

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, &amp; 30</b>				1. REQUISITION NO.	PAGE 1 OF <b>81 pages</b>	
2. CONTRACT NO. <b>USAC-IAD-2010-03-12</b>	3. AWARD/EFFECTIVE DATE	4. ORDER NO.	5. SOLICITATION NUMBER <b>USAC-IAD-2010-03-12</b>	6. SOLICITATION ISSUE DATE <b>03-12-2010</b>		
7. FOR SOLICITATION INFORMATION CALL: a. NAME <b>Jay Beard, Senior Manager Purchasing</b>			b. TELEPHONE NO. (No Collect Calls) <b>202-776-0200</b>	8. OFFER DUE DATE/LOCAL TIME <b>04-12-2010 @ 5:00PM</b>		
9. ISSUED BY <b>Universal Service Administrative Company 2000 L Street, NW, Suite 200 Washington, DC 20036</b>		CODE	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> UNRESTRICTED OR NAICS: SIZE STANDARD:			
			<input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A)			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS	13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING		
15. DELIVER TO <b>Universal Service Administrative Company 2000 L Street, NW, Suite 200 Washington, DC 20036</b>		CODE	14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP			
16. ADMINISTERED BY <b>Universal Service Administrative Company 2000 L Street, NW, Suite 200 Washington, DC 20036</b>		CODE				
17a. CONTRACTOR/OFFEROR CODE		FACILITY CODE	18a. PAYMENT WILL BE MADE BY <b>Universal Service Administrative Company 2000 L Street, NW, Suite 200 Washington, DC 20036</b>			
TELEPHONE NO.		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM				
<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER						
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES		21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	All materials and labor required to complete the work outlined in the Request for Proposals to Universal Service Fund IPIA Assessment Services, USAC-IAD-2010-03-12. Work must be in compliance with the terms and conditions set forth therein.					
(Use Reverse and/or Attach Additional Sheets as Necessary)						
25. ACCOUNTING AND APPROPRIATION DATA				26. TOTAL AWARD AMOUNT (For USAC Use Only)		
<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 AS MODIFIED IN ADDENDA		<input type="checkbox"/> ARE		<input type="checkbox"/> ARE NOT ATTACHED.		
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5		<input type="checkbox"/> ARE		<input type="checkbox"/> ARE NOT ATTACHED.		
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN _____ 1 _____ COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED			<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS.			
30a. SIGNATURE OF OFFEROR/CONTRACTOR		31a. UNIVERSAL SERVICE ADMINISTRATIVE COMPANY				
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT)	30c. DATE SIGNED	31b. NAME OF PURCHASING OFFICIAL (TYPE OR PRINT)		31c. DATE SIGNED		

**Request for Proposal for  
Universal Service Fund IPIA  
Assessment Services**

**USAC-IAD-2010-03-12**

Responses due no later than  
5:00 p.m. Eastern Time  
April 12, 2010

Universal Service Administrative Company  
2000 L Street N.W., Suite 200  
Washington, DC 20036  
Phone 202.776.0200 • Fax 202.776.0080  
<http://www.usac.org>

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## Section

## A

## A. INTRODUCTION AND BACKGROUND

The Universal Service Administrative Company (“USAC”) is requesting proposals to provide professional assessment services for the federal Universal Service Fund (“USF”) Support Mechanisms (also referred to as “Programs”): Rural Health Care (“RHC”) to include its Pilot Program, Schools and Libraries (“SL”), High Cost (“HC”), and Low Income (“LI”), to monitor compliance with the requirements of the federal government’s Improper Payments Information Act (“IPIA”)<sup>1</sup>. The IPIA requires federal agencies to review programs and activities they administer and identify those that may be susceptible to significant erroneous payments.<sup>2</sup> The IPIA focuses on disbursements of federal funds made by a federal agency, contractor, or an organization administering a federal program or activity. The Federal Communications Commission (also referred to as “Commission” or “FCC”) has determined that the IPIA applies to the USF programs administered by USAC. The procedures are designed to assess rates of improper payments and are not intended to constitute (or replace) audits of compliance with Commission rules. Audits of compliance with Commission rules are not part of the work contemplated under this RFP. The contract awarded shall be a time and materials (“T&M”) agreement with a not-to-exceed (“NTE”) amount, for one base year and at the sole discretion of USAC two one-year renewal options. This Request for Proposals (“RFP”) describes the goods and services requested, and provides instructions on how to respond.

### A.1. Purpose of Procurement

USAC administers the support mechanisms pursuant to FCC regulations.<sup>3</sup> USAC disburses funds to eligible service providers on a monthly basis for the HC and LI programs and, as appropriate, invoices are submitted by service providers and approved for the RHC and SL programs. USAC disburses on average over \$590 million monthly to approximately 4,500 service providers. Certain aspects supporting program administration are outsourced to USAC contractors. USAC’s administrative expenses are paid by the USF.

FCC regulations provide that contributions to the USF shall be based on contributors’ end-user telecommunications revenues and a contribution factor determined quarterly by the Commission

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<sup>1</sup> See 31 U.S.C. § 3122; Public Law 107-300, Stat. 2350, November 26, 2002.

<sup>2</sup> The IPIA and Office of Management and Budget’s (OMB) implementing guidance (OMB Memoranda M-03-13 (May 21, 2003) and OMB Circular A-136 (revised) (August 23, 2005)) require agencies to annually review all programs and activities to identify those susceptible to significant improper payments. OMB defines significant improper payments as those in any particular program that exceed both 2.5% of program payments and \$10 million annually. For each program identified as susceptible, agencies are required to report the annual amount of estimated improper payments along with steps taken and actions planned to reduce such improper payments.

<sup>3</sup> See 47 C.F.R. Part 54.

based on information submitted by USAC.<sup>4</sup> To meet this requirement, USAC collects quarterly revenue data four times each year from approximately 2,900 contributors and, in April, annual revenue data for the previous year from approximately 6,000 contributors. As required by FCC regulations USAC collects, verifies, and summarizes the interstate and international industry revenue reported and includes the information in its quarterly filings with the FCC.

For more information about USAC and USAC's role in administering the USF, see <http://www.usac.org/about/usac/usac-role.aspx>.

General objectives of the IPIA assessment program are to support the effective and efficient implementation of the USF and to help ensure that entities receiving support are in compliance with program rules and regulations. The assessments are designed to: (1) assess rates of compliance of USF beneficiaries with applicable law; (2) deter waste, fraud, and abuse by beneficiaries of the universal service programs; (3) detect waste, fraud, and abuse by beneficiaries of the USF; and (4) identify areas for improvement in the compliance of beneficiaries with applicable law and in the administration of the USF.

This is not a procurement by a federal agency, a government corporation, a government controlled corporation or other establishment in the Executive Branch of the United States Government. The contract awarded as a result of this RFP will not be a subcontract under a federal prime contract to USAC.

USAC reserves the right to amend, revise or cancel this RFP at any time at the sole discretion of USAC and no legal or other obligations are assumed by USAC by virtue of the issuance of this RFP, including any commitment to procure the services sought therein. This RFP may include unintended errors or omissions, and the accuracy and completeness of this document is not guaranteed. In the future, regulatory authorities may issue rules, requirements, or policy directives that may increase, decrease, or otherwise affect the functions to be performed by the Contractor.

This RFP describes the work responsibilities and functions that the Contractor shall provide.

As this is a competitive procurement, and USAC may award a contract without negotiations, the Offeror's initial proposal should contain the Offeror's best terms from a price and technical standpoint.

## **A.2. Description of USAC**

USAC is a not-for-profit Delaware corporation. The FCC appointed USAC as the permanent administrator of the USF and the Universal Service Support Mechanisms – HC program, LI program, RHC program and SL program (collectively referred to as “programs” or “support mechanisms”) – as set forth in Title 47, Part 54, Section 701 of the Code of Federal Regulations. USAC also administers the RHC Pilot program.<sup>5</sup> Subject to Commission oversight, USAC

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<sup>4</sup> 47 C.F.R. §§ 54.706, 708, 709, 711.

<sup>5</sup> See *Rural Health Care Support Mechanism*, WC Docket No. 02-60, Order, 21 FCC Rcd 11111 (2006).



performs the billing, collection, and disbursement functions associated with the USF and the programs.

USAC is a wholly-owned subsidiary of the National Exchange Carrier Association (“NECA”). However, NECA has no management or operational control over USAC. The Chairman of the FCC is responsible for selecting all members of the USAC Board of Directors and approving the selection of USAC’s Chief Executive Officer. USAC is not a “Government corporation” as that term is defined in 31 U.S.C.A. §§ 9101-02. Additional information concerning USAC and its administration of the USF and programs can be obtained from USAC’s website ([www.usac.org](http://www.usac.org)) and from USAC’s annual reports (<http://www.usac.org/about/governance/annual-reports/>).

Section <b>B</b>
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## B. SUPPLIES OR SERVICES AND PRICES/COSTS

### B.1. Scope of Procurement

USAC and the FCC have designed an assessment program to estimate rates of improper payments associated with each of the four USF support mechanism. The assessment program reflects the following objectives:

- Separately assess payments under all four USF programs.
- Ensure the accuracy of USAC payments to program applicants.
- Evaluate the eligibility of program applicants who have received payments.
- Include high-level testing of information obtained from program participants.
- Meet IPPIA requirements for sample size and precision.

Contractor will be responsible for performing these objectives in accordance with the statement of work set forth in Section C, below.

### B.2. Statement of Key Priorities

USAC will award a Contract resulting from this solicitation to the responsible Contractor whose offer conforming to the solicitation will be most advantageous to USAC, with price and other factors considered. Contractor should plan on starting work within two weeks of contract signing.

### B.3. Pricing

USAC shall pay Contractor for the goods and services subject to the terms stated in the Contract. Proposed pricing must be sufficient to achieve the objectives and deliverables set forth in **Section C**. Offerors shall provide a pricing proposal for the services requested in this RFP as Volume III of their response. Pricing must be valid and offered for acceptance by USAC for a period of 180 days from the date the Offeror's proposal is submitted.

When developing a pricing proposal, Offerors must use the Labor Category Descriptions set forth in **Appendix A** of this RFP.

Labor rates provided must be on a fully burdened basis.

Using the table of labor categories identified below, Offerors shall identify labor rates by labor category in **Appendix A**, anticipated to be used in the performance of described work for all applicable years. The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. (For clarity, Offerors must provide such rates in the form of the table.) Offerors must provide the hourly rates

for staffing for the base Contract Year and each of the two option years. Labor rates will remain fixed for the term of the contract as set forth in **Appendix A**.

USAC and the Contractor shall establish an annual ceiling or not-to-exceed (“NTE”) amount in the contract using the following methodology.

Labor Category	Labor Rate for Base Year (Col A)	Annual Hours per Employees (Col B)	Number of Employees (Col C)	Total Estimated Cost (Cols A x B x C)
Project Lead		2000	1	
Senior Analyst		2000	2	
Junior Analyst		2000	4	
Project Administration		2000	2	
			Total Estimated Ceiling or NTE	

## C. DESCRIPTION/SPECIFICATIONS/STATEMENT OF WORK

General objectives of the IPIA compliance program are to support the effective and efficient implementation of the USF program by supporting FCC efforts to comply with the requirements of Improper Payments Information Act (IPIA).<sup>6</sup> The IPIA requires federal agencies to review programs and activities they administer and identify those that may be susceptible to significant erroneous payments.<sup>7</sup> The IPIA focuses on disbursements of federal funds made by a federal agency, contractor, or an organization administering a federal program or activity. The FCC has determined that the IPIA applies to the USF Support Mechanisms administered by USAC.

USAC and the FCC have designed an assessment program to estimate rates of improper payments associated with each USF support mechanism. The assessment program reflects the following objectives:

- Separately assess IPIA compliance of the four USF programs.
- Ensure the accuracy of USAC payments to program applicants.
- Evaluate the eligibility of program applicants who have received payments.
- Include high-level testing of information obtained from program participants.
- Meet IPIA requirements for sample size and precision.

The following table summarizes the estimated scope for the USF IPIA program:

<b>USF Program</b>	<b># Annual Reviews (estimate)</b>
High Cost	240 (20/month)
Schools and Libraries	720 (60/month)
Low Income	600 (50/month)
Rural Health Care	600 (50/month)
<b>Total</b>	<b>2,160 (180 month)</b>

The foregoing number of annual reviews is an estimate only. The actual number of monthly and total reviews may be higher or lower than identified. The total number of annual reviews for each USF Program will be performed on a rolling basis. For example, for disbursements made in

<sup>6</sup> See 31 U.S.C. § 3122; Public Law 107-300, Stat. 2350, November 26, 2002.

<sup>7</sup> The IPIA and Office of Management and Budget's (OMB) implementing guidance (OMB Memoranda M-03-13 (May 21, 2003) and OMB Circular A-136 (revised) (August 23, 2005)) require agencies to annually review all programs and activities to identify those susceptible to significant improper payments. OMB defines significant improper payments as those in any particular program that exceed both 2.5% of program payments and \$10 million annually. For each program identified as susceptible, agencies are required to report the annual amount of estimated improper payments along with steps taken and actions planned to reduce such improper payments.

month 1, sample selections will be made and information requested from beneficiaries during month 2. In month 3, information will be received and IPIA assessments will be performed. Reporting for month 1 disbursements will occur in month 4. Results for an entire 12 month period – which will be the basis for the annual IPIA assessment – will be delivered within 4 months after the period ends.

This process is illustrated in the following table:

	<b>Subsample A</b>	<b>Subsample B</b>	<b>Subsample C</b>
Month 1	Disbursement		
Month 2	Selection, Notification, and Information Request	Disbursement	
Month 3	Receipt of Information and Analysis	Selection, Notification, and Information Request	Disbursement
Month 4	Reporting	Receipt of Information and Analysis	Selection, Notification, and Information Request
Month 5		Reporting	Receipt of Information and Analysis
Month 6			Reporting

The procedures are designed to assess rates of improper payments and are not intended to constitute (or replace) audits of compliance with Commission rules. Audits of compliance with Commission rules are not part of the work contemplated under this RFP.<sup>8</sup> The assessment procedures contemplated under this RFP will be performed on information that can be gathered pursuant to a one-time request to beneficiaries. Each assessment will involve analyzing the requested information and will take approximately three to ten hours to complete. The assessment procedures do not depend on significant interaction with beneficiaries beyond what is necessary to obtain the requested information. The procedures will be executed without site visits to the beneficiaries or extensive dialogue with beneficiaries concerning information provided.

Performing the assessment procedures contemplated under this RFP will not require specialized training or licensure in accounting or auditing. Experience performing general analytic tasks in a business, financial, or accounting environment will be considered sufficient. USAC will provide specialized training at USAC’s headquarters as needed to support the objectives of each task assigned. The Contractor’s ability to provide a consistent, quality work product will be essential to accomplishing the mission of the assessment program.

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<sup>8</sup> USAC intends to post a separate RFP for compliance audit work related to the four USF programs as well as contributors to the USF.

USAC currently anticipates the following resource mix will be sufficient for the level of effort contemplated in this engagement and should be used as the basis for the proposal:

- 1 Project Lead
- 6 Analysts (2 senior, 4 junior) responsible for executing the IPIA assessments themselves.
- 2 Project Administration Support staff

Depending on the level of effort necessary to support the assessment program as determined by USAC in its sole discretion, Contractor may be required to increase or decrease the number or level of personnel assigned to the contract. USAC will provide written notice to Contractor regarding changes to the level of effort. Contractor shall promptly adjust the personnel assigned to this Contract upon receipt of such notice.

Contractor will perform the assessment activities using case management-type software provided by USAC. This software will provide the Contractor and USAC the ability to track assessments at the individual, USF Program, and total assessment program levels. USAC will provide or facilitate training on this software. Contractor shall be responsible for effective use of this software to manage the information gathering and both ongoing and periodic reporting responsibilities as specified by USAC.

USAC will provide specialized training on each of the support mechanisms. All contractor team members associated with the contract are required to attend the training.

The USAC Vice President of Internal Audit, or his designee, will provide general oversight of the assessment procedures and process, to include providing quality control guidance. Oversight shall include periodic meetings to review assessment results and progress, as well as to ensure Contractor is meeting schedule goals and is staying within the agreed to budget. Failure of Contractor to meet quality standards, schedule or budget goals may result in remedial actions as directed by USAC, up to and including termination for default by Contractor as described in Section H.11.

USAC will designate in writing a Project Manager, who will be a USAC employee or other person independent of the Contractor. The Project Manager will be responsible for specifying, modifying or canceling assessments, and determining whether assessments have been satisfactorily completed.

USAC will issue new assessments by program area on a monthly basis.

The Contractor, in each invoice under this contract, shall identify the number of hours worked per Contractor employee supporting each program area, and the amount of time spent on each program area. Hours worked under this contract supporting general, or non-assessment specific tasks (i.e. meetings or training) shall be identified as such. See **Section G** for specific invoicing requirements and **Appendix B** for an example of the required "Contractor Weekly Status and Timesheet".

If the Contractor becomes aware that it will not be able to complete an assessment successfully, then the Contractor shall promptly notify USAC, and USAC may direct the contractor to stop work on that assignment, or modify the assignment, or take any other corrective action permitted under this contract.

All work contemplated under this engagement will be performed at USAC's offices in Washington, D.C. *USAC intends to award a single contract for the services described herein.*

Section

D

## D. PACKAGING AND MARKING

[Reserved]



Section  
**E**

E. INSPECTION, REPORTING AND QUALITY ASSURANCE

[Reserved]

Section

**F**

## F. DELIVERIES OR PERFORMANCE

Contractor shall perform primary duties of assignment at USAC headquarters, located at 2000 L Street, NW, Washington, DC 20036. USAC shall provide appropriate office space and appropriate access to computer network. During the performance of the engagement, the Contractor shall meet and/or communicate frequently with USAC personnel to discuss project status. Due to the nature and volume of the work, such meetings are expected to be held at the direction of USAC, and at least on a bi-weekly basis.

All Contractor personnel shall complete the USAC Visitor Form, located at **Appendix E** of this RFP, prior to being assigned a temporary USAC Visitor's Badge and being allowed on site to perform the duties of assignment.

Section  
**G**

## G. CONTRACT ADMINISTRATION DATA

### G.1. Payment Information

The Contractor shall submit proper invoices once per month to:

Universal Service Administrative Company  
Attn: Accounts Payable  
2000 L St. NW, Suite 200  
Washington, DC 20036

Electronic invoices shall be submitted to:  
[Finance-USACAccountsPayable@usac.org](mailto:Finance-USACAccountsPayable@usac.org).

To constitute a proper invoice, the invoice must include the following information and/or attached documentation:

- A. Name of the business concern, invoice number and invoice date.
- B. Purchase Order (“PO”) number, contract number or authorization for performance of services.
- C. Properly completed, machine readable (i.e. Microsoft Excel®) “Contractor Weekly Status and Timesheet” as provided in **Appendix B**.
- D. Name, title, phone number, and complete mailing address of responsible official to whom payment is to be sent.
- E. Name, title, phone number, and complete mailing address of responsible official to whom notification should be sent if the invoice is defective.
- F. Any other substantiating documentation or information as required by this Contract, or as reasonably requested by USAC, including, but not limited to the approved weekly timesheets.
- G. Accompanying documentation for each expense/other direct cost invoice as required in **Section I.1.G**.
- H. A statement signed by a responsible official of the concern stating the following:  
substantially similar if not identical to the following:  
I certify that the services and items identified and submitted for payment on this invoice have been delivered in accordance with the contract, and that all charges are true, correct and have not been previously billed or paid.

USAC will not pay invoices not properly submitted or not conforming to the requirements set forth above. In addition, USAC will not pay invoiced amounts associated with goods and services either not delivered or if delivered, not accepted by USAC.

USAC will pay properly submitted invoices within thirty (30) calendar days of receipt provided such invoice is proper and submitted in accordance with terms set forth herein.

Monthly invoices shall be based upon Contractor's weekly timesheets for personnel, which must be included with the appropriate invoice. Only actual hours worked shall be billed. Each weekly timesheet must include a description of services rendered, a weekly status report (including, but not limited to, achievements, challenges, problems, solutions, and alternative strategies arising during project development/implementation), and must reflect actual hours worked during the time period.

## **G.2. Term**

This is a one (1) year Agreement, with two (2) one-year renewal options (each option year may be exercised at USAC's sole discretion as discussed below). The initial Term of this Agreement shall commence on the Effective Date and shall end one year later unless terminated earlier in accordance with this Agreement.

USAC may, in its sole discretion, exercise not more than two one-year options to extend the Term of all or any part of the Services to be provided by the Contractor under this Agreement by giving written notice of its intent to exercise such option not less than 60 days before the end of the Term.

## **G.3. Compensation, Billing and Payment**

### **G.3.A. Price**

USAC shall pay Contractor for the Services set forth in this RFP and accepted by USAC.

Contractor shall invoice USAC for services rendered and expenses incurred pursuant to the Contract once every 30 days (but not more frequently). Except as provided below, USAC will make payment of properly billed amounts that are not the subject of a good faith dispute between the parties within 30 days of receipt from Contractor of an invoice. USAC may, in its discretion offset amounts owed to Contractor against amount owed by Contractor to USAC. Invoices are subject to review or audit by USAC for a period of four years from the date of receipt by USAC. Insufficiently documented fees or ODCs are subject to recovery by USAC.

Total payments under the Contract (excluding payments for allowable pre-approved expenses or ODCs) shall not exceed the agreed to NTE price. The Contractor is required to notify USAC in writing when their costs reach eighty percent (80%) of the NTE.

### **G.3.B. Labor Rates**

When applicable for change orders, USAC shall pay Contractor based on the Labor Rates listed in **Appendix A**. The Labor Rates under this Agreement shall be fully loaded and include all applicable federal, state and local taxes and duties.

**G.3.C. Taxes**

Prices charged to USAC as set forth in this Agreement include all applicable federal, state and local taxes and duties.

**G.3.D. Fines**

Any fines, penalties or other costs incurred by Contractor or its agents, employees or Subcontractors for noncompliance by Contractor, its agents, employees, or Subcontractors with the requirements of any laws, rules, regulations, licenses, permits, approvals or other governmental requirements shall not be reimbursed by USAC but shall be the sole responsibility of Contractor, except when incurred as a result of compliance with specific terms and conditions of this Agreement or written instructions from USAC.

**G.3.E. Offeror Payment Address**

Offeror shall include and identify the payment address in the proposal if it is different than that of the Offeror.

**G.3.F. Prompt payment**

USAC will make payment of undisputed invoices received in proper form, subject to any discounts, holdbacks or other reductions authorized by this Contract, within thirty (30) days.

## H. SPECIAL CONTRACT REQUIREMENTS

### H.1. Definitions.

Unless otherwise defined herein or in any appendix hereto, terms capitalized for other than grammatical purposes and used herein or in any appendix hereto shall have the meanings set forth below.

“Agreement” or “Contract” means the legally binding, written agreement between USAC and Contractor that shall consist of this Contract, the fully signed Solicitation/Contract/Order for Commercial Items cover sheet, any and all appendices to the RFP (in the case of attachments that request information from the Offeror, the completed attachment shall be included), questions and answers to the RFP, amendments to the RFP, Offeror’s proposal, and amendments, modifications and supplements that may be entered into by the Parties from time to time.

“Contract” shall have the same meaning as “Agreement,” defined above.

Contracting Officer is the designated USAC representative who shall be named after award of the Contract.

“Contractor” shall mean the Offeror that is selected for award and identified in block 17a of the fully signed Solicitation/Contract/Order for Commercial Items sheet that is the cover of this Agreement, as well as its Subcontractors, consultants and employees.

“Contractor Software” means computer software used by Contractor for which Contractor has acquired all ownership rights. Contractor Software does not include Third-Party Software or USAC Software.

“Contract Year” means each of the calendar years within the Term.

“Disabling Code” means Software code that is included in Software to permit the owner of the Software to disable the operations performed by the Software at the remote command of such owner, or at a predetermined time or upon predetermined circumstances.

“Electronic Format” means deliverables and data created, by means other than scanning, using an industry standard, commercially available software program. To the extent materials are not available to Contractor in a format that complies with the requirements of the preceding sentence (i.e., catalog cuts, materials received from third parties, etc.), scanning is acceptable.

“Equipment” means the computer equipment dedicated to USAC that is used by Contractor and/or its Subcontractor(s) to provide the Services described in the Statement of Work, and as may be modified during the Term, including: all servers, storage devices, security devices, backup or archival storage devices, and all of their related peripheral devices such as

monitors, input devices, disk drives, and network interface devices attached to servers.

“Force Majeure” means any cause beyond the reasonable control and without the fault of the Party invoking force majeure, including but not limited to Internet backbone failures and backbone degradation of service, strikes, power blackouts, acts of terrorism, riot, civil unrest, insurrections, unusually severe weather, acts of God or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, tornadoes, earthquakes, epidemics, quarantine restrictions or freight embargoes.

“Hourly Rate” means the rate(s) prescribed in the Contract for payment for labor that meets the labor category qualifications of a labor category specified in the Contract and that are –

- i. Performed by Contractor;
- ii. Performed by the Subcontractors; or
- iii. Transferred between divisions, subsidiaries, or affiliates of Contractor under a common control.
- iv. Fully burdened and include wages, indirect costs, overhead, general and administrative expense, and profit.

“Including” shall mean including without limitation. This term is as defined, whether or not capitalized in this Agreement.

“Malicious Code” means software code such as computer viruses, worms, trojan horses that is inserted into software used in providing the Services and that is deliberately designed to damage data, provide unauthorized access to USAC Information, or produce an unexpected and unwanted result or computer operation.

“Offeror” means the person or entity submitting a proposal in response to this RFP , to perform the work. Offeror shall be named in block 17a of the Solicitation/Contract/Order for Commercial Items sheet that is the cover of the RFP.

“Services” means the services, functions and responsibilities described in this Agreement as they may be supplemented, enhanced, modified or replaced.

“Software Materials” means the modifications to, or enhancements (derivative works) of, USAC Software that are first developed during performance of this Agreement by Contractor or its Subcontractors, or any new software that is developed to provide a Service or that is incorporated into a website or permitted to act upon USAC Information, and that has as its purpose the performance of the Services.

“Stakeholder” means any or all of the schools, libraries and rural health care provider applicants, and the service providers that deliver services to those entities.

“Subcontractor” means a person or entity that has entered into a formal or informal contract with Contractor to provide goods or Services in connection with the performance of this Agreement. “Subcontractor” includes Subcontractors and sub-Subcontractors at any tier.

“Termination Date” means the date the Services (except for Termination Assistance Services) are terminated in accordance with this Agreement or the date the term of the Agreement expires in accordance with **Section G.2**.

“Third-Party Software” means Software used to provide the Services that is provided under license or lease by a third party to Contractor or USAC. Third-Party Software includes any Subcontractor Software that is not USAC Software.

“USAC Confidential Information” has the meaning set forth in **Appendix C** of this Agreement.

“USAC Information” means all written, electronically, magnetically or optically stored, or printed material, including without limitation, reports, Stakeholder applications and submissions, all beneficiary payment related information, FCC forms, manuals, memoranda, electronic mail, images, specifications, drawings, databases (including all related documentation, but not including database management software) screen format and other visual effects, technical information, Stakeholder information, procedures for administering USF Programs, and business information (not including information relating only to Contractor’s or any Subcontractor’s business or operations) that is created, modified, reproduced or maintained by Contractor, Subcontractor or USAC employees in connection with the performance of the Services. “USAC Information” also includes USF Programs-specific information that is first developed by Contractor or any Subcontractor in the performance of the Services, program procedures, and program specific information that is provided to Contractor or Subcontractor by a Stakeholder in the course of performance of the Services or that is created or developed from such Stakeholder information. “USAC Information” does not include software or documentation relating to software or business process information or know-how that is used for purposes other than administering the programs, and which does not include data specific to the programs. "USAC Information" also does not include Contractor financial information. “USAC Information” is and includes “USAC Confidential Information.”

“USAC Software” means (1) computer software acquired by USAC from a third party and delivered by USAC to Contractor, (2) computer software first developed by Contractor or any Subcontractor in the performance of the Services for the purpose of performing the Services, (3) computer software that is developed by Contractor or a Subcontractor for which USAC is charged a fee, (4) computer software that is incorporated into a website or other property (including databases or electronic files) owned by USAC, or (5) computer software licensed by USAC at any time prior to or during the Term for the purpose of the provision of Services under this Agreement. USAC Software includes Software Materials.

“Work Made for Hire” has the meaning set forth in 17 U.S.C. § 101.

## **H.2. Responsible Offerors**

USAC will only award contracts to Offerors whom USAC determines to be responsible, are not under criminal indictment, and are able to fully perform under the contract. Before making a determination as to whether a potential Offeror is responsible, USAC will consider the following information: total funds received directly or indirectly from any USAC program; information about financial competence; credit needs; adequacy of a Offeror's accounting system; relevant experience of the Offeror; assurance of adequate Offeror controls; and the Offeror's policies and procedures concerning its administrative practices, including but not limited to information technology, physical and data security, purchasing, personnel, and its other business practices.



Additionally, USAC will consider the following: information about the Offeror's corporate ethics policies and whether the Offeror is under criminal indictment or has been suspended or debarred from award of state or federal contracts.

Offerors must also notify USAC in writing of any participation by the Offeror or any Subcontractor or key personnel associated with the Offeror in any of the federal Universal Service support programs administered by USAC. These programs are described in Section A. The purpose of such notification is to inform USAC of any actual or potential conflict of interest that may be created if the Offeror has access to USAC confidential documents or is awarded a contract. Offerors must request a written waiver from USAC of any conflict of interest that may apply, and if such a waiver is not granted, the Offeror will not be eligible for award of a contract. Offeror's may also be required to submit a proposed mitigation plan.

### **H.3. Record Retention**

The Contractor will retain all electronic records and paper records consistent with the record retention guidelines set forth in **Section I.2.B.** and provided by USAC.

### **H.4. Information Security**

The Contractor will establish and maintain safeguards to protect the confidentiality, integrity, and availability of USAC information in their possession according to industry best practices standards. This includes all data and e-mail that is sent to and from applicants, beneficiaries, service providers, USAC, and other stakeholders. The Contractor must ensure that their local area network, personal computers, and e-mail server(s) are secure. This can be achieved through a totally isolated network, DMZ, or subnet configuration.

### **H.5. Qualifications, Retention and Replacement of Contractor Personnel.**

- A. Contractor shall at all times assign an adequate number of personnel to perform the Services as approved by USAC. The personnel Contractor assigns to perform the Services must meet all requirements for their respective labor category and shall be fully trained and qualified for the Services they are to perform before they begin performing such Services, except as otherwise set forth herein.
- B. In the event USAC determines in good faith that the continued assignment of a Contractor or Subcontractor(s) employee to perform any part of the Services is not in the best interests of USAC, then USAC shall give Contractor written Notice to that effect. After receipt of such Notice, Contractor shall have ten days in which to investigate the matters stated in such Notice, discuss its findings with USAC and resolve any problems with such person. If, following such period, USAC requests replacement of such person, Contractor shall remove such person from performance of any part of the Services and shall replace that person with another person of suitable ability and qualifications. Notwithstanding the foregoing, in the event USAC determines there exists a potential for imminent harm to the Programs or to USAC, the Contractor or Subcontractor shall remove the employee immediately upon request by USAC. In the event that Contractor becomes aware that one of its employees, or an employee of its Subcontractor(s), may have intentionally violated programmatic review procedures and protocols in order to make an incorrect decision to the benefit of a Stakeholder, Contractor shall immediately

notify USAC's General Counsel or designee thereof. Contractor shall, at a minimum, include in that notification a description of the action, the manner in which Contractor became aware of the action, the steps Contractor has taken to remedy the action, and Contractor's analysis of whether there are adequate controls in place to avoid such a situation in the future.

- C. For the purposes of this contract, Key Staff are defined as each member of the assessment team or teams. USAC expects that the Key Staff identified in the Offeror's proposal will be assigned to the contract and will work on the contract for a minimum of the first base year of the term unless there are extenuating circumstances (e.g. health, leave the firm) or if USAC requires their replacement. Any changes to Key Staff must be submitted in writing to USAC for approval during the contract.
- D. As set forth in section C, Contractor may at any time be required to adjust the number of personnel assigned to the Contract depending on the level of effort needed for performance as determined by USAC in its sole discretion.

## **H.6. USAC Information**

- A. USAC Information is the exclusive property of USAC. 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 this Agreement), commingled with non-USAC Information, or commercially exploited by or on behalf of Contractor, its Subcontractors or their respective employees or agents. Promptly upon the expiration of the Term, or such earlier time as USAC may direct, Contractor shall, at the direction of USAC, and at no additional cost to USAC, return or destroy all copies of USAC Information in the possession or under the control of Contractor, its Subcontractors and their respective employees as directed by USAC. 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.
- B. USAC will have unrestricted access to, and the right to review and retain the entirety of all computer or other files containing USAC Information subject to reasonable security procedures. At no time will any of such files or other materials or information be stored or held in a form or manner not accessible to USAC. All USAC information shall be maintained separately from all Contractor internal information or other information that is not directly related to the performance of the Services. Contractor will provide to USAC all passwords, codes, comments, keys, documentation and the locations of any such files and other materials promptly upon the request of USAC, including Equipment and Software keys and such information as to format, encryption (if any) and any other specification or information necessary for USAC to retrieve, read, revise and/or maintain such files and information.

## H.7. Safeguarding USAC Information

- A. Contractor shall establish and maintain safeguards against the destruction, loss, misuse, misappropriation, disclosure or alteration of USAC Information in the possession of Contractor or its Subcontractors.
- B. Without limiting the generality of **Section H.7.A.** above:
  - i. Contractor personnel shall not attempt to access, or allow access to, any data, files or programs within the information systems environment to which they are not entitled under this Agreement. If such access is attained, Contractor shall immediately report such incident to USAC as soon as Contractor becomes aware of it, describe in detail any accessed materials and return to USAC any copied or removed materials.
  - ii. Contractor shall establish and maintain environmental, safety and facility procedures, data security procedures and other industry “best practices” safeguards against the destruction, loss, or unauthorized access, copying, removal or alteration of USAC Information in the possession of Contractor or its Subcontractors. Without limiting the foregoing, Contractor and any Subcontractors in possession of USAC Information shall employ access controls, access logging, and data storage, physical security and other measures as recommended by National Institute of Standards and Technology publication SP800-53, Recommended Security Controls for Federal Information Systems (Feb. 2005 or the latest subsequent revision thereof).
  - iii. USAC shall have the right to establish backup security for USAC Information and to keep backup copies of USAC Information in USAC’s possession at USAC’s expense if USAC so chooses. No removable storage media on which USAC Information is or has been stored may be used to store data of Contractor or any other Contractor customer.
  - iv. Contractor shall be responsible for developing and maintaining procedures for the reconstruction of lost USAC Information. Contractor shall recover USAC Information to the last available backup, at USAC’s request and sole discretion and at no charge to USAC unless such destruction or loss was caused by USAC. Upon reasonable request by USAC at any time, Contractor shall promptly retrieve, in the format and on the media generally used by USAC, any portion of USAC Information reasonably specified by USAC consistent with the Services.

## H.8. Confidentiality

### A. Confidential Information

Contractor and USAC each acknowledge that the other possesses and will continue to possess Confidential Information, as defined in **Appendix C**, that has been developed or received by it, has commercial value in its or its customers’ business and is not in the public domain. A disclosing Party’s Confidential Information shall not include information that the receiving Party can demonstrate (A) was, at the time of disclosure to it, in the public domain; (B) after disclosure to it, is published or otherwise becomes part of the public domain through no fault of the receiving Party; (C) was lawfully in Recipient’s possession, without an obligation of confidentiality, prior to receipt

hereunder, as evidenced by written records of Recipient; (D) was received independently by Recipient from a third party who was free to lawfully disclose such information to Recipient without restriction of confidentiality; or (E) was independently developed by the receiving Party without reference to Confidential Information of the furnishing Party.

Each Party's Confidential Information shall remain the property of such Party except as expressly provided otherwise by the other provisions of this Agreement. Neither Party shall (A) make any use or copies of the Confidential Information of the other Party except as contemplated by this Agreement, (B) acquire any right in or assert any lien against the Confidential Information of the other Party, (C) sell, assign, lease, or otherwise dispose of Confidential Information to third parties or commercially exploit such information, including through derivative works or (D) refuse for any reason (including a default or material breach hereunder by the other Party) to promptly provide the other Party's Confidential Information (including all copies thereof) to the other Party if requested to do so. Upon expiration or earlier termination of this Agreement and completion of each Party's obligations hereunder, each Party shall return or destroy, as the other Party may direct, all documentation in any medium that contains, refers to, or relates to the other Party's Confidential Information.

#### B. Non-Disclosure/Confidentiality Obligations

During the term of this Agreement and at all times thereafter, each Party shall maintain the confidentiality of all Confidential Information disclosed to it by the other Party. Each Party shall use at least the same degree of care to safeguard and to prevent disclosing to third parties the Confidential Information of the other as it employs to avoid unauthorized disclosure, publication, dissemination, destruction, loss, or alteration of its own information (or information of its customers) of a similar nature; provided, however, that the parties may disclose such Confidential Information to their employees and affiliates (as required in connection with this Agreement), auditors, legal counsel, accountants, consultants and Subcontractors where (i) use by such person or entity is authorized under this Agreement, (ii) such disclosure is necessary or otherwise naturally occurs in that person's or entity's scope of responsibility hereunder, (iii) the person or entity (and its applicable officers and employees) to which such Confidential Information will be disclosed has signed a Confidentiality Agreement as a pre-condition to disclosure of the Confidential Information, which includes, at a minimum, the Terms and Conditions set forth in the Confidentiality Agreement in **Appendix C** and (iv) the disclosing Party assumes full responsibility for the acts or omissions of the person or entity to which such Confidential Information was disclosed. Notwithstanding anything herein to the contrary, USAC may, if required, disclose Confidential Information to the FCC.

#### C. Contractor and Subcontractor Employee Confidentiality Agreement

Contractor shall require each employee and the employees of any Subcontractor who will receive access to USAC Confidential Information to sign a Confidentiality Agreement as a condition of employment with Contractor or the Subcontractor with respect to USAC Information. The agreement shall contain at a minimum, the terms and conditions set forth in **Appendix C** to this Agreement. The agreement shall not be less restrictive than the terms and conditions set forth in **Appendix C**. Contractor shall conduct annual training sessions to train its employees with respect to their obligations pursuant to the

Confidentiality Agreement. Contractor shall require its Subcontractors to conduct annual training sessions for their employees with respect to their confidentiality requirements. Upon the termination of any employee, Contractor shall remind the employee of their continuing confidentiality obligations and that they are prohibited from using their former position to exert influence on Contractor employees in connection with their provision of the Services. Contractor shall require its Subcontractors to remind employees of their continuing confidentiality obligations upon the Subcontractor's employee's termination of employment and that they are prohibited from using their former position to exert influence on Subcontractor employees in connection with their provision of the Services.

D. Contractor Enforcement of the Confidentiality Agreement

Contractor shall fully enforce the terms of the Confidentiality Agreement. Should Contractor become aware that an employee has violated the terms and conditions of the Confidentiality Agreement, Contractor shall inform the USAC General Counsel, or the USAC General Counsel's designee, when Contractor becomes aware of a potential violation of the Confidentiality Agreement and shall provide USAC with a complete report of the nature and extent of the violation, the identity and positions of the individuals participating in the violation, the steps taken to recover any improperly disclosed USAC Confidential Information, the extent to which such recovery was accomplished, and the steps being taken to prevent future occurrences of a similar nature. USAC agrees that the delivery of such a report shall not be deemed by USAC to be a waiver of any attorney-client or attorney work product privileges by Contractor with respect to the information disclosed in such report.

E. USAC Enforcement of the Confidentiality Agreement

USAC may, at its option, enforce the terms of the Confidentiality Agreement against a Contractor or Subcontractor employee as a third-party beneficiary of the Confidentiality Agreement.

F. Exclusions

The Receiving Party shall not be considered to have breached its obligations under this **Section H.8** for disclosing Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body, provided that, promptly upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party of the Confidential Information to be disclosed and the third party requiring such disclosure, in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.

G. Warranties

Each Party represents and warrants that it has the right to disclose all Confidential Information that it discloses to the other Party pursuant to this Agreement. Otherwise, neither Party makes any representation or warranty, express or implied, with respect to any Confidential Information.

## H.9. Proprietary Rights and Software

A. Ownership of and Limited License to Use USAC Information

All USAC Information becomes upon its creation and remains the exclusive property of USAC.

B. Ownership of and Limited License to Use USAC Software

All USAC Software shall be the exclusive property of USAC.

C. Exclusion of Contractor Software

Contractor represents and warrants that no Contractor Software shall be incorporated in any USAC Software, Software Materials or modernized system software, nor shall any Contractor Software be used to create or act on any USAC Information.

D. Third-Party Software Supplied by USAC

USAC grants to Contractor or, at Contractor's request, to one of its Subcontractors, to the extent authorized by the Third-Party Software license, the same rights of access and use during the Term of the Third-Party Software held by USAC, for the sole purpose of performing the Services.

E. Malicious Code

Contractor represents and warrants that it shall use best efforts to prevent the introduction and proliferation of any Malicious Code into Software used to provide the Services. In the event any Malicious Code is found in USAC's computer environment and such Malicious Code originated in the Equipment, Software, Services or other resources provided by Contractor or originated from any person for whom Contractor is responsible, Contractor shall at its own expense take all necessary efforts to: (a) promptly remove such Malicious Code and restore or recover lost or damaged USAC Information to the extent possible, caused by such Malicious Code using generally accepted data restoration techniques including the use of the most recent available backup unaffected by the Malicious Code and (b) eliminate, and reduce the effects of, the Malicious Code. USAC shall bear the cost and expense of performing the foregoing with respect to any Malicious Code that originates from USAC personnel or any software provided to Contractor by USAC.

F. Disabling Code

Contractor shall not, without the prior written consent of USAC, insert into any USAC Software, Software Materials, or permit to be invoked, any Disabling Code. With respect to any Disabling Code that may be part of the software, Contractor shall not invoke or cause to be invoked such Disabling Code at any time, including upon expiration or termination of this Agreement for any reason, without USAC's prior written consent.

G. Residual Knowledge

Nothing contained in this Agreement shall restrict either Party from the use of any ideas, concepts, know-how, or techniques relating to the Services which either Party, individually or jointly, develops or discloses under this Agreement, provided that in doing so such Party does not breach its obligations under **Section H.8** or infringe the intellectual property rights of the other Party or third parties who have licensed or provided materials to the other Party. However, except for the various license rights contained in this **Section H.9**, neither this Agreement nor any disclosure made hereunder grants any license to either Party under any patents or copyrights of the other Party.

**H.10. Insurance**

Contractor shall maintain, during the term hereof, any insurance and/or bonds required by law, but which shall be of the prescribed types and minimum amounts as set forth below.

- A. All insurance policies required shall be maintained in full force until all services under this Agreement are completed. Contractor shall provide thirty (30) days' prior written notice to USAC in the event of cancellation of or material change in the policy.
- B. Upon request, Contractor shall furnish USAC with insurance certificates evidencing that the required coverage is in force. USAC shall not be liable for the payment of any premiums.
- C. The insurance companies indicated in the certificates shall have an AM Best rating of A or better and a surplus rating of 7.
- D. Compliance with the insurance requirements set forth herein shall not release Contractor of full responsibility for all liability as set forth in the indemnification clause stated in **Section H.19 and Section H.23**.
- E. The minimum requirements of insurance to be carried by Contractor shall be as follows:
  - i. Workers' Compensation and Employer's Liability Insurance.
    - (A) Coverage A, Workers' Compensation - Statutory benefits as required by the Workers' Compensation Laws of all appropriate jurisdictions and reference to such compliance made on all certificates of insurance.
    - (B) Coverage B, Employer's Liability - One Million Dollars (\$1,000,000), or as otherwise required by law.
  - ii. Commercial General Liability Insurance.
    - (A) Commercial General Liability Insurance in an amount not less than Three Million Dollars (\$3,000,000) combined single limit, or the equivalent, as respects Bodily and Personal Injury and Property Damage in any one occurrence/Five Million Dollars (\$5,000,000) aggregate.
    - (B) Contractual Liability Insurance to include coverage for the liabilities assumed under **Section H.19** in an amount not less than Three Million Dollars (\$3,000,000). Acceptance of coverage in this amount by USAC does not release Contractor of full responsibility for all liability as set forth in the indemnification clause set forth in **Section H.19**.
  - iii. Professional Liability Insurance.
 

Professional Liability Insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate for claims arising out of Professional Services provisions under this Agreement. Upon termination of Contractor's Agreement, Contractor shall present evidence of an extended reporting period to provide coverage for claims for a period of three years from the date of termination.
- F. USAC shall be informed in writing within ten (10) days of any Contractor insurance cancellation during the term of this Agreement.

G. Contractor shall also maintain, to the extent it deems advisable, and at its own expense, any medical payments, life, disability, or other insurance necessary for its own protection. In no event will USAC be responsible for maintaining any of the foregoing insurance coverage.

### **H.11. Termination for Default of Contractor**

- A. USAC may, by written notice of default to Contractor, terminate this Agreement in whole or in part if Contractor fails, in any material respect, to:
- i. Deliver the supplies, perform the services or provide required assistance, information, or software within the times specified in this Agreement;
  - ii. Make progress, so as to endanger performance of this Agreement; or
  - iii. Perform any other provisions of this Agreement; or
  - iv. Comply with all representations, certifications and warranties.
- B. If USAC terminates this Agreement for default in whole or in part, it may acquire, under commercially reasonable terms and conditions, the terminated Services from another source, and Contractor will be liable to USAC for any reasonable excess costs for such Services. In the event of a partial termination, Contractor shall continue the work not terminated.
- C. Except for the defaults of Subcontractors at any tier (unless such defaults arise from a Force Majeure and without the fault or negligence of Subcontractor), Contractor shall not be liable for any excess costs if the failure to perform this Agreement arises from a Force Majeure and without the fault or negligence of Contractor.
- D. USAC's right to terminate this Agreement for default may be exercised if Contractor does not cure such failure within ten (10) calendar days (or more if authorized by USAC) after receipt of written Notice from USAC specifying the failure. The rights and remedies of USAC on termination for a default are in addition to any other rights and remedies provided by law or under this Agreement.

**H.12. [Reserved]**

**H.13. [Reserved]**

### **H.14. Termination for Convenience**

USAC may terminate Contractor's performance of any or all Services for convenience on at least one (1) Business Day prior written notice to Contractor.

### **H.15. Actions on Termination**

- A. Upon receipt of a Notice of Termination, unless otherwise directed by USAC, Contractor shall:
- i. Stop work to the extent specified in said Notice;
  - ii. Place no further order or subcontracts for materials, services or facilities except as may be necessary for the completion of terminated work;



- iii. Settle all outstanding liabilities and claims arising out of the termination of the orders and subcontracts subject to the prior written approval or ratification of USAC; and
  - iv. Subject to the prior written approval of USAC , transfer title to USAC and deliver to USAC or as directed by USAC all Equipment, Software Materials, data, work in process, completed work and other USAC Information and material produced in connection with, or acquired for, the work terminated.
- B. In the event of Termination for Convenience, Contractor shall submit a termination settlement proposal within ninety (90) days of the effective date of the termination (which period may extend beyond the term of this Agreement) which includes:
- i. The cost of all work performed under this Agreement relevant to the terminated portion for which payment has not already been made by USAC;
  - ii. The cost of settling and paying termination settlement proposals, including subcontract termination liabilities, under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and
  - iii. Other reasonable costs that Contractor or its Subcontractors may incur as the result of the termination, including reasonably necessary costs incurred in repair or restoration of the site incident to the termination, preparation of paper or electronic data for transfer, preparation of any USAC-owned equipment for transfer, any unused Third Party Software license fees, costs for terminating any lease entered into solely for purpose of performing this Contract, Subcontract or a portion thereof, employee severance including accrued bonus and time off payments, if any, owed to the terminated employees, provided that in no event shall USAC's termination obligation for such severance exceed an amount equal to the amount Contractor actually pays the employee in severance compensation or the amount equivalent to two-week's salary per year of service providing the contract Services, whichever is less; and any other cost or expense necessary to put Contractor in the position it would have been in but for the early termination; provided that if a terminated employee is re-hired by Contractor or a Contractor affiliate within one year of discharge for early termination of this Agreement, Contractor shall refund USAC the severance paid.
- C. USAC shall have no further obligation or liability hereunder to pay or provide compensation or any other amounts to Contractor other than those mutually agreed upon as set forth under subparagraph (b) above and as otherwise expressly set forth in this Agreement, and except as described in (b) above, for any period after the effective date of Termination of this Agreement.

## **H.16. USAC Rights Upon Termination**

A. [Reserved]

B. Third Party Services

Contractor shall use its reasonable commercial efforts to make available to USAC or its designee, pursuant to reasonable terms and conditions, any third party services then being utilized by Contractor in the performance of the terminated Services. Contractor shall be

entitled to retain and utilize any such third party services in connection with the performance of services for any other Contractor customer.

C. Assignability of Subcontracts to USAC

To the extent requested in writing by USAC on partial or complete termination of Services or expiration of this Agreement, Contractor will immediately assign to USAC any subcontract between Contractor and any Subcontractor for subcontracts that are dedicated to providing terminated Services to USAC. Contractor will provide reasonable assistance to USAC in obtaining the services provided by the Subcontractor to USAC on substantially the same terms and conditions as the Subcontractor provides its services to Contractor.

## H.17. Changes

Issuance of Change Orders will comply with the following:

- A. USAC may at any time, by written order, make changes within the general scope of this Contract in any one or more of the following:
  - i. Description of services to be performed.
  - ii. Time of performance (*i.e.*, hours of the day, days of the week, etc.).
  - iii. Place of performance of the services.
  - iv. Number and level of personnel assigned to the Contract.
- B. If any such change causes a material increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, USAC shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- C. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order by submission of change proposal with sufficient information for USAC to reasonably determine the impact of the change on cost, schedule or place of performance. However, if USAC decides that the facts justify it, USAC may receive and act upon a proposal submitted before final payment of the Contract.
- D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- E. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract.
- F. Changes requested by USAC that require a change to the scope of work, fees, costs or other term of this Contract shall not be effective unless in writing by USAC's Contracting Officer.

## H.18. Notices

- A. Except as otherwise specified in this Agreement, any notice, demand for information, consent, approval or documents required or authorized by this Agreement to be given to a

Party 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), (d) sent by facsimile with a signed acknowledgement of receipt by return facsimile, or (e) sent by electronic mail with a confirmation of receipt returned by recipient's electronic mail server to such Party at the following address:

For USAC:

David Capozzi  
Acting General Counsel  
Universal Service Administrative Company  
2000 L Street, NW  
Suite 200  
Washington, DC 20036  
Telefax: 202-776-0080  
Telephone: 202-776-0200  
dcaozzi@usac.org

With a copy to:

Richard Belden  
Chief Operating Officer  
Universal Service Administrative Company  
2000 L Street, NW  
Suite 200  
Washington, DC 20036  
Telefax: 202-776-0080  
Telephone: 202-776-0200  
rbelden@usac.org

For Company:

see Block 17a of the fully signed  
Solicitation/Contract/Order for  
Commercial Items cover sheet.

With a copy to:

- B. Each Party's designation of such person and/or address may be changed at any time by such Party upon written notice given pursuant to the requirements of this Section. A notice served by mail shall be effective upon receipt.

## **H.19. Indemnity**

Contractor shall defend, indemnify and hold harmless USAC from and against, any costs, liabilities, damages or expenses (including reasonable attorneys' fees) arising out of or relating to:

- A. claims for personal injuries, death or damage to tangible personal or real property to the extent proximately caused by the negligent acts or negligent omissions of Contractor or its servants or Subcontractors in connection with this Agreement; and
- B. claims of any nature whatsoever to the extent caused by the violation of contract terms, negligence, illegal or intentional wrongful acts or omissions of Contractor or its employees, agents, servants, consultants, or Subcontractors in connection with the performance of the Services.

**H.20. [Reserved]****H.21. Political Payments and/or Contributions**

Contractor warrants to USAC that neither Contractor nor anyone authorized to act on Contractor's behalf has made any payment or contribution to any officer, employee or director of USAC for the purpose of influencing the award of this Agreement. Contractor agrees that it shall pay to USAC any amounts paid in breach of this warranty, and that it shall be ineligible to receive any award of any contract or purchase order from USAC for a period of five (5) years in the event of a final judgment that Contractor has breached such warranty. None of the funds paid by USAC to Contractor under this Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office. So long as the amount of any Contractor contributions described in this paragraph is less than the amount of Contractor's gross profits, it shall be conclusively presumed that any such contributions were paid out of Contractor's profits, and not from any payment by USAC.

**H.22. Compliance with Laws**

Each Party shall comply with all applicable federal and state laws and regulations and local ordinances in the performance of the Agreement.

**H.23. Choice of Law/Consent to Jurisdiction**

This 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 except as they may be preempted by, or in conflict with, any federal laws, rules, regulations or regulatory action.

The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State and Federal courts located in the District of Columbia. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates and agrees that the State and Federal courts located in the District of Columbia shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

**H.24. Independent Contractor**

Contractor acknowledges and agrees that it is an independent contractor to USAC and Contractor's Key Personnel, employees, representatives, directors, officers, subcontractors and agents are not employees of USAC. USAC will not withhold or contribute to Social Security, workers' compensation, federal or state income tax, unemployment compensation or other employee benefit programs on behalf of Contractor or Contractor personnel. Contractor shall indemnify and hold USAC harmless against any and all loss, liability, cost and expense (including attorneys' fees) incurred by USAC as a result of USAC not withholding or making

such payments. Neither Contractor nor any of Contractor's personnel are entitled to participate in any of the employee benefit plans of, or otherwise obtain any employee benefits from, USAC. USAC has no obligation to make any payments to Contractor's Key Personnel, employees, representatives, directors, officers, subcontractors and agents.

## **H.25. Invalidity of Any Provision**

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

## **H.26. Waiver**

The waiver by either Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

## **H.27. Binding Effect**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, legatees, personal representatives and other legal representatives, successors, and assigns.

## **H.28. Entire Agreement**

This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof, and there are no representations, warranties, covenants, or obligations except as set forth herein. This Agreement supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, written or oral, of the Parties hereto relating to the subject matter of this Agreement. Except as otherwise specifically provided herein, nothing in this Agreement is intended or shall be construed to confer upon or to give any person other than the Parties hereto any rights or remedies under or by reason of this Agreement.

## **H.29. Non-Discrimination**

- A. Contractor affirmatively assures that, in regard to any Contractor purchase agreement issued or subcontracts entered into pursuant to this project, all qualified persons will be afforded equal opportunity to participate in the contract process and will not be discriminated against on grounds of race, color, religion, sex, marital status, sexual orientation, national origin, age or non-job related disability.
- B. Contractor shall not discriminate against any employee or application for employment because of race, color, religion, sex, marital status, sexual orientation or national origin or age. Contractor shall comply with the provisions of all applicable federal, state, and local laws, regulations and executive orders relating to equal opportunity and nondiscrimination in employment, the employment of the handicapped, the employment of veterans, and the use of minority business enterprises, to the extent that any such laws, orders and regulations are applicable in the performance of the Services.

### **H.30. Limits on Liability**

- A. Except as provided in **Section H.30(B)**, 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 this Agreement, shall in no event exceed the amounts paid to Contractor under this Agreement. In no event will either Party be liable for any indirect, special, consequential, incidental or punitive damages in connection with or arising out of the performance of or the use of any information, items, products or services provided under this Agreement.
- B. Notwithstanding the provision of **Section H.30(A)**, the following liabilities shall not be limited or exculpated by this Article:
- i. damages caused by the illegal or intentional misconduct of the breaching Party;
  - ii. indemnification claims under this section H.19 ; or
  - iii. theft or other losses of USAC funds resulting from fraud, embezzlement, conversion, misappropriation or other intentional acts or omissions of Contractor, its Subcontractors, or their respective employees.

### **H.31. Public Statements**

Neither Contractor nor its Subcontractors shall issue any public statement (or any private statement unless required in the performance of the Services), relating to or in any way disclosing any aspect of this Contract or the Services including the scope, extent or value of the Services, without the prior written consent of USAC.

### **H.32. Conflict of Interest**

USAC is the appointed neutral administrator of the federal USF. USAC is governed by a Board of Directors comprised of various stakeholders in the universal service programs, and is forbidden from advocating positions on universal service policy matters.<sup>9</sup> Because of USAC's unique role as neutral administrator, it is essential that any Contractor providing assistance to USAC in administering the USF maintain the same neutrality, both in fact and in appearance. To the extent that a Contractor has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect (including but not limited to receiving universal service support, contributing to the universal service programs, advocating policy positions on matters related to the programs), there may be actual, potential and/or apparent conflict(s) of interest associated with serving as USAC's Contractor providing services related to the administration of the USF.

During the term of this Contract, Contractor shall identify any conflicts or potential conflicts of interest and the means by which such conflicts will be addressed. Contractor shall report such conflicts to USAC in writing and include detailed information regarding: (1) any affiliation with telecommunications service provider(s) or beneficiaries of, or other organizations that participate in, the USF or the programs; and (2) percent of revenues received from, and debt held by, telecommunications service provider(s) or beneficiaries of, or other organizations that

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<sup>9</sup> See 47 C.F.R. §§ 54.703, 54.702(c)-(d).

participate, in the programs or contribute to the USF. Contractor shall include detailed information regarding whether any of the senior personnel assigned to this engagement also will be assigned to an engagement with a telecommunications service provider or beneficiary of, or other organization that participates in, the programs or contributes to the USF.

During the term of this Contract, Contractor shall identify any current or threatened litigation or other proceeding, including bankruptcy and related matters, in any judicial court or administrative agency in any jurisdiction, as well as any matter currently in, or expected to be in, arbitration, mediation, or other form of dispute resolution, the resolution of which could materially affect Contractor's financial strength or ability to perform the duties set forth in this Contract, and Contractor shall provide a summary description of the liabilities Contractor anticipates may occur as a result of such proceedings. Contractor shall identify any judgments entered in which Contractor was found to have committed fraud, misappropriation of funds, or other civil or criminal offense.

During the term of this Contract, Contractor shall identify if it, or any of its officers or personnel to be assigned to this engagement, are suspended, debarred, or proposed for debarment from performing work for the United States government.

The Contractor shall require each employee, independent contractor, and the employees or independent contractors of any Subcontractor to complete an annual disclosure statement identifying any actual or potential conflicts of interest consistent with the principles set forth in **Appendices D(1) and D(2)**. The Contractor shall ensure that it has in place prohibitions on gifts to its employees, independent contractors and the employees or independent contractors of any Subcontractor who provide services to USAC. The annual disclosure statement shall contain, at a minimum, the information and disclosures set forth in the USAC Statement of Ethical Conduct Disclosure Form in **Appendices D(1) and D(2)**.

The FCC's rules prohibit USAC from advocating policy positions on anything other than administrative matters concerning universal service support. Consequently, Contractor must abide by a similar standard and refrain from advocating policy positions with respect to federal universal service matters.

## Section

**I****I. CONTRACT CLAUSES****I.1. Standard Contract Clauses****I.1.A. Inspection/Acceptance**

- i. USAC has the right to inspect and test all materials furnished and services performed under this Contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. USAC will perform inspections and tests in a manner that will not unduly delay the work.
- ii. If USAC performs inspection or tests on the premises of Contractor or a Subcontractor, Contractor shall furnish and shall require Subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- iii. Unless otherwise specified in the Contract, USAC will accept or reject services and materials (excluding software) at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted sixty (60) days after the date of delivery, unless accepted earlier.
- iv. At any time during Contract performance, and up to twelve (12) months (or such other time as may be specified in the Contract) after acceptance of the services or materials last delivered under this Contract, USAC may require Contractor to replace or correct services or materials that at time of delivery failed to meet Contract requirements at no charge to USAC.
- v. This clause applies in the same manner and to the same extent for corrected or replacement materials or services as to materials and services originally delivered under this Contract.

**I.1.B. Assignment/Delegation; No Subcontract**

Neither this Contract, nor any right or interest hereunder, shall be assignable or delegated by Contractor without the prior written consent of USAC. Any purported assignment or delegation that violates this section is void. Prior written approval of USAC is required before entering into any subcontract for the performance of or assistance with the Services. Requests for authorization to subcontract must be submitted in writing to USAC, accompanied by a description of the specific work to be subcontracted, the total value of such subcontracted work, and proof that the organization which will perform the subcontracted work is particularly equipped, capable and responsible to perform such work. The subcontract must be assignable to USAC and must be approved by USAC prior to the effective date. The right to qualify, accept or reject any proposed Subcontractor is reserved expressly for USAC.



**I.1.C. Disputes**

Failure of the parties to this Contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this Contract shall be resolved in the courts of appropriate jurisdiction sitting in the District of Columbia. Contractor shall proceed diligently with performance of this Contract, pending final resolution of any dispute arising under the Contract. District of Columbia law shall apply to all disputes.

**I.1.D. [Reserved]**

**I.1.E. Excusable Delays**

Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of USAC in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, or delays of common carriers. Contractor shall notify USAC in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the USAC of the cessation of such occurrence.

**I.1.F. Patent Indemnity**

Contractor shall indemnify USAC and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this Contract, provided Contractor is reasonably notified of such claims and proceedings.

**I.1.G. Payments**

1) *Services accepted.* Payment shall be made for services accepted by the USAC that have been delivered to the delivery destination(s) set forth in this contract. USAC will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

- (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
- (B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

- (C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.
- (D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.
- (E) No overtime is authorized for performance under this contract. Contractor shall not bill, and USAC will not pay, for hours work by Contractor personnel in excess of forty (40) hours per week.

(ii) *Materials.*

- (A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR 2.101, the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—
  - (1) Quantities being acquired; and
  - (2) Any modifications necessary because of contract requirements.
- (B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, USAC will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—
  - (1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
  - (2) Makes these payments within 30 days of the submission of the Contractor's payment request to USAC and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (C) To the extent able, the Contractor shall—
  - (1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
  - (2) Give credit to USAC for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.
- (D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

- (1) *Other Direct Costs.* As no travel is contemplated for this engagement, USAC anticipates very minimal expenses or ODCs. All reimbursable expenses for travel must be preapproved in writing by USAC.
- (2) *Total cost.* It is estimated that the total cost to USAC for the performance of this contract shall not exceed the ceiling prices set forth in Attachment A and the Contractor agrees to use its best efforts to perform the work specified under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 80 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to USAC for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to USAC for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, USAC has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.
- (3) *Ceiling price.* USAC will not be obligated to pay the Contractor any amount in excess of the ceiling price in Attachment A, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in Attachment A has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):
  - (i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

- (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
    - (A) The original timecards (paper-based or electronic);
    - (B) The Contractor's timekeeping procedures;
    - (C) Contractor records that show the distribution of labor between jobs or contracts; and
    - (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
  - (iii) For material and subcontract costs that are reimbursed on the basis of actual cost—
    - (A) Any invoices or subcontract agreements substantiating material costs; and
    - (B) Any documents supporting payment of those invoices.
- (5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that USAC has otherwise overpaid on an invoice payment, the Contractor shall—
- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
    - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
    - (B) Affected contract number and delivery order number, if applicable;
    - (C) Affected contract line item or subline item, if applicable; and
    - (D) Contractor point of contact.

- (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to USAC under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

- (ii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise or unless there is good faith dispute regarding amounts owed. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than three (3) months (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging USAC, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

- (i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.
- (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 months after the date of the release or the date of any notice to the Contractor that USAC is prepared to make final payment, whichever is earlier.

**I.1.H. Risk of Loss**

Unless this Contract specifically provides otherwise, risk of loss or damage to the supplies provided under this Contract shall remain with Contractor until, and shall pass to USAC upon delivery of the supplies to USAC at the destination specified in the Contract.

**I.1.I. Taxes**

The Contract price includes all applicable federal, state, and local taxes and duties.

**I.1.J. Title**

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

**I.1.K. Warranty**

Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this Contract. During the term of this Agreement, Contractor represents and warrants that Contractor shall render the Services with promptness and diligence and in a professional and courteous manner, in accordance with the practices and professional standards used in well managed operations performing services similar to the Services. Contractor represents and warrants that it shall use adequate numbers of qualified individuals to perform the Services. Each Party represents and warrants to the other that:

- i. It has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and
- ii. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such Party.

**I.1.L. Compliance with Laws Unique to Government Contracts**

Offeror agrees to comply with 31 U.S.C. Section 1352 relating to limitations on the use of appropriated funds to influence certain federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 41 U.S.C. Sections 51–58, Anti-Kickback Act of 1986; 41 U.S.C. Section 265 and 10 U.S.C. Section 2409 relating to whistleblower protections; 49 U.S.C. Section 40118, Fly American; and 41 U.S.C. Section 423 relating to procurement integrity.

**I.1.M. Order of Precedence**

Notwithstanding anything to the contrary, any inconsistencies in this solicitation or Contract shall be resolved by giving precedence to the provisions of this Contract, including all appendices, over the attached Contractor proposal. In the case of any attachment required to be completed by the Contractor, the completed attachment shall be a part of the Contract. Contractor may not modify the attachments provided with this RFP except to provide the information requested. Any modification to the Contract and the RFP shall have the same precedence as the part it modifies unless the modification expressly states a different precedence.

**I.1.N. Restriction on Subcontractor Sales**

- i. Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective Subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such Subcontractors directly to USAC of any item or process (including computer software) made or furnished by the Subcontractor under this contract or under any follow-on production contract.
- ii. The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.
- iii. The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

**I.2. Additional Required Contract Terms and Conditions****I.2.A. Compliance with FAR Clauses**

Offeror shall comply with the FAR clauses in this paragraph 1.2.A. as being incorporated in this Contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items. Where incorporated clauses use the term “Government” or “Contracting Officer”, the term “USAC” shall be substituted.

- i. 52.222–21, Prohibition of Segregated Facilities (FEB 1999).
- ii. 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).
- iii. 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).
- iv. 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- v. 52.222–50, Combating Trafficking in Persons (AUG 2007) (Applies to all contracts).

**I.2.B. USAC Examination of Record**

- i. USAC, or an authorized representative of USAC, shall have access to and right to examine any of Contractor's directly pertinent records involving transactions related to this Contract.
- ii. Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this Contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this Contract. If this Contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this Contract shall be made available until such appeals, litigation, or claims are finally resolved.

- iii. As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require Contractor to create or maintain any record that Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

**1.2.C. FAR Flow Down Clauses**

Contractor shall flow down the FAR clauses listed below to its Subcontractors:

- i. 52.222–26, Equal Opportunity (MAR 2007) (E.O. 11246).
- ii. 52.222–35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (SEP 2006) (38 U.S.C. 4212).
- iii. 52.222–36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
- iv. [RESERVED]
- v. 52.222–50, Combating Trafficking in Persons (AUG 2007) (22 U.S.C. 7104(g)). Flow down required in accordance with paragraph (f) of FAR clause 52.222–50.



Section

**J**

## J. LIST OF ATTACHMENTS

APPENDIX A	DIRECT LABOR PRICE CATEGORIES
APPENDIX B	CONTRACTOR WEEKLY STATUS AND TIMESHEET
APPENDIX C	USAC CONFIDENTIALITY AGREEMENT
APPENDIX D(1)	STATEMENT OF ETHICAL CONDUCT FOR EMPLOYEES: DISCLOSURE FORM
APPENDIX D(2)	STATEMENT OF ETHICAL CONDUCT FOR EMPLOYEES: PROHIBITED GIFTS
APPENDIX E	USAC VISITOR FORM

## K. REPRESENTATIONS, CERTIFICATIONS, AND OTHER STATEMENTS OF OFFERORS OR RESPONDENTS

Contractor shall complete the representations and certifications set out below as applicable. Submission of a signed proposal constitutes Contractor's representation and certification that the statements made in this **Section K** are true.

### K.1. Certifications

A. *Definitions.* As used in this provision--

“Forced or indentured child labor” means all work or service –

- i. Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- ii. Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except –

- i. FSC 5510, Lumber and Related Basic Wood Materials;
- ii. Federal Supply Group (FSG) 87, Agricultural Supplies;
- iii. FSG 88, Live Animals;
- iv. FSG 89, Food and Related Consumables;
- v. FSC 9410, Crude Grades of Plant Materials;
- vi. FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- vii. FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- viii. FSC 9610, Ores;
- ix. FSC 9620, Minerals, Natural and Synthetic; and
- x. FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person conducting the business can demonstrate –

- i. Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- ii. Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under federal law from the requirement to be conducted under such authorization;
- iii. Consist of providing goods or services to marginalized populations of Sudan;
- iv. Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- v. Consist of providing goods or services that are used only to promote health or education; or
- vi. Have been voluntarily suspended.

**B. *Representations Required to Implement Provisions of Executive Order 11246 --***

- i. Previous contracts and compliance. Contractor represents that –

It  has,  has not, participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

It  has,  has not, filed all required compliance reports.

- ii. Affirmative Action Compliance. Contractor represents that –

It  has developed and has on file,  has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

**C. *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).***

By submission of its offer, Contractor certifies to the best of its knowledge and belief that no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of Contractor with respect to this procurement, Contractor shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. Contractor need not report regularly employed officers or employees of Contractor to whom payments of reasonable compensation were made.

D. *Certification Regarding Responsibility Matters (Executive Order 12689).*

(Applies only if the contract value is expected to exceed the simplified acquisition threshold.) Contractor certifies, to the best of its knowledge and belief, that Contractor and/or any of its principals –

- i.  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
- ii.  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property; and
- iii.  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and
- iv.  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

Taxes are considered delinquent if both of the following criteria apply:

- (C) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
- (D) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

Examples.

- (E) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
- (F) The IRS has filed a notice of federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals Contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability

because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

- (G) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
- (H) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

E. *Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126).*

[The Contracting Officer must list in paragraph e.1 any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

Listed End Product

Listed End Product:	Listed Countries of Origin:
N/A	
N/A	
N/A	

F. *Certification*

[If the Contracting Officer has identified end products and countries of origin in paragraph e.1 of this provision, then Contractor must certify to either e.2.i or e.2.ii by checking the appropriate block.]

- v.  Contractor will not supply any end product listed in paragraph e.1 of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.
- vi.  Contractor may supply an end product listed in paragraph e.1 of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. Contractor certifies that is has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, Contractor certifies that it is not aware of any such use of child labor.

G. *Place of manufacture*

(Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, Contractor shall indicate

whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly –

- i.  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or
- ii.  Outside the United States.

H. *Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701).*

- i. All Contractors must submit the information required in paragraphs g.3 through g.5 of this provision to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).
- ii. If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of Contractor’s TIN.
- iii. Taxpayer Identification Number (TIN)
  - TIN: \_\_\_\_\_ . \* TIN has been applied for.
  - TIN is not required because:
    - Contractor is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
    - Contractor is an agency or instrumentality of a foreign government;
    - Contractor is an agency or instrumentality of the Federal Government;

iv. Type of Organization

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

v. Common Parent

- Contractor is not owned or controlled by a common parent:
- Name and TIN of common parent:
- Name \_\_\_\_\_

- TIN \_\_\_\_\_

*Restricted business operations in Sudan.* By submission of its offer, Contractor certifies that it does not conduct any restricted business operations in Sudan.

## Section

## L

## L. INSTRUCTIONS, CONDITIONS, AND NOTICES TO OFFERORS OR RESPONDENTS

### L.1. General

Any proposal that fails to comply in all respects with the following preparation and submission requirements may be rejected. Proposals must concisely address USAC's requirements, and should not contain a significant amount of corporate boiler-plate marketing information. They must be prepared with 12-point font. Complete proposals must be submitted to Jay Beard, USAC Purchasing Manager, no later than the date and time set forth in the RFP. An electronic copy and five (5) hard copies of the proposal are required. Proposals may be mailed or delivered to: Universal Service Administrative Company, Attn: Jay Beard, 2000 L Street, NW, Suite 200, Washington, DC 20036. Inquiries may be directed to Jay Beard by electronic mail at [rfp@usac.org](mailto:rfp@usac.org); by telephone at (202) 776-0200; or by fax at (202) 776-0080.

### L.2. Procurement Schedule

Tentative Procurement Schedule

Schedule	Event
March 24, 2010	Deadline for submitting written questions to USAC
March 31, 2010	Post answers to written questions
April 12, 2010	Proposals due

### L.3. Confidentiality Statement

The proposal shall identify the method employed by the Offeror to identify information contained in the proposal that the Offeror contends is confidential information. USAC will treat confidential information identified as such on the sheet in which such confidential information appears with the same degree of care that it employs in the handling of its own confidential business information. USAC reserves the right to provide copies of proposals received to the FCC. USAC may be required to disclose Contractor information in accordance with the Freedom of Information Act (5 U.S.C. 552).

**Note: Offerors shall not submit technical information that the Offeror contends is a trade secret of the Offeror. USAC will not be responsible for any loss or damage that the Offeror may sustain as a result of inadvertent disclosure by USAC of such trade secrets contained in a proposal. USAC does not consider pricing information to be "technical information."**



**L.4. Submission, modification, revision, and withdrawal of proposals.**

- A. Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach USAC's offices at the address specified in the RFP by the time specified in the RFP. If no time is specified then the time for receipt is 5:00 p.m., Eastern Time on the date that proposal or revision is due.
- B. Any proposal, modification, or revision received at USAC's offices after the exact time specified for receipt of proposals is deemed a "late submission" and will not be considered unless it is received before award is made and USAC determines in its sole discretion that the late submission would have been timely but for conditions beyond the reasonable control of the Offeror and accepting the late submission will not unduly delay the acquisition or prejudice the rights of other Offerors submitting proposals.
- C. Proposals may be withdrawn by written notice received at any time before award. Proposals may be withdrawn in person by an Offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.
- D. Offerors may submit modifications to their proposals at any time before the specified closing date and time for receipt of proposals, or as otherwise expressly provided by the Contracting Officer.
- E. Proposals must be valid for a period of 180 days.

**L.5. Proposal Format**

Proposals shall be presented in three separate volumes:

- A. Technical Proposal
- B. Past Performance
- C. Pricing Proposals

If any subcontractors or affiliated individuals or firms are proposed to perform any required tasks, the information specified in the section entitled **Corporate Information**, below, shall be provided with respect to each such subcontractor or affiliated individual or firm. The proposal shall specifically identify the tasks that each subcontractor or affiliated firm is proposed to perform.

Offeror shall address in their proposals each of the items set forth below. Responses to each item must include the identifier associated with each item.

**L.6. Technical Proposal Content**

Offerors must submit a detailed response to this RFP. Offeror must clearly state whether it will comply with the stated requirements and provide detailed information about how it will fulfill the requirements of the RFP. Technical proposals that merely repeat the requirements set forth in the RFP and state that Contractor "will perform the statement of work" or similar verbiage will be considered non-responsive and will not receive further consideration. USAC is interested only in proposals that demonstrate the Contractor's expertise in performing engagements of this

type as illustrated by the respondent's description of how it proposes to perform the requirements set forth in this RFP.

**L.6.A. Cover Page**

Each proposal must contain a cover page. The cover page shall include the name of the Offeror's organization, and the Offeror's contact name, address, telephone number, facsimile number, e-mail address, website address, date, a statement verifying the proposal is valid for a period of 180 days, and signature of a duly authorized Offeror representative.

**L.6.B. Executive Summary**

This section shall summarize all key features of the proposal, including the identification of subcontractors and/or affiliated individuals or firms that respondent proposes to assist in this engagement. A list of any deviations and exceptions from the requirements contained in this RFP shall be identified in the Executive Summary. Pricing information shall not appear in the Executive Summary.

**L.6.C. Corporate Information**

The proposal shall contain a concise description of the principal business of the Contractor and all subcontractors and/or affiliated individuals or firms proposed to assist on this engagement, and should discuss the Contractor's capabilities for performing this Contract, including personnel resources and project management capabilities.

**L.6.D. Key Personnel**

Identify by name all key personnel. For each of these individuals, please provide a one-two page resume that includes their educational background, job experience, and a list of specific efforts they have supported and references. Contractor must confirm that Key Personnel are, or will be, available for full-time placement on this Contract as of the Effective Date. If Contractor, at time of proposal and prior to the award of the contract, has information that any such key personnel anticipate terminating his or her employment or affiliation with Contractor, Contractor shall identify such personnel and include the expected termination date in the proposal. For those key positions that Contractor anticipates filling after submission of the proposal, after the award of the contract or during the period of the contract, Contractor shall provide the minimum educational background and job experience that will be acceptable.

**L.6.E. Contractor Experience**

Offerors shall submit the following information in their technical proposal, this proposal shall be presented to USAC in Volume I of their response.

- i. Describe your firm's experience working with case management-type software products or otherwise working on projects involving a high volume of transactions managed using case management concepts.
- ii. Describe your firm's experience with statistical sampling.
- iii. Describe your firm's experience with information and telecommunications technology.

- iv. Define how your prior experience would impact efficiency in achieving the objectives.
- v. Describe your firm's experience, if any, with state universal service funds or with federal USF contributors or one or more of the USF Support Mechanisms.
- vi. Describe your firm's experience, if any, in analyzing common customer service records, bills, tariff documents and reports used in the telecommunications industry.
- vii. Describe how your firm has successfully met schedule and cost constraints in performing similar projects. Include metrics regarding schedule compliance and cost performance relative to budget/Not-to-exceed limits in addition to qualitative statements.
- viii. Describe your firm's experience working with case management-type software products or otherwise working on projects involving a high volume of transactions managed using case management concepts.
- ix. Describe your firm's experience with statistical sampling.
- x. Describe your firm's experience with information and telecommunications technology.
- xi. Define how your prior experience would impact efficiency in achieving the objectives.
- xii. Describe your firm's experience, if any, with state universal service funds or with federal USF contributors or one or more of the USF Support Mechanisms.
- xiii. Describe your firm's experience, if any, in analyzing common customer service records, bills, tariff documents and reports used in the telecommunications industry.
- xiv. Describe how your firm has successfully met schedule and cost constraints in performing similar projects. Include metrics regarding schedule compliance and cost performance relative to budget/Not-to-exceed limits in addition to qualitative statements.

#### L.6.F. **Conflicts of Interest**

USAC is the appointed neutral administrator of the federal USF. USAC is governed by a Board of Directors comprised of various stakeholders in the universal service programs, and is forbidden from advocating positions on universal service policy matters.<sup>10</sup> Because of USAC's unique role as neutral administrator, it is essential that any Contractor providing assistance to USAC in administering the USF maintain the same neutrality, both in fact and in appearance. To the extent that a Contractor has client, membership, financial and/or any other material affiliation with entities that participate in the federal USF in any respect (including but not limited to receiving universal service support, contributing to the universal service programs, advocating policy positions on matters related to the programs), there may be actual, potential and/or apparent conflict(s) of interest associated with serving as USAC's Contractor providing services related to the administration of the USF.

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<sup>10</sup> See 47 C.F.R. §§ 54.703, 54.702(c)-(d).

Offeror shall identify any conflicts or potential conflicts and the means by which such conflicts will be addressed. Offeror shall include detailed information regarding: (1) any affiliation with telecommunications service provider(s) or beneficiaries of, or other organizations that participate in, the USF or the programs; and (2) percent of revenues received from, and debt held by, telecommunications service provider(s) or beneficiaries of, or other organizations that participate, in the programs or contribute to the USF. Offeror shall include detailed information regarding whether any of the senior personnel that will be assigned to this engagement also will be assigned to an engagement with a telecommunications service provider or beneficiary of, or other organization that participates in, the programs or contributes to the USF.

This information must also be provided for any prospective subcontractors. Offerors shall propose specific and detailed measures to address actual, potential and/or apparent conflicts of interest raised by the affiliations and services described above. Please be as specific as possible in describing what the measures would be, how they would be implemented and monitored, and how they would eliminate or mitigate particular conflicts or concerns. In addition, where Offeror's proposed measures include use of an affiliated organization, Offeror shall provide as much detail as possible regarding how the separateness of the organizations will be maintained and enforced, including with respect to staffing, confidential information, computer systems and other matters.

The FCC's rules prohibit USAC from advocating policy positions on anything other than administrative matters concerning universal service support. Consequently, Contractor must abide by a similar standard and refrain from advocating policy positions with respect to federal universal service matters. The Contractor will be required to agree contractually to abide by this limitation. If your organization has advocated policy positions on universal service in the past, or if you anticipate doing so in the future, discuss how you expect to satisfy this requirement of the procurement.

#### **L.6.G. Litigation, Debarment and Other Proceedings**

The proposal shall identify any current or threatened litigation or other proceeding, including bankruptcy and related matters, in any judicial court or administrative agency in any jurisdiction, as well as any matter currently in, or expected to be in, arbitration, mediation, or other form of dispute resolution, the resolution of which could materially affect the Offeror's financial strength or ability to perform the duties set forth in this RFP, and shall provide a summary description of the liabilities the Offeror anticipates may occur as a result of such proceedings. The proposal shall identify any judgments entered within the past ten (10) years in which the Offeror was found to have committed fraud, misappropriation of funds, or other similar civil or criminal offense.

The proposal shall identify if it, any of its officers or personnel including major subcontractors to be assigned to this engagement have ever been suspended, debarred, or proposed for debarment from performing work for the United States government.

#### **L.6.H. Confidentiality**

In the course of providing the contracted services, the Contractor will create and have access to USAC Confidential Information as defined in the USAC Confidentiality Agreement in

**Appendix C.** Offerors must address their obligation to safeguard USAC confidential information as set forth in **Section H. 7** and **Appendix C**, as well as defining the specific manner in which they intend to safeguard this information.

USAC has entered into a Memorandum of Understanding with the FCC which requires USAC's contractors, subcontractors, consultants, agents, and representatives to execute a Confidentiality Agreement before receiving access to non-public information. The agreement shall contain, at a minimum, the Terms and Conditions set forth in the Confidentiality Agreement in **Appendix C**.

#### L.6.I. **Certifications and Representation**

The proposal must include all certifications and representations included in the RFP.

#### L.6.J. **Miscellaneous requirements and terms**

Offers utilizing subcontractors are permissible. Each offer shall include a representation that Offeror has not: solicited, accepted, or attempted to accept any kickback from any subcontractor(s) included in its proposal; or included, directly or indirectly, the amount of any kickback in any prices stated in its pricing proposal. If an Offeror has reasonable grounds to believe a possible violation of the kickback prohibition described in the previous sentence has occurred, Offeror shall notify USAC in writing. For purposes of this representation, "kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to Offeror, or any Offeror employee, subcontractor, or subcontractor employee, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract awarded by USAC or in connection with a Subcontract relating to a contract awarded by USAC.

The proposal shall include the information described below. The Offeror should provide information that will enable USAC to determine whether the Offeror is responsible and able to perform under the contract, consistent with the requirements set forth in this RFP:

- i. The Offeror's policies and procedures concerning its administrative practices, including but not limited to information technology, physical and data security, purchasing, personnel, and its other business practices relevant to the requirements set forth in this RFP.
- ii. Information about the Offeror's corporate ethics policies relevant to the requirements set forth in this RFP.
- iii. Information regarding the adequacy of the Offeror's accounting system relevant to the requirements set forth in this RFP.
- iv. Information regarding financial credit requirements needed by the Offeror to fulfill the contract.

#### L.7. **Past Performance**

For each of the contracts referenced, or otherwise used as a basis for Contractor's Experience, in your response to **Section L.6.E**, above describe the relevant work performed, the time period during which the work was performed, and identify the name of the entity, contact name, address, and telephone number.

**L.8. Price Proposal**

Offerors shall provide a pricing proposal for the services requested in this RFP as Volume III of their response. When developing a pricing proposal, Offerors must use the Proposal Pricing Requirements set forth in **Section B.3** of this RFP. Offerors that are GSA Schedule holders are strongly encouraged to offer pricing that is equal to, or better than, their GSA Schedule pricing (e.g., by offering discounts to Schedule labor rates). When developing a pricing proposal, Offerors must use the templates and categories set forth in **Appendix A** of this RFP.

Proposed pricing must be sufficient to achieve the objectives and deliverables set forth in **Section C** in light of the number of assessments Contractor will be required to conduct. USAC anticipates the following resource mix will initially be sufficient for the work contemplated in this engagement and should be used as the basis for the initial proposal:

- 1 Project Lead
- 6 Analysts (2 senior, 4 junior) responsible for executing the IPIA assessments themselves.
- 2 Project Administration Support staff

USAC anticipates the workload per person will be forty (40) hours per week for a full year.

Depending on the level of effort necessary to support the assessment program, as determined by USAC in its sole discretion, Contractor may be required to increase or decrease the number and level of personnel assigned to this contract.

Offerors should discuss any cost savings they will provide for option years. Offerors shall indicate any discounts being offered in their proposals.

Pricing must be valid and offered for acceptance by USAC for a period of 180 days from the date the proposal is issued.

**L.9. Type of Procurement**

This is not a procurement by a federal agency, government corporation, government controlled corporation or other establishment in the Executive branch of the United States Government. The contract awarded as a result of this RFP will not be a subcontract under a federal prime contract to USAC.

**L.10. Section L Conformance**

The proposal must conform in all respects to RFP **Section L**, "Instruction to Offerors".

**L.11. Certifying and Signing Proposals**

Offerors must sign their proposals. Subcontractors to an Offeror are not required to sign the Offeror's proposal. By submitting its proposal, the Offeror certifies in connection with this solicitation:

- i. The prices proposed have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to the prices with any other Offeror or with any competitor;

- ii. Unless otherwise required by law, the prices proposed have not been and will not be knowingly disclosed by the Offeror before award of a contract, directly or indirectly to any other offer or to any competitor; and
- iii. No attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not submit a proposal for the purpose of restricting competition.
- iv. Each person signing a proposal certifies that:
  - He or she is the person in the Offeror's organization responsible for the decision as to the prices being offered therein and that he or she has not participated, and will not participate, in any action contrary to the paragraphs above; or, he or she is not the person in the Offeror's organization responsible for the decision as to the prices being offered but that he or she has been authorized in writing to act as agent for the persons responsible in certifying that they have not participated, and will not participate, in any action contrary to the paragraphs above, and as their agent does hereby so certify; and
  - He or she has not participated, and will not participate, in any action contrary to the paragraphs above.

## Section

## M

## M. EVALUATION FACTORS FOR AWARD

### M.1. Introduction

This is a competitive acquisition for the award of a time and materials (“T&M”) agreement with a not-to-exceed (“NTE”) maximum price. USAC may award one contract resulting from this solicitation to the responsible Offeror whose proposal conforming to the solicitation will be most advantageous to USAC, price and other factors considered. Responsible Offerors shall be determined based upon review of proposals submitted by Offerors and information gathered independently by USAC.

### M.2. Selection Factors

**The three factors are** Technical, Past Performance and Price. The Technical, Past Performance and Price factors are of descending order of importance, with technical being the most important factor and price the least important factor. The Technical and Past Performance factors, when combined, are significantly more important than price. When non-price proposals are evaluated as relatively equal, the Price factor will increase in importance. Offerors are cautioned that the award may not necessarily be made to the lowest price offered. USAC may perform a price-technical trade-off to determine the best value offer. **USAC reserves the right to reject any or all proposals**, and may waive informalities and irregularities in proposals received. Award will be made to the contractor that offers the best value to USAC.

USAC will evaluate price proposals for award purposes by calculating and comparing the total estimated NTE for the base year and all option years using the staffing model prescribed in Section A.. USAC may determine that an offer is unacceptable if it offers prices that are significantly or materially unbalanced. Evaluation of options shall not obligate USAC to exercise the option(s).

- Binding Commitment/Agreement. A binding agreement/commitment between USAC and Contractor will occur only upon execution by both parties of a written contract.
- Award without Discussion. Awards may be made from initial offers without discussions. In the event discussions are held, USAC may, in its sole discretion, provide the Contractor an opportunity to discuss unfavorable past performance information obtained from references, on which the Contractor had not had a previous opportunity to comment.
- Evaluation of Proposals. USAC will only evaluate proposals that meet all of the proposal submission requirements in this RFP.



- Proposals Should Contain Best and Final Pricing. USAC may award the engagement on the basis of initial proposals. Therefore, each proposal should contain the Contractor's best terms from a price and technical and management proposal standpoint.

### **M.3. Evaluation Factors**

- A. Technical Evaluation Approach. – The evaluation approach will consider the following factors : (1) Experience/Corporate Resources and(2) Key Personnel. These factors are equal in importance.
- B. Past Performance Factor
- i. The Past Performance evaluation will assess the relative risks associated with an Offeror's likelihood of success in performing the solicitation's requirements as indicated by that Offeror's record of past performance for each evaluation subfactor. In this context, "Offeror" refers to the proposed Offeror and all proposed major subcontractors. A major subcontractor is defined as major if it will be performing more than 20% of the total cost of contract performance. In either case, the Offeror and proposed major subcontractors will be assessed individually and the results will then be assessed in their totality to derive the Offeror's Past Performance rating. USAC will rate Past Performance by evaluating the quality, relevancy, and recency of the Offeror's past performance, as well as that of its major subcontractors, as it relates to the probability of successful accomplishment of the required effort. Areas of relevance include type of contract (e.g., time and materials), type of services provided, total value of contract, and complexity of contract.
  - ii. In conducting the performance risk assessment, USAC may use data provided in the Offeror's proposal *and* data obtained from other sources including, but not limited to, interviews with current and past customers.
  - iii. Past performance information based on contracts that are not relevant will be considered only when an offeror has no past performance information from contracts for similar efforts. However, past performance information from contracts that are not relevant or only partially relevant will be rated lower than relevant past performance information.
  - iv. If USAC's attempts at gathering and verifying the offerors referenced past performance information fails, and the offeror has been notified and not been able to correct this problem, the offeror will be not be given a rating of favorable or unfavorable.
- C. Price. USAC will evaluate Price based on total price and whether proposed prices are fair and reasonable. Proposals that are unrealistic in terms of technical commitment or unrealistically low in price will be deemed to show an inherent lack of technical competence or failure to comprehend the complexity and risk of the USAC requirements. USAC expects Offerors to offer their most competitive commercially-available pricing for this requirement. Offerors that are GSA Schedule holders are strongly encouraged to offer pricing that is equal to, or better than, their GSA Schedule pricing (e.g., by offering discounts to Schedule labor rates

**M.4. Acceptance of Proposal**

Before Offeror's specified expiration time, USAC may accept a proposal (or part of a proposal), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

**M.5. Award without Discussions**

USAC may award the engagement on the basis of initial proposals received. Therefore, each initial proposal should contain Offeror's best terms from a cost or price and technical and management proposal standpoint. Before the proposal's expiration time, USAC may accept a proposal, whether or not there are discussions or negotiations after its receipt, unless a written notice of withdrawal is received before award.

**M.6. Discussions**

Discussions or negotiations conducted after receipt of a proposal do not constitute a rejection or counteroffer by USAC. USAC reserves the right to conduct negotiations with one or more Offerors, sequentially or simultaneously, after receipt of proposals.

**M.7. RFP Amendment**

Any information given to an Offeror concerning the RFP will be furnished promptly to all other Offerors as an amendment to the RFP, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other Offeror.

**M.8. Right to Withdraw Proposal**

USAC reserves the right to withdraw this RFP and/or cancel this procurement at any time, and to make no award if, in USAC's sole judgment, it would be in the best interests of USAC to do so.

**APPENDIX A**  
**DIRECT LABOR PRICE CATEGORIES**

**Labor Category Descriptions**

<b>Name/Title</b>	<b>Minimum Education</b>	<b>Minimum Experience</b>	<b>Functional Responsibility</b>
<i><b>Project Lead</b></i>	Bachelors Degree in relevant business or technical field	7 years of applicable financial or business consulting experience, including substantial experience in project management.	Performs day-to-day management of overall contract support operations. Manages and coordinates the planning and production of all contract support activities. Has authority and responsibility to identify and commit resources required to support effort. Assigns work tasks to team members. Crafts and enforces quality control programs.
<i><b>Senior Analyst</b></i>	Bachelors Degree in relevant business or technical field	5 years of applicable financial or business analysis or consulting experience.	Responsible for ensuring work flow schedules are implemented in a timely manner. Works with USAC resources on implementation issues. Works with Project Leader to manage staff assigned to project. Conducts preliminary quality assurance over project deliverables and activities. Performs second-line exception analysis and resolution; responsible for escalating unresolved exceptions to USAC resources.
<i><b>Junior Analyst</b></i>	Bachelors Degree in relevant business or technical field	2 years of applicable financial or business analysis experience.	Responsible for requesting, analyzing, and tracking support documentation. Responsible for identifying and escalating potential exceptions to Senior Analyst.
<i><b>Project Administration</b></i>	Associate Degree in relevant business or technical field	1 year of applicable experience.	Assists in drafting and preparing project deliverables. Assist Analysts in reporting and tracking schedule and progress of assessments, exceptions, and project costs. Other duties as assigned.

**Labor Price Categories**

Contractor shall use the following table of labor categories, which are more fully described in **Section B** above, and rates in submitting pricing for their proposal. Labor rates provided must be on a fully burdened basis.

Line Item	Labor Category	Base Year Rate	Option Year Rates	
			1	2
		-----		
01	Project Lead			
02	Senior Analyst			
03	Junior Analyst			
04	Project Administration			

USAC and the Contractor shall establish an annual ceiling or not-to-exceed (“NTE”) amount in the contract using the following methodology.

**Base Year**

Labor Category	Labor Rate for Base Year (Col A)	Annual Hours per Employees (Col B)	Number of Employees (Col C)	Total Estimated Cost (Cols A x B x C)
Project Lead		2000	1	
Senior Analyst		2000	2	
Junior Analyst		2000	4	
Project Administration		2000	2	
			Total Estimated Ceiling or NTE	

**Option Year 1**

Labor Category	Labor Rate for Option Year 1 (Col A)	Annual Hours per Employees (Col B)	Number of Employees (Col C)	Total Estimated Cost (Cols A x B x C)
Project Lead		2000	1	
Senior Analyst		2000	2	
Junior Analyst		2000	4	
Project Administration		2000	2	
			Total Estimated Ceiling or NTE	

**Option Year 2**

Labor Category	Labor Rate for Option Year 2 (Col A)	Annual Hours per Employees (Col B)	Number of Employees (Col C)	Total Estimated Cost (Cols A x B x C)
Project Lead		2000	1	
Senior Analyst		2000	2	
Junior Analyst		2000	4	
Project Administration		2000	2	
			Total Estimated Ceiling or NTE	

**APPENDIX B**

**CONTRACTOR WEEKLY STATUS AND TIMESHEET  
(electronic, machine readable format)**

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Labor Category: \_\_\_\_\_

Week Ending: \_\_\_\_\_

Total Hours: \_\_\_\_\_

**ACHIEVEMENTS:**

*[List the activities or deliverables that you completed this week, and the hours associated with each, using the table below.]*

Date	Program	Assessments Summary	Hours	Location*
	RHC			
	SLD			
	HC			
	LI			
	General Support Activities			

\* If location was not USAC offices, please indicate here.

**CHALLENGES/PROBLEMS**

*[List any challenges or problems that may affect your ability to complete your assigned tasks, and any solutions you propose to address those challenges or problems.]*

**ALTERNATIVE STRATEGIES:**

*[If the project schedule or scope is at risk, list any alternative strategies you are exploring.]*

**FOR Contractor**

By signing this timesheet, I certify the information above is true and correct.

\_\_\_\_\_  
Signature of Contractor Employee

## APPENDIX C

**USAC CONFIDENTIALITY AGREEMENT**

1. I recognize and acknowledge that as an employee, director, officer, contractor, subcontractor, consultant, agent, or an employee or other representative thereof (collectively, "a Staff Person") for the Universal Service Administrative Company ("USAC"), I may have access to Confidential Information, as that term is defined in Appendix A to this Confidential Information Use and Disclosure Agreement ("Confidentiality Agreement").
2. I acknowledge and agree that I will treat any Confidential Information in the manner set forth in this Confidentiality Agreement. I acknowledge and agree that this obligation applies to the treatment of all Confidential Information to which I obtain access while working as a Staff Person for or on behalf of USAC, regardless of the form of the Confidential Information or the manner in which I obtain access to it. I acknowledge and agree that my obligations with respect to Confidential information apply to oral and written communications, drafts and final documents, information obtained directly or indirectly, and information obtained pursuant to or outside of my job responsibilities if I obtained the information as a result of my relationship with USAC.
3. I acknowledge and agree that my obligation to treat Confidential Information in the manner set forth in this Confidentiality Agreement will continue even if I am no longer a Staff Person.
4. I acknowledge and agree that I will not use Confidential Information for any purpose other than a legitimate business purpose of USAC.
5. I acknowledge and agree that, except as provided in paragraphs 6 and 7 herein or as authorized by the USAC Chief Executive Officer or the USAC General Counsel, or in either one's absence, a respective designee, I will not disclose Confidential Information to any person or entity other than: (a) the provider of the Confidential Information at issue, or (b) an authorized Staff Person who has executed a confidentiality agreement with USAC.
6. I acknowledge and agree that this Confidentiality Agreement shall not apply to requests for Confidential information made by an employee of the Federal Communications Commission ("FCC"), except that I may not disclose Personally Identifiable Information (as that term is defined in Appendix A to this Confidentiality Agreement) without the express advance written approval of the USAC Director of Human Resources or the USAC General Counsel, or in either one's absence, a respective designee.
7. I acknowledge and agree that, subject to the notice requirement in paragraph 8 below, this Confidentiality Agreement shall not prevent disclosure of Confidential Information in response to an official request from the Comptroller General of the United States, the Government Accountability Office, or the United States Congress or a Committee or Subcommittee thereof, except that I may not disclose Personally Identifiable Information without the express advance written approval of the USAC Director of Human Resources or the USAC General Counsel, or in either one's absence, a respective designee.
8. I acknowledge and agree that if I receive a subpoena or any other request or demand for Confidential Information, I will take all reasonable and appropriate steps to ensure that the request is submitted within one business day of receipt, and prior to any disclosure of such information or records, to the USAC General Counsel, or in the USAC General Counsel's absence, a respective designee.

9. I acknowledge and agree that if I know or have a reasonable basis for believing that any Staff Person is using or disclosing Confidential Information in violation of this Confidentiality Agreement, I will immediately so notify my USAC supervisor or the USAC General Counsel.
10. I acknowledge and agree that if I intentionally or unintentionally disclose any Confidential Information in violation of this Confidentiality Agreement, I will immediately so notify my USAC supervisor or the USAC General Counsel.
11. I acknowledge and agree that if I am uncertain or have questions about my obligations under this Confidentiality Agreement, I will immediately seek advice from my USAC supervisor, the USAC Director of Human Resources or the USAC General Counsel.
12. I acknowledge and agree that any violation of this Confidentiality Agreement may subject me to disciplinary-action, including suspension or termination of employment, and civil and criminal liability.
13. I acknowledge and agree that signing this Confidentiality Agreement is a condition of my working as a Staff Person for USAC. I acknowledge and agree that USAC may modify this Confidentiality Agreement and require me to execute the modified version.
14. I acknowledge and agree that upon completion or termination of my relationship as a Staff Person for USAC, I will return to the USAC General Counsel, the USAC Director of Human Resources, or other person designated by either of them, any Confidential Information in my possession.
15. I acknowledge and agree that this Confidentiality Agreement is binding upon me as of the date of my signature, that any modification to this Confidentiality Agreement is binding on me as of the date that I sign such modified version, and that my obligations under the Confidentiality Agreement, including any modifications, continue through and beyond the termination of my position as a Staff Person and for as long as I have in my possession, access to, or knowledge of Confidential Information. I further acknowledge and agree that USAC may, in its sole discretion, modify Appendix A and such modification(s) shall be effective and enforceable against me following written notice to me, which may be by any reasonable method, including but not limited to hand delivery, mail, courier service, email, or facsimile, and that my signature or agreement is not required for the modification to Appendix A to be effective and binding on me.
16. If any provision of this Confidentiality Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be deemed stricken and the remainder of the Confidentiality Agreement shall continue in full force and effect as if it had been executed without the invalid provision.

Acknowledged and agreed:

By (signature): \_\_\_\_\_

Name (print): \_\_\_\_\_

Date: \_\_\_\_\_



## CONFIDENTIALITY AGREEMENT - APPENDIX A

Personally Identifiable Information is defined as information whose disclosure would constitute an unwarranted invasion of personal privacy, including but not limited to, personnel records, salary and compensation information, medical records, social security number or residential address. In the event of a question about whether disclosure would constitute an unwarranted invasion of personal privacy, the USAC General Counsel or his or her designee will use for guidance the standards set forth in 47 C.F.R. § 0.457(f) and decisions made thereunder.

Confidential Information is defined as:

1. Information, data, material, or communications in any form or format, whether tangible or intangible, including notes, analyses, data, compilations, studies, or interpretations (collectively referred to hereafter as "Information") and any data, material or communications in any form or format, whether tangible or intangible, that contains, reflects, or is derived from or based upon any information or is related to internal USAC management matters, including but not limited to USAC program integrity procedures, if disclosure is reasonably likely to interfere with or prejudice the performance of the internal USAC management functions.
2. Information related to the development of statements of work or evaluation criteria for USAC or FCC procurements (but not final solicitation or procurement documents that are formally released to one or more prospective bidders or offerors), contractor bids or proposals, evaluation of bidders or offerors, selection of contractors, or the negotiation of contracts.
3. Information that is excluded by applicable statute or regulation from disclosure, provided that such statute (a) requires that the information be withheld from the public in such a manner as to leave no discretion on the issue, or (b) establishes particular criteria for withholding or refers to particular types of information to be withheld. Such information includes copyrighted or trademarked information.
4. Information containing trade secrets or commercial, financial or technical information that (a) identifies company-specific (i.e., non-aggregated) proprietary business information about a Universal Service Fund (USF) contributor (or a potential contributor) or its parent, subsidiary, or affiliate, and (b) has not previously been made publicly available.
5. Information concerning USAC relationships with financial institutions, including but not limited to, account locations, identifiers, balances, transaction activity and other account information and any advice or guidance received from such institutions.
6. Information regarding or submitted in connection with an audit or investigation of a USF contributor, potential USF contributor, USF beneficiary, applicant for USF support, or USAC Staff Person.
7. Information to which USAC, the FCC, or any other government agency might assert a claim of privilege or confidentiality, including but not limited to attorney-client communications, information that constitutes work product or reflects USAC, FCC or other government agency decision-making processes, including law enforcement investigations and program compliance matters. Such information includes but is not limited to internal USAC

information, information exchanged between USAC and the FCC or another government agency and information exchanged between two or more government agencies in any form, including but not limited to letters, memoranda, draft settlement documents, and working papers of USAC, the FCC, other government agencies, and their respective staff.

8. Information that was submitted with a corresponding written request for confidential treatment, protection, or nondisclosure, including, but not limited to, submissions marked "proprietary," "privileged," "not for public disclosure," or "market sensitive information," unless and until such request is denied.
9. Information developed in security investigations. Such information is the property of the investigative agency and may not be made available for public inspection without the consent of the investigative agency.

**APPENDIX D(1) - STATEMENT OF ETHICAL CONDUCT FOR EMPLOYEES: DISCLOSURE FORM**

USAC 1033 03/2007

Universal Service Administrative Company

**POLICY**

Each employee shall file with designated management, and update at least annually, a written disclosure of current and prior (within the past five years) employment with or financial interest in any of the following: a telecommunications or Internet service provider, communications common carrier, educational institution, rural health care provider, or other telecommunications organizations.\* A written disclosure is also required with respect to service as a board member of any institution eligible for high cost support or discounts under the Schools and Libraries Universal Service Program or the Rural Health Care Program. Each employee shall promptly file with designated management a written disclosure of any discussion regarding potential employment with any person, corporation, group, or association, or other entity which has, or is seeking, a contractual, donative, employment, business, financial, or other beneficial relationship[], that may be substantially affected by that employee's performance of his or her duties to the Corporation. The employee filing such disclosure of discussion of potential employment shall review with designated management the matters he or she is working on, and designated management shall determine whether that employee must recuse himself or herself from any of those matters because of the conflict or potential conflict they may present because of the discussion of potential employment.

**Disclosure statements must be filed by January 31 of every year and updated throughout the year for any change in circumstances that would trigger a requirement to disclose.**

EMPLOYEE INFORMATION	
Name	Position with USAC
Home Address	Date of Filing
Please list positions currently held as director or Board member, manager, employee, or consultant with any of the following: educational institution, library, rural health care provider, telecommunications or Internet services provider, communications common carrier, or other telecommunications organization or internal connections provider.*	
Organization	Position
Please list any telecommunications or Internet services provider, communications common carrier, other telecommunications organizations, or internal connections provider, in which you or your spouse own securities valued at more than \$15,000 or more than 1 percent of the total equity of the entity. (You need not list shares in any mutual fund that may include such securities unless the fund is devoted exclusively to investment in such securities.)	
Corporate Name	Function of Corporation
Please list any educational institution, library, rural health care provider, telecommunications or Internet services provider, communications common carrier, or other telecommunications organizations or internal connections provider with which you have been employed prior to your employment by USAC.* (List only those with which you have been employed in the last five years.)	
Organization	Position
I have read USAC's <i>Statement of Ethical Conduct for Employees, Definition of Gifts Prohibited, and Travel Guidelines and Expense Reimbursement Policy</i> , owned by the accounting-USAC department. I understand these documents, I am in compliance with them, and I will continue to abide by them.	
Signature	Date

**APPROVED BY THE USAC BOARD OF DIRECTORS, October 20, 1998; REVISED AND APPROVED BY USAC BOD, October 24, 2000.**

**\*Includes any entity that contributes to and/or receives disbursements from any Universal Service Support Mechanism.**

APPENDIX D(2)  
STATEMENT OF ETHICAL CONDUCT FOR EMPLOYEES

**ADOPTED BY THE USAC BOARD OF DIRECTORS ON OCTOBER 20, 1998**  
**REVISED AND REAFFIRMED ON OCTOBER 24, 2000**  
**REVISED AND REAFFIRMED ON OCTOBER 22, 2002**  
**REVISED AND REAFFIRMED ON OCTOBER 19, 2004**  
**REAFFIRMED WITHOUT REVISION ON OCTOBER 24, 2006**  
**REVISED AND REAFFIRMED ON OCTOBER 28, 2008**

In appointing the Universal Service Administrative Company (the Company or USAC) as the permanent administrator of the Universal Service Support Mechanisms, *see* 47 C.F.R. § 54.701 *et seq.*, the Federal Communications Commission (FCC) has invested the employees and officers of the Company (hereafter referred to collectively as Employee or Employees except where specifically noted otherwise) with significant responsibilities for the stewardship of corporate funds, programs, property, information, and interests. With regard to Employees who are also Company officers, the provisions of this Statement of Ethical Conduct for Employees and Officers apply in addition to any independent fiduciary duties officers may owe to the Company as a result of their status as Company officers.

By accepting employment with the Company, each Employee acknowledges these responsibilities and agrees to regulate his or her personal conduct in a manner that assures the Company, stakeholders in the Universal Service Fund and the universal service support mechanisms, and his or her USAC colleagues and supervisors of undivided loyalty to these responsibilities, and uncompromised integrity in their discharge. Employees shall direct any questions concerning the ethics standards set forth herein to the Vice President and General Counsel, who serves as the Company's ethics officer.

The USAC Board of Directors has adopted this Statement of Ethical Conduct for Employees to guide their conduct. Employee responsibilities include:

1. Each Employee has a continuing obligation to protect and conserve all corporate money, property, information, and other resources, expending them in the best interests of the Company strictly in accord with policies adopted by the Board of Directors, and authorities and procedures duly established by the Company, and all applicable law.
2. Except by virtue of good reputation derived from service to the Company, no Employee shall seek to use his or her relationship to the Company for his or her personal benefit or professional advancement.
3. No Employee shall solicit or accept, directly or indirectly, anything of substantial monetary value (including any gift, gratuity, favor, entertainment, loan, or any other consideration) from any person, corporation, association, or other entity which has, or is seeking, a contractual, donative, employment, financial, or other beneficial relationship with the Company, which relationship may subsequently affect or influence the Employee's performance of his or her duties to the Company or the Employee's loyalty to USAC or discharge of responsibilities with uncompromised integrity. (See "[Definition of Gifts Prohibited](#)" section.)

4. No Employee shall solicit and, in general, no Employee shall accept payment from any entity other than the Company for expenses incurred while traveling on behalf of the Company. However, with the advance approval of the Company's management, an entity may reimburse the Company for the travel expenses of a Company Employee to participate in training seminars, industry association meetings, or other events where the Company's management determines that such participation is in the best interest of the Company. (See USAC's [Business and Travel Expenses of USAC Representatives Eligible for Reimbursement and Procedures for Approving Acceptance of Travel Reimbursement from Outside Sources](#) for additional details.)
5. No Employee shall engage in any conduct that might result in the loss of public confidence in the responsible performance of the Company's functions, the impairment of corporate efficiency or economy, or might reasonably give the appearance of the following:
  - The compromise or loss of complete impartiality of judgment and action.
  - The making or implementation of a corporate decision outside of standard corporate policies and procedures.
6. No Employee shall make use of, or permit others to make use of, any information obtained as a result of his or her relationship with the Company, which information is not generally available to the public, whether for direct personal gain or for advice to others with whom he or she has family, business, personal, financial, or professional ties.
7. Each Employee has a continuing fiduciary duty of loyalty and care in the management of fiscal and investment affairs, and acts in violation of that duty under the following circumstances:
  - He or she fails to use diligence in supervising and periodically inquiring into the actions of those Employees and outside experts to whom any duty to make day-to-day financial or operational decisions has been assigned or delegated; or
  - He or she knowingly permits the Company to enter into a business transaction with himself or herself, or with any corporation, partnership, or association, in which he or she holds a position as trustee, director, partner, general manager, principal officer, or substantial shareholder or beneficial owner, without previously having informed and receiving the consent of all persons charged with approving that transaction of his or her interest or position, including, without limitation the General Counsel. When making such disclosure, the Employee must provide comprehensive detailed information concerning the transaction, including, without limitation, any significant facts known to him or her indicating that the transaction might not be in the best interest of the Company; or
  - He or she fails to perform his or her duties honestly, in good faith, and with reasonable diligence and care.
8. No Employee shall receive any salary or other compensation from any source other than the Company during the period of his or her employment by the Company without the prior written consent of the employee's division head, in consultation with the Company's General Counsel. If a request for outside employment or board membership is approved, the Employee has an obligation to immediately notify his or her division head and the USAC General Counsel if the nature of the employment or board membership changes in any manner (including, without limitation, receipt of compensation) that was not

comprehensively described in the original written request submitted for employment or board membership.

9. In no event, may an employee of the Company receive any salary or compensation from an entity that has a Universal Service Fund reporting obligation or is a beneficiary or service provider (or subcontractor to a service provider) to a universal service support mechanism.
10. No Employee may have direct or indirect financial interests, or engage in any outside employment or activities, which conflict substantially, or have the appearance of conflicting substantially, with his or her corporate responsibilities and duties. The Company shall develop guidelines for determining such a substantial conflict or appearance of substantial conflict, with criteria based primarily on the following: the magnitude of an Employee's financial interest, the degree of policy making authority of the Employee in the Company, and the potential effect actions or inactions by the Company could have on such financial interests. Financial interests in any one entity valued at less than \$15,000 or less than one percent of the total equity of the entity that could potentially be affected by Company action or inaction and investments in a mutual fund with a broad range of holdings, including securities in entities that could be affected by the activities of the Company, shall be presumed not to present a conflict or the appearance of a conflict.
11. No Employee may engage, directly or indirectly, in financial, business, trade, or professional transactions as a result of, or in primary reliance upon, information obtained through his or her employment, or the discharge of his or her corporate responsibilities.
12. Each new Employee of the Company shall, within the first week of employment, file with designated USAC management a written disclosure of current and prior (within the past five years) employment with or financial interest in any of the following: a telecommunications or Internet service provider, communications common carrier, educational institution, rural health care provider, or other organizations having an interest in the Universal Service Fund or the universal service support mechanisms. (See Form 1033 – *Statement of Ethical Conduct for Employees Disclosure Form* in [Appendix A](#).) If the Employee has any change in circumstances that would trigger a requirement to disclose, an updated disclosure statement must be filed immediately. A written disclosure is also required with respect to service as a board member of any institution eligible for support under the High Cost or Low Income Support Mechanisms or for support or discounts under the Schools and Libraries or Rural Health Care Support Mechanisms. All Employees must file with the Company Chief Executive Officer an updated disclosure statement by January 31 of every year and attend an annual briefing on Employee ethical obligations provided by the Company.
13. Each Employee shall promptly file with the Vice President and General Counsel or his or her designee a written disclosure of discussion of potential employment with any person, corporation, group, or association, or other entity which has, or is seeking, a contractual, donative, employment, business, financial, or other beneficial relationship, that may be substantially affected by that Employee's performance of his or her duties to the Company. The Employee filing such disclosure of discussion of potential employment shall review with designated management the matters he or she is working on, and designated management shall determine whether that Employee must recuse himself or herself from any of those matters because of the conflict or potential conflict they may present because of the discussion of potential employment.

14. The conduct or interests of individual Employees may be further or otherwise reasonably restricted in light of special circumstances, duties, or responsibilities. Such restrictions shall be transmitted to the individual in writing by the Chief Executive Officer upon recommendation of the Vice President and General Counsel and shall be subject to review by the Board of Directors or a committee of the Board, upon written application by the individual.
15. The Board of Directors shall review, at least biennially, this *Statement of Ethical Conduct for Employees and Officers* to determine its adequacy, evaluate compliance, and revise the statement as appropriate.
16. As a condition of employment, an Employee shall execute the USAC Employee Confidentiality Agreement within five business days of starting work at the Company.

**APPENDIX E**  
**USAC VISITOR FORM**

**NAME:** \_\_\_\_\_

**USAC DIVISION:** \_\_\_\_\_

**USAC ID Badge (VISITOR BADGE # \_\_\_\_\_)**

**Replacement value \$20.00.**

**Visitor Direction:** Visitor is required to sign the Visitors Log at the 2<sup>nd</sup> floor reception each day he/she will be working at USAC's offices. USAC hours of operations are from 9:00 a.m. – 6:00 p.m. A Visitor needing to work within USAC space outside of these standard hours must have his/her USAC employee point of contact onsite with them at all times. If no USAC point of contact is available, Visitor will not be permitted to work within USAC space. Visitors are required to visibly display the assigned USAC ID Badge at all times while in USAC space. Visitors must present the assigned badge to any inquiring USAC employee for security purposes. If Visitor's USAC ID Badge is lost, missing or has been left at home, Visitor must notify the receptionist and be assigned another temporary badge. Visitor is required to pay USAC the replacement value stated in this form for the USAC ID Badge if Visitor does not return it immediately upon request by any USAC employee or at the end of Visitor's assignment

**USAC Device and Network Security:** USAC performs periodic scanning of network devices. Any device connected to the USAC network is subject to these scans. Visitor understands that if he/she is connected to the USAC network, he/she consents to these scans.

Visitor agrees that he/she shall use his/her best efforts to ensure that no software, device, or other undisclosed feature, including, without limitation, a time bomb, virus, software lock, spyware, adware, drop-dead device, malicious logic, worm, Trojan horse, back door or trap door, that is designed to delete, disable, deactivate, interfere with, harm any software or systems, or USAC's information, or that is intended to provide access to or produce modifications not authorized by USAC or similar items ("Malicious Software") will be introduced into USAC's systems or networks. Visitor agrees that, in the event Malicious Software is found to have been introduced into the systems used by Visitor, Visitor or the company he/she represents shall use its best efforts at no charge to USAC to assist in reducing and eliminating the effects of the Malicious Software and, if the Malicious Software causes a loss of operational efficiency or loss of data, to mitigate and restore such losses.

If Visitor is using a USAC workstation, laptop, mobile or other device and/or the USAC network, then Visitor shall not, without the prior express written permission of the USAC IT Security Manager, (i) install or download any software, personal content or 3rd party content through the USAC network and/or onto a USAC workstation, laptop, mobile or other device; or (ii) make any configuration changes to any USAC workstation, laptop, mobile or other device. Visitor shall abide by all USAC computer, email, internet and network usage policies.

**Space Agreement:** Visitor agrees to leave his/her assigned workspace in the same condition in which it was originally assigned. Visitor, or the company he/she represents, will be held financially responsible for any damages incurred as a direct result of the occupancy. USAC reserves the right to inspect said



workspace at any time. No workspace assignment is guaranteed and Visitors are subject to seat reassignment based on seating considerations at anytime for any reason.

By signing this form I acknowledge and agree to the terms stated herein.

**Visitor's Signature ("Visitor")**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Company Name (if applicable): \_\_\_\_\_

-----  
Receptionist must initial below, indicating when badge is issued and returned.

Badge provided to visitor:	_____	_____
	Initial	Date
Badge returned:	_____	_____
	Initial	Date