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1 Terms and Conditions for the Use of FirstNet Network Capacity

1.1 Background

A. The Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, Title VI, 126 Stat. 256 (codified at 47 U.S.C. § 1401 *et seq.*)) (the “Act”) authorizes the First Responder Network Authority (“FirstNet”) to ensure the establishment of a nationwide, interoperable public safety broadband network (“NPSBN”).

B. FirstNet is the licensee of station license WQQE234 in the 700 MHz Public Safety Broadband Nationwide License Radio Service issued by the Federal Communications Commission (“FCC” or “Commission”) pursuant to the Act, the Communications Act of 1934 (as amended, the “Communications Act”), and the FCC’s Rules.

C. The Act permits FirstNet to enter into a public-private arrangement to construct, manage, and operate the NPSBN, the consideration for which includes, in part, permitting access to Network Capacity (defined below), which arrangement is referred to under Section 6208 of the Act as a covered leasing agreement.

D. These Terms and Conditions for the Use of FirstNet Capacity (“Capacity Terms & Conditions”) are incorporated into and supplement the terms of the contract and set forth certain terms and conditions regarding the use of the Network Capacity by the Contractor.

1.2 Terms and Conditions

The Contractor shall comply with the following:

1. Defined Terms. For the purposes of these Capacity Terms & Conditions, capitalized terms not otherwise defined herein shall have the following meanings:
 - 1.1. “Contract” means the written agreement resulting from a public-private arrangement between FirstNet and the Contractor to construct, manage, and operate the NPSBN, including these Capacity Terms & Conditions, which relate to Contractor access to the Network Capacity.
 - 1.2. “Network Capacity” means the entire capacity of the core network and the Radio Access Network (“RAN”) that has been constructed either by FirstNet alone or by the Contractor and is operated, maintained, managed and improved by the Contractor under the Contract, but does not include NPSBN RAN capacity from a state or territory that chooses to conduct its own deployment of a RAN in its state or territory pursuant to Section 1442(e)(2) of the Act.
 - 1.3. “Public Safety Entity” or “PSE” shall have the meaning ascribed to it in Section 1401(26) of the Act.

- 1.4. “Regulatory Requirement” means any law, rule, regulation, or ordinance, including but not limited to any applicable rule, regulation, order or decision issued by FirstNet, the FCC, a state Public Utility or Service Commission, a court of competent jurisdiction or other governmental entity.
 - 1.5. “Trademark License” means the separate terms and conditions regarding the use of FirstNet’s trade names, trademarks, and service marks.
2. Use of Network Capacity.
- 2.1. *Public Safety Entity.* The Contractor shall utilize the Network Capacity on a primary basis to provide services to any PSE users. The branding and marketing of services to all PSE users shall be under FirstNet trade names, trademarks, and service marks pursuant to the Trademark License.
 - 2.2. *Non-Public Safety Services.* Subject to Section 2.1 (Public Safety Entity), the Contractor may utilize the Network Capacity on a secondary basis for the provision of non-public safety services in accordance with Section 1428(a)(2)(B) of the Act.
 - 2.3. *Not a Spectrum Lease.* The capacity use right granted under this Section 2 (Use of Network Capacity.) is not a spectrum lease and the Contractor is expressly prohibited from subleasing spectrum authorized to FirstNet under station license WQQE234. Notwithstanding the foregoing, nothing in these Capacity Terms & Conditions is intended to limit the Contractor’s ability to team or subcontract with third parties with respect to the build, operation, maintenance, management, and improvement of the NPSBN.
3. Operation of the NPSBN.
- 3.1. Except for those portions of the NPSBN RAN that a state or territory chooses to construct and operate under Section 1442(e)(2) of the Act, in addition to the rights and obligations under the Contract, the Contractor is directed by FirstNet to manage the NPSBN in accordance with the following:
 - (i) the Contractor agrees and acknowledges that FirstNet is the licensee of station license WQQE234 and that nothing under these Capacity Terms & Conditions or the Contract shall abrogate FirstNet’s control of: (A) the station license WQQE234; or (B) the ultimate responsibility of the operation of the NPSBN which is governed by the terms of the Contract;
 - (ii) the Contractor shall be responsible for such duties as FirstNet deems necessary in order to facilitate the operation of the NPSBN as further defined in the Contract and which will be reflected in the daily operation of the NPSBN;
 - (iii) the Contractor agrees and acknowledges that FirstNet shall have unfettered use of and access to all NPSBN facilities and equipment; and

(iv) the Contractor agrees and acknowledges that FirstNet shall make all policy decisions regarding the NPSBN and, subject to Section 4.1, FirstNet will be responsible for filing all FCC applications directly related to FirstNet and station license WQQE234.

3.2. It is expressly agreed and understood that nothing in these Capacity Terms & Conditions is intended to or will constitute a transfer of “control” of station license WQQE234 from FirstNet to Contractor or any other person.

4. Compliance with Regulatory Requirements.

4.1. The Contractor shall be solely responsible for, and accordingly be solely liable for, obtaining and maintaining in its own name and at its own expense, all licenses (except for station license WQQE234), permits, consents, authorizations or other rights required for the use of the Network Capacity, including with respect to the NPSBN and the provision of wireless services to any PSE user or secondary user, and for ensuring compliance with any and all Regulatory Requirements for itself and the operation of the Contractor-managed NPSBN. Contractor shall indemnify and hold FirstNet harmless against any failure to comply with this provision.

4.2. If any Regulatory Requirement has the effect of canceling, changing, or superseding any material term or provision of these Capacity Terms & Conditions, then these Capacity Terms & Conditions will be deemed modified in such a way as FirstNet and the Contractor mutually agree is consistent with the form, intent and purpose of these Capacity Terms & Conditions and is necessary to comply with the Regulatory Requirement.

5. Use of Funds Provided By FirstNet. No funds made available by FirstNet may be used to make payments under a contract to a person or entity who has been, for reasons of national security, barred by any agency of the Federal Government from bidding on a contract, participating in an auction, or receiving a grant or otherwise in violation of Section 1404 of the Act.

6. Transition of PSE Customers. Within twelve months of the execution of the Contract, the Contractor shall prepare for FirstNet’s approval a plan for the transition of all of the PSE users, without termination related costs or charges of any kind to such user, to FirstNet or FirstNet’s designee upon any termination of the Contract. The plan shall include transition services, which at a minimum will provide a process by which the Contractor will fully transfer the PSE to FirstNet or FirstNet’s designee and the ability, at FirstNet’s request, for the PSE to continue to receive services from the Contractor after termination but during a transition period. The plan, which shall be reviewed and updated from time to time by the Contractor for FirstNet’s approval, shall be an attachment to these Capacity Terms & Conditions and shall be part of, and subject to, the Contract.

7. No Solicitation. Contractor shall not solicit or attempt to solicit, either directly or indirectly, PSE users that purchased or subscribed to public safety related services over the NPSBN for twenty-four months after the termination of the Contract.

8. Assignment. Contractor shall not assign or otherwise transfer these Capacity Terms & Conditions or any rights or obligations hereunder, by operation of law or otherwise, without the prior written consent of FirstNet, and any attempt to do so will be null and void.
9. No Joint Venture. These Capacity Terms & Conditions are not intended to create nor shall it be construed to create any partnership, joint venture, employment or agency relationship between FirstNet and Contractor, and no party shall be liable for the payment or performance of any debts, obligations, or liabilities of the other party, unless expressly assumed in writing herein or otherwise. FirstNet and Contractor each retain full control over the employment, direction, compensation and discharge of their employees, and will be solely responsible for all compensation of such employees, including social security, withholding and worker's compensation responsibilities.
10. No Third-Party Beneficiaries. These Capacity Terms & Conditions are entered into solely among, and may be enforced only by, FirstNet and the Contractor and shall not be deemed to create any rights in any third parties, including suppliers and customers of FirstNet or the Contractor, or to create any obligations of FirstNet or the Contractor to any such third parties.
11. Severability; No Waiver. If any term, covenant or condition in these Capacity Terms & Conditions are, to any extent, invalid or unenforceable in any respect under the Regulatory Requirements governing these Capacity Terms & Conditions, the remainder of these Capacity Terms & Conditions shall not be affected by such invalidity or unenforceability, and each term, covenant or condition of these Capacity Terms & Conditions shall remain valid and enforceable to the fullest extent permitted by law. The failure of either FirstNet or the Contractor to enforce any of the provisions of these Capacity Terms & Conditions, or the waiver of any of the provisions of these Capacity Terms & Conditions in any instance, shall not be construed as a general waiver or relinquishment on its part of that provision. No waiver or modification of any provision of these Capacity Terms & Conditions shall be implied. In order to be effective, a waiver or modification of a provision of these Capacity Terms & Conditions shall be in writing and must be signed by the party against which it is to be enforced.
12. Survival. The expiration or termination of the Contract will not affect the rights or obligations: (i) with respect to Section 6 (Transition of Public Safety Entity Customers) and Section 7 (No Solicitation) of these Capacity Terms & Conditions; or (ii) pursuant to any other provisions of these Capacity Terms & Conditions that, by their sense and context, are intended to survive the expiration or termination of these Capacity Terms & Conditions.
13. Incorporation by Reference; Priority. These Capacity Terms & Conditions are part of and are hereby incorporated into the Contract, which such Contract is permitted and was entered into under the Act and defines the Contractor's rights and obligations regarding the public-private arrangement to build, operate, maintain, manage, and improve the NPSBN. The Contract contains additional terms and conditions to which the Contractor is subject, including with respect to the use of the Network Capacity. Unless expressly provided otherwise in the Contract, in the event of conflict between the Contract and these Capacity Terms & Conditions, the order of priority shall be: (i) these Capacity Terms & Conditions but only with respect to matters specifically addressed herein; and (ii) the Contract.

Attachment to the Terms and Conditions for the Use of FirstNet Network Capacity

Transition Plan

[To Be Prepared By the Contractor and Approved by FirstNet]