

## ATTACHMENT 2 – TERMS AND CONDITIONS

**Offeror’s proposal shall identify deviations from, revisions, exceptions or additional terms (collectively “Exceptions”) to the Terms and Conditions Sheet, but only if such Exceptions are clearly identified in a separate Attachment B to Volume II, “Exceptions to RFP Terms.”**

**Proposals that include material Exceptions to the Terms and Conditions may be considered unacceptable and render Offeror ineligible for award unless the Offeror withdraws or modifies any unacceptable Exceptions prior to USAC’s selection of the successful Offeror for award.**

**USAC will only review Exceptions to the Terms and Conditions that are included in Offeror’s Attachment B to Volume II, “Exceptions to RFP Terms.”. After selection of the awardee, USAC will not consider or negotiate any other proposed changes to the Terms and Conditions.**

## I. DEFINITIONS

- A. “Contract” means all contract documents related to USAC Solicitation Number USAC-21-030, including the RFP and Attachments 1-10.
- B. “Contractor” means the Offeror whose proposal was selected for award of the Contract.
- C. “Data” means recorded information, regardless of form or the media on which it may be recorded, and includes, but is not limited to, technical data and Software.
- D. “Deliverables” means the deliverables, goods, items, products, and material that are to be prepared by Contractor and delivered to USAC as described in Solicitation Number USAC-21-030 and Attachment 5.
- E. “FISMA” refers to the Federal Information Security Modernization Act of 2014, 44 U.S.C. § 3541, *et seq.*
- F. “Offeror” means an entity submitting a formal proposal in response to this Solicitation.
- G. “Services” means the tasks, services, functions and responsibilities described in Solicitation Number USAC-21-030, Attachment 3, and in the Contract issued hereunder.
- H. “Software” means computer programs that allow or cause a computer to perform a specific operation or series of operations, together with all modifications to, or enhancements (“derivative works”) thereof.

## II. INSPECTION / ACCEPTANCE

Contractor shall only tender for acceptance Services and Deliverables that conform to the requirements of the Contract. USAC will, following Contractor’s tender, inspect or test the Deliverables or Services and:

- (a) Accept the Services and Deliverables; or
- (b) Reject the Services and Deliverables and advise Contractor of the reasons for the rejection.

If rejected, Contractor must repair, correct or replace nonconforming Deliverables or re-perform nonconforming Services, at no increase in Contract price. If repair, correction, replacement or re-performance by Contractor will not cure the defects or is not possible, USAC may terminate for cause under Section X, below, and, in addition to any other remedies, may reduce the Contract price to deduct amounts for the defective work.

Unless specified elsewhere in the Contract, title to items furnished under the Contract shall pass to USAC upon acceptance, regardless of when or where USAC takes possession.

### III. ENTIRE CONTRACT / BINDING EFFECT

The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. This Attachment 2 shall take precedence over any other Contract document, including Contractor proposals that may be included as attachments to the Contract. Any waiver of any provision of the Contract will be effective only if in writing and signed by the party granting the waiver. The Contract shall be binding upon and shall insure to the benefit of the parties hereto and their respective successors and assignees.

### IV. CHANGES

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

### V. INVOICES

A. *Where to Submit Invoices.* Contractor shall submit invoices electronically to [invoices@usac.coupa.com](mailto:invoices@usac.coupa.com) or through the Coupa Supplier Portal. Additionally, Contractor shall submit an electronic invoice to the address designated in the Contract to receive invoices.

B. *Invoice Content.* Invoices must include:

1. Name and address of Contractor;
2. Invoice date, number and period of performance;
3. Contract number;
4. Completed and signed copies of the Contractor Weekly Status Report and Time Sheet by each Contractor personnel performing services on the Contract for the time period covered by the invoice, if applicable;
5. Name and address of official to whom payment is to be sent or to notify in event of invoice or payment issues; and
6. Any other substantiating documentation or information as reasonably required by USAC.

C. *EFT Information.* Contractor shall provide Electronic Funds Transfer (“EFT”) banking information via secure method prior to issuance of first invoice. USAC shall not be liable for incomplete or erroneous transfers which occur as a result of Contractor providing incorrect or out of date EFT information.

D. *Invoice Submittal Date.* Contractor may submit invoices for payment upon completion and USAC’s acceptance of all of the work associated with a Contract or, if the period of performance of a Contract exceeds sixty (60) days, once every thirty (30) days, with

the submission of the first invoice no earlier than thirty (30) days after issuance of the Contract.

- E. *Content of Periodic Invoices.* If periodic invoices are submitted for a Contract, each invoice shall include only Services that have been completed and Deliverables that have been accepted as of the date of invoice submission and that have not been billed in a prior invoice.
- F. *Contractor Statement to Accompany Invoices.* All invoices shall be accompanied by the following statement signed by Contractor: “I certify that the services and items submitted on this invoice have been performed and delivered in accordance with the Contract USAC 21-030 and that all charges are true, correct and have not been previously billed.”

## **VI. PAYMENT / RATES**

This Contract has a fee structure of variable fee per unit, single award contract (Contract). The unit price for the work (total project and all line items) is to be set forth in Attachment 1 (Pricing Schedule) to the Contract. The Contract price will include all direct and indirect costs set forth in Solicitation Number USAC-21-030, including equipment, product support, supplies, general and administrative expenses, overhead, materials, travel, labor, taxes (including use and sales taxes), shipping, and profit. USAC will not reimburse Contractor for any travel related expenses. All work shall be performed in accordance with all Sections of this Contract. USAC will pay invoices submitted in accordance with Section V., above, within thirty (30) calendar days of receipt of invoice, provided the Services and/or Deliverables have been delivered and accepted by USAC.

## **VII. PATENT INDEMNITY**

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

## VIII. ASSIGNMENT / SUBCONTRACTING

Contractor shall not assign or subcontract all or any portion of the Contract without obtaining USAC's prior written consent. Consent must be obtained at least thirty (30) days prior to the proposed assignment or subcontracting. USAC may require information and assurances that the proposed assignee or subcontractor has the skills, capacity, qualifications and financial strength to meet all of the obligations under the Contract. An assignment or subcontract shall not release the Contractor of the obligations under the Contract, and the assignee or subcontractor shall be jointly and severally liable with the Contractor.

Contractor 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 unless there is a compelling reason to do so. Contractor shall review the System for Award Management ("SAM") for suspension or debarment status of proposed subcontractors. See <https://www.sam.gov>.

## IX. TERMINATION FOR CONVENIENCE

USAC may terminate the Contract for any reason or no reason upon one (1) day prior written notice to the Contractor. Subject to the terms of the Contract, Contractor shall be paid for all time actually spent performing the Services required by the Contract up to date of termination, plus reasonable charges Contractor can demonstrate to the satisfaction of USAC have resulted directly from the termination.

## X. TERMINATION FOR CAUSE

Upon the expiration of a ten (10) day cure period (during which the defaulting party did not provide a sufficient cure), the non-defaulting party may terminate the Contract issued hereunder, in whole or in part, *for cause* in the event of the defaulting party's failure to comply with any material term or condition of the Contract, as applicable, or if either party fails to provide the other party, upon request, with adequate assurances of future performance. In the event of termination for cause, the non-defaulting party shall be entitled to any and all rights and remedies provided by law or equity. If it is determined that USAC improperly terminated the Contract for cause, such termination shall be deemed a termination for convenience. In the event of partial termination, the defaulting party shall continue to perform the portion of the Services not terminated.

## **XI. STOP WORK ORDER**

USAC may, in its sole discretion, issue a stop work order at any time during the Contract term. Upon receipt of a stop work notice, or upon receipt of a notice of termination (for cause or convenience), unless otherwise directed by USAC, Contractor shall, on the stop work date identified in the stop work or termination notice: (A) stop work, and cause its subcontractors, consultants or agents to stop work, to the extent specified in said notice; and (B) subject to the prior written approval of USAC, transfer title and/or applicable licenses to use, as appropriate, to USAC and deliver to USAC, or as directed by USAC, all materials, Data, work in process, completed work and other USAC Information or material produced in connection with, or acquired for, the work terminated. In the event of a stop work order, all deadlines in the Contract shall be extended on a day for day basis from such date, plus reasonable additional time, as agreed upon between the parties, acting in good faith, to allow Contractor to reconstitute its staff and resume the work.

## **XII. LIMITATION OF DAMAGES**

Except in cases of gross negligence or willful misconduct, in no event shall either party be liable for any consequential, special, incidental, indirect or punitive damages arising under or relating to the performance of the Contract. USAC's entire cumulative liability from any causes whatsoever (including indemnification obligations, if any), 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 lesser of Contractor's actual, proven direct damages or the amounts paid to Contractor under the Contract. The parties expressly acknowledge that the limitations and exclusions set forth in this provision 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 Contractor for its performance of the Services and Deliverables. All exclusions or limitations of damages contained in the Contract, including, without limitation, the provisions of this Section, shall survive expiration or termination of the Contract.

## **XIII. CONFIDENTIAL INFORMATION**

- A. *Confidential Information.* Confidential Information includes, but is not limited to, information, Data, material, or communications in any form or format, whether tangible or intangible, spoken or written (collectively referred to hereafter as "Information"), that contains, reflects, or is derived from or based upon, or is related to:
1. Management, business, procurement or financial Information of either party, the FCC or a USF stakeholder, including proprietary or commercial Information and trade secrets that have not previously been publicly disclosed;
  2. Information regarding USAC's processes and procedures (including, but not limited to, program operational Information, Information regarding USAC's administration of its programs, and Information regarding USAC's processing of applications for program support);

3. Information concerning USAC's relationships with other vendors or contractors, the FCC, USF Stakeholders and financial institutions;
  4. Information marked to indicate disclosure limitations such as "Confidential Information," "proprietary," "privileged," "not for public disclosure," "work product," etc.;
  5. Information compiled, prepared or developed by Contractor in the performance of the Contract;
  6. Any Information identified as confidential by the disclosing party; and
  7. Personally Identifiable Information (PII), any information about an individual that can be used to distinguish or trace an individual's identity either alone or when combined with other information that is linked or linkable to a specific individual. Examples of PII include name, address, telephone number, date and place of birth, mother's maiden name, biometric records, etc.
- B. *Non-Disclosure/Use/Irreparable Harm.* It is anticipated that one of the parties (Disclosing Party) may disclose, or has disclosed, Confidential Information to the other party (Recipient). At all times during the term of the Contract and thereafter, the Recipient shall maintain the confidentiality of all Confidential Information and prevent its unauthorized disclosure, publication, dissemination, destruction, loss, or alteration. Recipient shall only use Confidential Information for a legitimate business purpose of USAC and in the performance of the Contract. Recipient acknowledges that the misappropriation, unauthorized use, or disclosure of Confidential Information would cause irreparable harm to the Disclosing Party and could cause irreparable harm to the integrity of the USF Programs.
- C. *Employee Access to Confidential Information.* Recipient shall not disclose Confidential Information to partners, joint venturers, directors, employees, agents and subcontractors (sub-Recipient) unless absolutely necessary for a Recipient's or sub-Recipient's performance of the Contract, and if necessary, shall only disclose the Confidential Information necessary for sub-Recipient's performance of its duties. As a pre-condition to access to Confidential Information, Recipient shall require sub-Recipients, including its employees and subcontractors, and the employees of any subcontractor, to sign a non-disclosure or confidentiality agreement containing terms no less restrictive than those set forth herein. The Disclosing Party may enforce such agreements, if necessary, as a third-party beneficiary.
- D. *Contractor Enforcement of Confidentiality Agreement.* Contractor must report, and describe in detail, any breach or suspected breach of the non-disclosure requirements set forth above to the USAC General Counsel immediately (i.e., within one (1) hour) upon becoming aware of the breach. Contractor will follow-up with the USAC

General Counsel and provide information on when and how the breach occurred, who was involved, and what has been done to recover the Information.

- E. *Exclusions.* If requested to disclose Confidential Information by an authorized governmental or judicial body, Recipient must promptly notify the Disclosing Party of the request and to the extent that it may legally do so, Recipient must refrain from disclosure of the Confidential Information until the Disclosing Party has had sufficient time to take any action as it deems appropriate to protect the Confidential Information. In the event Confidential Information of USAC is requested, Recipient must notify USAC, with a copy to USAC's General Counsel, of the request. Neither Contractor nor its subcontractors shall issue any public statement relating to or in any way disclosing any aspect of the Contract without the prior written consent of USAC. Notwithstanding anything herein to the contrary, USAC may, without notice to Contractor, provide the Contract, including Contractor's proposal information, and any information or Data delivered, prepared or developed by Contractor in the performance of the Contract to the FCC or other governmental or judicial body, and may publicly disclose basic information regarding the Contract, e.g., name of Contractor, price, basis for selection, description of Services/Deliverables and any provisions necessary for USAC to justify actions taken with respect to the Contract.

#### **XIV. RETURN OF USAC INFORMATION**

- A. "USAC Information" includes Information and Data provided by USAC to Contractor for use in the performance of the Contract, Data that is collected, developed or recorded by Contractor in the performance of the Contract, including without limitation, business and company personnel information, program procedures and program specific information, and Data that is created or derived from such Data. USAC Information is Confidential Information and subject to all requirements in Section XIII and Attachment 8.
- B. Promptly upon the expiration or termination of the Contract, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all USAC Information, including all copies thereof, in the possession or under the control of Contractor. Contractor shall not withhold any USAC Information as a means of resolving any dispute. To the extent that there is a dispute between Contractor and USAC, Contractor may make a copy of such USAC Information as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.
- C. USAC Information is provided to Contractor solely for the purpose of rendering the Services, and USAC Information or any part thereof shall not be sold, assigned, leased, or otherwise transferred to any third party by Contractor (except as required to perform the Services or as otherwise authorized in the Contract), commingled with non-USAC Information, or commercially exploited by or on behalf of Contractor, or its employees or agents. Promptly upon the expiration of the Contract term, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to



USAC, return or destroy all copies of USAC Information in the possession or under the control of Contractor or its employees or any subcontractors or their employees. Contractor shall not withhold any USAC Information as a means of resolving any dispute. To the extent that there is a dispute between Contractor and USAC, Contractor may make a copy of such USAC Information as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.

## **XV. INFORMATION SECURITY**

Contractor shall establish and maintain safeguards to protect the confidentiality, integrity, and restricted availability of Confidential Information, including any PII, in its possession according to NIST and FISMA requirements. This includes all information that is sent to and received from USAC and USAC Stakeholders. Contractor and its subcontractors shall ensure that their respective local area networks, servers, and personal computers are secure from unauthorized access from within or outside their respective organizations. Contractor shall not store or otherwise maintain any USAC Confidential Information in the Cloud, or back-up and store USAC's Confidential Information without first obtaining USAC's written consent.

## **XVI. MALICIOUS SOFTWARE**

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

## **XVII. FISMA PROVISIONS**

Contractor shall meet and comply with all USAC IT Security Policies and all applicable USAC, NIST, and FISMA requirements and other Government-wide laws and regulations for the protection and security of information systems and data. Contractor's security and privacy controls must be assessed against the same NIST criteria and standards (specifically NIST Special Publication (SP) 800-53, rev. 4, or the latest version) as if they were a government-owned or-operated system, and comply with all FISMA requirements.

### **Safeguarding of Covered Contractor Information Systems:**

USAC's data security strategy includes the requirement to ensure the security of data protection controls regardless of the location or the party responsible for those controls. As a

Contractor, you serve a vital role to achieve this goal. Contractor shall apply the following minimum safeguarding requirements and procedures from NIST SP 800-171 “Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations” to protect covered Contractor information systems and USAC Data. USAC may require a written response that may be an attestation of compliance, a submission of supporting document, or both. If USAC requests a written response, Contractor is required to submit an electronic copy of the document(s) confirming compliance within 10 calendar days. If there are any requirements that are out of scope or that cannot be complied with, those requirements must be fully explained with a business justification.

1. Limit information system access to only authorized users, processes acting on behalf of authorized users, or devices (including other information systems). [AC-1, AC-2].\*
2. Limit information system access to only the types of transactions and functions that authorized users are permitted to execute. [AC-2].\*
3. Verify and control/limit connections to and use of external information systems. [AC-20].\*
4. Control information posted or processed on publicly accessible information systems. [AC-22].\*
5. Identify information system users, processes acting on behalf of users, or devices. [IA-2].\*
6. Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems. [IA-3].\*
7. Sanitize or destroy information system media containing USAC Information before disposal or release for reuse. [MP-2, MP-4, MP-6].\*
8. Limit physical access to organizational information systems, equipment, and the respective operating environments to only authorized individuals. [PE-2, PE-6].\*
9. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices. [PE-3].\*
10. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems. [SC-7, SC-8].\*
11. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks. [SC-7].\*
12. Identify, report, and correct information and information system flaws in a timely manner. [SI-2, SI-5].\*
13. Provide protection from malicious code at appropriate locations within organizational information systems. [SI-3].\*
14. Update malicious code protection mechanisms when new releases are available. [SI-3].\*
15. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed. [SI-3].\*

\* Reference to the specific security control under the NIST SP 800-171 that is applicable for each requirement. NIST SP 800-171 can be found here:  
<https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r1.pdf>.

## **XVIII. TECHNOLOGY CONSIDERATIONS**

If Contractor deploys commercial off-the-shelf software (COTS) or Software as a Service (SaaS) in the cloud or on USAC's on-premise to provide Services, Contractor's infrastructure must satisfy the following requirements:

- FedRamp compliant
- The product must be able to utilize USAC's instance of OKTA's Identity and Access Management software for user authentication.
- The product must also be able to support and/or work with the OKTA Multi-Factor Authentication (MFA) functions and features.
- OKTA is a cloud-based Identity and Access Management product used by USAC.
- Any USAC data stored in a COTS/SaaS product database must be easily accessed by USAC via standard web services or another standard access mechanism.

For RFIs, RFPs, and/or contracts involving the development of reports for USF programs (Lifeline, High Cost, Rural Health Care and Schools and Libraries) custom software developed shall reuse the USAC technical stack unless Contractor demonstrates that those components are unable to meet the requirements. Key components of USAC's technical stack include the following:

- Java Programming Language
- .NET Programming Language
- SQL Server
- OKTA (Identity and Access Management)
- Postgres (Relational Database Management System)
- Elastic Search, Logstash, Kibana
- Atlassian based tools (SDLC)
- Apache Tomcat (Application Servers)
- Red Hat Enterprise Linux
- Business Intelligence, Reporting, Geographical Information System, and Data Warehouse tools

Further details of USAC's technical stack will be provided during the down-selection process.

## **XIX. PROPRIETARY RIGHTS**

Contractor agrees that all Data, Software, Deliverables, reports or other materials (collectively "Materials") developed or conceived by Contractor and/or documented by Contractor in the performance of the Contract, as well as all modifications and improvements thereto and all other designs, discoveries and inventions, are USAC property and shall be deemed USAC Information pursuant to Section XIV above and works made-for-hire for USAC within the meaning of the copyright laws of the United States. In the event that any of the aforementioned are not

considered works made-for-hire for USAC within the meaning of the copyright laws of the United States, Contractor shall and hereby does irrevocably grant, assign, transfer and set over unto USAC in perpetuity all worldwide rights, title and interest of any kind, nature or description it has or may have in the future in and to such materials, and Contractor shall not be entitled to make any use of such materials beyond what may be described in this Contract. Contractor hereby waives, and shall secure waiver from its employees or subcontractors, any moral rights in such assigned materials, such as the right to be named as author, the right to modify, the right to prevent mutilation and the right to prevent commercial exploitation. Accordingly, USAC shall be the sole and exclusive owner for all purposes for the use, distribution, exhibition, advertising and exploitation of such Materials or any part of them in any way and in all media and by all means throughout the universe in perpetuity.

Contractor shall not, without the prior written permission of the USAC Procurement Specialist, incorporate in Data delivered under the Contract any Data not first produced in the performance of the Contract unless the Contractor: (1) identifies the Data; and (2) grants to USAC, or acquires on USAC's behalf, a license of the same scope as set forth earlier in this Section.

Promptly upon the expiration or termination of the Contract, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all Materials, including all copies thereof, in the possession or under the control of Contractor. Contractor shall not withhold any Materials as a means of resolving any dispute. To the extent that there is a dispute between Contractor and USAC, Contractor may make a copy of such Materials as is necessary and relevant to resolution of the dispute. Any such copies shall promptly be destroyed upon resolution of the dispute.

## **XX. RESPONSIBILITY FOR CONTRACTOR PERSONNEL**

Contractor personnel working on USAC premises are required to sign and agree to the terms of a Visitor Form provided by USAC. Contractor is responsible for any actions of its personnel, including any actions that violate law, are negligent or that constitute a breach of the Visitor Form and/or the Contract.

*Security Briefings.* Before receiving access to IT resources under the Contract, Contractor personnel must receive a security briefing, which USAC will arrange, and complete any nondisclosure agreement required by the Contract.

## **XXI. RECORD RETENTION**

During the term of the Contract and for three (3) years following final payment, the Contractor shall maintain and make available at its offices at all reasonable times, the records, materials, and other evidence relating to the Contract for examination, audit, or reproduction.

## **XXII. KEY PERSONNEL**

All Contractor employees assigned to the positions identified in Section 9 of Solicitation Number USAC-21-030 are key personnel. The key personnel assigned to the Contract must remain in their respective positions throughout the term of the Contract, as applicable. USAC may terminate all or a part of the Contract if the Contractor changes the position, role, or time commitment of key personnel, or removes key personnel from the Contract, without USAC's prior written approval. USAC may grant approval for changes in staffing of key personnel if it determines in its sole discretion, that:

- changes to, or removal of, key personnel is necessary due to extraordinary circumstances (e.g., a key personnel's illness, death, termination of employment, or absence due to family leave), and
- the Contractor has resources (e.g., replacement personnel) with the requisite skills, qualifications and availability to perform the role and duties of the outgoing personnel.

Replacement personnel are considered key personnel and this Section shall apply to their placement on and removal from the Contract.

### **XXIII. INSURANCE**

At its own expense, Contractor shall maintain sufficient insurance in amounts required by law or appropriate for the industry, whichever is greater, to protect and compensate USAC from all risks and damages/injuries that may arise under the Contract, including as appropriate, public and commercial general liability, personal injury, property damage and employer's liability and worker's compensation insurance. Contractor shall produce evidence of such insurance upon request by USAC. Contractor shall provide written notice thirty (30) days prior to USAC in the event of cancellation of or material change in the policy.

### **XXIV. CONFLICTS OF INTEREST**

It is essential that any Contractor providing Services or Deliverables in support of USAC's administration of the USF maintain the same neutrality, both in fact and in appearance, and avoid any conflict of interest or even the appearance of a conflict of interest. For example, to the extent that Contractor, or any of its principals, has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect, there may be actual, potential and/or apparent conflict(s) of interest. Contractor shall promptly notify USAC, with a copy to USAC's General Counsel, in writing of any actual or potential conflicts of interest involving Contractor, or any circumstances that give rise to the appearance of a conflict of interest, and the means by which Contractor proposes to avoid, neutralize, or mitigate such conflicts. Contractor shall also notify USAC of any conflicts Contractor has with USAC vendors. Failure to provide adequate means to avoid, neutralize or mitigate any conflict of interest may be the basis for termination of the Contract. By its execution hereof, the Contractor represents and certifies that it has not paid or promised to pay a gratuity, or offered current or future employment or consultancy, to any USAC or governmental employee in connection with the award. In order to maintain

the required neutrality, Contractor must not advocate any policy positions with respect to the Programs or the USF during the term of the Contract. Neither the Contractor nor its subcontractors shall issue any public statement relating to or in any way disclosing any aspect of the Contract without the prior written consent of USAC.

## **XXV. INVALIDITY OF ANY PROVISION**

It is the intent of the Parties that the provisions of the Contract will be enforced to the fullest extent permissible, but that the unenforceability of any provision will not render unenforceable or impair the remainder of the Contract, which will be deemed amended, to delete or modify, as necessary, the invalid or unenforceable provisions. The Parties further agree to negotiate replacement provisions for any unenforceable term that are as close as possible to the original term and to change such original term only to the extent necessary to render the same valid and enforceable.

## **XXVI. WAIVER**

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

## **XXVII SEVERABILITY**

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

## **XXVIII. CHOICE OF LAW / CONSENT TO JURISDICTION**

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

## **XXIX. USAC AND APPLICABLE LAWS**

USAC is not a Federal agency, a government corporation, a government controlled corporation or other establishment in the Executive Branch of the United States Government. USAC is not a contractor 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 Contractors to adhere to certain procurement-related 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 (collectively “Procurement Regulations”). Contractor shall comply with the procurement standards and all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under the Contract.

### **XXX. 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 United States Bankruptcy Code, or any replacement provision therefore (the “Code”), licenses to rights to “intellectual property” as defined in the Code. The Parties agree that USAC, as licensee of such rights under this Contractor, shall retain and may fully exercise all of its rights and elections under the Code. The Parties further agree that, in the event of the commencement of bankruptcy proceedings by or against Contractor under the Code, 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 Material, license, Software, Data or works made for hire.

### **XXXI. NON EXCLUSIVITY / INDEPENDENT CONTRACTOR**

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 the Contractor hereunder or from independently developing or acquiring goods or services that are similar to, or competitive with, the goods or services, as the case may be, contemplated under the Contract.

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor’s key personnel, employees, representatives, directors, officers, subcontractors and agents are not employees of USAC. USAC will not withhold or contribute to Social Security, workers’ compensation, federal or state income tax, unemployment compensation or other employee benefit programs on behalf of Contractor or Contractor personnel. Contractor shall indemnify and hold USAC harmless against any and all loss, liability, cost and expense (including attorneys’ fees) incurred by USAC as a result of USAC not withholding or making such payments. Neither Contractor nor any of Contractor’s personnel are entitled to participate in any of the employee benefit plans of, or otherwise obtain any employee benefits from, USAC. USAC has no obligation to make any payments to Contractor’s key personnel, employees, representatives, directors, officers, subcontractors and agents. Contractor shall not hold herself/himself out as an employee of USAC and Contractor has no authority to bind USAC except as expressly permitted hereunder.

### **XXXII. TEMPORARY EXTENSION OF SERVICES**

USAC may require continued performance of any Contract services within the limits and at the rates specified in the Contract. USAC may extend the services more than once, but the total extension of performance hereunder shall not exceed two six (6) months extensions. The USAC Procurement representative may exercise an option to extend by written notice to the Contractor within ten (10) days prior to expiration of the then current term.

### **XXXIII. NOTICES**

All notices, consent, approval or other communications required or authorized by the Contract shall be given in writing and shall be:

- (a) personally delivered,
- (b) mailed by registered or certified mail (return receipt requested) postage prepaid,
- (c) sent by overnight delivery service (with a receipt for delivery), or
- (d) sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such party at the following address:

*If to USAC:*

Vice President of Procurement and Strategic Sourcing, Universal Service  
Administrative Co.

700 12<sup>th</sup> Street, NW, Suite 900

Washington, DC 20005

Email: To the designated USAC Contract Officer for this procurement, with a copy to [usacprocurement@usac.org](mailto:usacprocurement@usac.org).

*If to Contractor:* To the address or email set forth in the Contractor's proposal in response to the Solicitation.

### **XXXIV. SURVIVAL**

All provisions that logically should survive the expiration or termination of the Contract shall remain in full force and effect after expiration or early termination of the term of the Contract. Without limitation, all provisions relating to return of USAC information, confidentiality obligations, proprietary rights, and indemnification obligations shall survive the expiration or termination of the Contract.

### **XXXV. EXECUTION / AUTHORITY**

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

### **XXXVI. INDEMNITY**



Contractor shall defend, indemnify and hold harmless USAC from and against, any costs, liabilities, damages or expenses (including reasonable attorneys' fees) arising out of or relating to: (1) claims for personal injuries, death or damage to tangible personal or real property to the extent proximately caused by the negligent acts or negligent omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with this Contract; and (2) claims of any nature whatsoever to the extent caused by the violation of Contract terms, negligence, illegal or intentional wrongful acts or omissions of Contractor or its employees, agents, consultants, or Subcontractors in connection with the performance of the Services.

### **XXXVII. ADDED SERVICES**

USAC may at any time submit a written request that Vendor perform a service that is not included in Solicitation Number USAC-21-030. 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, or anything else 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 the USAC has provided Vendor with authorization to perform the Added Service and an amendment to the contract has been executed by both Parties, in each case subject to requisite approvals.

### **XXXVIII. COVERED COMPANY**

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

“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.

“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 this Contract.

B. *Prohibition.* Contractor will ensure that no funds from USAC under this Contract will be used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company. This prohibition extends to any subcontractors that provides Services under the Contract. Contractor is responsible for notifying any subcontractors it engages under this Contract of this prohibition.

C. *Monitoring.* Contractor must actively monitor what entities have been finally designated by the FCC as a Covered Company. Contractor must actively monitor to ensure that no funds from USAC are used to purchase, obtain, maintain, or otherwise support any equipment or

services produced or provided by a Covered Company from Contractor or any subcontractor it engages under the Contract. If Contractor finds that funds from USAC are being used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company, Contractor shall immediately notify USAC. In Contractor's notification to USAC, Contractor shall provide the same information required for non-compliance in Section XXXVIII.D. Any such notification must have audit ready supporting evidence.

**D. *Annual Certification.***

Contractor will conduct a Reasonable Inquiry and provide a certification to USAC in writing no later than December 31 of each calendar year that the Contract is in effect.

If Contractor, and all applicable subcontractors, are in compliance with Section XXXVIII.B., Contractor 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.

If Contractor, or any applicable subcontractor, is not in compliance with Section XXXVIII.B., Contractor shall so inform USAC and provide the following information in the certification:

(i) If for equipment produced or provided by a Covered Company—

- 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);
- 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
- Explanation of 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—

- 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);
- If the service is not associated with maintenance, the product service code of the service being provided; and
- Explanation of why USAC funds purchased, obtained, maintained, or otherwise supported the services and a plan to remove and replace such service as expeditiously as possible.

Contractor shall retain audit ready supporting evidence for all certifications.