

**MEMORANDUM OF UNDERSTANDING BETWEEN THE FEDERAL  
COMMUNICATIONS COMMISSION AND THE UNIVERSAL SERVICE  
ADMINISTRATIVE COMPANY**

**I. PURPOSE AND PARTIES**

The Federal Communications Commission (Commission) and the Universal Service Administrative Company (USAC) (USAC and the FCC are collectively referred to herein as the "Parties") enter into and agree to comply with this Memorandum of Understanding (MOU) to facilitate the efficient management, oversight, and execution of the Commission's federal universal service program, also known as the Universal Service Fund (USF). This MOU is not intended to and does not in any way limit the Commission's authority over the USF or the USF Administrator. The Commission is responsible for the effective and efficient management and oversight of the USF, including USF policy decisions. USAC is responsible for the effective administration of the programs, including collecting contributions and administering the disbursement of program support, producing timely and relevant data and analysis to inform the Commission in its policy-making and oversight of the USF, sharing information with and educating stakeholders to promote successful participation in the USF programs, and advising the Commission on the operational requirements and challenges of implementing proposed and adopted Commission rules.

This MOU includes the USAC Confidential Information Use and Disclosure Agreement (Attachment A) (USAC Confidentiality Agreement). The Parties may update the MOU to include additional attachments, as appropriate, from time to time. Any such attachments will be incorporated herein by reference and made a part of this MOU.

**II. BACKGROUND**

In 1997, USAC was established as an independent and competitively neutral entity to temporarily administer the USF, and in 1998, the Commission designated USAC as the permanent USF Administrator of all USF support mechanisms: high-cost, low income, rural health care, and schools and libraries. 47 CFR §§ 54.701-717. Pursuant to Commission rules, USAC administers each of the USF programs consistent with section 254 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 254; Part 54 of the Code of Federal Regulations, orders, written directives, and other instructions promulgated by the Commission or its bureaus and offices; and other laws as applicable, including government and Commission accounting requirements. As part of its duties and subject to the Commission's rules and oversight, USAC bills contributors to the USF, collects USF contributions, and administers the disbursement of universal service support payments. The monies of the USF are federal funds.

### **III. RELATIONSHIP BETWEEN USAC AND THE COMMISSION**

#### **A. The Commission**

The Commission is responsible for the overall management, oversight, and administration of the USF, including all USF policy decisions. The responsibilities of the Commission's bureaus and offices over USAC and the USF are found in the Act, including section 254, 47 U.S.C. § 254, Part 54 of the Code of Regulations, Commission orders, written directives and other instructions promulgated by the Commission or its authorized bureaus and offices, this MOU, and other laws as applicable.

#### **B. USAC**

USAC is responsible for the efficient, effective, and competitively neutral management of the four universal service support mechanisms. USAC is also responsible as the Commission's agent for billing and collecting contributions to and administering the disbursement of support payments from the USF.<sup>1</sup> The USF funds are maintained at the U.S. Treasury and USAC's administration of the disbursement process includes submitting all necessary documentation to the Commission's certifying officials who review and certify all disbursements of USF support payments from the U.S. Treasury.

USAC works closely with the Commission to improve the operating efficiency of the USF. USAC, in consultation with the Commission, optimizes the operation of the universal service support mechanisms and contributions by enhancing its internal systems and developing new systems. USAC also promotes program integrity by prioritizing prevention, detection, and deterrence of waste, fraud, and abuse.

Pursuant to the process outlined below, USAC regularly engages with the universal service stakeholders and the Commission to facilitate effective involvement in achieving the goals of universal service. USAC conducts outreach designed to promote understanding of, and successful participation in, the USF programs, and identifies to the Commission potential universal service partners in other federal departments and agencies, and state, county, municipal, and Tribal governments. USAC has and will continue to improve its ability to provide accessible data and relevant analysis to both the Commission and external stakeholders, as described below.

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<sup>1</sup> USAC conducts its own procurements, is not a purchasing agent for the FCC in acquiring goods, services, and real property for the use of the FCC, and does not state in its contracts that the FCC or Government will be liable to USAC's vendors for USAC's purchases.

## IV. OPERATIONAL RESPONSIBILITIES OF THE PARTIES

### A. General Requirements

1. **Coordination and Communication.** The Commission and USAC shall maintain policies and procedures to ensure effective communication and coordination concerning management, oversight, and administration of the USF (*i.e.*, high-cost, low-income, rural health care, schools and libraries, and USF contributions). Consistent with their USF responsibilities, the Wireline Competition Bureau Chief, Wireless Telecommunications Bureau Chief, Enforcement Bureau Chief, Managing Director, and General Counsel shall each designate and make known to USAC the point(s) of contact entrusted with such communication and coordination. The USAC Chief Executive Officer or his/her designee shall designate and make known to the Wireline Competition Bureau Chief, Wireless Telecommunications Bureau Chief, Enforcement Bureau Chief, Managing Director and General Counsel, the responsible counterpart points of contact for communication and coordination.
2. **Oversight by the USAC Board of Directors.** Consistent with the Commission's rules, the USAC Board of Directors will oversee the activities and operations of USAC. As provided in the Commission's rules, the Board of Directors of USAC currently consists of nineteen directors; one of them is the USAC CEO and the other eighteen are nominated by different stakeholder groups with interest in the USF; including contributors and beneficiaries. *See* 47 CFR § 54.703. Consistent with existing practice, the Board of Directors may, in the performance of its duties, appoint or delegate authority to a committee of the Board of Directors to review or act on matters put before them.
3. **Conflicts of Interest.** Every aspect of the administration of the USF and the operation of USAC is and shall be conducted in a manner that promotes the integrity of the USF, and instills the highest public trust and confidence in the USF, USAC, and the Commission. To that end, USAC, as well as its directors, officers, employees, contractors, subcontractors, consultants, agents, and all other representatives shall avoid any organizational or personal conflicts of interest or the appearance of a conflict of interest in any aspect of the administration of the USF and the operations of USAC. In addition, USAC shall maintain a written Ethics Policy and provide the Commission with a copy. USAC shall advise the Commission in writing with respect to any changes in its Ethics Policy. Additional conflict of interest considerations that apply to procurements are set forth at IV.B.10, below.
4. **Claims Involving the USF.** Consistent with relevant statutory, regulatory and other Commission requirements, USAC shall continue to report to, coordinate with, and seek any necessary approvals from the Commission with respect to establishment and collection of debt, bankruptcy, fraud, and any other litigation that could affect USF monies and the integrity of the USF. USAC shall treat the

designee in the Commission's Office of General Counsel (OGC) as the primary point of contact for such coordination and consent. Given that the Commission has oversight authority over the USF and USAC has been appointed administrator of the USF, the parties to this MOU intend that any exchange of information between them in connection with coordination on litigation involving the USF would not constitute a waiver of the attorney-client privilege. The Commission and USAC also share certain common interests in litigation involving the USF and intend that their cooperation and sharing of documents and information in order to advance their common interest in litigation is recognized under the joint defense and common interest doctrines such that information and documents shared by the parties, including information protected by the attorney-client privilege, the work product doctrine and any other privileges that otherwise apply in order to mutually assert common or joint defenses, shall remain protected by such privileges.

5. **Potential Loss of Service.** USAC shall immediately notify the points of contact in the Commission's, Office of Managing Director (OMD), Wireline Competition Bureau (WCB), and Wireless Telecommunications Bureau (WTB) as applicable, and OGC: (1) when it receives allegations or complaints that could result in a USF beneficiary's loss of eligible services; and (2) prior to USAC making any decision that could result in a USF beneficiary losing an eligible service.
6. **Forms Approval.** USAC shall submit all proposed USF forms and form changes or other information collections to the points of contact designated by the Managing Director and by the WCB and/or WTB Chief, as applicable, for prior approval. In making any such submission for approval of forms or form changes, USAC shall provide the designated points of contact with sufficient time to review the proposed forms, including but not limited to sufficient time for the proposal to be reviewed and processed under the Paperwork Reduction Act of 1995, Public Law 104-13, Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.). This subsection shall not apply to minor modifications that are necessary for USAC to implement and optimize online filings of forms. However, minor modifications do not include changes to the information collections or removal of certification requirements and/or other requirements required by Commission rules.
7. **Stakeholder Engagement and Program Outreach.** USAC will engage with universal service stakeholders (*e.g.*, beneficiaries, contributors, consumers, other state, Federal and Tribal governmental entities) to promote successful stakeholder participation in universal service, to understand and mitigate challenges experienced by stakeholders, and to ensure accurate dissemination of program objectives.
  - a. **Monthly Report.** USAC will provide monthly reports to the points of contact designated by the Managing Director and by the WCB Chief on all

planned training sessions and public speaking engagements (other than internal employee training sessions held at USAC's facilities).

- b. **Governmental Partners Outreach.** Prior to any new coordination, training, speaking events or any other new engagement with state or Federal governmental entities, USAC will coordinate with the point of contact designated by the WCB Chief.
- c. **Tribal-Specific Outreach.** For any Tribal-specific events, USAC shall also notify the Consumer and Governmental Affairs Bureau's Office of Native Affairs and Policy (ONAP) Chief, or his/her expressly authorized designee, prior to any coordination, training, speaking events or any other new engagement with Tribal government or Tribal representatives. USAC will coordinate with the point of contact designated by the WCB Chief and the ONAP point of contact prior to any such engagement.

**8. Notification of Rule Violations and Potential Waste, Fraud and Abuse.**

USAC will alert designated points of contact with the Commission's Office of Inspector General (OIG), Enforcement Bureau (EB), OMD, WCB, and WTB, as appropriate, where it identifies evidence of rule violations, waste, fraud, or abuse in the USF programs or USF contribution matters.

- 9. Enforcement Referrals.** As required in Section IV.A.8 above, USAC staff, including program and audit staff, shall refer any rule violations and potential waste, fraud, and abuse to the Commission's Enforcement Bureau and the Commission's Office of Inspector General, as applicable, for consideration of enforcement action in a timely manner. The EB point of contact shall ensure distribution of referrals to the appropriate divisions within EB.

- 10. USAC Website Changes.** USAC shall provide notice of substantive changes to the content of the website and seek approval from the Wireline Competition Bureau Chief, or designated point of contact, for any substantive changes to policy-related language. This subsection shall not apply to minor modifications that are necessary for USAC to implement and optimize its website and other publicly accessible information.

**B. Commission Oversight of USAC Procurements**

- 1. Annual Procurement Plan.** USAC shall provide the Commission with a procurement plan no later than January 1 of each year. The procurement plan shall include all anticipated procurements and contract modifications, including indefinite-delivery indefinite-quantity (IDIQ) contracts, and anticipated task and delivery orders issued pursuant to IDIQ contracts, for the upcoming fiscal year with an actual or anticipated total contract value (including options) in excess of \$100,000. The plan shall include for each procurement: the procurement name; explanation of need for the procurement; a description of the goods and/or

services to be procured; estimated cost; and the type of competition to be used (“type of competition” includes: full and open competition; obtaining quotes from three or more sources; placing orders under a multiple award contract or Blanket Purchase Agreement; and other procurements where multiple vendors are considered for award), or the justification for a non-competitive action (*i.e.*, sole source award). The procurement plan shall also address USAC’s planned efforts to utilize small businesses, minority businesses, and women’s business enterprises (*see* 2 CFR § 200.320), and any potential conflict of interest for planned procurements and USAC’s proposed remediation for such potential conflicts (*see* Sections IV.A.3) and IV.B.10 of this MOU).

- 2. Quarterly Procurement Reporting.** USAC shall provide to the Commission on a quarterly basis, a report showing status of USAC procurement activity and advance notice of any upcoming procurement activity. The report shall identify all procurements and contract modifications (contracts or contract modifications awarded or executed in the past 90 days, in-process, and anticipated over the next 120 days) with an actual, anticipated total value (including options and other extensions) in excess of \$100,000. For these reports, “procurements” shall include IDIQ contracts along with any related task and delivery orders in excess of \$100,000. To the extent that a procurement(s) above this threshold arises after submission of a quarterly report and needs to be completed prior to the next quarterly report, USAC shall promptly notify the Managing Director via email once the need for such procurement is known. The quarterly report shall include for each ongoing procurement: the procurement name; a description of the goods and/or services to be procured; the status of the procurement; the contract type (fixed price, labor-hour, time and materials, etc.); whether competition will be conducted, or, if not, the justification for the non-competitive action (*i.e.*, sole source award); the estimated award date; and the estimated contract value (including all option years). For each completed procurement action, the report shall also include: the name of the contractor; the date of award or contract modification; the value of the modification or awarded contract (including all priced option years); any known or disclosed potential conflict of interest (including the remediation plan associated with such potential conflict) and the size status of the contractor (based upon the Small Business Administration size standard for the North American Industry Classification System (NAICS) code that is applicable to the procurement) and disclosure of awards to small businesses, minority businesses, and women’s business enterprises as required in the Annual Procurement Plan in Section IV.B.1 above. For each IDIQ contract, the report shall provide the value, vendor identity, and services or goods procured pursuant to each task order and delivery order placed. USAC and the Commission shall meet monthly, as needed, to review this report and any other pertinent procurement information requested by the Commission.
- 3. Procurement Advance Review.** OMD shall establish procedures for review and approval of USAC procurements. Such procedures, at a minimum, shall specify dollar thresholds for review of competitive and sole source procurements; and

detailed information required to approve each procurement. USAC shall seek advance approval of procurements pursuant to the Managing Director's procurement review procedures unless otherwise specified by OMD. The procurement review procedures shall periodically be reviewed and updated as necessary to ensure efficient and effective processing of USAC procurement actions.

4. **Transparency.** USAC shall post all competitive solicitations for contracts with an estimated total contract value (including options) in excess of \$250,000 on the USAC and FedBizOpps websites. In addition, USAC shall post on the USAC website a summary of each contract, IDIQ, task order, and delivery order award for which the total value (including options) exceeds \$250,000. Each summary shall include the name and address of the awardee, award date, a short description of the work, contract type, total value (including options), and term (including option periods).
5. **Annual Procurement Report.** USAC shall provide a fiscal year-end procurement report for all procurements with a total contract value (including options) in excess of \$100,000 no later than February 1 of each year. For each completed procurement for the past fiscal year, the report shall include: (1) the award amount (including option periods); (2) a short description of the goods or services procured; (3) an explanation of any cost savings achieved or the cost effectiveness of the selection, as applicable; (4) an explanation of the impact of the contract on program performance, including the application of any contractual incentives or penalties, as applicable; (5) a description of the competition that was achieved (including the number of proposals received) or the justification for conducting a non-competitive action (*i.e.*, sole source award); (6) any known or disclosed potential conflict of interest (including the remediation plan associated with such potential conflict); (7) the size status of the awardee; and (8) indicate whether USAC considered the selection excellent, good, fair, poor, very poor, with a narrative supporting the rating selected. For purposes of this report, the term "procurement" includes any task order or delivery order issued under an IDIQ contract.
6. **Procurement Standards and Procedures.** Except as set forth below, USAC shall implement and adhere to the procurement standards and procedures set forth in 2 CFR §§ 200.318-.321, 200.323, and 200.325-.326, & App. II to 2 CFR Part 200 of (including any amendments to these sections during the term of the MOU), for the procurement of supplies and other expendable property, equipment, real property leases, and services with Federal funds. As used in these procurement standards: the terms "non-Federal entity" and "recipient" shall refer to USAC; the term "Federal awarding agency" shall refer to the Commission; the terms "under Federal Awards" or "under the Federal award" shall refer to contracts awarded with Federal funds; and the micro-purchase and simplified acquisition thresholds are defined in 2 CFR §§ 200.67 and 200.88. The Parties agree to cooperate in resolving any ambiguities regarding the application of the 2 CFR Part 200

procurement standards to USAC. USAC shall abide by these standards for all procurements absent waiver of any provision by the Managing Director or by agreement of the Parties, with the exception that USAC is not required to comply with the prohibition against contracting with a contractor that was involved in earlier stages of a multi-phased contract (*see* 2 CFR § 200.319(a)), where continuation is a natural part of the process, and the contractor should not be excluded from participating in the competition for a subsequent, related contract. Notwithstanding anything to the contrary in the foregoing, USAC must still seek FCC approval for procurements in excess of the dollar thresholds set forth in MOU § IV.B.3, above. (The procurement standards regulations, and any subsequent amendments, are available at <http://www.gpo.gov/>).

7. **Limitation on Open-Ended Commitments.** By statute, the USF is currently exempt from the Antideficiency Act. That exemption has in the past been periodically renewed, but currently expires December 31, 2019, unless Congress acts to extend it. If the Antideficiency Act exemption lapses at any time, or upon the written instruction of the Managing Director, USAC shall not enter into contracts that constitute open-ended commitments of universal service funds, or commitments/obligations in violation of the Antideficiency Act. Under such circumstances, USAC shall:
  - a. establish USAC's maximum legal commitment at the time of award, either by establishing a firm fixed price or a not-to-exceed price that the contractor exceeds at its own risk;
  - b. not include any commitment by USAC to provide indemnification of any other party unless such indemnification has a stated not-to-exceed amount and such amount is considered a part of the total contract price for USAC Board of Directors and, if applicable, the Managing Director approval purposes;
  - c. not include any provision authorizing another party to unilaterally increase the contract price; and not include any provision authorizing automatic renewal or extension of the contract without prior written authorization of USAC, except for items contracted on a month-to-month basis, provided that USAC; (a) includes a maximum duration or financial commitment in month-to-month contracts; and (b) does not extend such contracts into any period during which the USF is not exempt from the federal Antideficiency Act.
8. **Transferability of Property Rights.** All property (personal, real, and intangible) acquired by USAC at any time in the course of its administration of the USF including, but not limited to, software, data, computer equipment, furniture, and office furnishings, shall, subject to applicable law, be transferred, at no cost to the transferee, to the Commission or Commission designee in the event that USAC is no longer designated as the USF Administrator. To comply with this paragraph



and 47 CFR § 54.702(l), USAC shall include appropriate language in its contracts stating that its intellectual property rights may be transferred to the FCC or a party designated by the FCC in the event that USAC's participation in administering the USF ends.

9. **Contract Administration.** USAC shall provide information regarding contractor performance upon reasonable request by the Commission, and shall cooperate with any review or oversight audit by the Commission or the Comptroller General regarding USAC's contracting practices and/or USAC's contractors' performance.
10. **Conflicts of Interest.** In addition to complying with the conflict of interest requirements in 2 CFR § 200.318(c), USAC, as well as its employees, officers, directors, contractors, subcontractors, consultants, agents, or representatives, shall not award any noncompetitive contracts to a USAC affiliate, including but not limited to NECA or its successors or assigns, or to any entity that has a representative serving on the board of USAC or NECA. In competitive procurements, allowing participation by NECA will be considered on a case-by-case basis after assessing potential organizational conflicts of interest.
11. **Performance-Based Contracting.** USAC shall use performance-based contracting for the procurement of services when feasible to establish meaningful and measurable performance standards. To give effect to the performance standards, USAC shall include financial incentives and penalties in its performance based contracts.
12. **Training.** USAC shall provide all employees involved in procurement activities training on the provisions of this Section IV.B and other relevant sections of this MOU.
13. **Competition Advocate.** USAC shall maintain a competition advocate position to perform duties consistent with applicable provisions in this Section. The Competition Advocate shall submit an annual report to the Board and the Commission. All non-competitive procurements in excess of \$25,000 must be approved by USAC's Competition Advocate in advance of OMD's review under Section IV.B.3.

#### C. **Treatment of Non-Public Information**

USAC shall establish and disseminate safeguards to protect non-public information in any form and provide material and tools necessary to implement these safeguards (such as encryption, document disposal bins, stamps, templates, envelopes, cover sheets, or other safeguards). All USAC employees shall be required to execute a Confidentiality Agreement before receiving access to non-public information. The Confidentiality Agreement, Attachment A, is incorporated herein.

## D. Reporting Requirements

USAC shall provide the Commission with the reports, performance measures, and other data as specified in this section. The Commission or its Bureaus or Offices reserve the right, at their sole discretion, to direct USAC in writing to provide the Commission with additional reports, performance measures, or other data without requiring the Parties to amend or otherwise modify the MOU. USAC shall respond promptly to data requests made by the Commission or its bureaus or offices.

1. **Financial and Programmatic Reports.** USAC shall no later than September 1, on an annual basis, provide the Commission with an USF Reports Spreadsheet listing the USF reports USAC will submit to the Commission for the upcoming year. The USF Reports Spreadsheet shall include for each report, the report title, description, Commission request source, frequency, due date, Commission distribution list, and available data format, including a comprehensive data specification (*e.g.*, data element field description, precision range, format) for each report. Also, USAC will make each report available for review by Commission staff electronically, to the extent feasible, with the USF Reports Spreadsheet. USAC and the applicable Bureau Chief, Managing Director, General Counsel, or designated point of contact[s] shall meet, as needed, to discuss and finalize the USF Reports Spreadsheet. The Managing Director, in consultation with the appropriate bureaus and offices, shall approve the report no later than November 15 of each year. To the extent modifications are needed to the USF Reports Spreadsheet or additional reports are needed, the Managing Director, or designee, shall notify USAC of such updates and meet, as necessary, to modify the USF Reports Spreadsheet.
2. **Commission Access to USF Analytics and Data.** USAC will establish and maintain systems capability to allow efficient and ready access by Commission staff to current analytics and data. Additionally, USAC will train Commission staff on how to access and use such analytics and data. To the extent programmatic changes occur, Commission staff and USAC shall collaborate to update USAC systems capability; Commission staff access to requested data analytics; and the USF Reports Spreadsheet. USAC shall also coordinate with the applicable Bureau Chief, Managing Director, General Counsel, or designated point of contact[s] to establish and maintain data management policies concerning the transfer of data to the Commission.
3. **Performance Measures.** On a monthly basis, USAC will provide to the Managing Director a monthly report setting forth performance metrics for each of the USF programs in the following categories:
  - USF program operations
  - Contributor performance
  - USAC administrative performance
  - Customer Experience

- Strategic Initiatives to improve program performance via effective program administration

4. **Customer Service Standards.** USAC shall act promptly to address complaints raised by USF contributors and beneficiaries (collectively “program stakeholders”). USAC will collect, monitor, and report “customer complaint information” on a monthly basis to USAC Program Managers. USAC will implement a system for collecting and analyzing complaints raised by program stakeholders, including complaints about the speed of application processing or delays in responding to inquiries. USAC will regularly review complaint information, identify trends, and develop proposals for resolving complaints raised by USF program beneficiaries (*i.e.*, recipients or potential recipients of USF funding and beneficiaries and potential beneficiaries) and contributors to the programs that are administered by USAC. USAC will continue reporting on its performance in this area on all four programs and contributors on a monthly basis to the Commission staff and members of the USAC Board of Directors. In addition, USAC shall make these reports available to the public. USAC will also continue reporting on its performance in the annual report it submits to the Commission. USAC shall make publicly available the means for submitting a complaint and its customer service standards.
5. **Expenditure Records and Reporting.** At the start of any review, investigation, or any other work associated with USF fraud or alleged fraud against the USF, USAC shall track all expenditures that USAC, its contractors, and its vendors incur in connection with any such action. As necessary, USAC and the Commission will work together to determine what records and estimates are needed in order to track such expenditures for reimbursement and/or other purposes. If USAC has any questions or concerns regarding methods and mechanisms for tracking expenditures in such matters, it shall promptly seek guidance from the Commission. At a minimum, USAC shall track expenditures associated with review, investigation, or any other work associated with USF fraud or alleged fraud against the USF, including but not limited to expenditures related to the following (whether conducted by the Department of Justice, the Commission, and/or by the OIG): (i) audits, (ii) support of investigations, civil cases or criminal prosecutions, (iii) remission and/or restitution proceedings, and (iv) review of settlement proposals. In addition, where there is a pending review, investigation, or any other inquiry (collectively, each a “pending investigation”) into (i) alleged fraud against the USF and/or (ii) allegations of other improper behavior that would, if true, adversely affect the USF, USAC shall track all expenditures associated with the processing and disbursement of any payments of universal service funds to beneficiaries subject to such a pending investigation until the matter is resolved.

**E. U.S. Treasury**

Following the transfer of the USF funds from private banking to the U.S. Treasury in April 2018, USAC will maintain any then currently unmatured U.S. Treasury Securities in a private bank (pursuant to an agreement acceptable to the FCC) until their maturity. USAC will promptly transfer the cash to the U.S. Treasury as and when each of the securities mature. USAC understands and agrees that all disbursements from the USF Treasury account require approval by a FCC certifying official.

**F. Statutes and Agency Directives Applicable to the USF**

The FCC, as a federal agency, is required to comply with a number of government-wide statutes, regulations, and policies. As part of its ongoing oversight of USAC, the FCC provides USAC with guidance on USAC's role in ensuring FCC compliance with such government-wide requirements. Commission guidance on such matters may, as appropriate, take the form of adoption of provisions in the MOU, adoption of additional regulations, issuance of orders, and/or through correspondence with USAC. Examples of Commission guidance to USAC on such matters can be found in the following MOU provisions: Subsection G addressing Improper Payments Elimination and Reduction Improvement Act of 2012, and Subsection I addressing the Freedom of Information Act. If USAC has questions regarding its role in ensuring FCC compliance with any government-wide statutes, regulations and/or policies, it should promptly bring such questions to the attention of the Commission through consultation with appropriate staff in the Office of Managing Director or the Office of General Counsel.

**G. USF Audits and Assessments**

Collaborating with the Office of Managing Director, USAC will implement a comprehensive program to audit USF programs and identify and recover improper payments, consistent with the Improper Payments Elimination and Reduction Improvement Act of 2012, any subsequent legislation, and relevant guidance from the Office of Management and Budget (OMB), including OMB Circulars A-50, A-123 and A-136. USAC shall conduct the audit and assessment programs under the oversight of the USAC Board of Directors (consistent with the requirements of 47 CFR Part 54, Subpart H) and the Managing Director. USAC, in consultation and coordination with the appropriate Commission bureaus or offices, will use information obtained in the audits and assessments to design and implement outreach and education initiatives to educate USF contributors and program beneficiaries to promote contributor and program beneficiary success in universal service participation. The Managing Director will have lead responsibility in the Commission to work with USAC in developing USF contributor and program beneficiary audit plans to be executed by USAC. USAC will develop and execute test plans to verify compliance with Commission rules and orders and will consult with the Managing Director and other relevant bureaus and offices, when necessary, on issues requiring Commission guidance or interpretation. In addition, USAC shall provide all necessary information for the Commission to timely satisfy its reporting requirements under federal law.

**1. Beneficiary and Contributor Audits**

USAC or any independent auditor that USAC engages shall conduct audits in accordance with generally accepted government auditing standards (GAGAS), as required by 47 CFR § 54.702(n). The cost-effective audit program shall be designed to recapture improperly disbursed payments, to determine whether USF monies are used for their intended purpose, to verify that all audited USF contributors are making the appropriate contributions in accordance with the Commission's rules, and to detect and deter waste, fraud, and abuse.

**2. Improper Payment Estimates, Identification and Recovery**

USAC shall work with the Office of Managing Director to develop and implement a plan to identify, recover and reduce improper payments and estimate an improper payment rate, as required, to assist the Commission in complying with federal law and OMB guidance.

**3. Agreed-upon Procedures Review**

An Agreed-upon procedures review shall be conducted in accordance with 47 CFR § 54.717. A review of USAC procurement activities shall be included in this annual agreed-upon procedures review. In addition, USAC procurement activities shall be reviewed periodically through USAC's internal control program, conducted pursuant to OMB Circular A-123.

**4. Audit Follow-up**

Pursuant to Commission rules, USAC shall take steps to implement all recommendations applicable to USAC or USF arising from audits, investigations, and other reviews of USF beneficiaries and contributors, including recommendations to recover funds that may have been improperly disbursed to beneficiaries as identified by Commission staff, USAC auditors, the OIG, auditors working under the oversight of the OIG, and auditors working under contract for USAC. In this process, the USAC shall use the audit follow-up procedures set forth in OMB Circular A-50 and Commission Directive 1013.3. USAC will immediately notify the Managing Director, or designated point of contact for coordination, if it is unable to implement fully any recommendation applicable to USAC or the USF.

In implementing the recommendations from audits, investigations, and other reviews, USAC shall apply the guidance contained in Commission rules, orders, and other guidance. Absent contrary written guidance from the Commission, USAC shall start its implementation actions as soon as possible, but in any event no later than 30 days from the date of the final report of the audit, investigation, or other review.

Concerning the Commission's annual financial statement and Federal Information Security Modernization Act of 2014 (FISMA) audits, which includes the USF, and the agreed-upon procedures audit of USAC, USAC shall discuss audit findings with Managing Director, or designated point of contact for coordination, and implement recommendations as directed by the Managing Director, or designated point of contact for coordination.

For all audits and assessments, where feasible, USAC shall develop and implement a corrective action plan to address all recommendations arising from such audits and will submit the corrective action plans to Managing Director, or designated point of contact for coordination.

**5. Internal Control**

USAC shall implement effective internal control over its operations, including the administration of the USF and compliance with applicable laws and regulations. USAC will implement an internal control structure consistent with the standards and guidance contained in OMB Circular A-123, including the methodology for assessing, documenting, and reporting on internal controls specified in Appendix A of OMB Circular A-123. USAC shall report periodically and as directed to OMD and the OIG on its internal control activities. USAC's external financial statement auditors shall also provide a report to USAC's Audit Committee on internal controls over financial statement reporting.

**6. Employing the Audit Program to Advance Program Goals Adopted by the Commission**

Annually, USAC shall identify to the Commission common findings from the audit and assessment programs. USAC shall analyze those findings and develop a root-cause analysis and corrective action plan for each type of finding for each program. The purpose of this analysis and plan is to identify and recommend administrative and programmatic improvements to eliminate or reduce the improper payments identified in the audit and assessment programs. Working with the Office of Managing Director and other appropriate bureaus or offices, USAC shall implement such recommendations as appropriate.

**H. Information Technology (IT) Requirements**

**1. General Coordination**

USAC will comply with federal and Commission information technology requirements on an on-going basis including, but not limited to, those pertaining to capital planning, computer and information security, communications, accessibility and privacy. USAC will coordinate with the Commission's Chief Information Officer (CIO) or his/her designee on IT projects, including IT related requirements, mandates, directives, and/or legislation or other federal mandates.

In specific, USAC shall ensure that its websites and web services shall provide services through the most current Hypertext Transfer Protocol Secure (HTTPS) and HTTP Strict Transport Security (HSTS). In addition, the USAC shall cooperate with the OIG concerning all OIG information technology audits, inspections and investigations, including information security testing that is to be performed by the OIG or its contractors.

USAC will submit an annual report to the Managing Director and the FCC's 508 Information Technology Coordinator describing the measures USAC has taken to implement Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended by the Workforce Investment Act of 1998 (Public Law 105-220) (the Rehabilitation Act) to provide maximum access to information and communication technology, including plans and actions taken to implement accessibility requirements and ensure compliance with the Standards for Section 508 of the Rehabilitation Act as set forth in Appendices A, C, and D to 36 CFR Part 1194.

USAC will submit an annual report to the Commission describing USAC's information technology security, including measures taken to implement information technology security requirements applicable to federal agencies and efforts taken to safeguard the information technology systems of USAC, including plans and actions taken to ensure compliance with FISMA and any related OMB and NIST guidance. Upon request, USAC will provide the Commission with complete information about its IT related spending, facilities, personnel levels and capabilities, contracts, operations, processes, technical infrastructure, and progress in achieving the foregoing requirements.

## **2. OMB Circular A-11**

USAC will prepare information required by OMB Circular A-11 for inclusion in the Commission's information technology capital planning submissions to OMB in a timely manner. This includes the Exhibit 300 "Capital Asset Plan and Business Case Summary," data for inclusion in the Commission's Exhibit 53 "Information Technology Investment Portfolio," and such other information as OMB Circular A-11, or its successor, may require. USAC will update the Capital Asset Plan and Business Case Summary on an annual basis.

## **I. Freedom of Information Act Submissions**

The Parties recognize the importance of public access to USAC's records consistent with the principles of the Freedom of Information Act, 5 U.S.C. § 552. The Parties acknowledge that the records of USAC directly relating to the USF, and program contributors and beneficiaries, including program forms and other data submitted by USF stakeholders and USAC-produced records related to USF contributors and program beneficiaries, are "agency records" subject to the FOIA and the Commission's FOIA implementing regulations, 47 CFR §§ 0.441, et seq. The Parties also acknowledge that other records generated or received by USAC may also meet the definition of "agency

records.” USAC shall refer any requests for access to its records to the Office of Managing Director Performance Evaluation and Records Management Office (PERM) within one business day of receipt. The Commission, in consultation with USAC, will determine whether the records meet the definition of “agency records” under the FOIA, and, if so, whether they are properly released or may be withheld under applicable FOIA exemptions. The Commission and USAC shall coordinate closely to ensure complete compliance with FOIA. The following procedures apply to requests for USAC records received by USAC or the Commission.

1. USAC will cooperate with the appropriate Commission bureau and office staff and use all reasonable efforts to provide copies of the requested records to the Commission within five business days. If more than five business days are required to gather and provide to the Commission staff the requested records, USAC will promptly notify the Commission and obtain the Commission’s approval as to when the records will be provided to the Commission.
2. When providing records for multi-part FOIA requests, USAC will clearly indicate the portion of the FOIA request to which the record responds and which, if any, FOIA exemptions USAC recommends applying to each responsive record. USAC may present in writing (including electronic means) its views of whether it recommends withholding or release of documents pursuant to the Commission's FOIA regulations.
3. USAC will use all reasonable efforts to respond within three business days to requests from the Commission for estimates of the costs associated with USA C's search for, and review of, the records responsive to a FOIA request. If more than three business days are required to provide the cost estimate, USAC will promptly notify the Commission and obtain the Commission's approval as to when the cost estimate will be provided to the Commission.
4. When determining the cost estimate for a FOIA request, USAC shall compute the amount in accordance with FOIA requirements in effect at the time of the request. USAC shall not take into consideration the classification of the requestor when determining costs.
  - a. If USAC estimates USAC's cost to process the FOIA request will not exceed the cap as stated by the requestor in the request, USAC shall proceed with processing the request.
  - b. If USAC estimates USAC's cost to process the FOIA will exceed the cap as stated by the requestor in the FOIA request, USAC shall provide the Commission with the cost estimate for USAC to search for and review records. USAC shall proceed with processing the FOIA when the Commission directs USAC to proceed.



5. Before releasing any documents relating to USAC transactions that include confidential commercial information identified by USAC, the Commission will notify any third parties involved in the relevant commercial transactions with USAC and afford such third parties the opportunity to object to the release in whole or in part as required under applicable law then in effect.

#### **J. USAC REQUESTS FOR GUIDANCE**

Pursuant to Section 54.702(c) of the Commission rules, where the Act or the Commission's rules are unclear, or do not address a particular situation, the USF Administrator shall seek guidance from Commission staff. Prior to seeking such guidance, USAC shall contact the designated point of contact in the applicable bureau or office and shall coordinate with Commission staff on the presentation of its request.

#### **V. IMPLEMENTATION**

USAC shall amend its By-Laws, corporate policies, procedures, and code of conduct where appropriate consistent with the terms of this MOU. USAC shall consider compliance with the terms of this MOU when evaluating performance of its employees, contractors, and any other individual or entity acting on behalf of USAC.

#### **VI. REVISION AND DURATION**

This MOU will become effective upon signature by both Parties below and will remain in effect for five (5) years from the later of the dates set forth below, unless revised or terminated by mutual agreement in writing between the Commission and USAC. The Board of Directors of USAC or officials at the Commission may, at any time, propose changes, modifications, or revisions to the MOU. Upon execution of this MOU by the Parties, this MOU will supersede the MOU dated May 2, 2016 and any prior versions of this MOU will no longer be in effect.

The Parties acknowledge and agree that continuous and consistent administration of the USF is vital to the accomplishment of the missions of the Commission and the USF. USAC agrees to furnish all necessary services and personnel to provide for the continuity and consistency of USF administration in the event of any revision or termination of this or any subsequent MOU or any other relevant change to USF administration. The Parties will act in good faith to provide for such continuity and consistency of USF administration in such an event and arrange reasonable reimbursement for the expenses incurred by USAC in providing such continuity and consistency.

#### **VII. NO PRIVATE CAUSE OF ACTION AND DISCLAIMER**

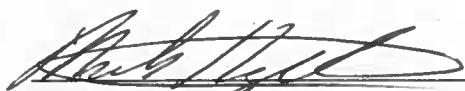
Nothing in this MOU creates a private cause of action for any entity. Nothing in this MOU constitutes a legal determination concerning the applicability of any statute or law. Nothing in this MOU waives, modifies, or otherwise changes any Commission rule, order, or other directive governing the USAC or the USF.

**VIII. SEVERABILITY**

If any provision of this MOU is determined by a court of competent jurisdiction to be invalid or unenforceable, that provision shall be stricken and the remainder of the MOU shall continue in full force and effect as if it had been executed without the invalid provision.

**SIGNATURES**

Date: 12/19/18



Mark Stephens  
Managing Director  
Federal Communications Commission

Date: 12/19/18



Radha Sekar  
Chief Executive Officer  
Universal Service Administrative  
Company

**Attachment A**  
**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 ("Commission"), 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 such 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) \_\_\_\_\_ Date \_\_\_\_\_

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

## CONFIDENTIALITY AGREEMENT – APPENDIX A

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 Commission 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 Commission, 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, Commission 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 Commission 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 Commission, 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.

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 CFR § 0.457(f) and decisions made thereunder.