or defense of a claim as well as court costs.
“Malicious Code” or “Malware”	Any software, firmware, program, routine, protocol, script, code, command, logic, or other feature that performs an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system and that is: (a) is designed to (i) disrupt, disable, deactivate, interfere with, or otherwise compromise USAC’s IT System, or (ii) access, modify, disclose, transmit, or delete PII, Data, Confidential Information, or USAC Data; or (b) either inadvertently or upon the occurrence of a certain event, compromises the confidentiality, integrity, privacy, security, or availability of PII, Data, Confidential Information, USAC Data, or USAC’s IT System. Examples of Malicious Code include, but are not limited to, viruses, worms, bugs, ransomware, spyware, bots, backdoors, devices, and Trojan Horses.

“Malicious Cyber Activity”	Any activity, other than those activities authorized by or in accordance with U.S. law, that seek to compromise or impair the confidentiality, integrity, or availability of computers, information or communications systems, networks, physical or virtual infrastructure controlled by computers or information systems, or information resident thereon.
“Milestone”	The completion of the Transition of a defined set of Services as set forth in Attachment 10 and any amendment thereto or additional mutually executed statement of work.
“Milestone Date”	The date set forth in Attachment 10 for completion of a Milestone.
“Monthly Recurring Fee”	As described in _____.
“Multifactor Authentication”	A type of authentication using two or more factors to achieve verification of the identity of a user, process or device as a prerequisite to allowing access to an information system. A user is granted access only after successfully presenting two or more pieces of evidence to an authentication mechanism. Factors include: (i) something you know (e.g. password/personal identification number (PIN)); (ii) something you have (e.g., cryptographic identification device, token); or (iii) something you are (e.g., biometric).
“NARA”	National Archives and Records Administration
“NECA”	As defined in Section 6.2.

“New IP”	Any Intellectual Property, including, without limitation, any idea, invention, design, concept, technique, or discovery made by the Parties other than Vendor Background IP (including any customization or Improvements thereto), Vendor Third Party Software, or Commissioned Work, whether done by one Party or jointly by the Parties, in connection with the performance of the Services hereunder and made after the Effective Date of the Contract, including, without limitation, any modification or enhancement of the USAC Technology.
“NIST”	National Institute of Standards and Technology.
“Not-to-Exceed Amount”	The maximum amount that USAC can spend for Services and associated, as set forth in Section 10.8.
“OMB”	Office of Management and Budget.
“Optional Renewal Term”	As defined in Section 13.2.
“Party” or “Parties”	Either or both of Vendor or USAC, as appropriate.

“Personally Identifiable Information” or “PII”	Any information in any media or form identifying or relating to an identified or identifiable natural person or that can be used to distinguish or trace an individual’s identity, including, without limitation: a person’s first and last name, home or other physical address, telephone number, fax number, email address or other online identifier, date of birth, Social Security number or other third-party issued identifier (including, but not limited to, state identification number, driver’s license number, or passport number), biometric data, health or insurance information, credit card, credit history or rating, income or other financial information (including bank account information), passwords, PINs, or other access codes or security credentials for financial or other accounts, IP address and cookie information, service and usage information, any other device-specific number or identifier, or any other personally identifiable information, that alone or in combination with other personal or identifying information (such as mother’s maiden name or other similar information) is linked or linkable to a specific individual.
“Privacy Act”	The Privacy Act of 1974, Pub. L. No. 93-579, December 31, 1974 (5 U.S.C. § 552a), as amended.
“Procedures Manual”	As defined in Section 5.4.
“Process” or “Processing”	Any operation or set of operations that is performed upon USAC Data, whether or not by automatic means, including, but not limited to, collection, recording, organization, storage, access, adaptation, alteration, retrieval, consultation, use, disclosure, dissemination, making available, alignment, combination, blocking, deleting, erasure, or destruction.
“Procurement Regulations”	The following provisions of the Code of Federal Regulations: 2 C.F.R. §§ 200.318-321, 200-323, 200.325-326 and App. II to C.F.R. Part 200.

“Program” and “Programs”	One or more of the following USF programs: the E-rate Program, the Rural Health Care Program, the High Cost Program, and the Lifeline Program.
“Program Participant”	Any person or entity participating in, or seeking to participate in, or having participated in, the Programs.
“Renewal Term”	As defined in Section 13.2.
“Security Incident”	Any event or occurrence that actually or potentially compromises or jeopardizes the confidentiality, integrity, privacy, security, or availability of PII, Data, Confidential Information, USAC Data, or USAC’s IT System regardless of whether such event or occurrence: (a) poses a material or imminent threat to such PII, Data, Confidential Information, USAC Data, or USAC’s IT System, or (b) results in a Data Breach. Without limiting the foregoing, any attempt to compromise or jeopardize the confidentiality, integrity, privacy, security, or availability of PII, Data, Confidential Information, USAC Data, or USAC’s IT System or USAC’s access to or use thereof, shall be considered a Security Incident.
“Service Level Credit”	The credit or price reduction that USAC is entitled to receive or apply against the Fees as a result of a failure to meet or exceed an applicable CSLA or KPI.
“Service Level” or “Service Level Agreement”	A KPI or CSLA.
“Services”	The services provided by Vendor to USAC within the scope of the Contract, including without limitation, Added Services and Transition Services.
“Software”	Any computer program, application, operating system, middleware component or other software that allow or cause a computer to perform a specific operation or series of operations, in object or source code form as applicable in the circumstances, together with all modifications thereto and enhancements or derivative works thereof.

“SSAE Reports”	As defined in Section 12.3.
“Stand-Up Fee”	As defined in _____.
“Statement of Work” or “SOW”	Attachment 8 and any Added Services that the Parties mutually agree to.
“Subcontractor”	Any agent or contractor approved by USAC and retained by Vendor to perform Services on behalf of Vendor pursuant to Section 6.1.
“Terms and Conditions”	This Attachment 2 that contains the legal terms of the Contract.
“Termination Assistance Period”	The period of time beginning on the date upon which the Contract is terminated or expires and ending upon completion of the Exit Transition.
“Termination for Convenience Costs”	As defined in Section 13.4.
“Third Party Agreements”	As defined in Section 14.4.
“Third Party”	An entity other than Vendor and other than USAC.
“Transition”	The set of tasks and activities necessary and sufficient for Vendor to complete in order to ensure the successful initiation of Services into production by Vendor.
“Transition Plan”	The plan for the Transition, as further specified in Attachment 10.
“Transition Timeline”	The schedule or timeline from commencement to completion of the Transition, as set forth in Attachment 10.
“Transition Services”	Any tasks, actions or activities necessary to complete the Transition to USAC’s satisfaction.
“USAC”	Universal Service Administrative Company.
“USAC Auditors”	USAC’s internal and external auditors and legal representatives, and any of USAC’s regulators, including (but not limited to) the FCC, the FCC’s OIG office, the General Accountability Office, and FCC’s external auditors.
“USAC-Conflicted Entity”	As defined in Section 6.2.

“USAC Data”	Any and all data (a) provided to Vendor by USAC, its agents, customers, Data Suppliers, Carriers, or Program Participants or (b) collected, accessed, obtained, maintained, developed, or otherwise used by Vendor in the course of its performance of the Services, and includes any and all data generated or compiled from or using such data, including without limitation any PII, Sensitive PII or other data of any USAC employee or contractor and any data concerning any of USAC’s Program Participants. All Data Supplier Data is USAC Data.
“USAC IT System(s)”	USAC’s electronic computing and/or communications systems (including but not limited to various internet, intranet, extranet, email and voice mail).
“USAC Materials”	Any materials, documentation, manuals, guidelines, business processes, methodologies, database rights, inventions, designs, drawings, confidential information or other items licensed or owned by USAC and used by USAC to support its business process functions, excluding USAC Software and excluding the Vendor Materials and Vendor Software.
“USAC Service Locations”	Any premises owned or leased by USAC.
“USAC Software”	All computer software used as of the Effective Date or introduced during the Contract Term and any Termination Assistance Period by USAC to support its business process functions, all upgrades of such systems licensed by or for USAC, all enhancements of such systems developed by or for USAC, and any system adopted in the future to replace such existing systems, to the extent any of the foregoing is required to be used by Vendor in connection with the provision of Services.
“USAC Technology”	The USAC Materials and the USAC Software.
“Use”	To make, use, reproduce, distribute, transmit and make derivative works of and to sublicense such rights to third parties.

“USF”	Universal Services Funds.
“Variable Fees”	As described in _____ Fees.
“Vendor”	_____
“Vendor Background IP”	As defined in Section 14.1.
“Vendor Controls”	As defined in Section 12.1.
“Vendor Materials”	Any materials, documentation, manuals, guidelines, business processes, methodologies, database rights, inventions, designs, drawings, confidential information or other items licensed or owned by Vendor and used by Vendor to perform the Services, excluding Vendor Software and excluding the USAC Materials and USAC Software.
“Vendor Personnel”	Vendor’s employees, subcontractors, consultants, and agents used to provide Services and/or create deliverables under the Contract, including, but not limited to, Key Vendor Personnel. “Vendor Personnel” also includes the entity that employs Vendor’s employees, subcontractors, consultants, and agents in all cases except where the context clearly references only individuals.
“Vendor Service Locations”	Any premises owned or leased by Vendor.
“Vendor Software”	Software that is owned or licensed by Vendor and used by Vendor to provide the Services.
“Vendor Staff”	Vendor employees identified in Article 7.
“Vendor Third Party Software”	Any Vendor Software licensed by Vendor from a third party.

- 1.2 References to Laws. A reference to any statute, enactment, order, regulation or other similar instrument will be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.
- 1.3 Headings. Headings are included in these Terms and Conditions for ease of reference only and will not affect the interpretation or construction of these Terms and Conditions.
- 1.4 Construction. Unless the context otherwise requires, (a) the word “or” shall be interpreted in the inclusive sense (i.e., “and/or”); (b) the word “including” (and its

grammatical variations) shall be deemed to be followed by “without limitation”; (c) the phrases “such as”, “for example”, or “e.g.,” shall be deemed to mean “for example but without limitation”; (c) “will” shall be construed to mean “shall”; (d) the singular shall include the plural and vice versa; and (e) all references to “dollars”, “Dollars”, “\$”, “United States Dollars”, or the like refer to the dollar that is the lawful currency of the United States of America.

- 1.5 Time is of the Essence. Time is of the essence for the timely performance of each obligation by Vendor. For the performance of obligations by USAC, time is of the essence only to the extent that Vendor would not be able to perform or meet its obligations but for the timely performance by USAC. In the event Vendor intends to claim its obligation to timely perform has been excused by USAC’s delay, Vendor must immediately (and in any event within 5 calendar days) provide written notification of such intent to USAC in accordance with the notice provisions under these Terms and Conditions.
- 1.6 USAC and Applicable Laws. USAC is not a federal agency, a government corporation, a government controlled corporation or any other establishment in the Executive Branch of the United States government. USAC is not a Vendor to the federal government and the Contract is not a subcontract under a federal prime contract. USAC conducts its procurements in accordance with the terms of a Memorandum of Understanding with the FCC, which requires USAC and its Vendors to adhere to the Procurement Regulations. Vendor shall comply with the Procurement Regulations and all applicable federal, state and local laws, executive orders, rules, regulations, declarations, decrees, directives, legislative enactments, orders, ordinances, common law, guidance, or other binding restriction or requirement of or by any governmental authority related to the Services or Vendor’s performance of its obligations under the Contract, and includes without limitation FCC Orders; the rules, regulations and policies of the FCC; the Privacy Act of 1974; FISMA; NIST guidelines which provide the requirements that the federal government must follow regarding use, treatment, and safeguarding of data; and OMB Guidelines pertaining to privacy, information security, and computer matching; the Communications Act of 1934; and the Communications Act of 1996.

2. CONTRACT STRUCTURE

- 2.1 Primary Nature of Vendor’s Obligations. The liabilities and obligations of Vendor hereunder are primary and enforceable against Vendor at any time and in any legally permissible sequence, i.e., either before, simultaneously with, or after proceeding against any property or security available to USAC or against any Affiliate of Vendor or Subcontractor. The primacy of Vendor’s obligations as outlined in this Section 2.1 will remain in full force and effect regardless as to any renewal, modification or extension of the Contract, and will survive the termination of the Contract until the expiration of all applicable statutes of limitations for claims which could be made by the claiming Party.
- 2.2 Non-impairment of Obligations. The primacy of Vendor’s obligations as outlined in Section 2.1 above will in no way be affected or impaired by any of the following:

- 2.2.1 *No Waiver.* Any failure, omission or delay on the part of USAC to enforce, assert or exercise any right, power or remedy conferred on or available to USAC by virtue of the Contract, or any action on the part of the USAC in granting any extension in any form to Vendor for the performance of its obligations pursuant to the Contract; or
- 2.2.2 *Rights in Bankruptcy.* Any voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the assets, receivership, conservatorship, insolvency, bankruptcy, assignment for the benefit of creditors, re-organization, arrangement, composition or readjustment of or other similar proceeding affecting USAC or any of its assets.
- 2.3 Amendments to Contract. The Contract shall not be changed, modified, terminated, or discharged, in whole or in part, except by an instrument in writing signed by Vendor and USAC (and where required by the Memorandum of Understanding Between the FCC and USAC (available at <https://transition.fcc.gov/omd/usac-mou.pdf>), the FCC).
- 2.4 FCC Rights. The Parties agree that, at the sole option of USAC and/or the FCC, nothing in the Contract prevents any right of USAC from being exercised or enjoyed by the FCC (including, for the avoidance of doubt, and without limitation, any and all rights with regard to Intellectual Property and any and all rights that survive the Contract), or any obligation of USAC from being fulfilled by the FCC. Vendor acknowledges that USAC may be required (or otherwise choose) to obtain FCC approval prior to granting Vendor any consent or approval required under the Contract. USAC shall be excused for any delays resulting from obtaining such FCC approval and neither USAC nor the FCC shall be liable for any decision by the FCC not to grant such approval. Vendor will bear the entire risk of any work undertaken prior to such FCC approval or in excess of the Not-to-Exceed Amount and acknowledges that it may be unable to charge any Fees for, or otherwise recover the costs of, such work.
- 2.5 Non-Exclusivity. Except as may be set forth in these Terms and Conditions, 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 Vendor 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 these Terms and Conditions.
- 2.6 Sole Discretion. Except as otherwise expressly provided, any USAC or FCC consent or approval that is required under these Terms and Conditions must be in writing and may be granted or denied by USAC (and, to the extent applicable, the FCC) in its sole and absolute discretion.

3. SCOPE OF SERVICES

- 3.1 Scope of Services Generally. Commencing on the Effective Date, and continuing throughout the Contract Term of the Contract and any Termination Assistance Period,

Vendor will be responsible for providing to USAC (a) Services; (b) Added Services; and (c) Transition Services. In performing the Services, Vendor shall provide a turn-key, full service operation to include, but not be limited to: facilities; equipment, including telephone instruments, related lines, and cable; telephone service; personal computers; Software (other than USAC Software); circuits; staff; training; setup, testing; and reporting. Vendor shall be responsible for the installation of the required cable and wire at any of its facilities.

- 3.2 Out-of-Scope Work. Vendor will not invoice, and USAC will not be liable for, any out-of-scope work performed by Vendor, unless an amendment or new statement of work has been executed between the Parties.
- 3.3 Added Services. USAC may at any time submit a written request that Vendor perform an Added Service. Upon receipt of a request for Added Services, Vendor will provide USAC with a written proposal for the Added Service, including, at minimum: (a) a detailed description of the services, functions and responsibilities Vendor anticipates performing; (b) a schedule for commencement and completion; (c) a detailed breakdown of Vendor's prospective Fees; (d) a description of any new staffing, Software or machines to be provided by Vendor; and (e) such other information as may be requested by USAC. Vendor will not begin performing any Added Services unless and until an amendment or new Statement of Work has been executed by both Parties.
- 3.4 Service Enhancements. In providing the Services to USAC, Vendor will comply with USAC's business process standards, guidelines, directives, policies and procedures, information management technical architecture and product standards as may be modified and communicated in writing to Vendor by USAC.
- 3.5 Cooperation with Third Party Vendors. USAC has the right to perform itself, or retain third parties to perform, any of the Services. To the extent USAC performs any of the Services itself, or retains third parties to do so, Vendor will cooperate with USAC or such third parties as reasonably required to transition such Services to USAC or USAC's retained third parties (including, but not limited to, as set forth in Section 13.6). If Vendor anticipates that any such cooperation would materially affect its ability to meet any of its obligations under the Contract, Vendor will so notify USAC and the Parties will use best efforts to agree regarding what, if any, changes to the Contract are necessary. Vendor's obligation to cooperate is subject to any third party agreement and to the confidentiality restrictions that these Terms and Conditions imposes on USAC and such cooperation will respect Vendor's and USAC's commitments to contractual restrictions and obligations imposed by third party suppliers. Vendor understands and agrees that, in the event USAC reduces the scope of Services pursuant to this Section, the Fees may be reduced.
- 3.6 Excusable Failure to Perform. In addition to Vendor's rights and obligations set forth in Article 25, Vendor will be excused from failures to perform the Services or to meet or exceed the Service Levels only to the extent that (a) USAC fails to perform its responsibilities expressly identified in these Terms and Conditions; (b) Vendor uses its

reasonable efforts to continue to perform despite USAC's failure to perform; and (c) such failure directly causes Vendor's failure to perform. In order to be excused for non-performance, Vendor must provide USAC with prompt notice of USAC's failure to perform an expressly identified responsibility or responsibilities and the actual or anticipated consequences of USAC's failure. Nothing in these Terms and Conditions shall excuse Vendor from using its reasonable efforts to mitigate the adverse consequences of USAC's alleged failure to perform, including, without limitation, by implementing manual workarounds for system outages arising from any of the foregoing.

3.7 System Compatibility. Vendor shall ensure that the Services and all deliverables under this Contract are fully compatible with USAC's internal systems, processes, and controls, and any policies that apply to Vendor under any Data Supplier Agreement.

3.8 Additional Standards.

3.8.1 Section 508 Compatibility. Vendor shall ensure that Services provided under the Contract comply with the applicable electronic and information technology accessibility standards established in 36 C.F.R. Part 1194, which implements Section 508 of the Rehabilitation Act, 29 U.S.C. § 794d, and is available at <http://www.section508.gov>.

3.8.2 TDD/TTY. Vendor shall ensure that TDD/TTY users are offered similar levels of service that are received by telephone users supported by the Contract.

4. TRANSITION

4.1 Transition Milestones. The initial phase of the Contract will include the stand-up of operations by Vendor. Stand-up of operations shall occur pursuant to a series of Milestones that will be further defined as part of the Contract. The Milestones are included in the Transition Plan. Transition Milestones and payment of associated fees shall be subject to acceptance by USAC. Vendor shall propose criteria for USAC's acceptance, for USAC consideration, for each Milestone. However, USAC shall have the sole right to determine whether a Transition Milestone has been achieved to its satisfaction, and is therefore acceptable.

4.2 Transition Plan. Vendor will perform or cause its Subcontractors to perform (as the case may be) all functions and services set forth in the Transition Plan and as otherwise necessary to deliver the Milestones set forth in the Transition Plan on or before the associated Milestone Dates set forth in Attachment 10.

4.3 Transition Services. The Transition Services will be performed in accordance with the Transition Plan, in a manner that minimizes any adverse impact on USAC's business, and without causing any material disruption to USAC. Vendor will designate an individual for each of USAC's facilities and functions being transitioned who will be responsible for managing and implementing the Transition Services with respect to such functions or services. Until the Transition has been completed, each such individual will review with

USAC the status of the Transition Services for which that individual is responsible as often as may be reasonably requested by USAC.

- 4.4 Failure to Meet Milestone Dates. In the event that Vendor fails to deliver any Milestone on or before its Milestone Date or fails to meet the Cutover Date, (a) USAC may reduce payments as described in Attachment 10 in addition to any other remedies that USAC may have against Vendor; and (b) USAC may terminate the Contract for cause in accordance with Section 13.3.1.
- 4.5 Consents. Vendor will obtain any third-party consents, licenses, permits or authorizations (including consents or licenses from its Subcontractors and vendors) needed to provide Services and perform its obligations under the Contract, and will maintain and comply with such consents and authorizations once obtained; provided that the foregoing shall be subject to Section 14.4 with respect to consents to the assignment of software licenses thereunder. USAC will provide reasonable cooperation to Vendor in obtaining and maintaining such consents and authorizations. Vendor will pay all costs and expenses with respect to obtaining, maintaining and complying with all such consents and authorizations (including without limitation any consents necessary to Use USAC Software) and such acquisition, maintenance and compliance will be at no additional charge to USAC.

5. OPERATION

- 5.1 Vendor Performance in United States. All Services must be performed within the United States. This requirement is inclusive of: (a) work related to the Services performed by all Vendor employees and/or contractors; and (b) storage and/or processing of data and/or other virtual services (such as cloud storage, remote data processing, *etc.*). Vendor shall ensure that all Vendor Service Locations have appropriate physical and electronic security.
- 5.2 English Language. All records and invoices shall be maintained exclusively in the English language. Additionally, all oral and written communications (including without limitation meetings, telephone calls, reports, notices and conferences) between the Parties shall be conducted exclusively in the English language. All Contract Staff, including Key Vendor Personnel and Subcontractor personnel, shall be fluent in the English language. Additional language requirements are set forth in _____.
- 5.3 Procedures Manual. As soon as available and no later than twenty-one (21) days prior to the Cutover Date, with USAC's input and cooperation, Vendor will prepare the Procedures Manual in the form and scope specified by USAC and will deliver the Procedures Manual to USAC, for USAC's approval. The Procedures Manual will contain Vendor's procedures for performing the Services accurately and in a timely manner and will include all operations manuals, support plans and user guides necessary and sufficient to document such procedures to USAC's satisfaction. Following USAC's review of the Procedures Manual, Vendor will revise the Procedures Manual as requested by USAC and will resubmit the Procedures Manual for approval. Once approved, Vendor

will perform the Services in accordance with the approved Procedures Manual. Vendor will periodically suggest updates and changes to the Procedures Manual to reflect any changes in the operations or procedures described, and will submit such changes for approval by USAC. No changes to the Procedures Manual shall be implemented by Vendor until the change has been approved by USAC in writing. Vendor shall ensure that a portion of the Procedures Manual contains the process by which USAC reviews funding applications (PIA). In addition to requiring USAC approval, annual updates to the PIA procedures require FCC approval.

- 5.4 Knowledge Transfer. Upon thirty (30) days' notice from USAC and no more than two (2) times per calendar year, Vendor will meet with representatives of USAC at USAC's facilities, or elsewhere as directed by USAC, in order to (a) explain how the Services are provided and (b) provide such training and documentation as USAC may require to enable USAC to understand and provide the Services ("Knowledge Transfer"). Vendor will provide USAC with a reasonable number of copies of appropriate documentation describing and reflecting the means of performing the Services, including revised or updated versions of such documentation as and when available. Any documentation provided by Vendor to USAC pursuant to this Section will be complete and of a quality satisfactory to USAC. In addition to the foregoing, if the FCC, another regulatory or enforcement body, or Congress requests information from USAC regarding or related to any of the Programs, Vendor will make such presentation and provide such documentation to USAC (and, at USAC's request, to the requestor) as soon as reasonably practicable following USAC's request, without regard to the notice and frequency limitations of the first sentence of this Section.

Training Materials. At any time during the Contract Term, USAC may request, and Vendor shall provide, copies of training materials prepared by Vendor, and shall provide to USAC staff the same or similar training as Vendor provides to its staff for purposes of delivering the Services.

- 5.5 Prioritization. Vendor agrees that USAC will be entitled to establish the priorities for Vendor's scheduling of its performance of the Services and change the priorities upon written notice. If a change in priorities by USAC will adversely affect any Service Level, Vendor will notify USAC of the expected impact of the change in priorities ("Impact Assessment"). If USAC approves the change in priorities, and such change causes the failure to meet a Service Level that Vendor identified in the Impact Assessment, then such failure to meet the Service Level will be excused solely to the extent caused by the change in priorities.

- 5.6 Law Enforcement Matters and Congressional Inquiries. Vendor must provide information and documentation promptly as requested by USAC or the FCC (e.g., Office of Inspector General, Enforcement Bureau), GAO, other federal and state law enforcement agencies, and congressional inquiries in support of any potential or ongoing investigations. If there are any such requests, Vendor will immediately notify USAC, and both parties will coordinate on any required response. Complete responses to such requests shall be provided within thirty (30) days of receipt of a request, or as soon as

practicable if the information and documentation is requested sooner than thirty (30) days.

6. SUBCONTRACTING PROCEDURE

- 6.1 **No Subcontracting Without Prior Approval:** Unless approved in writing by USAC, which approval may be granted or withheld in USAC's sole discretion, Vendor may not subcontract all or any part of the Services. If Vendor seeks consent to subcontract part of the Service, it must first notify USAC, in writing at least thirty (30) days in advance of the proposed subcontract, of: (a) the reasons for the proposed subcontract; (b) the scope of Services proposed to be subcontracted; (c) the identity and qualifications of the Subcontractor as well the Subcontractor's criminal, educational, and background check policies; (d) any potential conflicts of interest (including without limitation as set forth in Section 6.2); and (e) documentation that the proposed Subcontractor has a demonstrated history of providing excellent services within such scope. USAC, in its discretion, may request Vendor to provide such additional information as USAC deems necessary in making its decision to grant or deny a proposed subcontract.
- 6.2 **USAC-Conflicted Entities:** If the proposed Subcontractor is: (a) the National Exchange Carrier Association ("NECA") or any of its successors or assigns; or (b) any entity that has a representative serving on the board of USAC or NECA (any of the foregoing, a "USAC-Conflicted Entity"), Vendor must so notify USAC as part of its request for approval.
- 6.3 **Terms and Conditions for Approved Subcontractors:** If subcontracting is allowed pursuant to Section 6.1, Vendor must include in any subcontract terms and conditions that are at least as protective of USAC and its confidential and proprietary information as the Contract, including without limitation: (a) Articles 8 (Facilities Use), 12 (Vendor Compliance and Audit), 15 (USAC Data and Confidential Information), 16 (Security), and 31 (Publicity), (b) third party beneficiary rights approved by USAC in its favor; and (c) waivers of any lien rights; and (d) requirements that USAC will have no liability to any Subcontractor for amounts that are owed to such Subcontractor arising out of the Services. Prior to entering into any subcontract or materially amending, modifying or otherwise supplementing any subcontract relating to the Services, Vendor must notify USAC of the terms and conditions of the proposed subcontract, amendment, modification or supplement and must obtain USAC's approval thereof.
- 6.4 **No Release of Liability.** Subcontracting will not release Vendor from its responsibility for its obligations under the Contract. Vendor will be responsible for the work and activities of any Subcontractor, including compliance with the terms of the Contract. Vendor will be responsible for all payments to its Subcontractors and USAC shall have no liability for any such payments.
- 6.5 **Removal of Subcontractors.** USAC may require Vendor to remove and replace any of its Subcontractors pursuant to the provisions of Section 7.9 below.

- 6.6 Suspended or Debarred Parties. Vendor shall not enter into any subcontract with a company or entity that is debarred, suspended, or proposed for debarment or suspension by any federal executive agency. Vendor shall review the System for Award Management (SAM) for suspension or debarment status of proposed Subcontractors. *See* <https://www.sam.gov>.
- 6.7 Direct Contracting. At any time, USAC shall have the right to terminate Services provided by any Subcontractor and enter into direct agreements with such Subcontractor, and Vendor shall ensure that there are no associated prohibitions or restrictions in its agreements with Subcontractors preventing such action (or shall waive any such prohibition or restriction); provided, however, that USAC shall provide written notice to Vendor of its intent to enter into a direct agreement with a Subcontractor, and, within ten (10) days of receipt of USAC's written notice, Vendor shall have the right to elect to in-source the portion of the Services contracted out to such Subcontractor for the remainder of the Initial Term or any Renewal Term.

7. VENDOR STAFF

- 7.1 Key Vendor Personnel. The individuals in the positions specified as such in _____, or identified by name therein, will be the initial Key Vendor Personnel. Except as set forth therein, all Key Vendor Personnel will be dedicated to the USAC account on a full-time basis. Before assigning any new individual to a Key Vendor Personnel position, Vendor will: (a) consult with USAC regarding the proposed assignment; (b) introduce the individual to appropriate representatives of USAC and provide USAC the opportunity to speak with and raise any concerns regarding such individual; (c) subject to applicable Law, provide USAC with any information regarding the individual that may be reasonably requested by USAC; and (d) allow USAC to reject the proposed assignment based on reasonable grounds. USAC shall have the unilateral right to change the positions designated as Key Vendor Personnel.
- 7.2 Reassignment of Key Vendor Personnel. Vendor will not replace or reassign any of the Key Vendor Personnel within two (2) years from the Effective Date, unless USAC consents to such reassignment or replacement or such person: (a) voluntarily resigns from Vendor, or states in writing his or her intention to resign from Vendor unless reassigned by Vendor; (b) is dismissed by Vendor for cause; (c) fails to perform his or her duties and responsibilities pursuant to the Contract; or (d) dies or is unable to work due to his or her disability. After the initial two (2)-year period, Vendor will not reassign any of the Key Vendor Personnel without prior consultation with USAC. In no event may Key Vendor Personnel be transferred or re-assigned until a suitable replacement is approved by USAC and begins work. Vendor shall ensure that Key Vendor Personnel transferred, re-assigned or removed from the Services have completed their obligations and transferred all relevant documentation and knowledge resources to the appropriate recipients.
- 7.3 Staffing. Vendor will appoint a sufficient number of individuals to the Contract Staff so that the Services are provided in a proper and timely manner in accordance with best industry practices, the Statement of Work and the Service Levels. Vendor shall forecast demand and follow strong workforce management principles to maintain adequate

staffing and meet performance standards described in the Contract. Vendor shall evaluate, no less than weekly, the sufficiency of the number of reviewers by function in order to ensure maximum coverage and efficiency. Only individuals with suitable education, experience, training and qualifications to perform the Services may be appointed to the Contract Staff. Contract Staff working at any USAC Service Location may only perform functions that support USAC's operations. Vendor will notify USAC as soon as possible after dismissing or reassigning any member of the Contract Staff or upon resignation of any member of the Contract Staff. Vendor will immediately coordinate with USAC to revoke access and privileges to USAC facilities, systems and documents for any employee that ceases to be a member of the Contract Staff for any reason, including, without limitation, any employee that resigns or is terminated or reassigned.

Vendor will provide USAC with a periodic staffing plan for USAC's review and comment.

- 7.4 Removal of Key Vendor Personnel at USAC's Demand. If at any time USAC decides that any of the Key Vendor Personnel should not continue in that position, then USAC may, in its sole discretion and upon written notice to Vendor, require removal of any Key Vendor Personnel from the Contract Staff. USAC's written notice to Vendor shall include the reasons for USAC's dissatisfaction. In such event, Vendor will promptly replace such person with a suitable replacement reasonably acceptable to USAC using the process described in Section 7.2.
- 7.5 Emergency Removal. In the event that USAC notifies Vendor that it has reason to believe that any Key Vendor Personnel has committed sexual or other harassment, violated of any Law or violation of any of the provisions of these Terms and Conditions regarding confidentiality or data security, then, upon USAC's request, Vendor shall immediately suspend the individual pending an investigation into the alleged conduct. In such an event, USAC and Vendor shall confer on an emergency basis to temporarily reassign and/or expand the duties of a then-current Key Vendor Personnel knowledgeable with the Contract to assume the duties of the suspended individual on an interim basis while awaiting the results of the investigation ("Interim Assignment"). In no event shall an Interim Assignment last for longer than thirty (30) calendar days.
- 7.6 Contract Staff Validation. All Contract Staff, regardless of their location, shall be validated by Vendor upon assignment, to have not been on any list published and maintained by Government of the United States of America of persons or entities with whom any U.S. person or entity is prohibited from conducting business. Presently, the lists of such persons or entities can be found on the following web sites: (a) Denied Persons List on the Bureau of Industry and Security at <http://www.bxa.doc.gov/dpl/Default.shtm>; or (b) the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Control Department of Treasury at <http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.html>. Vendor shall conduct a quarterly review to confirm that no Contract Staff is on either of the above lists and shall report such confirmation to USAC. In the event Vendor becomes aware of any member of Contract Staff being included in the list of prohibited persons or entities, Vendor shall

immediately remove such member of Contract Staff from the provision of Services at Vendor's expense, shall immediately notify USAC thereof, and as soon as possible shall replace such person(s) with qualified person(s) whose names do not appear on such lists. Additionally, prior to any member of Contract Staff performing Services at or visiting any USAC facility, Vendor shall provide the name and home mailing address of such person to USAC so that USAC can perform its own independent review at its discretion.

- 7.7 Non-Discrimination. Vendor represents that it is an equal opportunity employer. Vendor shall not engage in any unlawful discrimination as to race, creed, color, national origin, sex, age, religion, disability, marital status, citizenship status, or sexual orientation in any employment decisions relating to the Contract and shall comply with all applicable federal and state employment laws and regulations, including: Executive Order 11246; The Vietnam ERA Veteran's Readjustment Act of 1974; Section 503 of the Rehabilitation Act of 1973.
- 7.8 Excessive Turnover of Employees. Vendor will provide USAC with a list of all personnel dedicated full-time to the Contract Staff at the end of every ninety (90) day period after the Effective Date. In the event that USAC, acting in good faith, believes that Vendor is experiencing excessive turnover of employees, Vendor will: (a) meet with USAC to discuss the reasons for, and the impact of, such turnover rate; and (b) implement a plan reasonably acceptable to USAC to reduce the turnover rate to a reasonably low level.
- 7.9 Removal of Unacceptable Contract Staff. Subject to applicable Laws, USAC may require that Vendor remove and replace any member of the Contract Staff who USAC determines is unacceptable, including USAC's determination that such individual: (a) is not qualified to perform the responsibilities required for the position held by such individual; (b) is not performing his or her responsibilities in accordance with the Contract; or (c) has violated any term or condition of the Contract, including the data security and privacy obligations set forth in these Terms and Conditions. USAC shall provide written notice to Vendor, stating the reason for USAC's dissatisfaction. Within five (5) days following Vendor's receipt of USAC's notice, Vendor shall remove such individual from the Contract Staff and provide USAC with prompt notice of such removal. Vendor may, within ten (10) business days of such notice, address concerns identified by USAC with such person and present to USAC for USAC's approval a plan (agreed to in writing by such person) to address such concerns in lieu of removal. In the event that USAC notifies Vendor that such request arises from such person's commission of sexual or other harassment, violation of any Law or violation of any of the provisions of these Terms and Conditions regarding confidentiality or data security, such individual shall be immediately be suspended from any duties pursuant to the Contract pending an investigation. In any event, Vendor shall promptly replace such member of Contract Staff with a qualified person acceptable to USAC.
- 7.10 Background Checks. Vendor shall, at its cost and expense, conduct (or cause to be conducted), in compliance with applicable Law, criminal, educational, and background checks ("Employee Checks") on each individual member of Contract Staff prior to

commencing work under the Contract. Additionally, Vendor shall provide to USAC for approval a copy of its Employee Check policies applicable as of the Effective Date. Vendor shall promptly provide to USAC any updates to such policies; provided, however, that any updates thereto which lower or relax the standards set forth in the criminal, educational, and background check policies then in effect shall be subject to USAC's prior written approval, unless required by applicable Law. If any member of Contract Staff has a lapse in assignment to USAC or a lapse in employment for thirty (30) days or more during the Contract Term, a new criminal background investigation may be required by USAC. In the event USAC is required, pursuant to an audit or a request from a governmental authority, to provide information regarding Vendor's compliance with this requirement, Vendor shall provide to USAC such information regarding such checks as is requested by such governmental authority, redacted as may be permitted by such governmental authority or Law.

- 7.11 Vendor Liability for Contract Staff. Vendor is responsible for all actions and omissions of Contract Staff, including any actions or omissions that violate Law, are negligent or that constitute a breach of the USAC Visitor Form and/or the Contract.
- 7.12 USAC Right to Hire. USAC shall have the right to extend offers and hire Vendor Staff at any time, and, in such an event, Vendor shall waive any non-competition agreement that would restrict the ability of the applicable employee joining USAC. USAC or its designee shall have reasonable access to such personnel for interviews and recruitment but shall do so in a manner that will not affect Vendor's ability to perform the Services. Vendor will release any such person that USAC or its designee desires to employ from any contractual restriction that would prevent or inhibit such person from accepting employment or performing services for USAC or its designee.
- 7.13 Employment of Staff.
- 7.13.1 No Vendor Contract Staff Employment with USAC. None of Vendor's Contract Staff shall be considered an employee of USAC by virtue of the Contract for any purpose. Vendor shall inform its Contract Staff that no staff members will be considered employees of USAC for any purpose, and that USAC shall not be liable to any of them as an employer in any amount for any claims or causes of action arising out of or relating to their assignment in connection with the Contract or release therefrom.
- 7.13.2 No USAC Employment with Vendor. None of USAC's staff shall be considered an employee of Vendor by virtue of the Contract for any purpose. USAC shall inform its staff that no members will be considered employees of Vendor for any purpose, and that Vendor shall not be liable to any of them as an employer in any amount for any claims or causes of action arising out of or relating to their assignment in connection with the Contract or release therefrom.
- 7.13.3 No Employee Benefits. Neither Party's personnel will be eligible to participate in any of the employee benefits or similar programs of the other Party.

8. FACILITIES USE

8.1 USAC Offices.

- 8.1.1 Vendor Use of USAC Facilities. At USAC's request or with USAC's approval, Services may be performed on a limited basis at USAC's offices, located at 700 12th Street N.W., Suite 900, Washington, DC 20005.
- 8.1.2 Limitations. In such event, Vendor will comply with all policies and procedures (including badging procedures) governing access to and use of USAC's offices. Without limiting the foregoing, any Contract Staff performing Services at USAC's headquarters must complete the USAC Visitor Form and Confidentiality Agreement prior to being assigned a temporary USAC visitor's badge and being allowed on-site. Vendor will comply with any USAC policies and procedures (including badging procedures) that apply to on-site contractors in effect at the USAC Service Locations, and as updated by USAC from time to time. Vendor may not provide or market services to any third party from any USAC premises without USAC's consent.
- 8.1.3 Vendor Covenants. Vendor will not commit or permit waste or damage to USAC's facilities and not use such facilities for any unlawful purpose. Vendor will indemnify and hold harmless USAC from and against any damage to USAC's office and any Losses caused by the acts or omissions of Vendor or Contract Staff while present at USAC's offices.

8.2 Vendor Offices.

- 8.2.1 USAC Use of Vendor Offices. At no additional charge, Vendor will make available to USAC furnished space in each of the Vendor Service Locations. Such space will include, but not be limited to, a separate room with at least two (2) workstations, access to the Internet, printers, fax and copier support and telephones. The USAC staff member(s) present at each Vendor Service Location will be permitted, without limitation, to perform daily review of operational metrics, address backlogs of application or customer service tickets, monitor the quality of the Services; coordinate with other USAC personnel on potential measures to remediate backlogs, inefficient processes, and high levels of escalations; and perform in person training on new USAC policy/procedure decisions. Vendor will also make temporary space available for occasional, short term visits by other USAC staff, vendors, or other representatives (including without limitation USAC Auditors) for: in person coordination meetings, training, audits, or other general oversight of the operation upon reasonable advanced notice from USAC.
- 8.2.2 Limitations. USAC will comply with all policies and procedures (including badging procedures) governing access to and use of each Vendor Service Location, which policies and procedures shall be provided to USAC prior to its access and use of the space at the Vendor Service Location.

9. SERVICE LEVELS

- 9.1 Service Levels Generally. In order to ensure that Vendor meets USAC's expectations, USAC will measure Vendor's performance against the Service Levels, including the KPIs and CSLAs, as outlined in Attachment 3. Vendor shall provide periodic reports sufficient to ascertain ongoing compliance with SLAs.
- 9.2 Ongoing Service Level Review and Adjustments. USAC and Vendor will review the Service Levels for the preceding twelve (12) months during the last calendar quarter of every year. At this time they shall adjust Service Levels for the following calendar year that: (a) require adjustment to reflect any improved performance capabilities associated with advances in the technology and methods used to perform the Services; or (b) are no longer appropriate because of a reduction in scope of the Services. Vendor shall dedicate at least one (1) staff member to review and develop revisions to Service Levels and provide regular insights and reporting thereon monthly.
- 9.3 Root Cause Analysis for Failure to Meet Service Levels. If Vendor fails to provide the Services in accordance with the applicable Service Levels, Vendor will do the following within two (2) business days in the case of a Critical Service Level and five (5) business days in the case of other Service Levels: (a) perform a root-cause analysis to identify the cause of such failure; (b) provide USAC with a report detailing the cause of, and procedure for correcting, such failure; (c) upon USAC's approval of such procedure, implement such procedure; and (d) provide USAC with assurance satisfactory to USAC that such failure will not recur following implementation of the procedure. The Service Levels will include metrics regarding performance of Services, and in the event of underperformance against the Service Levels Vendor will submit an improvement plan as part of (b) above.
- 9.4 Monitoring Tools and Procedures. As of the Cutover Date, Vendor will implement the measurement and monitoring tools and procedures necessary or required to measure and report Vendor's performance of the Services against the applicable Service Levels. Such measurement, monitoring, and procedures will (a) permit reporting at a level of detail sufficient to verify compliance with the Service Levels and (b) be subject to audit by USAC or a USAC Auditor as set forth in Article 12. Vendor will provide USAC and such designees with information concerning and access to such measurement and monitoring tools and procedures upon request for verification. Vendor shall provide monthly reports as described in (a) above.
- 9.5 Continuous Improvement. Vendor will work collaboratively with USAC to identify ways to improve the Service Levels and the technology and practices used in performance of the Services in ways that would benefit USAC either operationally or financially, including input design workflows, procedures, systems interfaces and any technical components that will directly impact the efficiency of the ERP Solution and Services. As part of this process, Vendor shall: (i) facilitate alignment among internal stakeholders at USAC on continuous improvement objectives; (ii) define and quantify expected and

measurable quality and efficiency benefits of improvement initiatives; (iii) set up regular monthly meetings to review the improvement initiatives and their measurable impact; (iv) assess the initiatives and plan for the implementation of selected initiatives; and (v) shall track and publish the measured impact of implemented initiatives to USAC. At the beginning of the third quarter of each contract year Vendor will begin the process of reviewing the previous six months of reports regarding technology and practices used. At the beginning of the fourth quarter, Vendor will present to USAC proposed continuous improvement objectives. By the end of the fourth quarter, Vendor and USAC shall come to agreement regarding a continuous improvement plan that, should USAC exercise an option year, will be put in place at the beginning of the next contract year.

- 9.6 Service Level Credits. If, at any time, Vendor fails to provide the Services in accordance with the applicable Service Levels, USAC will receive the Service Level Credits set forth in Attachment 3, provided that for avoidance of doubt Vendor's performance against the Service Levels will be measured and reported in accordance with the Contract. The Service Level Credits shall not limit or preclude USAC's right to recover other damages incurred by USAC, or to seek other remedies to which it may be entitled as a result of failure to meet the Service Levels (provided that any such Service Level Credits will be offset against any damages recovered by USAC to the extent necessary to prevent double recovery).
- 9.7 Vendor's Quality Assurance Plan. As part of its total quality management process, Vendor shall provide continuous quality assurance to USAC through: (a) the identification and application of proven techniques, best practices and tools from other installations within its operations; and (b) the implementation of demonstrable programs, practices and measures designed to improve performance standards as set forth in Section 9.4. Such procedures shall include checkpoint reviews, testing, user acceptance, and other procedures enabling USAC to confirm the quality of Vendor's performance. Vendor shall utilize project management tools, including productivity aids and project management systems, as appropriate in performing the Services. Vendor shall review all systems, Services, practices and procedures not less than once per calendar year, and will communicate such activities to USAC.
- 9.8 Complaints. Copies of any complaints received by Vendor (including complaints about Vendor) and their associated resolutions will be sent to USAC's designated procurement specialist within one (1) day of receipt, unless an urgent complaint arises that materially affects a broad set of users, in which case the complaint should be sent to USAC's designated procurement specialist.

10. PAYMENT TERMS

- 10.1 Fees. In consideration of Vendor providing the Services, USAC will pay to Vendor the Fees as set forth in _____. Except as expressly set forth in these Terms and Conditions, there will be no other charges or fees payable by USAC with regard to Vendor's performance of its obligations pursuant to the Contract. USAC may offset against the Fees any amounts owed to USAC by Vendor as Service Level Credits or other credits expressly provided for under the Contract.

- 10.2 Vendor Invoice Date and Payment Terms. No later than the fifteenth (15th) day of each calendar month during the Contract Term and any Termination Assistance Period, Vendor will invoice USAC for the Services performed in the prior month. Each invoice shall describe the charges and fees accrued during the applicable period, the line items, number of units processed/transactions completed, volume tier, Service Level Credits and credits arising from the resolution of billing disputes. The undisputed Fees will be due and payable to Vendor within thirty (30) days of USAC's acceptance of Vendor's invoice.
- 10.3 Currency, Format and Content. Vendor will invoice the Fees in United States Dollars. Each of Vendor's invoices will (a) set forth any discounts, credits one-time, firm-fixed or volume-based charges, including all line items, number of units processed/transactions completed, volume tier, Service Level Credits, and any other credits charged or issued during the period to which such invoice relates and (b) reflect any adjustment to or change in the Fees implemented during the period to which such invoice relates.
- 10.4 Process for Disputed Invoice Amounts. USAC may reasonably dispute an amount on an invoice and withhold payment of any portion of an invoice that it disputes in good faith. In such event, USAC will notify Vendor in writing of the disputed amount. USAC may withhold such disputed amount but will pay the undisputed amount in accordance with the terms of this Section 10.4. Inaccurate invoiced amounts, whether identified by Vendor or USAC, will be corrected on the next available invoice, subject to the limits set forth in Section 10.7, and clearly distinguished from current period invoiced amounts. Vendor will provide a written statement with the invoice to explain and provide a reconciliation of the corrections for USAC's review. If Service Level Credits are not accurately reflected on an invoice, USAC may, if necessary, direct Vendor to submit a revised monthly invoice reflecting accurate Service Level Credits.
- 10.5 Credits. Vendor will promptly credit to USAC any payment made to which Vendor is not entitled under the Contract and refund to USAC any such payment for which there are not sufficient Fees against which to credit the overpayment.
- 10.6 Taxes. USAC is not a tax-exempt organization. USAC and Vendor will each bear sole responsibility for (a) all taxes, assessments and other real property-related levies on its owned or leased real property and (b) in the case of Vendor, any withholding or other tax assessable on inter-company payments or reimbursements as a result of or in connection with the Contract. The Fees paid to Vendor under the Contract shall be inclusive of any applicable sales, use, gross receipts, excise, value-added, withholding, personal property, or other taxes attributable to periods on or after the Effective Date based on or measured by Vendor's cost in acquiring or providing equipment, materials, supplies, or services furnished or used by Vendor in performing or furnishing the Services or any deliverables, including all personal property and sales or use taxes, if any, due on any Services. In the event that any tax of any kind is assessed on the provision of the Services or deliverables by Vendor to USAC or on Vendor's Fees to USAC under the Contract, however levied or assessed, Vendor shall bear and be responsible for and pay the amount of any such tax. Vendor will remit all applicable taxes to the appropriate taxing authority in a timely

manner. The Parties will otherwise reasonably cooperate with each other to minimize all applicable taxes to the extent legally permissible.

- 10.7 Waiver of Late-Billed Amounts. Under no circumstance will USAC be liable to pay any Fees not invoiced within ninety (90) days after Vendor was first permitted to invoice USAC for such Fees.
- 10.8 Not-to-Exceed Amount. Vendor shall not charge Fees in excess of the Not-to-Exceed Amount, which is \$_____ for _____. Vendor is not obligated to provide Services under the Contract to the extent the Fees for such Services would exceed the Not-to-Exceed Amount for the then-applicable Initial Term or Renewal Term if (i) it has complied with the two following paragraphs, and (ii) it notifies USAC immediately when the Not-to-Exceed Amount has been reached. If USAC notifies Vendor in writing that the Not-to-Exceed Amount has been increased and specifies the amount of the new Not-to-Exceed Amount, Vendor shall immediately resume providing the Services; provided that Vendor shall have the same right (subject to the same conditions) if the new Not-to-Exceed Amount is reached.

Monthly Report on NTE. On a monthly basis, Vendor shall provide a report to USAC on the total spend against the Not-to-Exceed Amount for the Initial Term and each Renewal Term.

At 60% Notice. Vendor will provide a notice to USAC when Fees for the Initial Term or any Renewal Term exceed sixty percent (60%) of the Not-to-Exceed Amount for the Initial Term or such Renewal Term.

11. MOST FAVORED CUSTOMER

At the written request of USAC, Vendor shall provide pricing data that demonstrates the Fees are fair, reasonable and are the lowest fees charged for substantially similar work. Such data may include a comparison with current or recent fees for substantially similar work under comparable terms and conditions. Vendor may also include information obtained through market research. “Substantially similar” means taking into account the geography served, service locations, in-scope processes, volumes, systems used, clientele (including size and type of business operations, profit v. non-profit, etc.), and other material transaction elements.

12. VENDOR COMPLIANCE AND AUDIT

- 12.1 Audits Generally. Subject to Article 16 (Security), upon reasonable notice from USAC, Vendor shall provide (and shall cause its Subcontractors to provide) to USAC and to USAC Auditors access to and any assistance that they may require with respect to Contract Staff, Vendor Service Locations, Vendor controls and procedures (“Vendor Controls”), the Services, and Vendor’s books, records, and supporting documentation for the purpose of performing audits or inspections of any Services. Such audits may be conducted for any reasonable business purpose including (a) the accuracy of Fees and invoices; (b) audits and examinations by USAC’s regulatory authorities, including (but not limited to) the FCC, the FCC’s OIG office, the FCC’s external auditors, or the GAO;

(c) Vendor's compliance with the terms of the Contract and applicable Law; (d) handling of USAC Data and compliance with Data Supplier Agreements; (e) conduct of Vendor operations and procedures relating to the Services or in Vendor's performance of the Services; and (f) efficiency of Vendor in performing the Services. Vendor understands that all financial and non-financial transactions resulting from the Contract shall be documented by Vendor and subject to audit by USAC or USAC Auditors. The audit rights set forth in this Section may be exercised by USAC or the FCC or GAO authority at any time during the Contract Term and Termination Assistance Period and for three (3) years thereafter. The audit rights and procedures described in this section are in addition to and exclusive of any government audit requirements that may independently apply pursuant to any controlling governmental authority.

12.2 Review of Audit Results. Vendor and USAC shall promptly meet to review each audit report resulting from an audit under this Article and agree on an appropriate manner to address any deficiencies or recommendations contained therein. If any audit report indicates that Vendor or any Subcontractor is not in compliance with any applicable Law, audit, or other requirement applicable to Vendor pursuant to the Contract, Vendor shall take, and shall cause its Subcontractors to take, prompt actions at its cost and expense to comply with such Law or requirement. If the audit confirms that Vendor has overcharged USAC, USAC will notify Vendor of the amount of such overcharge and Vendor will promptly pay to USAC the amount of the overcharge, plus Interest calculated from the date of receipt by Vendor of the overcharged amount until the date of payment to USAC. In the event such overcharge exceeds five percent (5%) of the aggregate Fees for the period covered by the audit, Vendor will reimburse USAC for the costs of the audit. If such audit reveals any other deficiencies in Vendor's performance of its obligations under the Contract, Vendor shall immediately take steps to rectify all such deficiencies.

12.3 SSAE Reports. Each calendar year, Vendor shall engage, at Vendor's cost and expense, a globally recognized external auditor reasonably acceptable to USAC to prepare an end-to-end Statement of Standards for Attestation Engagements ("SSAE") 18 Service Organization Controls (SOC) 2 Type II report, or such other report as USAC may reasonably request, for each Vendor Service Location, with respect to the Vendor Controls (the "SSAE Reports"). The SSAE Reports shall cover the period from October 1st of the previous year through September 30th of the current year. Vendor shall provide its SSAE Report for the 2020 calendar year within ten (10) days after the Effective Date. As soon as reasonably practicable following Vendor's receipt of each SSAE Report, but no later than two (2) months following the end of the period covered by such SSAE Report, Vendor shall provide USAC and USAC's external auditors with a copy of such SSAE Report. Within thirty (30) calendar days after the end of each calendar year, Vendor shall provide a representation to USAC covering from the end of the period covered by the SSAE Reports through the end of the previous calendar year, which representation shall contain a statement as to changes in the Vendor Controls that have been implemented during such period and whether any material issues have arisen that would reasonably be expected to have been identified in an SSAE Report with respect to the Vendor Controls. Vendor shall promptly remediate any deficiencies that resulted in a qualified SSAE Report, or that could reasonably be expected to result in a qualified

SSAE Report. Vendor shall promptly respond to inquiries regarding the SSAE Reports from USAC and USAC's external auditors as necessary. If USAC determines that a form of independently audited quality certification other than the SSAE Reports is necessary to satisfy USAC's audit and reporting requirements, then Vendor shall, at USAC's request, assist USAC in performing its obligations relating to the issuance of appropriate reports with respect to such new quality certification.

- 12.4 Further Assistance. Vendor further agrees to provide any assistance requested by USAC to enable USAC to comply with the Vendor Controls and Law. Such assistance shall include but shall not be limited to: (a) documenting Vendor's internal controls and procedures related to the Services; (b) cooperating with any USAC Auditor or inspector in connection with testing the effectiveness of such controls and procedures; (c) making at least quarterly representations to USAC regarding any significant changes to such controls and procedures; (d) correcting any material weakness or significant deficiency as defined by the Vendor Controls and FISMA or any other deficiency that would prevent USAC from complying with Law; and (e) cooperating with USAC Auditors in connection with the issuance by Vendor's auditor of the SSAE Reports described in Section 12.3 above.
- 12.5 Corrective Action. If, in USAC's or a USAC Auditor's judgment, any report or audit contemplated under Section 12.2 or 12.3 reveals a deficiency or weakness in the internal controls placed in operation at the premises of Vendor or any Subcontractor, Vendor will promptly take such corrective action as USAC and its auditor may require at no additional expense to USAC.
- 12.6 Assistance. Vendor will assist and cooperate with, and provide a reasonable level of resources to support, the performance of the audits described in this Article at no additional cost to USAC. USAC, in its sole discretion and at its expense, may perform the audits described in this Article through its internal or external auditors.
- 12.7 Additional Audits. Vendor shall provide support for additional various audits on an annual routine basis. Such additional audits may include, but are not limited to, third party assessments to achieve FISMA accreditation, continuous monitoring, penetration testing, independent verification and validation of the system, and the annual FISMA audit subject to NIST 800-53 Rev 5. Such assistance shall include but shall not be limited to: (a) documenting Vendor's internal controls and procedures related to the Services; (b) cooperating with any USAC Auditor or inspector in connection with testing the effectiveness of such controls and procedures; (c) making at least quarterly representations to USAC regarding any significant changes to such controls and procedures; (d) correcting any material weakness or significant deficiency as defined by the Vendor Controls and FISMA or any other deficiency that would prevent USAC from complying with Law; and (e) cooperating with USAC Auditors in connection with the issuance by Vendor's auditor of the SSAE Reports described in Section 12.3 above. Vendor shall promptly remediate any weakness identified in any audit report, in no event later than recommended or demanded by the auditors.

13. TERMINATION

13.2 **Termination by USAC.** Unless otherwise agreed by the Parties, USAC may terminate the Contract in whole or in affected part:

13.3.1 **Cause.** Upon thirty (30) days' notice to Vendor, if Vendor does any of the following: (a) breaches any warranty, representation or covenant or fails to perform any material obligation, and such breach is irremediable or, if remediable, is not remedied within thirty (30) days of notice of the breach (or five (5) days for breaches related to confidentiality); (b) fails to meet the same Critical Service Level for two consecutive quarters; or (c) fails to meet a Milestone Date or the Cutover Date and does not cure such failure within fourteen (14) days of notice from USAC; or

13.3.2 **Change of Control, Insolvency or Credit Instability.** Upon notice to Vendor if: (a) Vendor undergoes a change of majority ownership; (b) becomes insolvent or makes an assignment for the benefit of creditors; (c) if a receiver or similar officer will be appointed to take charge of all or part of the assets of Vendor; (d) or if any recognized credit rating agency materially lowers Vendor's credit rating and Vendor is unable to provide USAC with reasonable assurances of Vendor's creditworthiness to satisfy USAC's concerns with respect to Vendor's credit rating; or

13.3.3 **USAC-Conflicted Entity.** Upon thirty (30) days' notice to Vendor if Vendor, without the prior written consent of USAC, merges with, acquires or is acquired, directly or indirectly, by a USAC-Conflicted Entity; or

13.3.4 **Noncompliance.** Upon seven (7) days' notice to Vendor, if Vendor violates any applicable Law or breaches its obligations under Article 14 (Intellectual Property Rights), 15 (USAC Data and Confidential Information) or 16 (Security); or

13.3.5 **Force Majeure.** If a Force Majeure Event or similar occurrence disrupts Services for (10) or more days; or

13.3.6 **Convenience.** Upon thirty (30) days' notice to Vendor for convenience and without cause. In the event of any such termination, USAC shall pay Vendor for work performed until the date of termination and documented actual, direct costs incurred by Vendor as a result of the early termination, subject to a cap to be specified in the contract.

If USAC terminates the Contract or any purpose in this Section other than Force Majeure or Convenience, in whole or in part, it may acquire, under commercially reasonable terms and conditions, the terminated Services from another source, and Vendor will be liable to USAC for any reasonable excess costs for such Services. In the event of a partial termination, Vendor shall continue the work not terminated.

- 13.4 Termination for Convenience Payment. In the event that USAC terminates the Contract for convenience prior to the end of the Initial Term of this Contract pursuant to Section 13.3.6, USAC will pay Vendor for work performed until the date of termination and the following documented actual, direct costs incurred by Vendor as a result of the early termination and not recovered by payment for work performed (“Termination for Convenience Costs”).
- 13.5 Termination by Vendor for Nonpayment; No Other Termination Right. Vendor may terminate the Contract, by not less than one hundred and eighty (180) days prior written notice to USAC, if USAC fails to make undisputed payments required under the terms of the Contract and fails to remedy such failure within forty-five (45) days after receipt of written notice specifying such breach and Vendor’s intention to terminate the Contract. Except as provided in this Section, Vendor will have no right to terminate the Contract as the result of USAC’s breach of the Contract.
- 13.6 Continued Performance. During any period commencing upon notice of termination and continuing until the completion of the Exit Transition End Date, Vendor will perform the Services in accordance with terms and conditions and performance standards in effect as of the date on which notice of termination is given. At USAC’s election, Vendor will continue to provide any or all the Services during the Exit Transition, subject to payment of the Fees therefor.
- 13.7 Exit Transition. Vendor will cooperate with USAC to effectuate a smooth and professional transition of the Services to USAC or its designee from Vendor (the “Exit Transition”) upon expiration of the Contract Term or in the event the Contract is terminated for any reason. The target date for completing the Exit Transition (the “Exit Transition End Date”) and the timing of any intermediate stages of the Exit Plan shall be as reasonably specified by USAC. The Parties and their employees and agents will cooperate in good faith to execute the Exit Plan and each Party will perform those tasks and actions assigned to it therein. As part of the Exit Transition, in addition to the obligations under the Exit Plan, Vendor will perform the following tasks and actions in addition to such other tasks and actions as are set forth in the Exit Plan or may be agreed upon by the Parties:
- 13.7.1 USAC Due Diligence Investigation. Vendor will permit USAC to perform a due diligence investigation of the methods, means and manner pursuant to which the Services are then being performed. Vendor will cooperate fully with such due diligence investigation, at no cost to USAC or its designee, provided such cooperation does not unreasonably interfere with Vendor’s performance of the Services or its other normal business operations.
- 13.7.2 Vacating USAC Service Locations. Vendor will, as of the completion of the Exit Transition (or sooner as directed by USAC), vacate all USAC Service Locations occupied by Contract Staff.

- 13.7.3 Return of USAC Property. As part of the Exit Plan, and again upon completion of the Exit Transition, Vendor will return to USAC or its designee (or, as appropriate, destroy pursuant to guidelines in NIST SP 800-88 Rev. 1 or the most current revision) all USAC property, tangible or intangible, including all USAC Confidential Information and USAC Materials, in its possession. Within ten (10) days of completion of the Exit Transition, Vendor will certify in writing to USAC that it and its Subcontractors have complied with this Section.
- 13.7.4 USAC Data. Within thirty (30) days after delivery of the Exit Plan, and again upon completion of the Exit Transition, Vendor will deliver to USAC or its designee all USAC Data (in electronic and hardcopy form) in the commercially available format reasonably requested by USAC, including without limitation all backup, archived, historical and disaster recovery data, customer and other records, emails, web site content and data pertaining to USAC, any Data Supplier or any Program Participant in any Vendor database.
- 13.7.5 Data Purge. Following approval by USAC, upon completion of the Exit Transition, all USAC Data and related data shall be purged from Vendor's and all its Subcontractors' systems, all electronic copies of data in Vendor's or its Subcontractors' possession shall be deleted and destroyed pursuant to guidelines in NIST SP 800-88 Rev. 1 or the most current revision and all paper documents in Vendor's or its Subcontractors' possession shall be destroyed by burning, pulping, shredding, macerating, or other means if authorized by USAC in writing in a secure manner. Within ten (10) days of completion of the Exit Transition, Vendor will certify in writing to USAC that it and its Subcontractors have complied with this Section.
- 13.7.6 Identify Substitute Location. If, in connection with any termination, USAC or its designee, elects to move hardware or other physical property owned by USAC and formerly utilized by Vendor in connection with performance of the Services to a new location, Vendor will, if requested by USAC, assist in identifying and specifying the requirements for a suitable substitute location.
- 13.7.7 Training Assistance. In connection with the Software applications and the processes and procedures to which USAC has rights upon termination in accordance with Article 14 (Intellectual Property Rights) Vendor will provide to USAC or its designee such training as may be reasonably necessary for USAC or its designee, at no additional cost, to access the USAC Data and otherwise utilize said rights.
- 13.7.8 Continuation of Services. At USAC's election, Vendor will continue to provide any or all the Services during the Exit Transition, subject to payment of the Fees therefor.
- 13.7.9 Inventory. Within thirty (30) calendar days of the expiration of the Contract or within thirty (30) calendar days following notice of termination of the Contract. Vendor shall forward the following to USAC:

- (a) Inventory of all transferable and non-transferable hardware and Software used in the provision of the Services and associated technical attributes (including hardware configuration, software operating system, integrated software packages, software language, program/module names, software development tools).
- (b) Inventory of all USAC Data in Vendor's or any Subcontractor's possession, including related data stores, including operational and reference data, and associated technical attributes (includes paper, scanned and other electronic data and records, database management system (DBMS), volume/size of records, file sizes, and other relevant data.), location, and an inventory of all documented procedures/processes/guidelines used in the performance of the Services.
- (c) Inventory of all documented procedures/processes related to system operation and maintenance. This includes system documentation.
- (d) Inventory of current and peak staffing numbers over the last twelve (12) months by function.
- (e) Written and electronic copies of all procedures/processes/guidelines/scripts/documentation, including sample reviews and checklists completed as part of the processing, and all training materials.
- (f) Copies of internal/external audits and reviews of all processes.
- (g) Paper and electronic copies of all web site designs and associated scripts/coding where developed as work product.
- (h) System analysis and design documentation (e.g., data models, process model, business rules, data base specifications, and all requirements documentation), as well as testing documentation (e.g., quality assurance and user acceptance test plans, cases, scripts, data) and production documentation.
- (i) Pricing information for any hardware or Software used in providing the Services that does not convey to USAC at the expiration or termination of the Contract.
- (j) Copies of all reporting data, metrics, and systems maintenance history and status, including service incidents within the twelve (12) months preceding the termination.

- (k) Paper copies of all data not kept in electronic format, and other documents necessary to meet the obligations under applicable audit and record retention requirements.

13.8 Survival. The provisions of Article 1 (Interpretation), Section 2.1 (Primary Nature of Vendor's Obligations), Article 12 (Vendor Compliance and Audit), Article 13 (Term and Termination), Article 14 (Intellectual Property Rights), Article 16 (Security), Article 19 (Representations and Warranties), Article 20 (Additional Covenants), Article 21 (Dispute Resolution), Article 22 (Indemnification), Article 23 (Damages and Limitation of Liability), Article 27 (Notices), Article 29 (Severability), Article 30 (Waiver), Article 31 (Publicity) and Article 32 (Law and Jurisdiction) will survive termination or expiration of the Contract.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 Vendor Materials, Vendor Software and Vendor Background IP. Except as set forth in this Section 14.1, Vendor shall retain all Intellectual Property Rights in (a) all Intellectual Property owned by Vendor as of the Effective Date, including all Intellectual Property Rights in Vendor Software, (b) any Intellectual Property independently developed by Vendor outside the scope of the Contract without breaching any of its confidentiality obligations herein, and (c) any Improvements to the foregoing, in each case used or incorporated by Vendor in connection with the Services or deliverables (collectively, "Vendor Background IP"). Vendor hereby grants to USAC a perpetual, irrevocable, non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to Use the Vendor Software and Vendor Materials (including Vendor Background IP). In an abundance of clarity, both parties expressly agree that, among the other rights identified above, such license shall allow USAC to Use Vendor Background IP for any business purpose except for the resale of Vendor Background IP and is assignable and sublicensable to the FCC. In an abundance of clarity and caution, Vendor hereby grants to USAC a non-exclusive, fully-paid up, transferable, sublicensable, perpetual, irrevocable, royalty-free license to Use any Vendor Software and Vendor Materials that are used by Vendor to provide the Services.

14.2 USAC Ownership of New IP. All New IP shall be owned by USAC. USAC shall have all right, title and interest, including exclusive worldwide ownership of Intellectual Property, in and to any New IP and all copies of such New IP. Vendor hereby irrevocably assigns and agrees to assign, and shall cause its Subcontractors to assign and agree to assign, to USAC, without further consideration, all right, title, and interest in and to all New IP, including all worldwide Intellectual Property rights in the New IP. Vendor acknowledges that USAC and the successors and permitted assigns of USAC shall have the right to obtain and hold in their own names any and all Intellectual Property rights in and to any New IP, including without limitation to right to transfer, assign or sub-license the same. Vendor hereby waives any "moral rights" in any New IP and shall cause its personnel and Subcontractors to waive any "moral rights" in New IP.

- 14.2.1 Vendor Cooperation to Perfect USAC's Ownership of New IP. Vendor agrees to execute, and shall cause its Subcontractors to agree to execute, any documents or take any other actions as may reasonably be necessary, or as USAC may request, to perfect USAC's ownership of any New IP. Vendor shall not, at any time, apply for copyright, trademark, or patent protection in any New IP, file any document with any governmental agency that would affect USAC's ownership of the New IP, or aid or abet any other person or entity in doing so.
- 14.2.2 Vendor Disclosure of New IP. Vendor shall disclose in writing to USAC all New IP promptly after creation of such New IP.
- 14.3 Continuous Provision. Vendor understands and agrees that the successful, error-free and continuous provision of the Services and the security of the overall system and security and availability of data are critical to the successful operation of USAC's normal business operations. As such, the licenses granted herein may be terminated by Vendor only pursuant to Section 13.4.
- 14.4 Assignability of Third Party Agreements and Licenses. Vendor shall structure its arrangements with third party providers of services, equipment and Software (as applicable) so that the relevant contracts may be transferred or assigned to USAC, at USAC's request, upon the expiration or termination of the Contract. At USAC's election, Vendor will assign to USAC, the FCC or USAC's other chosen designee, in whole or in part per USAC's election, any third-party license agreements (including any licenses to Vendor Third Party Software), support agreements, maintenance agreements, Subcontractor agreements and other third-party contracts (collectively, "Third Party Agreements") utilized by Vendor in connection with performance of the Services. With respect to any Third Party Agreements so assigned, Vendor will remain responsible for all obligations to any such third party arising prior to the completion of the Exit Transition, and USAC or its designee will assume and be responsible for all obligations to any such third party arising subsequent to the completion of the Exit Transition. Where Vendor utilizes a Third Party Agreement to provide services to customers in addition to USAC, Vendor shall not be obligated to assign such Third Party Agreement to USAC, but shall assist USAC in establishing a direct relationship with the third party signatory to such Third Party Agreement and shall waive any non-compete or other restrictions in the Third Party Agreement that would prevent or restrict the third party from entering into such direct relationship.
- 14.5 USAC Intellectual Property. Vendor acknowledges that USAC and its suppliers own, reserve and shall retain all right, title, and interest (including, without limitation, any Intellectual Property rights) in and to the USAC Technology. Nothing in these Terms and Conditions shall be deemed to imply the grant of a license in or transfer of ownership or other rights in the USAC Technology, and Vendor acknowledges and agrees that it does not acquire any of the same, except as expressly set forth in this Section. USAC hereby grants to Vendor a limited, non-exclusive, non-transferable, royalty-free license to Use, during the Contract Term and the Termination Assistance Period, the USAC Technology solely for purposes of providing the Services to USAC during the Term and

any Termination Assistance Period. Without limiting the foregoing, Vendor shall not be permitted to use USAC Technology for the benefit of any entity other than USAC.

- 14.6 Vendor Third Party Software. To the extent Vendor proposes to use Vendor Third Party Software in connection with performance of any of the Services, Vendor will obtain for USAC at Vendor's cost a non-exclusive license during the Contract Term and the Termination Assistance Period, which shall be sub-licensable for such purpose and during such period to the FCC and to any contractor providing Contract Staff to USAC in connection with USAC's receipt of the Services. Vendor shall not, without the advance written permission of USAC, incorporate any Vendor Third Party Software into the Software used to provide the Services. Any such Vendor Third Party Software shall be a commercial "off-the-shelf" product generally available to the public, and the licenses to such Vendor Third Party Software shall be transferable to USAC at the end of the Contract Term. Vendor shall, at the end of the Contract Term and at no additional cost to USAC, transfer to USAC or its designee all licenses to Vendor Third Party Software required for the provision of Services as set forth in Section 14.4.
- 14.7 Commissioned Work. As between Vendor and USAC, USAC will own all non-Software literary works or other works of authorship created pursuant to a Statement of Work and any requirements documents, personalized communication statements, interactive voice response and call center scripts, tapes of recorded service center calls, manuals, training materials and documentation that are created for the benefit of USAC during the course of the Contract ("Commissioned Work"). Vendor hereby irrevocably assigns, transfers and conveys, and will cause Subcontractors to assign, transfer and convey, to USAC, without further consideration, all of its and their right, title and interest in and to Commissioned Work. USAC hereby grants to Vendor, for the Contract Term and the Termination Assistance Period, a royalty-free, non-transferable, nonexclusive license to Use the Commissioned Work solely to perform the Services for USAC. Notwithstanding the foregoing, Vendor will retain ownership of all pre-existing Vendor Materials that are incorporated into the Commissioned Works. Vendor hereby grants to USAC a perpetual, irrevocable, royalty-free license to Use any such pre-existing Vendor Materials that are a part of any Commissioned Work.
- 14.8 USAC Assignment of Intellectual Property. USAC may assign any intellectual property licensed to USAC to the FCC or to any third party.
- 14.9 Protection of Source Code. Vendor will protect the source code of all software used in providing services against threats by Vendor's potential bankruptcy or going out of business in a way acceptable to USAC.

15. USAC DATA AND CONFIDENTIAL INFORMATION

- 15.1 USAC Data and Other Confidential Information Generally. USAC Data is and will remain USAC Confidential Information and the property of USAC. Without USAC's written approval, USAC Data and other USAC Confidential Information will not be (a) used by Vendor or Subcontractors other than in connection with providing the Services or

otherwise complying with Vendor's obligations under the Contract, (b) disclosed, sold, assigned, leased or otherwise provided or made available to third parties by Vendor or Subcontractors, or (c) commercially exploited by or on behalf of Vendor or Subcontractors. Vendor also hereby agrees that, prior to any disclosure of USAC Data or other USAC Confidential Information to any Subcontractor, such Subcontractor will also agree in writing to abide by obligations at least as restrictive as Vendor's obligations under this Article 15. In addition, Vendor hereby irrevocably assigns, transfers and conveys, and will cause Subcontractors to assign, transfer and convey to USAC, without further consideration, all of its and their right, title and interest (to the extent any of them may have any) in and to USAC Data or other USAC Confidential Information. Upon request by USAC, Vendor will execute and deliver, and will cause Subcontractors to execute and deliver, any instruments or other documents that may be necessary or desirable under any Law to preserve, or enable USAC to enforce, its rights with respect to USAC Data and other USAC Confidential Information. The applicable Data Supplier will be a third-party beneficiary of this Section 15.1 and shall have, among other rights provided by law, the right to enforce this Section pursuant to the applicable terms of these Terms and Conditions.

- 15.2 Standard of Care for Confidential Information Generally. In addition to the Security and the Confidentiality Procedures set forth in Attachment 7, and subject to Sections 15.1 and 15.3, each Party agrees to maintain the confidentiality of any Confidential Information received from the other Party, and will take all reasonable measures to ensure that Confidential Information of the disclosing Party is not disclosed or duplicated in contravention of the provisions of the Contract by its officers, directors, agents, professional advisors, contractors, Subcontractors and employees, at least to the same extent and manner as the recipient protects its own confidential information, and in no event less than a reasonable standard of care. Neither Party will disclose, publish, release, transfer or otherwise make available Confidential Information of, or obtained from, the other in any form to, or for the use or benefit of, any person or entity without the disclosing Party's consent. The obligations in this Section will not prevent any disclosure made pursuant to any Law. However, the recipient of any demand or requirement for such disclosure will give prompt notice to the disclosing Party. Vendor acknowledges that Confidential Information of Vendor may be subject to the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA").
- 15.3 Standard of Care for PII and Sensitive PII Generally. The Parties agree to maintain the confidentiality of PII and Sensitive PII in accordance with Section 15.4 below.
- 15.4 Permitted Disclosure. Notwithstanding the foregoing, USAC and Vendor will each be permitted to disclose relevant aspects of the other's Confidential Information to its officers, directors, agents, professional advisors, contractors, Subcontractors and employees, solely to the extent such disclosure is not restricted under any Consents or any Authorizations, and solely on a need-to-know basis to the extent that such disclosure is necessary for the performance of the disclosing Party's duties and obligations or the determination, preservation or exercise of its rights and remedies under the Contract. In the event any Subcontractor is to be given access to any Confidential Information of

USAC, Vendor will so notify USAC in writing at least ten (10) business days in advance of providing such access, and will deny providing such access to the extent USAC objects within such ten (10) business day period. Prior to granting such access, Vendor will obtain from such Subcontractor written agreement to be bound by the terms of this Article 15, Article 16 and Attachment 7, USAC and the FCC each to be a third-party beneficiary thereof and shall have, among other rights provided by law, the right to enforce the applicable terms of that agreement. Vendor shall ensure that any of the other Vendor-related persons listed in the first sentence above who have access to USAC Confidential Information sign a confidentiality agreement with terms substantially the same as those described in this Article 15. Vendor will also notify such Vendor-related persons of the civil and criminal sanctions for noncompliance contained in the applicable federal laws. Such confidentiality agreements shall specifically provide that each of USAC and the FCC are third-party beneficiaries thereof and shall have, among other rights provided by law, the right to enforce the applicable terms of that agreement. Vendor will provide copies of such confidentiality agreements to USAC upon request.

15.5 Errors and Inaccuracies. Vendor will promptly (no later than within seven (7) days) correct any errors or inaccuracies in: (a) USAC Data in Vendor's possession that were caused by Vendor's acts or omissions; and (b) the reports delivered by Vendor to USAC under the Contract.

15.6 Privacy and Security Training. Vendor will be required to provide information security and privacy awareness training to each member of Contract Staff prior to having access to USAC information or to USAC information systems and thereafter on an annual basis. Contract Staff will be required to provide USAC with acknowledgements signed by Contract Staff upon request as evidence of the security and privacy awareness training. Contract Staff shall also be required to attend all mandatory privacy and data security training sessions as required by USAC, and all Contract Staff will be required to sign confidentiality and non-disclosure agreements as required by the Data Suppliers and USAC.

15.7 Return or Destruction of USAC Data

15.7.1 Data Return or Destruction General Procedures. Except as provided in Section 15.7.2, and promptly upon the expiration or termination of the Contract (or such earlier time as USAC may direct), Vendor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all USAC Data, including all copies thereof, in the possession or under the control of Vendor or Vendor Personnel. If USAC directs that Vendor destroy any USAC Data, then, at USAC's request, Vendor shall provide USAC with an executed certificate in writing stating that all such USAC Data was destroyed.

15.7.2 Acknowledgement of Data Inclusion in Federal System of Record. Vendor acknowledges and agrees that certain USAC Data may be included in a federal system of record and is subject to record retention schedules set forth by NARA and USAC's records retention policy. Upon expiration or termination of the

Contract, information subject to NARA's schedules or USAC's records retention policy shall not be destroyed by Vendor without the written consent of USAC. Vendor will work with USAC in good faith to promptly return all such USAC Data to USAC.

15.7.3 Withholding of USAC Data. Vendor shall not withhold any USAC Data as a means of resolving any dispute. To the extent that there is a dispute between Vendor and USAC, Vendor may make a copy of such USAC Data as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.

15.7.4 Hard Copy Destruction. If Vendor destroys hard copies of USAC Data, Vendor must do so by burning, pulping, shredding, macerating, or other means if authorized by USAC in writing.

15.7.5 Electronic Copy Destruction. If Vendor destroys electronic copies in computer memory or any other type of media, destruction must be done pursuant to guidelines in NIST SP 800-88 Rev. 1 or the most current revision.

15.8 Assignability of USAC Data. USAC Data is provided to Vendor solely for the purpose of rendering the Services, and USAC Data or any part thereof shall not be sold, assigned, leased, or otherwise transferred to any third party by Vendor (except as required to perform the Services or as otherwise authorized in the Contract), commingled with non-USAC Data, modified, decompiled, reverse engineered, or commercially exploited by or on behalf of Vendor, Vendor Personnel, or any third party.

16. SECURITY PROVISIONS

16.1 Data Security Laws Compliance. Vendor shall comply with FISMA, 44 U.S.C. § 3541, et seq., the Privacy Act of 1974 (5 U.S.C. § 552a) as amended (as may be applicable), and NIST SP 800-53 Rev 5, and USAC security policies (which USAC may revise at any time in its sole discretion). Vendor shall protect PII in accordance with all federal and USAC requirements, including, but not limited to, OMB Memoranda M-17-12 and guidance from NIST, including, but not limited to, NIST SP 800-53 Rev 5, FIPS 140-3, and USAC's IT policies. Vendor shall cooperate with USAC to implement the abovementioned and any federally mandated information security and privacy requirements not described herein (collectively with the aforementioned laws, regulations, requirements, memoranda and guidance, the "Data Security Laws").

16.2 Vendor Compliance Generally. Throughout the Contract Term, Vendor shall comply with: (i) USAC's information privacy and IT security policies; and (ii) the prevailing standards of care and best practices regarding information privacy and IT security to the extent they meet or exceed the requirements of the Data Security Laws, the aforementioned USAC policies, or the obligations set forth in these USAC Terms and Conditions.

- 16.3 Vendor Duties Prior to Delivering Services. Prior to delivering the Services or enabling data-sharing or interoperability of any kind with USAC's IT System, Vendor shall: (i) work with USAC to document, establish and enable the effective and secure integration of any gateways or data transmission mechanisms necessary for the parties to perform their obligations under the Data Security Laws; (ii) complete any security questionnaires, IT rules of behavior, certifications, assessments, or workforce training reasonably requested by USAC in a timely manner; and (iii) receive prior written authorization from USAC to access USAC's IT System from USAC. If at any time USAC determines that the establishment of such gateways or data transmission mechanisms is reasonably required to securely access the Services, their establishment shall be at Vendor's sole cost and expense. Under no circumstances shall USAC's written authorization to access its IT System serve as a representation or warranty by USAC that such access is secure or as a waiver of any rights in the Contract. Failure to satisfy the conditions set forth in subsections (i) – (iii) herein to USAC's reasonable satisfaction shall be considered a material breach of the Contract by Vendor.
- 16.4 Vendor Security Policies. Vendor shall apply the safeguarding requirements and procedures from NIST SP 800-171 Revision 2 "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" to protect covered Vendor IT Systems and USAC Data. Throughout the Contract Term, Vendor shall establish and maintain appropriate internal policies and procedures regarding: (i) the security of the Services and Vendor's IT System; and (ii) the permitted use, disclosure, access to, and security of PII, USAC Data, Confidential Information, and USAC IT Systems. Vendor shall provide USAC upon request with copies of its information privacy and IT security policies and procedures to review. Such policies and procedures shall not materially conflict with USAC's policies and procedures either expressly or by omission. Vendor agrees to maintain strict control of Vendor's IT System and the access information (e.g. name, username, password, access rights) of all Vendor Personnel to immediately remove access for persons no longer authorized, and to inform USAC immediately if Vendor suspects, or reasonably should expect, there is unauthorized access to USAC's information or IT System. Vendor shall require Vendor Personnel to use Multifactor Authentication. Vendor agrees to require all who access to USAC's IT System through Vendor to maintain the confidential nature of the Confidential Information, and to not use or access USAC's IT System except for the benefit of USAC.
- 16.5 Privacy Compliance Plan. In providing the Services, Vendor shall conduct itself in a manner that safeguards USAC Data against destruction, loss, damage, corruption, alteration, loss of integrity, commingling, or unauthorized access or Processing (the "Data Safeguards"). Vendor's Data Safeguards shall be no less rigorous than the most protective of: (a) the requirements of applicable Law; (b) the specific standards set forth in this Article; and (c) the applicable USAC Standards relating to data security (including such standards and procedures relating to quality, change, and problem management, safety, data privacy and data security, and disaster recovery), as set forth in Attachment 7. Each Party shall designate an individual responsible for coordinating data security related matters for such Party ("Data Security Liaison"), who will be the primary contact person of such Party for all data security related matters under the Contract. In the event a direct

interconnection is to be established between Vendor's and USAC's computing and/or networking facilities, the Data Security Liaisons shall execute an interconnection security agreement prior to the establishment of such direct interconnection. Vendor will periodically update and test the Privacy Compliance Plan every calendar quarter.

- 16.6 PII. Without limiting, and in addition to, Article 15, this Article, and Attachment 7, Vendor shall ensure that: (i) PII shall be protected in accordance with all Laws and USAC requirements, including, without limitation, relevant: (a) OMB Memoranda (including without limitation OMB Memoranda M-17-12 and M-17-16); (b) guidance from the NIST including without limitation the most current revision of NIST SP 800-53 Rev. 5 (Security and Privacy Controls for Federal Information Systems and Organizations) and (c) FCC requirements or the most current replacement of the above; (ii) to the extent that cloud-based services are employed by Vendor and interact with USAC data, Vendor shall provide documentation and proof of accreditation to demonstrate compliance and such services shall be certified by FedRAMP for use at a moderate risk by the time the cloud-based services are implemented (USAC reserves the right to inspect the Authority to Operate ("ATO") notice for Services certified by the FedRAMP Joint Accreditation Board (JAB) or the complete package of documents for those with agency accreditation); and (iii) all security-related incidents resulting in any interruption to system services including the disclosure of PII, shall be tracked in accordance with policy standards as outlined in the most current revision of NIST SP 800-53 Rev. 5 (Security and Privacy Controls for Federal Information Systems and Organizations) and NIST SP 800-61 (Computer Security Incident Handling Guide) as well as in OMB Memoranda M-17-12.
- 16.7 Vendor Responsible for Personnel. Vendor shall ensure that all of its agents, employees, representatives, subcontractors, or other personnel performing services under the Contract will be bound by the same or substantially similar restrictions on collection, use, disclosure, and retention of PII. Vendor shall be responsible for any breach of data security and privacy-related obligations and shall fully indemnify USAC for any damages incurred as a result of any breach. Vendor will be required to provide information security and privacy awareness training to all employees that will be working on the Contract prior to having access to USAC information or to USAC information systems and on an annual basis. All Vendor employees engaged in services will also be required to sign confidentiality and non-disclosure agreements as required by third parties and USAC.
- 16.8 Encryption and Secure Storage. PII must be encrypted at all times in accordance with FIPS 140-3 standards. This encryption requirement includes both Data at Rest (i.e., stored on a hard drive, CD, DVD, thumb drive, etc.) and Data in Transit (i.e., via email or other secured electronic means). Any PII that is retained in documents or other physical formats must be stored in a secured location and with limited access. The standard for disposal of PII requires practices that are adequate to protect against unauthorized access or use of the PII, including at minimum adhering to the provisions of Section 15.7.
- 16.9 Further Requirements. Vendor's Services, and Vendor's applications, processes and systems used in the provisioning of Services, shall be approved by USAC's IT Security Team and shall comply with FISMA, NIST, and OMB requirements. Vendor shall demonstrate ATO for any system that will house USAC Data, in compliance with NIST

standards, and provide all relevant documentation as defined in the Risk Management Framework lifecycle therein. Vendor further agrees to provide any assistance requested by USAC to enable Vendor or USAC to comply with FISMA requirements, including, without limitation, at Vendor's expense, providing USAC with periodic documentation and reports demonstrating FISMA compliance and system accreditation and correction of any weakness or deficiency (as defined by FISMA) attributable to Vendor that would prevent Vendor or USAC from complying with FISMA. Vendor shall be responsible at its sole expense to remediate any noncompliance of its systems or the services with FISMA. No less than annually, Vendor shall write, review, and update an assessment of all applicable federal mandates and other industry-accepted standards as set forth in this Article to ensure adherence thereto.

16.10 Vendor Assumption of the Risk. Vendor agrees that access to the PII, Data, USAC Data, Confidential Information, and USAC's IT Systems is at USAC's sole discretion, and that Vendor's access to such system or information may be conditioned, revoked or denied by USAC at any time, for any reason, without any liability whatsoever to USAC. Access to USAC's IT System by Vendor and Vendor Personnel, including any data-sharing or interoperability between USAC and Vendor, shall be for the sole purpose of providing the Services. Vendor agrees that: (i) USAC's IT System is owned solely by USAC; (ii) USAC will monitor the use of USAC's IT System; (iii) neither Vendor nor Vendor Personnel have any expectation of privacy with regard to USAC's IT System; and (iv) all information appearing on USAC's IT System (except for information publicly disclosed by USAC) will be considered Confidential Information. Vendor will not use USAC's IT System except as expressly authorized by USAC. USAC may require that Vendor Personnel use a USAC.org email address when providing Services. Vendor agrees that its use of, and access to, USAC's IT System is completely at its own risk.

16.11 Vendor's Obligation for Subcontractors. Vendor agrees to ensure that any subcontractor that accesses, receives, maintains, or transmits PII, Data, USAC Data, Confidential Information, or USAC's IT System agrees to the same restrictions and conditions that apply throughout the Contract to Vendor.

16.12 Performance Within United States. All Services must be performed within the United States. This requirement is inclusive of: (a) work related to the Services performed by all Vendor Personnel; and (b) storage and/or processing of data and/or other virtual services (such as cloud storage, remote data processing, *etc.*).

16.13 Data Security Incident and Data Breaches

16.13.1 Vendor Must Notify USAC of Security Incidents and Data Breaches. Vendor shall identify Security Incidents or Data Breaches and notify USAC at incident@USAC.org and Privacy@USAC.org of any known or suspected Security Breach or Data Breach within one (1) hour of becoming aware of an actual or suspected Security Incident or Data Breach.

16.13.2 Notification Requirements. Vendor's notice to USAC shall include the following: (i) a description of the Security Incident or Data Breach, including the date of the Security Breach or Data Breach and the date of discovery by Vendor,

if known; (ii) a description of the type(s) of Malicious Code, PII, Data, USAC Data, Confidential Information, or USAC IT System involved in the Security Incident or Data Breach, if any; (iii) to the extent possible, a list of each individual whose PII has been, or is reasonably believed to have been accessed, acquired, used or disclosed during or as a result of the Security Breach or Data Breach; (iv) a brief description of what Vendor is doing to investigate the Security Incident or Data Breach and mitigate the harm to USAC; (v) any steps Vendor recommends USAC should take to protect itself from potential harm resulting from the Security Breach or Data Breach; (vi) the name, phone number, and e-mail address of Vendor's representative responsible for responding to the Security Incident or Data Breach; and (vii) any information required for USAC to comply with the Data Security Laws. Upon receiving Vendor's initial notice, USAC shall have the right to immediately take any security measures it deems reasonably necessary to mitigate the harmful effects to the PII, Data, USAC Data or Confidential Information the IT System. Vendor will regularly supplement its notice(s) with additional information as it becomes available.

16.13.3 Vendor Responsibilities Prior-to and After Security Incident or Breach. Vendor, working with USAC, shall use its best efforts to mitigate and eliminate the effects of the Security Incident or Data Breach on USAC and, if the Security Incident or Data Breach causes any loss of operational efficiency, loss of data, or unauthorized disclosure, Vendor will assist USAC in mitigating or restoring such losses or disclosures. Vendor agrees to fully cooperate with USAC in the investigation of the Security Incident or Data Breach and to participate in, to the extent directed by USAC, the notification of individuals, the media, the FCC, or third parties. Vendor shall promptly respond to USAC's questions regarding the Security Incident or Data Breach and coordinate with Vendor Personnel if required to mitigate the harm. To the extent USAC determines necessary, USAC agrees to provide reasonable access to the affected systems in order for Vendor to assist in such restoration of efficiency or data. Notwithstanding anything to the contrary in the Contract, if the Security Incident or Data Breach is due to the negligence or misconduct of Vendor or Vendor Personnel, then Vendor shall: (i) perform its obligations under this Section at no cost to USAC; (ii) promptly implement or develop any additional protocols, policies, gateways, transmission mechanisms, or security layers, if reasonably necessary, at its sole cost and expense, and with the approval of USAC; (iii) indemnify USAC for all damages, and if needed PII breach mitigations, under this Section as a result of the Security Incident or Data Breach. Failure to strictly abide by the above terms shall be considered a material breach of the Contract for which USAC shall have the right to immediately terminate for cause.

16.14 Backups. Vendor shall make reasonable backups of all USAC Data and shall ensure that the Services allow for the automatic backup of USAC Data stored by Vendor or any Subcontractor.

- 16.15 Security Audit. USAC or its designated USAC Auditor may, at USAC's expense and at any time, perform an audit of the security policies and procedures implemented by Vendor and in effect at Vendor Service Locations.
- 16.16 Notification and Assistance. Vendor will cooperate with USAC in any litigation and investigation against third parties deemed necessary by USAC to protect USAC Data, other USAC Confidential Information and/or PII and/or Sensitive PII. Each Party will bear the costs it incurs as a result of compliance with this Section.
- 16.17 Vulnerability Management. Vendor shall address vulnerabilities in accordance with NIST vulnerability management controls including, but not limited to, addressing vulnerabilities in the applicable timeframes set forth in such policies. Vendor shall provide a monthly vulnerability report and a risk mitigation plan to address any identified vulnerabilities. Critical and high vulnerabilities, as defined in NIST management controls, shall be reported to the USAC Chief Information Officer or Director of Information Security, and Vendor shall remedy such vulnerabilities within thirty (30) days of identifying them. In the event that Vendor cannot meet the applicable timeframe, Vendor shall provide USAC a plan of action and milestones ("POA&Ms") to address such vulnerabilities promptly, and shall prioritize remediation based on the risks implicated by such vulnerabilities. Failure to meet the applicable timeframe will result in USAC receiving a Service Level Credit as set forth in Attachment 3.

17. MALICIOUS CODE AND MALICIOUS CYBER ACTIVITIES

USAC may provide Vendor access to one or more of the USAC IT Systems. Vendor agrees that the USAC IT Systems are owned by USAC, that USAC reserves the right to monitor use of the USAC IT Systems, that neither Vendor nor Vendor Personnel should have any expectation of privacy with regard to use of the USAC IT Systems, and that all information appearing on the USAC IT Systems (except for authorized information provided by Vendor or information publicly disclosed by USAC) will be considered as USAC Confidential Information. Vendor agrees that it will not use the USAC IT Systems except as expressly authorized by USAC in the Contract. Vendor agrees to maintain strict control of all usernames, passwords and access lists it is given to the USAC IT Systems for of Vendor Personnel as are necessary to perform under the Contract, to immediately remove such access for those persons no longer authorized, and to inform USAC immediately if there is reason to believe there is unauthorized access. Vendor agrees to cause all who gain access to the USAC IT Systems through Vendor to maintain the confidential nature of all Confidential Information, and to not use the USAC IT Systems except for the benefit of USAC. Vendor agrees that it will use the USAC IT Systems completely at its own risk, and that it will be liable to USAC for any damages incurred by USAC as a result of Vendor's violation of this Section.

Vendor will not introduce Malicious Code into USAC IT Systems or engage in Malicious Cyber Activities in, with, or involving the Services or USAC IT Systems. Vendor will comply with NIST SP 800-83 Rev. 1 or the most current revision thereof to prevent Malicious Code. Vendor will perform regularly scheduled (preferably in real-time, but in no event less frequently than daily) virus checks using the latest commercially available, most comprehensive virus detection and scanning programs. If Vendor becomes aware that Vendor introduced Malicious Code into

any USAC IT System, or engaged in Malicious Cyber Activities, Vendor will notify USAC immediately. In addition, Vendor will use its best efforts to assist USAC in reducing the effects of the Malicious Code or Malicious Cyber Activities and, if the Malicious Code or Malicious Cyber Activity causes a loss of operational efficiency or loss of data, to assist USAC in mitigating and restoring such losses. USAC will provide reasonable access to the affected systems in order for Vendor to assist in such restoration of efficiency or data. If Malicious Code is found to have been introduced into any computing systems or networks of USAC by Vendor or Vendor Personnel or due to the negligence of Vendor or Vendor Personnel, Vendor will perform all of its obligations under this Section at no cost to USAC, and Vendor will be liable to USAC for damages and costs incurred by USAC as a result of such Malicious Code. If Vendor or Vendor Personnel has been found to (a) have engaged in any Malicious Cyber Activities; or (b) have allowed Malicious Cyber Activities to have occurred due to its willful, reckless, or negligent actions or omissions, Vendor will be liable to USAC for damages and costs incurred by USAC as a result of such Malicious Cyber Activities.

The introduction of Malicious Code by Vendor or Vendor Personnel into USAC's IT System, and/or the engaging in Malicious Cyber Activity involving USAC's IT System, shall be considered a Data Breach. If Vendor becomes aware that Vendor or its Vendors or agents has introduced Malicious Code into USAC's IT System, or has engaged in Malicious Cyber Activity, Vendor will notify USAC immediately in writing and otherwise act in a manner consistent with Section 16.13.

18. TECHNOLOGY CONSIDERATIONS

18.1 Deployment in Cloud. Vendor shall ensure that COTS, SaaS, PaaS, or IaaS Software deployed in Vendor's cloud or on USAC's Amazon Web Services GovCloud infrastructure satisfies the following requirements:

18.1.1 The Software must be able to utilize USAC's instance of OKTA's Identity and Access Management software for user authentication and provisioning. OKTA is a cloud-based Identity and Access Management product used by USAC.

18.1.2 Any USAC Data stored in a COTS/SaaS/PaaS/IaaS database must be readily accessed by USAC in a format determined at USAC's sole discretion via standard web services or another standard access mechanism.

18.1.3 Any COTS, SaaS, PaaS, or IaaS Software must have either: (1) an Authority to Operate issued by a federal agency along with the FedRAMP-Authorized Designation issued by the FedRAMP Project Management Office, or (2) a Joint Authorization Board issued Authority to Operate along with the FedRAMP-Authorized Designation issued by the FedRAMP Project Management Office. Furthermore, any COTS, SaaS, PaaS, or IaaS Software must maintain the FedRAMP-Authorized Designation for the Contract Term.

18.2 Deployment Within USAC's IT Environment. For the development of custom Software for deployment within USAC's IT System, Vendor shall ensure that the custom Software developed for USAC:

18.2.1 Meets all USAC architecture, standards, and IT security guidelines and standards. This includes, but is not limited to, the ability to achieve an Authority to Operate based on all applicable OMB, NIST, and FISMA guidelines.

18.2.2 Reuses available USAC technology services (microservices, APIs) unless Vendor demonstrates in writing that those services are unable to meet the requirements and USAC agrees to the substitute solution in writing with Vendor.

18.2.3 Uses the USAC technical stack unless Vendor demonstrates in writing that those components are unable to meet the requirements and USAC agrees in writing with Vendor. Key components of USAC's technical stack include the following:

- Java / Spring Framework Suite (Language and frameworks)
- OKTA (Identity and Access Management)
- Apache Kafka (Messaging)
- PostgreSQL / PostGIS (Database)
- Elasticsearch, Logstash, Kibana
- Atlassian tools (SDLC)
- Apache Tomcat (Application Servers)
- Red Hat Enterprise Linux (OS)

18.2.4 Further details of USAC's technical stack and service architecture may be provided as appropriate.

19. REPRESENTATIONS AND WARRANTIES

19.1 Vendor Representations and Warranties. Vendor represents and warrants each of the following subsections.

19.1.1 Good Standing. Vendor is a corporation duly organized, validly existing and in good standing under the Laws of _____.

19.1.2 Corporate Power and Authority. Vendor has all requisite corporate power and authority to execute, deliver and perform its obligations under the Contract.

19.1.3 Authorization and Non-Default. The execution, delivery and performance of the Contract by Vendor (a) has been duly authorized by Vendor and (b) will not conflict with, result in a breach of or constitute a default under any other agreement to which Vendor is a party or by which Vendor is bound.

19.1.4 Licensure. Vendor is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Vendor's ability to fulfill its obligations under the Contract.

19.1.5 Compliance with Law. Vendor is and will remain in compliance with all Laws applicable to Vendor and Vendor's performance of Services pursuant to the Contract does not and will not violate any applicable law, rule or regulation or breach any other agreement to which Vendor is a party or bound.

19.1.6 No Litigation. There is no outstanding litigation, arbitrated matter or other dispute to which Vendor is a party that, if decided unfavorably to Vendor, would reasonably be expected to have a material adverse effect on Vendor's ability to fulfill its obligations under the Contract.

19.1.7 Performance. Vendor is currently able, and is unaware of any reason why it would be unable in the future, to perform the Services in accordance with the Statement of Work and to meet or exceed the Service Levels, or for Service elements for which no Service Level has been specified in Attachment 3, to perform in accordance with prevailing industry best practices). Vendor also warrants that Services and Documentation are, at a minimum, in accordance with the highest industry standards.

19.1.8 No Conflict of Interest. Vendor currently does not have, and throughout the Contract Term and any Termination Assistance Period, will not have, conflict of

interest of any kind with or affecting USAC. Underscoring the importance of this representation, Vendor acknowledges that it is essential that any contractor providing services or materials in support of USAC's administration of the USF maintain the same neutrality as USAC, both in fact and in appearance, and avoid any conflict of interest or even the appearance of a conflict of interest. Further, Vendor expressly acknowledges that to the extent that Vendor, 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. Vendor shall promptly notify USAC in writing of any actual or potential conflicts of interest involving Vendor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which Vendor proposes to avoid, neutralize, or mitigate such conflicts. Vendor 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. Further, Vendor will not advocate in any public forum, including without limitation before the FCC or other regulatory agency, Congress or any court, any position with regard to the Universal Service Fund or the administration thereof. In the event of breach of this Section (which shall be considered irremediable), USAC shall have the absolute right to terminate the Contract pursuant to Section 13.3.1 without reimbursement of any costs incurred in performance or payment of any fees.

- 19.1.9 No Gratuities. In order to avoid the appearance of improper influence or advantage, Vendor shall not offer or provide to the employees, agents or other representatives of USAC any gratuities, gifts, payments or anything exceeding a nominal value.
- 19.1.10 Non-Infringement. None of the Services, the Commissioned Work, Vendor Software, Vendor Materials, any Improvements to the USAC Software performed by Vendor or Subcontractors or any other resources or items provided to USAC by Vendor or Subcontractors or used in the performance of the Services infringe or will infringe upon the proprietary rights of any third party.
- 19.1.11 Warranties Survive. All warranties, expressed and/or implied, shall survive inspection, delivery, acceptance and payment, and the expiration or earlier termination of the Contract.
- 19.1.12 No Disclaiming of Warranties. No warranty implied in connection with the sale and/or purchase and/or use of the Services herein either by operation of law or arising from usage in the trade, course of performance or course of dealing is now or will ever be disclaimed by Vendor.
- 19.1.13 No Interference With Use. In the event of any dispute with USAC regarding an alleged breach of the Contract, Vendor shall not use any means (electronic or otherwise) to prevent or interfere with USAC's use of any portion of the Software. Vendor understands that a breach of this provision could

foreseeably cause substantial harm to USAC and to numerous third parties having business relationships with USAC.

- 19.1.14 Assistance with Law Enforcement. If Vendor becomes aware of any Program Participant or other user of the Services being involved in any potentially illegal activity, Vendor will inform USAC immediately. If USAC determines that law enforcement should be notified, Vendor will work with USAC to inform federal, state or local law enforcement authorities and Vendor will provide such law enforcement authorities with all evidence in Vendor's possession of the potentially illegal activity.

20. ADDITIONAL COVENANTS

- 20.1 USAC Covenant. USAC covenants and agrees with Vendor that USAC will comply with all Laws applicable to USAC in connection with its obligations under these Terms and Conditions.
- 20.2 Vendor Covenants. Vendor covenants and agrees with USAC that:
- 20.2.1 Facilities and Staff. Vendor will have and maintain adequate facilities, equipment and a duly qualified staff as necessary to perform the Services in an efficient, professional and timely manner and as described in the applicable Statement of Work.
- 20.2.2 Minimization of Fees and Charges. Vendor's performance will at all times be in a manner that avoids the incurrence of unnecessary or duplicative Fees and charges to USAC.
- 20.2.3 Authorizations and Compliance with Law. Vendor will obtain and maintain all Authorizations required to perform the Services at its own expense. Vendor will comply at its own expense with all Laws (including without limitation rules, regulations or policies of the FCC) applicable to Vendor's delivery or performance of the Services, operation of its facilities and performance pursuant to the Contract. Vendor will be responsible for identifying and becoming familiar with any changes in Laws that are related to Vendor's delivery, use or performance of the Services or USAC's use or receipt of the Services. Vendor will promptly notify USAC of any such changes in Laws. Vendor and USAC will work together to identify the impact of such changes on how USAC receives or uses, and Vendor delivers, the Services. Unless otherwise provided for, Vendor shall continue to perform the Services at no additional charge to USAC despite any changes in Laws. If such changes in Laws prevent Vendor from performing its obligations or materially impact USAC's receipt or use thereof under the Contract, Vendor will develop and, upon USAC's approval, implement a suitable workaround at no additional cost to USAC until such time as Vendor can perform its obligations under the Contract in compliance with Laws without such workaround. Vendor will be responsible and bear any fine or penalty that Vendor or USAC may suffer or incur for any non-compliance with Laws relating to the

delivery or performance of the Services; provided, however, that USAC will be responsible and bear any such fine or penalty imposed on USAC if (a) Vendor has complied with its obligations under this Section, (b) USAC has failed to accept or implement any changes in how Vendor delivers, the Services resulting from such changes in Laws identified by Vendor, and (c) the fine or penalty is directly attributable to USAC's failure to accept or implement any such change in how USAC uses, and Vendor delivers, the Services. Vendor shall, at its cost and expense (except as otherwise provided in this Section), maintain Vendor Controls in each Vendor Service Location and USAC Service Location in accordance with industry standards for services of the type provided to USAC, including without limitation those set forth in Articles 15 and 16.

21. DISPUTE RESOLUTION

- 21.1 Dispute Resolution Generally. The Parties hereby agree to use all reasonable manners to avoid the escalation of disputes and to resolve any dispute in the most cost-efficient and prompt manner. It is the intention of Vendor and USAC to use reasonable measures to avoid the litigation of any Dispute under the Contract and therefore the Parties mutually agree that any Disputes arising under the Contract must be resolved using the alternative dispute resolution provisions contained herein.
- 21.1.1 Fees and Costs. Unless otherwise agreed in writing, Vendor and USAC will each bear all of their own fees and expenses incurred during the procedures.
- 21.1.2 Confidential Settlement Negotiations. The parties agree that all negotiations and/or dispute resolution conducted pursuant to this Article are confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. Such confidentiality obligations shall be triggered upon notice of a Dispute.
- 21.1.3 Continued Performance. At all times during the pendency of a Dispute and while the Parties are undergoing the dispute resolution procedures set forth in this Article, Vendor shall continue to perform all obligations pursuant to the Contract (including, but not limited to, providing all Services) and USAC will continue to perform its obligations (including, but not limited to the making of payments to Vendor).
- 21.1.4 Tolling of the Statute of Limitations. The Parties expressly agree to toll any applicable statute(s) of limitations during the pendency of the dispute resolution proceedings set forth in this Article above and ten (10) business days thereafter.
- 21.1.5 Jurisdiction and Choice of Law. The parties hereby invoke exclusive jurisdiction of the state and federal courts located in Washington D.C. for the litigation of any Dispute. The Dispute will be governed by the laws of the District of Columbia.
- 21.2 Mandatory Negotiation Period. If either Party has a Dispute with the other, that Party shall provide written notice describing the Dispute in detail to the other Party. Upon written notice, the Parties shall attempt to resolve the Dispute by conducting, at

minimum, two in-person (or video conference) meetings to resolve the dispute (each a “Negotiation”). Unless otherwise agreed in writing, both Negotiations shall take place within 30 days of notice of the Dispute. If the Dispute is not resolved within 30 calendar days, the Parties may mutually agree in writing to extend the negotiations for an additional 30 day period that must also include, at minimum, two further Negotiations. There is no limit to the number of times that the Parties can mutually agree to extend the Mandatory Negotiation Period as outlined in this Section. If the Parties do not agree to extend the Mandatory Negotiation Period, the noticing Party has ten (10) calendar days from the conclusion of the Mandatory Negotiation to request Mediation as identified in this Article. If the noticing Party does not invoke Mediation within ten (10) calendar days, the Dispute is deemed resolved and the noticing party waives the right to further relief any kind with regard to the Dispute.

- 21.3 Mandatory Mediation. The noticing Party has ten (10) days from the conclusion of the Mandatory Negotiation to request, in writing, Mediation of the Dispute. Mediation is to be conducted by a mediator with substantial experience in complex information technology and/or ERP service agreements. If the noticing Party requests Mediation, each Party will, within ten (10) calendar days of such request, provide the other Party with a list of at least three (3) mediators satisfying the above requirements and the Parties will select the mediator from such lists within five (5) calendar days. If a mediator is selected pursuant to this method, the mediator will provide the terms and rules for the mediation. If the Parties are unable to agree on a mediator, both Parties agree to conduct the mediation pursuant to the applicable rules and procedures of JAMS. The mediation will take place in Washington, D.C., and the Parties and mediator shall agree to a standard nondisclosure agreement regarding the contents and outcome of the mediation. The Parties shall use best efforts to resolve the Mediation within 60 calendar days of the initial request for Mediation.
- 21.4 Litigation. Only upon completion of the dispute resolution process set forth in this Article may either Party have recourse to litigation.
- 21.5 Injunctive Relief. Nothing in this Section will prevent either party from seeking emergency interim injunctive relief against the other Party in any courts having jurisdiction. Without limiting the foregoing, Vendor acknowledges that remedies at law may be inadequate to protect against a breach of any of Section 13.7 (Exit Transition), Article 15 (USAC Data and Confidential Information), or Article 16 (Security) and that in the event it breaches (or attempts or threatens to breach) its obligations under any of those Sections, such breach would cause substantial damages to USAC, the amount of which is difficult to estimate at the time of the making of the Contract and irreparable injury for which USAC would have no adequate remedy at law. Accordingly, Vendor agrees that USAC shall, in the event of such breach (or attempted or threatened breach), have the right to proceed directly to court, without going through the procedures set forth in this Article above, in order to obtain immediate injunctive and/or equitable relief (including any other ancillary relief), without the requirement of a bond.

22. INDEMNIFICATION

- 22.1 **Indemnification by Vendor.** Vendor will indemnify, defend and hold USAC, its agents, officers, directors and employees (each of the foregoing, an “Indemnified Party”) harmless from and against, any Losses resulting from, arising out of or relating to any third party claim alleging Vendor’s negligence or willful misconduct or relating to any allegation of: (a) the inaccuracy, untruthfulness or breach of any representation, covenant or warranty made by Vendor under the Contract; (b) Vendor’s performance or non-performance of the Services or breach of any of its obligations under the Contract including without limitation its obligations with respect to confidentiality, data security and privacy); (c) non-compliance by Vendor with applicable Law; (d) work-related injury of Vendor employees not caused by USAC; (e) accrued employee benefits of Vendor employees; (f) any other aspect of any Vendor employee’s employment relationship with Vendor or the termination of the employment relationship with Vendor; (g) any amounts, including taxes, interest and penalties, assessed against USAC that are the obligation of Vendor; (h) any allegation that the Vendor Materials, the Vendor Software or Vendor’s performance of the Services, (each an “Indemnified Item”), infringes a copyright, patent, trademark or constitutes an unlawful disclosure, use or misappropriation of another party’s trade secret or otherwise violates any other third party Intellectual Property rights; (i) any unauthorized use of USAC Software, USAC Materials or USAC Data; (j) personal injury (including death) or property loss or damage resulting from Vendor’s or its Subcontractor’s acts or omissions; (k) any damage to USAC’s office and any Losses caused by the acts or omissions of Vendor or Contract Staff while present at USAC’s offices as set forth in Section 8.2; (l) any breach of Vendor’s data security, confidentiality and privacy-related obligations as set forth in Article 15 or Article 16; or (m) Malicious Code as set forth in Article 17. Vendor will indemnify USAC from any actual costs and expenses reasonably incurred in connection with the enforcement of this Section.
- 22.2 **Mitigation.** If an Indemnified Item becomes the subject of a claim under Section 20.1(h), or in Vendor’s opinion is likely to become the subject of such a claim, then Vendor must cure by performing one of the following: (a) modify the Indemnified Item to make it non-infringing or cure any claimed misuse of another’s trade secret, provided such modification does not adversely affect the functionality of the Indemnified Item; (b) procure for USAC the right to continue using the Indemnified Item pursuant to the Contract; or (c) replace the Indemnified Item with an Indemnified Item that is substantially equivalent that is non-infringing and is free of claimed misuse of another’s trade secret. Any costs associated with implementing any of the above alternatives will be borne by Vendor.
- 22.3 **Indemnification Procedures.** If any third party claim is commenced against an Indemnified Party, the Indemnified Party will provide notice of the claim and copies of all related documentation to Vendor. The Indemnified Party will cooperate, at the cost of Vendor, in all reasonable respects with Vendor and its attorneys in the investigation, trial and defense of such claim and any appeal. However, the Indemnified Party may, at its own cost and expense, participate, through its attorneys or otherwise, in such investigation, trial and defense of such claim and any appeal. In such case, Vendor will use best efforts to cooperate with the Indemnified Party’s attorneys. No settlement that

involves the imposition of any obligation on, or an admission of wrongdoing or liability by, the Indemnifying Party shall be entered into without the express written consent of the Indemnified Party.

23. DAMAGES AND LIMITATION OF LIABILITY

- 23.1 **Liabilities Not Excluded or Limited.** This Article does not exclude or limit liability for: (a) Vendor's abandonment or wrongful termination of the Contract (b) Vendor's indemnification obligations under these Terms and Conditions; (c) Vendor's breach of any confidentiality, security, privacy obligations or intellectual property rights set forth in the Contract; (d) Vendor's failure to provide termination assistance in accordance with Section 13.7; (e) Vendor's liability for death, personal injury or damage to property; (f) Vendor's fraud, willful misconduct or gross negligence; (g) reductions in payments or credits for missed Milestones, failure to meet Milestones or failure to meet Service Levels; (h) Vendor's failure to comply with Law and/or liability for any fines or other payments imposed by a governmental authority; or (i) either Party's obligation to make any payment under the Contract. EXCEPT FOR THE FOREGOING, UNDER NO CIRCUMSTANCES WILL EITHER PARTY TO THIS CONTRACT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY.
- 23.2 **Limitation to Direct Damages.** Subject always to (i) any right USAC may have to repudiate, rescind or otherwise terminate the Contract which may arise hereunder or otherwise at law or in equity and (ii) Section 23.1, each Party's liability hereunder will be for actual verified direct damages only. The following shall expressly be deemed included within direct damages if suffered by USAC: (a) loss or corruption to USAC Data (including Data Supplier Data); (b) fines, penalties, damages, or other amounts payable to governmental authorities, or loss of program funding from governmental authorities or third parties; (c) any unamortized implementation fees plus the reasonable cost of re-procurement and cover if USAC terminates the Services in whole or in part for any reason other than convenience; and (d) any costs to USAC of any nature arising from a Data Security Incident.
- 23.3 **USAC Liability Cap.** Subject to Section 23.1, USAC's entire cumulative liability from any causes whatsoever, and regardless of the form of action or actions, whether in contract, warranty, or tort (including negligence), arising under the Contract shall in no event exceed the aggregate Fees paid by USAC in the year preceding the most recent of such claims.
- 23.4 **Negotiated Risk Allocation.** The Parties expressly acknowledge that the limitations and exclusions set forth in this Article have been the subject of active and complete negotiation between the Parties and represent the Parties' agreement based upon the level of risk to the Parties associated with their respective obligations under the Contract and the payments provided hereunder to Vendor for its performance of the Services.

24. INSURANCE

24.1 **Vendor Insurance Requirements Generally.** Vendor shall maintain insurance in the types and limits as required below at its own expense. In no event shall Vendor maintain insurance in an amount less than that required by Law or by these Terms and Conditions. Vendor shall produce evidence of such insurance upon request by USAC in the form of ACORD certificates of insurance. Receipt of insurance certificates furnished by Vendor shall not release Vendor of full responsibility for all liability under the Contract, including as set forth in the indemnification provisions of these Terms and Conditions. If this coverage is provided on a claims-made basis, then it must be maintained for a period of not less than three (3) years after acceptance of the deliverables and/or services provided in connection with the Contract. The insurance companies indicated in the certificates shall have an AM Best rating of A or better and a surplus rating of 7.

24.2 **Specific Coverage Requirements.** During the Contract Term and any Termination Assistance Period, Vendor shall obtain and maintain at its own cost and expense and shall require its Subcontractors to obtain and maintain at their own cost and expense insurance of the type and in the amounts set forth below:

24.2.1 Worker's Compensation:

- (a) State: Statutory
- (b) Employer's Liability: US\$1,000,000 per accident

24.2.2 Commercial General Liability:

- (a) US\$1,000,000 Per Occurrence on a Per Project or Per Location Basis
- (b) US\$2,000,000 General Aggregate
- (c) US\$2,000,000 Products Completed Operations
- (d) US\$1,000,000 Personal & Advertising Injury

Products and Completed Operations shall be maintained for not less than three (3) years after completion of the project. The policy shall name USAC as an additional insured. Vendor shall provide evidence of coverage to USAC on an annual basis.

24.2.3 Commercial crime coverage including employee dishonesty, forgery, or alteration, Inside the Premises, In Transit, Computer Fraud, and Funds Transfer Fraud, and USAC shall be included as a Loss Payee.

- (a) US\$10,000,000 Per Occurrence
- (b) US\$10,000,000 General Aggregate

24.2.4 Automobile Liability Insurance (owned, not owned or hired) in the amount of \$1,000,000 Combined Single Limit.

24.2.5 Excess/Umbrella Liability Insurance providing excess liability for items 23.2.1(b), 23.2.2 and 23.2.4 above. The policy shall name USAC as an additional insured. Coverage to be at least as broad as the primary program:

- (a) Each occurrence, and Aggregate US\$15,000,000

24.2.6 Professional Liability (errors and omissions) and Cyber Liability:

- (a) Each incident, and Aggregate US\$25,000,000

Professional Liability and Cyber Liability coverage shall be maintained for not less than three (3) years after termination of the Contract. Vendor shall provide evidence of coverage to USAC on an annual basis.

Must include coverage for all services provided by Vendor pursuant to the Contract covering liabilities, punitive damages, data breach regulatory fines and penalties and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of the Contract, including the failure of products to perform the intended function or serve the intended purpose. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of Malicious Code. This policy shall include coverage for improper disclosure of, access to or theft of information maintained electronically; use of Vendor's computer systems to send Malicious Code or for denial of service attacks; interruptions of service in Vendor's computer systems; and denials of or delays in access to Vendor's computer systems. Coverage shall include the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year. Coverage shall contain severability for the insured organization for any intentional act exclusions. If this coverage is provided on a claims-made basis, then it must be maintained for a period of two (2) years after acceptance of the deliverables and/or services provided in connection with the Contract. Additionally, such policy shall cover consequential or vicarious liabilities (e.g., claims brought against the Vendor or its affiliated companies and their respective directors, officers, and employees due to the wrongful acts and failures committed by you) and direct losses (e.g., claims made by the Vendor and its affiliated companies and their respective directors, officers, and employees against you for financial loss due to your wrongful acts or failures).

Vendor may have one policy to provide the required coverage, but, upon prior approval by USAC, Vendor may have two coverages that, combined, provide this coverage.

24.2.7 Coverage for Subcontractors

All insurance policies must provide coverage for all Subcontractors used by Vendor in performing services pursuant to the Contract. In the alternative, may require its Subcontractors to maintain their own insurance policies meeting these requirements, in which case Vendor shall, before providing Services pursuant to the Contract and at any later times upon USAC's request, provide USAC with certificates of insurance evidencing the required coverages of the Subcontractors. Vendor shall be liable to USAC for all damages incurred by USAC as a result of Vendor's failure to maintain the required coverages with respect to its Subcontractors, or Vendor's failure to require its Subcontractors to maintain the coverages required herein.

- 24.3 Insurance Documentation. Vendor shall furnish USAC with certificates of insurance prior to commencement of the work and thereafter upon request by USAC. Vendor's insurer shall, according to each insurance policy's provisions, provide USAC with thirty (30) days' prior written notice in the event a required policy shall be canceled or non-renewed. Vendor shall cause its insurers to waive their rights of subrogation against USAC.

25. **FORCE MAJEURE**

- 25.1 Force Majeure Generally. If and to the extent that a Party's performance of any of its obligations pursuant to the Contract is prevented, hindered or delayed by fire, flood, earthquake, elements of nature or acts of God, acts of war, acts of a public enemy, acts of a nation or any state, territory, province or other political division, terrorism, riots, civil disorders, rebellions or revolutions, fires, floods, epidemics, theft, quarantine restrictions, freight embargoes or any other similar cause beyond the reasonable control and without the fault or negligence of such Party (each, a "Force Majeure Event"), and such non-performance, hindrance or delay could not have been prevented by reasonable precautions, then the non-performing, hindered or delayed Party will be excused for such non-performance, hindrance or delay, as applicable, of those obligations affected by the Force Majeure Event for as long as such Force Majeure Event continues and such Party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. Notwithstanding the foregoing, the acts or omissions of a Party's agents, subcontractors, representatives, suppliers or other third parties providing products or services to such Party will not constitute a Force Majeure Event unless such acts or omissions are themselves the product of a Force Majeure Event.
- 25.2 Force Majeure Notification. The Party whose performance is prevented, hindered or delayed by a Force Majeure Event will immediately notify the other Party of the occurrence of the Force Majeure Event and describe in reasonable detail the nature and effects of the Force Majeure Event and such Party's good faith estimate of the likely duration of such Force Majeure Event. The Party whose performance was prevented, hindered or delayed by a Force Majeure Event will immediately notify the other Party of the cessation of such Force Majeure Event.

- 25.3 Force Majeure Mitigation Efforts. Each Party will, with the cooperation of the other Party, exercise all reasonable efforts to mitigate the extent of any non-performance, hindrance or delay caused by a Force Majeure Event and any adverse consequences of such Force Majeure Event. In the case of Vendor, this shall include (a) performance of required work or the provision of the Services with the use of Vendor's qualified management or other employees or Subcontractors, as permitted by the Contract, and (b) cooperating with USAC's efforts to secure necessary replacement services from other vendors and suppliers and reimbursing USAC for the use of replacement services. The occurrence of a Force Majeure Event does not excuse, limit or otherwise affect Vendor's obligation to provide appropriate recovery procedures.
- 25.4 Response to Force Majeure Event. Within two (2) hours of the occurrence of a Force Majeure Event, USAC and Vendor will estimate the duration of the event and estimate the extent to which the Force Majeure Event is likely to prevent Vendor from performing its obligations in accordance with the Contract. Vendor will also disclose at this time whether it is likely to promptly procure a suitable temporary alternate source for the affected Services.
- 25.5 Replacement Services. If any Force Majeure Event prevents, hinders or delays performance of any of the Services and Vendor is unable to promptly provide a suitable temporary alternate source for the affected Services, USAC may procure such Services from an alternate source and suspend Vendor's provision of such Services for the duration of the agreement executed between USAC and such alternate source in respect of the provision of such Services. Vendor will reimburse USAC for cost of cover for any Services that must be procured from such alternate source.
- 25.6 Recovery Prioritization. Whenever a Force Majeure Event causes Vendor to allocate limited resources between or among Vendor's customers, Vendor will treat USAC with no less priority than any other similarly situated customer. In addition, in no event will a Force Majeure Event cause Vendor to redeploy or reassign any Key Vendor Personnel to another account, unless as otherwise provided for in the Contract.
- 25.7 No Fees. For avoidance of doubt, no Fees shall be payable by USAC for any Services that Vendor fails to provide as a result of a Force Majeure Event or similar occurrence.
- 25.8 Termination of Contract Due to Force Majeure Event. If any Force Majeure Event or similar occurrence disrupts service for ten (10) or more days, USAC may terminate the Contract without payment of any termination fee or other amount.

26. RIGHTS IN THE EVENT OF BANKRUPTCY

All licenses or other rights granted under or pursuant to the Contract are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code, licenses to rights to "intellectual property" as defined in the U.S. Bankruptcy Code. The parties agree that USAC, as licensee of such rights under Vendor, shall retain and may fully exercise all of its rights and elections under the U.S. Bankruptcy Code. The parties further agree that, in the event of the

commencement of bankruptcy proceedings by or against Vendor under the U.S. Bankruptcy Code, USAC shall be entitled to retain all of its rights under the Contract and shall not, as a result of such proceedings, forfeit its rights to any USAC Data, Software, USAC Intellectual Property, or New IP.

27. NOTICES

- 27.1 Notice Requirements. Vendor and USAC will give all notices required by these Terms and Conditions in writing. Vendor and USAC will personally deliver such notices, send them by nationally recognized overnight courier, or send them by certified or registered first class mail, postage prepaid, to the addresses set forth below. Such notices as are (a) personally delivered will be deemed to be given when they are delivered; (b) sent by overnight courier will be deemed to be given on the date on which the sender designates them for delivery; and (c) sent by certified or registered first class mail will be deemed to be given three (3) days after the sender mails them.

IF TO USAC:

Universal Service Administrative Company
700 12th Street, N.W.
Suite 900
Washington, D.C. 20005
Attention: Procurement Department

With a copy to:

Universal Service Administrative Company
700 12th Street, N.W.
Suite 900
Washington, D.C. 20005
Attention: General Counsel

IF TO VENDOR:

Attention: _____

- 27.2 Change of Address. A Party may change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

28. RELATIONSHIP

- 28.1 Independent Entities. Vendor and USAC are independent entities. The Contract will not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership relationship, employer/employee or formal business organization of any kind. Neither Vendor nor USAC will have the right to bind the other without the other's express prior written consent.
- 28.2 Third Party Agreements. Unless otherwise agreed, Vendor will ensure that all Third Party Agreements that are to be assigned or transferred to USAC pursuant to Section 14.4, will be freely assignable to USAC without any modification or consent, subject only to USAC agreeing to assume Vendor's obligations thereunder from and after the effective date of the assignment.

29. SEVERABILITY

If any provision of the Contract is held invalid, illegal or unenforceable, for any reason whatsoever, by any court of competent jurisdiction or any other tribunal, such provision will be separable from the remainder of the provisions hereof which will continue in full force and effect as if the Contract had been executed with the invalid provisions eliminated.

30. WAIVER

The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise any right or remedy to which it is entitled under the Contract or law or equity, will not constitute a waiver thereof and will not cause a diminution of any of the obligations established by the Contract. A waiver of any default will not constitute a waiver of any subsequent default. In order to be effective, any waiver of any of the provisions of the Contract must be expressly stated to the other Party in writing.

31. PUBLICITY

- 31.1 USAC Public Statements. USAC may in its discretion make any press announcements or publicize the Contract or any matters relating to any of the transactions contemplated herein.
- 31.2 Use of USAC Name. Vendor will not use any USAC name or abbreviation thereof, or any USAC logo or adaptation thereof, in any advertising or trade display, press releases, or for any other purpose other than in communications made pursuant to the Contract (including as set forth in the Statement of Work), without USAC's prior written consent.

32. LAW AND JURISDICTION

- 32.1 Governing Law; Jurisdiction. The Parties acknowledge and agree that USAC is not a federal agency or subject to federal immunity and that the federal common contract laws

are not applicable to the Contract. To eliminate ambiguity, the Parties have selected a governing law and jurisdiction as follows: The Contract and the rights and obligations of the Parties under the Contract shall be governed by and construed in accordance with the Laws of Washington D.C., without giving effect to the principles thereof relating to the conflicts of Laws. The Parties agree that the state and federal courts located in Washington D.C. shall have exclusive jurisdiction with respect to any dispute, controversy, or claim arising out of or relating to the Contract.

- 32.2 Non-Applicability of U.N. Convention on Contracts for the International Sale of Goods. To the extent it may be applicable, the Parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to the Contract.

33. ASSIGNMENT AND DIVESTITURE

- 33.1 Assignment by Vendor. Vendor may not assign the Contract, including by operation of law or in the event of a change of control, without the consent of USAC which may be granted or withheld in USAC's sole discretion. Vendor will request such consent in writing and in such request shall include the identity and qualifications of the proposed assignee and documentation that the proposed assignee has a demonstrated history of providing excellent services within such scope and no irremediable conflicts.
- 33.2 Assignment by USAC. USAC may assign the Contract or its title or rights in or license to any Intellectual Property, in whole or in part, to the FCC or any third party. Upon any assignment of the Contract, USAC shall be released from any liability under the Contract.
- 33.3 USAC Divestiture. USAC may reorganize lines of business and/or Programs. In such cases, for up to twenty-four (24) months after the effective date of such reorganization, Vendor will provide to the reorganized lines of business and/or Programs all of the Services Vendor is obligated to provide to USAC under the Services in accordance with the Contract. The cumulative Fees to provide the Services to USAC and the reorganized lines of business and/or Programs shall be no greater than the Fees that would have been charged without the reorganization.

34. ENTIRE AGREEMENT

The Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior communications and agreements between the Parties relating to its subject matter. The Contract is binding on Vendor and USAC and their respective successors and permitted assignees.

35. COUNTERPARTS

The Contract may be executed in counterparts and exchanged by facsimile or electronically scanned copy. Each such counterpart will be deemed to be an original and all such counterparts together will constitute one and the same Contract.

36. NATIONAL SECURITY SUPPLY CHAIN REQUIREMENTS

36.1 Definitions. For purposes of this Article, the following terms are defined as stated below:

36.1.1 “Covered Company” is defined as an entity, including its parents, affiliates, or subsidiaries, finally designated by the Public Safety and Homeland Security Bureau of the FCC as posing a national security threat to the integrity of communications networks or the communications supply chain.

36.1.2 “Covered Equipment or Services” is defined as equipment or services included on the FCC-issued Covered List that pose a national security threat to the integrity of the communications supply chain.

36.1.3 “Covered List” is a list of covered communications equipment and services that pose an unacceptable risk to the national security of the United States. The FCC may update the list at any time. The list can be found at fcc.gov/supplychain/coveredlist.

36.1.4 “Reasonable Inquiry” is defined as an inquiry designed to uncover information about the identity of the producer or provider of equipment and services that has been purchased, obtained, maintained, or otherwise supported by funds from USAC under the Contract.

36.2 Prohibition. Vendor will ensure that no funds from USAC or other federal subsidies under the Contract will be used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company. Vendor must also ensure that no funds administered by USAC or the FCC under the Contract will be used to purchase, obtain, maintain or otherwise support Covered Equipment or Services placed on the Covered List. These prohibitions extend to any subcontractors that provides Services under the Contract. Vendor is responsible for notifying any subcontractors it engages under the Contract of this prohibition.

36.3 Monitoring. Vendor must actively monitor what entities have been finally designated by the FCC as a Covered Company and what equipment and services the FCC defines as Covered Equipment or Services and places on the Covered List. Vendor must actively monitor to ensure that no funds from USAC or other federal subsidies are used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company from Vendor or any subcontractor it engages under the Contractor. Vendor must also ensure that no funds administered by USAC or other federal subsidies are used to purchase, obtain, maintain, or otherwise support any Covered Equipment or Services that the FCC has placed on the Covered List from Vendor or any subcontractor it engages under the Contract. If Vendor finds that they have violated any or all of these prohibitions, then Vendor shall immediately notify USAC. In Vendor’s notification to USAC, Vendor shall provide the same information required for non-compliance in Section 36.4. Any such notification must have audit ready supporting evidence.

36.4 Annual Certification.

Vendor will conduct a Reasonable Inquiry and provide a certification to USAC in writing upon execution of the Contract and no later than December 31 of each calendar year that the Contract is in effect. If Vendor, and all applicable subcontractors, are in compliance with Section 36.2, Vendor shall state in the annual certification that no funds from USAC have been used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company or Covered Equipment or Services on the Covered List. If Vendor, or any applicable subcontractor, is not in compliance with Section 36.2, Vendor shall so inform USAC and provide the following information in the certification:

- (i) If for equipment produced or provided by a Covered Company or equipment on the Covered List:
 - a. The Covered Company that produced the equipment (include entity name, unique entity identifier, CAGE code, and whether the Covered Company was the original equipment manufacturer (OEM) or a distributor, if known);
 - b. A description of all equipment (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and
 - c. Explanation of the why USAC funds purchased, obtained, maintained, or otherwise supported the equipment and a plan to remove and replace such equipment as expeditiously as possible.
- (ii) If for services produced or provided by a Covered Company or services on the Covered List:
 - a. If the service is related to item maintenance: A description of all such services provided (include on the item being maintained: brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable);
 - b. If the service is not associated with maintenance, the product service code of the service being provided; and
 - c. Explanation of the why USAC funds purchased, obtained, maintained, or otherwise supported the services and a plan to remove and replace such service as expeditiously as possible.

Vendor shall retain audit ready supporting evidence for all certifications.

37. ADEQUATE COVID-19 SAFETY PROTOCOLS

To provide adequate COVID-19 safeguards for USAC employees, Vendor shall ensure that Vendor Personnel that enter USAC premises comply with all guidance for Vendor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Guidance”) for the duration of the Contract.

Nothing in this Section shall excuse noncompliance with any applicable federal, state and local laws establishing more protective safety protocols than those established under the Guidance.

IN WITNESS WHEREOF, these Terms and Conditions are hereby executed by the duly authorized representatives of the Parties, as set forth below.

By _____

By _____

Print Name _____

Print Name _____

Title _____

Title _____

Date _____

Date _____