

USAC Terms and Conditions

1. DEFINITIONS

- A. “Added Service” means a service that Contractor may perform for USAC that is not specified in the Scope of Work part of the Contract.
- B. “Cloud Protocols” means a comprehensive information security program governing standard technical configurations, platforms, or sets of procedures used in connection with the Services operated in cloud infrastructure environments.
- C. “Code” means the United States Bankruptcy Code.
- D. “Confidential Information” is defined in Section 16 of these USAC Terms and Conditions.
- E. “Contract” means these USAC Terms and Conditions, and any documents attached to these USAC Terms and Conditions that constitutes the entire agreement between the parties with respect to the subject matter hereof.
- F. “Contract Term” means the Initial Term of these USAC Terms and Conditions and any executed Optional Renewal Terms.
- G. “Contractor” means the Offeror (as defined elsewhere in the Contract) whose proposal was selected for award of the Contract.
- H. “Contractor Owned/Controlled IT” means any devices, equipment, systems, or environments owned or controlled by Contractor.
- I. “Contractor’s IT System” means Contractor’s electronic computing and/or communications systems (including but not limited to various internet, intranet, extranet, email and voice mail).
- J. “Contractor Personnel” means Contractor’s employees, subcontractors, consultants, and agents used to provide Services and/or create Deliverables under this Contract, including, but not limited to, Key Personnel. “Contractor Personnel” also includes the entity that employs Contractor’s employees, subcontractors, consultants, and agents in all cases except where the context clearly references only individuals.
- K. “COTS” means commercial off-the-shelf Software.
- L. “Courts” means the district and, if applicable, federal courts located in the District of Columbia.

- M. “CSP” means the USAC Coupa Supplier Portal, which is a method of paying USAC invoices.
- N. “Data” means information, regardless of the form or media.
- O. “Data at Rest” is defined in Section 18.H of these USAC Terms and Conditions.
- P. “Data Breach” means“ 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 Information) and/or USAC IT Systems or (2) an authorized user accesses or potentially accesses USAC’s sensitive information (including PII, Data, Confidential Information, USAC Information) and/or USAC IT Systems for any unauthorized purpose. Types of Data Breaches include, but are not limited to, Data Loss, Data Theft, and Exfiltration.
- Q. “Data in Transit” is defined in Section 18.H of these USAC Terms and Conditions.
- R. “Data Loss” means the result of unintentionally or accidentally deleting data, forgetting where it is stored, or exposure to an unauthorized party.
- S. “Data Security Laws” is defined in Section 18.A of these USAC Terms and Conditions.
- T. “Data Security Liaison” is defined in Section 18.C of these USAC Terms and Conditions.
- U. “Data Theft” means the deliberate or intentional act of stealing of information.
- V. “Deliverables” means the goods, items, products, and materials that are to be prepared by Contractor and delivered to USAC as described in the Contract.
- W. “Derivative Works” means any and all modifications or enhancements to, or any new work based on, in whole or in part, any USAC Information, Confidential Information, Data, Software, or Deliverable regardless of whether such modifications, enhancements or new work is defined as a “derivative work” in the Copyright Act of 1976.
- X. “Discloser” means a party to this Contract that discloses Confidential Information to the Recipient.

- Y. “Exfiltration” means the unauthorized transfer of information from USAC IT Systems.
- Z. “FCC” means the Federal Communications Commission, including, but not limited to, the Office of the Managing Director, the Office of Economics and Analytics, the Wireless Telecommunications Bureau, the Enforcement Bureau, the Wireline Competition Bureau, and the Public Safety and Homeland Security Bureau.
- AA. “FedRAMP-Authorized Designation” means a cloud product or service that satisfies the security assessment, authorization, and continuous monitoring requirements of the Federal Risk and Authorization Management Program (or “FedRAMP”).
- BB. “FIPS” means Federal Information Processing Standard.
- CC. “FISMA” means the Federal Information Security Management Act, 44 U.S.C. §3541, *et seq.*, as amended by the Federal Information Security Modernization Act of 2014, and their implementing and successor regulations.
- DD. “Initial Term” means the original duration of these USAC Terms and Conditions as described in Section 2 of these USAC Terms and Conditions.
- EE. “IaaS” means Infrastructure as a Solution.
- FF. “Key Personnel” means the full-time employees of Contractor that are in the positions identified elsewhere in the Contract as those that are required to perform the Services.
- GG. “Malicious Code” or “Malware” means 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 IT Systems, or (ii) access, modify, disclose, transmit, or delete PII, Data, Confidential Information, or USAC Information; 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 Information, or USAC IT Systems. Examples of Malicious Code include, but are not limited to, viruses, worms, bugs, ransomware, spyware, bots, backdoors, devices, and Trojan Horses.
- HH. “Malicious Cyber Activity” means any activity, other than those activities authorized by or in accordance with any U.S. federal or state 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.

- II. “Multifactor Authentication” means 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).
- JJ. “NARA” means the National Archives and Records Administration.
- KK. “NIST” means the National Institute of Standards and Technology.
- LL. “OMB” means the Office of Management and Budget.
- MM. “Optional Renewal Term” means an additional one year period that can extend the duration of these USAC Terms and Conditions at USAC’s sole discretion as described in Section 2 of these USAC Terms and Conditions.
- NN. “PaaS” means Platform as a Service.
- OO. “PII” means Personally Identifiable Information, which is 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.
- PP. “Procurement Regulations” mean 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.
- QQ. “Recipient” means a party to this Contract that receives Confidential Information from a Discloser.
- RR. “SaaS” means Software as a Service.
- SS. “SAM” means the System for Award Management or suspension or debarment status of proposed subcontractors that can be found at <https://www.sam.gov>.
- TT. “SAN” means the Supplier Actionable Notification, which is a method of paying USAC invoices.
- UU. “Security Incident” means any event or occurrence that actually or potentially compromises or jeopardizes the confidentiality, integrity, privacy, security, or availability of PII, Data, Confidential Information, USAC Information, or USAC IT

- Systems regardless of whether such event or occurrence: (a) poses a material or imminent threat to such PII, Data, Confidential Information, USAC Information, or USAC IT Systems, 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 Information, or USAC IT Systems or USAC's access to or use thereof, shall be considered a Security Incident.
- VV. "Services" means the services, tasks, functions and responsibilities described in the Contract.
- WW. "Software" means any application programming interface, content management system or any other computer programs, protocols, and commands that allow or cause a computer to perform a specific operation or series of operations, together with all Derivative Works thereof.
- XX. "Solicitation" means the request for Services described in the Contract.
- YY. "Sub-Recipient" means a partner, joint venturer, director, employee, agent and subcontractors of a Recipient to whom a Recipient must disclose Confidential Information.
- ZZ. "USAC" means Universal Services Administrative Company.
- AAA. "USAC Information" means any Data, materials, or communications in any form or format, whether tangible or intangible, spoken or written (regardless of media) 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 Derivative Works thereof. All USAC Information is Confidential Information and subject to all requirements in Section 16 of these USAC Terms and Conditions.
- BBB. "USAC IT System(s)" means USAC's electronic computing and/or communications systems (including but not limited to various internet, intranet, extranet, email and voice mail).
- CCC. "USAC Terms and Conditions" means this document that provides the legal terms that govern this Contract.
- DDD. "USF" means the Universal Service Fund.

2. TERM

The Initial Term is the period of time from the Effective Date (as defined in the Contract) of the Contract to _____. After the conclusion of the Initial Term, USAC will have the right to extend the Contract Term by exercising up to _____ () one-year Optional Renewal Terms. USAC may exercise an Optional Renewal Term by written notice to Contractor within ten (10) days prior to expiration of the then current Initial Term or Optional Renewal Term.

3. ACCEPTANCE / REJECTION

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.

USAC will only accept Services or Deliverables that meet the acceptance criteria described in a statement of work or scope of work to the Contract. If the Service or Deliverable is Software or hardware intended for USAC IT Systems, USAC will require acceptance testing during an acceptance period that will be described in a statement of work or scope of work to the Contract.

USAC will reject any Service or Deliverable that does not conform to the acceptance criteria described in a Statement of Work or Scope of Work to the Contract. 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 does not cure the defects within thirty (30) calendar days or if curing the defects is not possible, USAC may terminate for cause under Section 12 of these USAC Terms and Conditions, 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.

4. ENTIRE CONTRACT / BINDING EFFECT

The Contract supersedes and replaces all prior or contemporaneous representations, dealings, understandings or agreements, written or oral, regarding such subject matter. In the event of any conflict between these USAC Terms and Conditions and any other document made part of the Contract, the USAC Terms and Conditions shall supersede. 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 inure to the benefit of the parties hereto and their respective successors and assignees.

5. MODIFICATIONS

The terms of the Contract, including these USAC Terms and Conditions, shall not be modified other than in writing executed by both parties.

6. INVOICES

- A. *Where to Submit Invoices.* Contractor shall submit invoices through the CSP method or via the SAN method. The CSP method will require Contractor to register and create an account for the CSP. An invitation link to the CSP may be obtained by emailing CoupaHelp@usac.org. The SAN method will require Contractor to invoice USAC directly from the purchase order sent by USAC via email. For the SAN method, the USAC email will contain a notification with action buttons which will allow Contractor to create an invoice, add a comment, and acknowledge the receipt of the purchase order. For assistance on all Coupa related billing questions, Contractor may email CoupaHelp@usac.org. For assistance on all non-Coupa related billing questions, Contractor may email accounting@usac.org.
- B. *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.
- C. *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.
- D. *Itemization of Invoices.* USAC may require Contractor to re-submit any invoice with a more detailed itemization of charges upon request.

7. FEES AND RATES INCLUSIVE OF ALL CHARGES AND TAXES

All fees and labor rates specified in the Contract include all charges for labeling, packing, packaging, loading, storage, inspection, insurance, profit and applicable federal, state, or local sales, use, or excise taxes.

8. PAYMENT

Contractor shall be paid for Services performed on a fixed-price, service category rate basis using the service categories and fixed rates set forth in **Attachment 1**. USAC will pay invoices submitted in accordance with Section 6 of these USAC Terms and Conditions within thirty (30)

calendar days of receipt of invoice, provided the Services and/or Deliverables have been delivered and accepted by USAC.

9. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

Contractor shall not assign, delegate, 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, delegation, or subcontracting. USAC may require information and assurances that the proposed assignee, delegatee, or subcontractor has the skills, capacity, qualifications and financial strength to meet all of the obligations under the Contract. An assignment, delegation, or subcontract shall not release Contractor of the obligations under the Contract, and the assignee, delegatee, or subcontractor shall be jointly and severally liable with 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 USAC agrees with Contractor that there is a compelling reason to do so. Contractor shall review the SAM for suspension or debarment status of proposed subcontractors.

10. REPORTS

If any reports are required as part of this Contract, all such reports shall be accurate and timely and submitted in accordance with the due dates specified in this Contract. Should Contractor fail to submit any required reports or correct inaccurate reports, USAC reserves the right to delay payment of invoices until thirty (30) days after an accurate report is received and accepted.

11. TERMINATION FOR CONVENIENCE

USAC may terminate the Contract for any reason or no reason upon one (1) day prior written notice to Contractor without any liability or obligation thereafter. 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 that USAC, in its sole discretion, agrees in writing have resulted directly from the termination.

12. TERMINATION FOR CAUSE

Either party may terminate the Contract for cause upon providing the other party with a written notice. Such notice will provide the other party with a ten (10) day cure period. Upon the expiration of the ten (10) day cure period (during which the defaulting party does not provide a sufficient cure), the non-defaulting party may immediately thereafter terminate the Contract, in whole or in part, if the defaulting party continues to fail to comply with any term or condition of the Contract or fails to provide the non-defaulting 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.

13. STOP WORK ORDER

USAC may, in its sole discretion and without further obligation or liability, 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 in writing, Contractor shall, on the stop work date identified in the stop work or termination notice: (a) stop work, and cause Contractor Personnel 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 USAC Information, Confidential Information, Data, Software, Deliverable, or any Derivative Work to any of the preceding, whether completed or in process, for the work stopped. 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.

14. LIMITATION OF LIABILITY

Except in cases of gross negligence or willful misconduct, in no event shall USAC 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, 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 amount paid by USAC to Contractor in the year preceding the most recent of such claims. 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.

15. INDEMNITY

Contractor shall indemnify, hold harmless and defend USAC and its directors, officers, employees and agents against any and all demands, claims and liability, costs and expenses (including attorney's fees and court costs), directly or indirectly related to: (a) any claims or demand for actual or alleged direct or contributory infringement of, or inducement to infringe, or misappropriation of, any intellectual property, including, but not limited to, trade secret, patent, trademark, service mark, or copyright, arising out of or related to Contractor's performance of the Contract; (b) any claims or demands for personal injuries, death or damage to tangible personal or real property to the extent caused by the intentional, reckless, or negligent acts or omissions of Contractor or Contractor Personnel in connection with this Contract; and (c) any claims or demand of any nature whatsoever to the extent caused by violation of these USAC Terms and Conditions by Contractor or Contractor Personnel; (d) any breach of applicable law as described in Section 32 of these USAC Terms and Conditions by Contractor or Contractor Personnel; or (e) the negligence, reckless, illegal, or intentional acts or omissions of Contractor or Contractor Personnel in connection with the performance of the Services.

16. CONFIDENTIAL INFORMATION

- A. *Confidential Information.* Confidential Information includes, but is not limited to, USAC Information, Data, materials, or communications in any form or format, whether tangible or intangible, spoken or written (regardless of media) 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. PII; and
 7. Information that Recipient knows or reasonably should have known is confidential, proprietary, or privileged.
- B. *Non-Disclosure/Use/Irreparable Harm.* It is anticipated that a Discloser may disclose, or has disclosed, Confidential Information to the 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. *Sub-Recipient Access to Confidential Information.* Recipient shall not disclose Confidential Information to a 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 Contractor Personnel to sign a non-disclosure or confidentiality agreement containing terms no less restrictive than those set forth herein. Discloser 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 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 Confidential Information.
- E. *Exclusions.* If requested to disclose Confidential Information by an authorized governmental or judicial body, Recipient must promptly notify Discloser of the request and to the extent that it may legally do so, Recipient must refrain from disclosure of the Confidential Information until Discloser 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 immediately notify USAC, with a copy to USAC's General Counsel, of the request. Neither Contractor nor Contractor Personnel 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.

17. RETURN OR DESTRUCTION OF USAC INFORMATION

- A. *Return or Destruction of USAC Information.* Except as provided in Section 17.B of these USAC Terms and Conditions, and 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 or Contractor Personnel. If USAC directs that Contractor destroy any USAC Information, then, at USAC's request, Contractor shall provide USAC with an executed certificate in writing stating that all such USAC Information was destroyed.
- B. *Federal System of Record.* Contractor acknowledges and agrees that certain USAC Information and 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 Contractor without the written consent of USAC. Contractor will work with USAC in good faith to promptly return all such USAC Information and Data to USAC.

- C. *No Withholding of USAC Information.* 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.
- D. *Destruction of Hard Copies.* If Contractor destroys hard copies of USAC Information, Contractor must do so by burning, pulping, shredding, macerating, or other means if authorized by USAC in writing.
- E. *Destruction of Electronic Copies.* If Contractor 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.
- F. *No Other Use.* 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, modified, decompiled, reverse engineered, or commercially exploited by or on behalf of Contractor, Contractor Personnel, or any third party.

18. INFORMATION SECURITY

- A. *Data Security Laws.* Contractor 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. Contractor 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 and the most current revision of NIST SP 800-61 Rev 2, and FIPS 140-3. Contractor 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"). For any Contractor Owned / Controlled IT cloud-based Service that accesses, stores, or otherwise processes USAC Information, USAC Confidential Information, Data, and/or PII, Contractor shall provide documentation and proof of FedRAMP Authorized Designation for use at a moderate risk before any such cloud-based Service may be used. USAC reserves the right to inspect the Authority to Operate notice certified by the Joint Accreditation Board for FedRAMP or the complete package of documents for those with agency accreditation.

- B. *Compliance.* Throughout the Contract Term, Contractor 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.
- C. *Compliance Plan.* In providing the Services, Contractor 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, which shall be no less rigorous than the most protective of: (a) the requirements of applicable law; (b) the specific standards set forth in this Section 18. 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 this Terms. In the event a direct interconnection is to be established between Contractor Owned / Controlled IT and USAC IT Systems, the Data Security Liaisons shall execute an interconnection security agreement prior to the establishment of such direct interconnection. Contractor will periodically update and test the Privacy Compliance Plan every calendar quarter.
- D. *Integration.* Prior to delivering the Services/Deliverables or enabling data-sharing or interoperability of any kind with USAC's IT System, Contractor 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 or Deliverables, their establishment shall be at Contractor'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 these USAC Terms and Conditions. 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 Contractor.
- E. *Policies and Procedures.* Throughout the Contract Term, Contractor shall establish and maintain appropriate internal policies and procedures regarding: (i) the security of the Services, Deliverables, and Contractor's IT System; and (ii) the permitted use, disclosure, access to, and security of PII, Data, USAC Information, USAC Confidential Information, and USAC IT Systems. Contractor 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. Contractor agrees to maintain strict control of Contractor's IT System and the access information (e.g. name, username, password, access rights) of all Contractor Personnel to immediately remove access for persons no longer authorized, and

to inform USAC immediately if Contractor suspects, or reasonably should expect, there is unauthorized access to USAC's information or IT System. Contractor shall require Contractor Personnel to use Multifactor Authentication. Contractor agrees to require all who access to USAC IT Systems through Contractor to maintain the confidential nature of the USAC Confidential Information, and to not use or access USAC IT Systems except for the benefit of USAC.

- F. *Access to PII, Data, USAC Information, USAC Confidential Information and USAC IT Systems.* Contractor agrees that access to the PII, Data, USAC Information, USAC Confidential Information, and USAC's IT Systems is at USAC's sole discretion, and that Contractor'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 Contractor and Contractor Personnel, including any data-sharing or interoperability between USAC and Contractor, shall be for the sole purpose of providing the Services or Deliverables. Contractor 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 Contractor nor Contractor 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 USAC Confidential Information, as defined by these USAC Terms and Conditions. Contractor will not use USAC's IT System except as expressly authorized by USAC. USAC may require that Contractor Personnel use a USAC.org email address when providing Services. Contractor agrees that its use of, and access to, USAC's IT System is completely at its own risk.
- G. *Subcontractors.* Contractor agrees to ensure that any subcontractor that accesses, receives, maintains, or transmits PII, Data, USAC Information, USAC Confidential Information, or USAC's IT System agrees to the same restrictions and conditions that apply throughout these USAC Terms and Conditions to Contractor.
- H. *Encryption.* Contractor agrees that 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 17.
- I. *Services Performed in the 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 Contractor Personnel; and (b) storage and/or processing of data and/or other virtual services (such as cloud storage, remote data processing, etc.).

J. *Additional Requirements for Services in Contractor Owned / Controlled IT:*

- If Contractor becomes aware that the Services in Contractor Owned /Controlled IT will lose or has lost its respective FedRAMP Authorized Designation, Contractor shall notify USAC within twenty four (24) hours, shall discontinue use of such Services, and initiate activities to replace the Services that has lost FedRAMP Authorized Designation. Contractor and USAC shall work together to identify a replacement solution. A replacement solution must be identified, and approved in writing by USAC within ten (10) business days of the initial FedRAMP Authorized Designation changes notification.
- Contractor shall implement and use Cloud Protocols in connection with the Services operated in cloud infrastructure environments provided and controlled by any third-party. USAC's receipt of the Services, and Contractor's and USAC's use of the Services shall be in accordance with such Cloud Protocols.
- Contractor shall maintain Contractor Owned/Controlled IT used by Contractor in performance of the Services. USAC may require Contractor to respond to the information security questionnaires regarding Contractor's information security policies and practices. USAC will conduct its information security review, if required, with reference to the responses Contractor provides to such information security questionnaires. At USAC's request, Contractor shall also respond promptly (within not more than 10 business days) to any new or supplemental information security questions the USAC may require of Contractor during performance. USAC may terminate the Contract upon notice if Contractor fails to provide a timely response to requests for new or supplemental information security information or if USAC determines that Contractor's information security policies or practices increase risk to USAC in a manner unacceptable to USAC.
- Contractor shall maintain administrative, technical, physical, and procedural information security controls compliant with ISO 27001 standards for all Contractor Owned/Controlled IT used by Contractor in performance of the Services. Contractor shall maintain ISO 27001 Compliance certification and notify USAC of any changes to its compliance. Contractor shall provide USAC with its ISO 27001 Compliance certification within ten (10) days of the Effective Date of the Contract.

19. SECURITY INCIDENTS AND DATA BREACHES

- A. *Identification and Notification.* Contractor shall identify Security Incidents or Data Breaches and notify USAC at incident@USAC.org and Privacy@USAC.org of any actual or suspected Security Incident or Data Breach within one (1) hour of becoming aware of an actual or suspected Security Incident or Data Breach.

- B. *Notice.* Contractor's notice to USAC shall include the following: (i) a description of the Security Incident or Data Breach, including the date of the Security Incident or Data Breach, including the date of discovery by Contractor, if known; (ii) a description of the type(s) of Malicious Code, PII, Data, USAC Information, USAC 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 Contractor is doing to investigate the Security Incident or Data Breach and mitigate the harm to USAC; (v) any steps Contractor 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 Contractor'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 Contractor'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 Information USAC Confidential Information, or the USAC IT Systems. Contractor will regularly supplement its notice(s) with additional information as it becomes available.
- C. *Mitigation and Elimination Efforts.* Contractor, 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, Contractor will assist USAC in mitigating or restoring such losses or disclosures. Contractor 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. Contractor shall promptly respond to USAC's questions regarding the Security Incident or Data Breach and coordinate with Contractor 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 Contractor 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 Contractor or Contractor Personnel, then Contractor 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, USAC Information, USAC Confidential Information, Data, and USAC IT Systems breach mitigations, under this Section as a result of the Security Incident or Data Breach. Failure to strictly abide by these USAC Terms and Conditions shall be considered a material breach of the Contract for which USAC shall have the right to immediately terminate for cause.

- D. *Backups.* Contractor shall make reasonable backups of all USAC Information and shall ensure that the Services allow for the automatic backup of USAC Information in Contractor Owned / Controlled IT.
- E. *Security Audits.* USAC or its designee may, at USAC's expense and at any time, perform an audit of the security policies and procedures implemented by Contractor and in effect at for Contractor Owned / Controlled IT and the physical locations where such environments are housed or may be accessed.
- F. *Cooperation.* Contractor will cooperate with USAC in any litigation and investigation against third parties deemed necessary by USAC to protect USAC Information, Data, USAC Confidential Information, PII and USAC IT Systems. Each Party will bear the costs it incurs as a result of compliance with this Section.

20. MALICIOUS CODE AND MALICIOUS CYBER ACTIVITIES

USAC may provide Contractor access to one or more of the USAC IT Systems. Contractor 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 Contractor nor Contractor 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 Contractor or information publicly disclosed by USAC) will be considered as USAC Confidential Information. Contractor agrees that it will not use the USAC IT Systems except as expressly authorized by USAC in this Contract. Contractor agrees to maintain strict control of all usernames, passwords and access lists it is given to the USAC IT Systems for of Contractor Personnel as are necessary to perform under this 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. Contractor agrees to cause all who gain access to the USAC IT Systems through Contractor to maintain the confidential nature of all Confidential Information, and to not use the USAC IT Systems except for the benefit of USAC. Contractor 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 Contractor's violation of this Section.

Contractor 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. For any aspect of the Services in Contractor's IT Systems, Contractor will comply with NIST SP 800-83 Rev. 1 or the most current revision thereof to prevent Malicious Code. Contractor 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 Contractor becomes aware that any Malicious Code has been introduced into any USAC IT System, or that Contractor has engaged in Malicious Cyber Activities, Contractor will notify USAC immediately. In addition, Contractor 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 Contractor to assist in such restoration of efficiency or data. If Malicious Code is found to have been introduced into any USAC IT System or the Services, Contractor will perform all of its obligations under this Section at no cost to USAC, and Contractor will be liable to USAC for damages and costs incurred by USAC as a result of such Malicious Code. If Contractor or Contractor 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, Contractor 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 into USAC's IT System, and/or the engaging in Malicious Cyber Activity involving USAC IT Systems, shall be considered a Data Breach. If Contractor becomes aware that Malicious Code has been introduced into USAC IT Systems, or Contractor has engaged in Malicious Cyber Activity, Contractor will notify USAC immediately in writing within the time frame required by the United States Computer Emergency Readiness Team and FCC, which is currently within one (1) hour and otherwise act in a manner consistent with Section 19 of these USAC Terms and Conditions.

21. FISMA PROVISIONS

Contractor shall meet and comply with all USAC IT security policies and all applicable USAC and other laws and regulations for the protection and security of information systems and Data (including but not limited to FISMA, OMB, and NIST requirements). At its sole discretion, USAC may revise any USAC IT security policy at any time.

Safeguarding of Contractor IT Systems:

USAC's security strategy for Data includes the requirement to ensure the security of protection controls for Data regardless of the location or the party responsible for those controls. Contractor acknowledges that it serves a vital role in achieving this goal. Contractor shall apply the following minimum safeguarding requirements and procedures from NIST SP 800-171 Revision 2 "Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations" to protect covered Contractor IT Systems and USAC Data. Contractor shall, upon request, provide USAC with copies of its security policies and procedures to review. USAC may require a written response that may be an attestation of compliance, a submission of supporting document, or both. If USAC requests such a written response, Contractor shall submit an electronic copy of the document(s) confirming compliance within ten (10) calendar days. If there are any requirements that are out of scope or that cannot be complied with, Contractor shall fully explain those requirements with a business justification to USAC. Contractor must be in compliance with all such requirements unless USAC agrees in writing with Contractor that Contractor does not have to comply. If Contractor is not in compliance with all requirements and has not received written confirmation from USAC that Contractor may not comply with a requirement, USAC may terminate this Contract immediately upon written notice to Contractor.

Contractor shall:

- A. Limit Contractor IT Systems access to only authorized USAC employees and contractors, authorized Contractor Personnel and authorized processes.
- B. Limit Contractor IT Systems access to only the types of transactions and functions that USAC employees and contractors and authorized Contractor Personnel are permitted to execute.
- C. Verify and control/limit connections to and use of external Contractor IT Systems.
- D. Control information posted or processed on publicly accessible Contractor IT Systems.
- E. Sanitize or destroy Contractor IT Systems media containing USAC Information as described in Section 17.C. of these USAC Terms and Conditions.
- F. Limit physical access to Contractor IT Systems, equipment, and the respective operating environments to only USAC employees and contractors and authorized Contractor Personnel.
- G. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
- H. Monitor, control, and protect Contractor organizational communications (i.e., information transmitted or received by Contractor IT Systems) at the external boundaries and key internal boundaries of the Contractor IT Systems.
- I. Implement subnetworks for publicly accessible Contractor IT Systems components that are physically or logically separated from internal networks.
- J. Identify, report, and correct information and Contractor IT Systems flaws promptly.
- K. Provide protection from Malicious Code at appropriate locations within Contractor IT Systems.
- L. Update Malicious Code protection mechanisms when new releases are available.
- M. Perform periodic scans (no less frequently than daily) of Contractor's IT Systems and real-time scans of files from external sources as files are downloaded, opened, or executed.

22. TECHNOLOGY CONSIDERATIONS

Contractor shall ensure that COTS, SaaS, PaaS, or IaaS Software deployed in Contractor Owned / Controlled IT cloud or on USAC's Amazon Web Services GovCloud infrastructure satisfies the following requirements:

- A. 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.
- B. 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.
- C. 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.

Contractor shall ensure that any Software developed and/or deployed for USAC:

- A. 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.
- B. Reuses available USAC technology services (microservices, APIs) unless Contractor demonstrates in writing that those services are unable to meet the requirements and USAC agrees to the substitute solution in writing with Contractor.
- C. Uses the USAC technical stack unless Contractor demonstrates in writing that those components are unable to meet the requirements and USAC agrees in writing with Contractor. 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)

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

23. PROPRIETARY RIGHTS

Contractor agrees that all Data, Software, Deliverables, and all Derivative Works thereof are USAC property and shall be deemed USAC Information and are 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 Contractor Personnel 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 worldwide 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.

USAC may assign to the FCC any intellectual property rights USAC may have to any Data, Software, Deliverables, USAC Information and all Derivative Works thereof without notice to, or prior consent of, Contractor.

Nothing in this Contract shall be deemed to imply the grant of a license in or transfer of ownership or other rights in the Data, Software, Deliverables, USAC Information and all Derivative Works thereof, and Contractor acknowledges and agrees that it does not acquire any of the same, except to provide Services to USAC as expressly set forth in this Contract.

Contractor shall not, without the prior written permission of the USAC, incorporate any Data, Software, Deliverable, or any Derivative Work thereof delivered under the Contract not first produced in the performance of the Contract unless Contractor: (a) identifies the Data, Software, Deliverable, and any Derivative Work thereof; and (b) grants to USAC, or acquires on USAC's behalf, a perpetual, worldwide, royalty-free, non-exclusive, transferable license to use and modify such Data, Software, Deliverable, and any Derivative Work thereof in any way.

24. 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 Contractor Personnel, including any actions that violate law, are negligent, or that constitute a breach of the Visitor Form and/or the Contract.

Contractor Personnel requiring access to USAC IT Systems will be required to sign USAC's IT Security Rules of Behavior Form and complete mandatory IT Security and Privacy Awareness Online Training before being given access to USAC IT Systems. Contractor may be required to complete Role-Based Privacy Act Training, at Contractor's own cost, if accessing USAC information systems designated as federal systems of record.

Security Briefings. Before receiving access to IT resources under the Contract, Contractor personnel must provide security training to Contractor Personnel. USAC will review and approve Contractor's security training materials (including any security training materials in the event such training is provided to Contractor by any subcontractors, consultants, or agents) and verify that training certifications and records are provided, if requested during an annual FISMA audit. If Contractor Personnel will be in USAC offices or have access to USAC IT systems, background checks are required pursuant to NIST. Contractor shall conduct background checks on Contractor Personnel and provide evidence of the background checks to USAC upon request.

25. KEY PERSONNEL

USAC may specify which Contractor employees are Key Personnel under the Contract. Key Personnel assigned to the Contract must remain in their respective positions throughout the Contract Term. USAC may terminate all or a part of the Contract if 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:

- A. 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
- B. 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.

26. SHIPMENT/DELIVERY

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

27. 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 claims, risks and damages/injuries that may arise under the Contract, including, as appropriate, worker's compensation, employer's liability, commercial general liability, commercial crime coverage, automobile liability, professional liability, cyber liability (which may be included in some professional liability coverage), and excess / umbrella insurance. Upon USAC's request, Contractor shall name USAC as an additional insured to those insurance policies that allow it. Upon USAC's request, Contractor shall cause its insurers to waive their rights of subrogation against USAC. Contractor shall produce evidence of such insurance upon request by USAC. If

the insurance 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 this Contract. Contractor shall provide written notice thirty (30) days prior to USAC in the event of cancellation of or material change in the policy.

Contractor shall be liable to USAC for all damages incurred by USAC as a result of Contractor's failure to maintain the required coverages with respect to its subcontractors, or Contractor's failure to require its subcontractors to maintain the coverages required herein.

28. 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 organizational or personal 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 maintain written standards of conduct covering conflicts of interest and provide a copy to USAC upon USAC's request. Contractor shall promptly notify 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 promptly of any conflicts Contractor has with USAC vendors. Failure to provide adequate means to avoid, neutralize or remediate any conflict of interest may be the basis for termination of the Contract. By its execution hereof, 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 government employee in connection with the award. In order to maintain the absence of an actual or apparent conflict of interest as described herein, Contractor must not advocate any policy positions with respect to the USF programs or the USF during the term of the Contract. 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.

29. WAIVER

Any waiver of any provision of this Contract must be in writing and signed by the parties hereto. Any waiver by either party of a breach of any provision of this Contract by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.

30. 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. 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

31. CHOICE OF LAW / CONSENT TO JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of the District of Columbia 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 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 procurement specialist and USAC General Counsel for informal resolution prior to initiating any action in the Courts and must work with USAC in good faith to resolve any disputed issues. If any disputed issue by Contractor is not resolved after thirty (30) calendar days of good faith attempts to resolve it, Contractor may instigate legal proceedings. 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.

32. 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 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 the Procurement Regulations. Contractor 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 Contractor's performance of its obligations under this 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.

33. 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 Code, licenses to rights to "intellectual property" as defined in the Code. The parties agree that USAC, as licensee of such rights under 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 Data, Software, Deliverable, or any Derivative Work thereof.

34. NON EXCLUSIVITY

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

35. INDEPENDENT CONTRACTOR

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor Personnel 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 Personnel. 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.

36. TEMPORARY EXTENSION OF SERVICES

USAC may require continued performance of any Services within the limits and at the rates specified in the Contract. Except as may be set forth in the Contract, USAC may extend the Services more than once, but the total extension of performance hereunder shall not exceed six (6) months. USAC may exercise an option to extend by written notice to Contractor within ten (10) days prior to expiration of the then current Initial Term or Optional Renewal Term.

37. 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:

Chief Administrative Officer, Universal Service Administrative Company
700 12th Street, NW, Suite 900

Washington, DC 20005

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

With a copy to:

General Counsel, Universal Service Administrative Company

700 12th Street, NW, Suite 900

Washington, DC 20005

Email: OGCContracts@usac.org

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

38. 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.

39. FORCE MAJEURE

Neither party to this Contract is liable for any delays or failures in its performance hereunder resulting from circumstances or causes beyond its reasonable control, including, without limitation, force majeure acts of God (but excluding weather conditions regardless of severity), fires, accidents, epidemics, pandemics, riots, strikes, acts or threatened acts of terrorism, war or other violence, or any law, order or requirement of any governmental agency or authority (but excluding orders or requirements pertaining to tax liability). Upon the occurrence of a force majeure event, the non-performing party shall provide immediate notice to the other party and will be excused from any further performance of its obligations effected by the force majeure event for so long as the event continues and such party continues to use commercially reasonable efforts to resume performance as soon as reasonably practicable, and takes reasonable steps to mitigate the impact on the other party. If such non-performance continues for more than ten (10) days, then the other party may terminate this Contract with at least one (1) day prior written notice to the other party. In the event that the force majeure event is a law, order, or requirement made by a government agency or authority related to USAC and the purposes of this Contract, USAC may immediately terminate this Contract without penalty upon written notification to Contractor.

40. 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.

41. SECTION 508 STANDARDS

Compliance with Section 508. Contractor 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.

TDD/TTY Users. Contractor shall ensure that TDD/TTY users are offered similar levels of service that are received by telephone users supported by the Contract. Contractor shall also ensure that the Services provided under the Contract comply with the applicable requirements of 18 U.S.C. § 2511 and any applicable state wiretapping laws.

42. NATIONAL SECURITY SUPPLY CHAIN REQUIREMENTS

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

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.
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 to the communications supply chain.
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.
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 this Contract.

B. *Prohibition.* Contractor will ensure that no funds from USAC or other federal subsidies under this Contract will be used to purchase, obtain, maintain, or otherwise support any equipment or services produced or provided by a Covered Company. Contractor must also ensure that no funds administered by USAC or the FCC under this 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. 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 and what equipment and services the FCC defines as Covered Equipment or Services and places on the Covered List. Contractor 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 Contractor or any subcontractor it engages under the Contract. Contractor 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 Contractor or any subcontractor it engages under the Contract. If Contractor finds that they have violated any or all of these prohibitions, then, Contractor shall immediately notify USAC. In Contractor's notification to USAC, Contractor shall provide the same information required for non-compliance in Section 42.D of these USAC Terms and Conditions. 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 upon execution of this Contract and 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 42.B. of these USAC Terms and Conditions, 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 or Covered Equipment or Services on the Covered List. If Contractor, or any applicable subcontractor, is not in compliance with Section 42.B. of these USAC Terms and Conditions, Contractor 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.

Contractor shall retain audit ready supporting evidence for all certifications.

43. ADDED SERVICES

USAC may at any time submit a request that Contractor perform any Added Services. Before Contractor performs an Added Services, USAC and Contractor must execute an amendment to this Contract that, at a minimum, will provide: (a) a detailed description of the services, functions and responsibilities of the Added Service; (b) a schedule for commencement and completion of the Added Services; (c) a detailed breakdown of Contractor's fees for the Added Services; (d) a description of any new staffing and equipment to be provided by Contractor to perform the Added Services; and (e) such other information as may be requested by USAC.

44. ADEQUATE COVID-19 SAFETY PROTOCOLS

To provide adequate COVID-19 safeguards for USAC employees, Contractor shall ensure that Contractor Personnel that enter USAC premises comply with all guidance for Contractor 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.