

XXX XX, 20XX

<<Authorized Rep Name>>  
<<Grantee Name>>  
<<Address>>

Re: Contract Agreement for Project #<<Grant #>>, Your Signature and Reply is Requested

Project Title: <<Project Title>>

Dear <Salutation> <Last Name>:

Attached for your review and signature is the contract document required to establish the grant agreement for the GREAT Grant award with the North Carolina Department of Information Technology. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

The authorized representative from your company should execute the grant agreement via DocuSign no later than XXX XX, 20XX.

<b>Document:</b>	<b>Document Description:</b>	<b>Signed By:</b>
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Information Technology and the Grantee.	Authorized Representative for the Grantee
Exhibit A	Scope of Services: Outlines the scope of the construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Grantee to request reimbursements from Department of Information Technology.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Grantee to the Department of Information Technology and when they are due.	No Signature Required
Exhibit D	Sample Progress and Final Report: Provides a sample document for the Grantee to review progress and final report requirements.	No Signature Required
Mapping Files	<<Mapping File Name>>.zip: Electronic files to use with GIS software that identifies eligible project areas for this contract	No Signature Required
W-9	Required of all entities entering into a grant agreement with the State of NC. The form and instructions are included with this contract package and can also be downloaded at the following website: <a href="https://www.osc.nc.gov/documents/substitute-tax-forms">https://www.osc.nc.gov/documents/substitute-tax-forms</a>	Authorized Representative for the Grantee
Vendor Electronic Payment Form	This form is required of all grantees that would like electronic payment of the grant funds. The form and instructions are included with this contract package.	Authorized Representative for the Grantee

If you have any questions regarding the enclosed documents, please contact me at (919) 210-9236 or [greatgrant@nc.gov](mailto:greatgrant@nc.gov)

Sincerely,

George T. Collier, State Broadband Liaison  
Broadband Infrastructure Office  
NC Department of Information Technology

Enclosure

Growing Rural Economies with Access to Technology Grant Agreement  
**DIT Broadband Infrastructure Office Program**

The North Carolina Department of Information Technology (“DIT”), an agency of the State of North Carolina (“State”), enters into this GROWING RURAL ECONOMIES WITH ACCESS TO TECHNOLOGY (“GREAT”) PROGRAM agreement (“Grant Agreement” or “Agreement”) with the <<Grantee Name>> (the “Grantee” and, together with DIT, the “Parties”).

WHEREAS, the North Carolina General Assembly (“General Assembly”) finds that broadband service is an essential element to ensure economic opportunity in a twenty-first century global economy and the availability of terrestrially deployed broadband at connection speeds exceed 10 megabits per second (“Mbps”) download and one Mbps upload (“10:1”) is vital for enabling economic opportunity in our State, particularly in rural areas. The General Assembly has determined it is the policy of the State to facilitate the deployment of broadband to unserved areas of the State by affording grants to private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof, for eligible projects in unserved areas of economically distressed counties, subject to the applicable requirements of G.S. §143B-1373; and

WHEREAS, under G.S. §143B-1373(b), the General Assembly authorized the Secretary for the North Carolina Department of Information Technology (“Secretary”) to award grants from the GREAT Fund to eligible recipients for eligible projects. The Secretary has authorized the North Carolina Broadband Infrastructure Office to review applications for and, where appropriate, recommend awards for such GREAT Program grants pursuant to G.S. §143B-1373(e), (g) & (i);

WHEREAS, pursuant to G.S. §143B-1373, and based on the terms, conditions and representations in the GREAT Grant Program Application (“Application”) submitted through DIT Grants Management Portal at <https://www.ebs.nc.gov/irj/portal> and this Grant Agreement’s Exhibit A (Scope of Project Summary), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), and Exhibit D (Progress and Final Report Form), the Secretary has approved a grant (the “Grant”) to <<Grantee Name>>;

WHEREAS the GREAT Program grants provide terrestrially deployed Internet access service with transmission speeds of at least 10:1 (“broadband service”) in an unserved area as defined under G.S. § G.S. §143B-1373(a)(14); and

WHEREAS, the Secretary of DIT awarded the Grant: (1) based on the Application filed by <<Grantee Name>> and any subsequent materials supporting the application that have been approved of by DIT in writing; (2) based on GREAT Program guidelines and other grant requirements and guidelines; and (3) for the deployment of broadband infrastructure to provide at least 10 megabits per second download and 1 megabit per second upload speeds as summarized in the Application (the “Project”).

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NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

**1. Scope of this Grant Agreement**

- a. This Grant Agreement is governed by applicable North Carolina law, including but not limited to, G.S. 143B-1373, G.S. §143C-6-23, and 09 NCAC, Subchapter 3M.
- b. The following documents are incorporated by reference into this Agreement:
  - i. The Application filed by <<Grantee Name>> and any subsequent materials supporting the application that have been approved of by DIT in writing; and
  - ii. GREAT Program guidelines and other grant requirements and guidelines, which and may be amended, modified, or supplemented and applied accordingly to this Grant Agreement by DIT in its sole discretion. Guidelines and other documentation are available at <https://www.ncbroadband.gov/grants/great-grant/grants-management-documents>

**2. Obligations of Grantee**

**a. Broadband Access and Speeds.**

- i. The Grantee shall offer the proposed advertised minimum download and upload speeds identified in the awarded Project and Application for the duration of the five-year Grant Agreement.
- ii. The Grantee shall provide to NC Broadband Infrastructure Office (“BIO”), evidence consistent with the Federal Communications Commission attestation that the Grantee is providing access and making available the proposed speed, or a faster speed, to the targeted households, businesses, agricultural operations, and community anchor points (“Locations”) as described in this Grant Agreement. For the purposes of this Agreement, broadband access is considered available if the internet carrier can provide broadband service to a Location immediately or within ten (10) business days upon request and without cost to the customer other than standard connection fees.
- iii. If applicable, the Grantee shall disclose to NC BIO any changes to data caps for the Project are that differ from the data caps listed in the Grantee’s Application. For the purposes of this agreement, “data caps” are the limits imposed by broadband service providers on the total amount of data a user can download or upload during a specified period.

**b. Funding and Administrative Expenses.**

- i. The DIT grants to the <<Grantee Name>> an amount not to exceed <<Approved Grant Award>> for infrastructure costs directly relating to the Project. If DIT determines that the actual costs of the Project are less than the Grant amount, DIT, in its discretion, may reduce the amount of the Grant accordingly.
- ii. If the Grantee determines that the actual costs of the Project are less than the Grant amount, it shall report this determination to DIT and return any surplus Grant funds it has received.
- iii. The Grantee hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Grantee shall not make or approve of any improper expenditure of Grant funds.

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- iv. Eligible expenditures for the Project are limited to infrastructure costs incurred after the date of the Grant award. Infrastructure costs are costs as defined in G.S. §143B-1373(a)(9) that include:
  - 1. Installation
  - 2. Acquiring or updating easements, which is limited to 5% of the grant amount or \$25,000, whichever is less
  - 3. Equipment
  - 4. Fiber
  - 5. Construction
  - 6. Backhaul infrastructure directed at broadband service to the end user
  - 7. Testing costs, which is limited to 1% of the grant amount or \$5,000, whichever is less
- v. Without limitation and as determined by DIT in its sole discretion, the following expenditures are not eligible for Grant funding and should not be submitted to DIT for reimbursement or credited by the Grantee toward its Cash Match requirement under Section 2(c) below:
  - 1. Any costs incurred prior to the Effective Date.
  - 2. Middle mile, backhaul, and other similar projects not directed at broadband service for the end users.
  - 3. Overhead expenses.
  - 4. Administrative costs.
  - 5. All expenditures related to Project areas comprised of census blocks, or portions thereof, within which a broadband provider is receiving State or federal matching funds to deploy technologically neutral scalable broadband service within the next 18 months as reported to the Office prior to the opening of the application period for which this project was awarded.
- c. **Cash Match.** As a condition of receiving the Grant, the Grantee must contribute a cash match of <<Approved Match Percentage>>% of the Total Project amount, as determined by the scoring of the grant application of this Grant Agreement (“Cash Match”). Up to 50% of the Cash Match, under G.S. §143B-1373(j), may be comprised of third-party funding and other grant programs but may not be derived from Universal Service Fund, Connect America Fund, or other grants awarded for broadband expansion through a separate State or federal program. Expenditures that DIT, in its sole discretion, determines are not eligible for Grant funding may not be counted toward the Cash Match. All Cash Match funds shall be expended on costs eligible for Grant funding pursuant to the Payment Schedule as specified in Exhibit B.
  - i. Proof of Match. Prior to the execution of the Grant Agreement, the grantee must submit evidence specified in Exhibit B to show proof of matching funds.
  - ii. If loan or other grant funds are pledged, DIT requires a copy of the loan/grant commitment letter that specifies the amount of funding available from each source of funds. This includes any commitments from counties. In addition, all county funds must adhere to G.S. §153A-349.60.
- d. **Proof of Financial Solvency.** Per the authorizing legislation, a Grantee must show evidence of financial solvency to successfully meet the terms of the grant requirements prior to the disbursement of a lump sum payment of grant funds. Failure to provide proof of financial solvency will be a material breach of the Grant Agreement. DIT will accept one or more of the following documents as evidence of financial solvency:
  - i. 3 years of audited financial statements or if a publicly traded company, a link to

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the online statements;

- ii. 24 consecutive months of banking statements that show a positive cash flow;
- iii. Letter from a financial institution(s) indicating the amount of available funds;
- iv. Letter of Credit that states the available amount;
- v. Proof of access to available personal lines of credit and the available amounts; and
- vi. Commitment letters from investors, board of directors, or other funding sources that indicates a specific amount that could be committed towards the Project. If an individual, please include the name, address, and phone number of the individual in the letter. If an organization, the letter must be on company letterhead and certified and signed by the authorized representative of the organization.

**e. Project Records.**

- i. The Grantee shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- ii. The Grantee shall retain all financial records, supporting documents and all other pertinent records related to the Grant Agreement and the Project for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

**f. Project Milestones.**

- i. Grantee must submit progress and financial reports as required in Exhibit C and other requested documentation demonstrating the achievement of the following milestones:
  1. **On or before XXX XX, 20XX**
    - a. Completion of the engineering or design of the project; and
    - b. Submittal of evidence that all necessary agreements, permits, or contractual arrangements have been acquired or executed in order to construct or deploy infrastructure/equipment. Documentation can include but not limited tower agreements, licenses, permits, easement acquisition, or right of way access.
  2. **On or before XXX XX, 20XX**
    - a. Start of construction/installation of equipment and/or infrastructure
  3. **On or before XXX XX, 20XX**
    - a. Access is available to 10% of the locations
  4. **On or before XXX XX, 20XX**
    - a. Completion of the Construction Period and access to the number of locations identified in Exhibit A.
  5. **On XXX XX in the years of 20XX, 20XX, 20XX**
    - a. Submittal of an attestation specified in Sections 2 (a) (ii) and 2 (g) (iv)
- ii. If Grantee anticipates that a milestone will not be met within the time allowed, Grantee should notify DIT at least fifteen (15) days, prior to the time when the milestone should be completed, or as soon as it is reasonably determined a milestone will not be met, but no later than the final milestone date. Notice should be provided to DIT in writing pursuant to Section 13 (Notice). DIT, upon its

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discretion, will allow Grantee thirty (30) days to complete said milestone, and Grantee may only request and receive two (2) extensions for milestone completion per Grant award. If Grantee does not complete the milestone as agreed upon within the period of time granted by DIT or does not notify DIT of the need for an extension pursuant to this Section and fails to complete the milestone, Grantee will be found to be in material breach of this Agreement, and DIT may exercise its authority under G.S. § 143B-1373 and this Agreement to seek termination of the Agreement and retrieval of funds expended.

**g. Project Monitoring and Reporting.**

- i. The Grantee agrees to generate reports regarding the Project as may be requested by the State (including, without limitation, DIT) in such form as they may request, including after the Termination Date. The Grantee further grants the State (including any of its agencies, commissions or departments such as DIT, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the Grant Agreement or the Project. In addition, the Grantee agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, DIT) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.
- ii. The Grantee shall furnish DIT detailed written progress reports using the format designated by DIT according to the time periods specified in Exhibit C or as otherwise requested by DIT. A sample form represented by Exhibit D provides the type of data to meet these reporting requirements. Such reports should describe the progress made by the Grantee toward achieving the purpose(s) of the Project. Such descriptions should include the following:
  1. The successes and problems encountered during the reporting period; and
  2. Descriptions for requested items from Section 2(a) of this Grant Agreement
- iii. Failure to submit a required report by the scheduled submission date will result in the following:
  1. The withholding of any forthcoming payment until DIT is in receipt of the delinquent report and the report meets with DIT's approval, in DIT's sole discretion; or
  2. Subject to the repayment provision in Section 6.
- iv. Within thirty (30) days after the Termination Date, the Grantee shall submit a final report using the format designated by DIT describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Grantee should describe the Project how they were implemented, to what degree their established objectives were met, and the difficulties encountered, what they changed and their cost. The Grantee will certify and provide evidence consistent with the Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds identified in the Application and for which a base speed multiplier was awarded, pursuant to the final scoring matrix referred in the Application, are available throughout the Project area prior to any end user connections.

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**3. Grant Funds and Payment.**

- a. **Payment by DIT.** DIT shall pay the Grant funds to the Grantee in accordance with the Payment Schedule attached hereto as Exhibit C after receipt of written requests utilizing DIT grant request form for payment from the Grantee certifying that the conditions for such payment under this Grant Agreement have been met and that the Grantee is entitled to receive the amount so requested and any other documentation that may be required by DIT.
- b. **Grantee's Obligation of Grant Funds.** The Grantee shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days after the Termination Date.

**4. Term of Grant Agreement.** The effective period of this Grant Agreement shall commence on XXX XX, 20XX ("Effective Date") and shall terminate on XXX XX, 20XX unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date").

- a. **Deployment Project Period or "Construction Period."** The Construction Period is the time from the execution of this Grant Agreement to the time that service is available to Locations identified in Exhibit A "Scope of Services" and will not extend past XXX XX, 20XX. No extensions of milestones or Project Changes regarding deployment or construction will be given past this date.
- b. **Maintenance Period.** The Maintenance Period begins on the end date of the Construction Period or XXX XX, 20XX, whichever is earlier. Broadband service at or above the minimum speeds must be continually made available to the Locations specified in Exhibit A through the Maintenance Period until the Termination Date of this Grant Agreement.

**5. Project Changes; Amendments.**

- a. **Project Changes.** A "Project Change" is any material alteration, addition, deletion, or expansion of the Project, including (without limitation) material changes to the broadband infrastructure improvements. Prior to implementing a proposed Project Change, the Grantee shall submit the proposal to DIT for review.
  - i. In the event of a cost underrun or a total Project budget that is less than what is specified in Exhibit A, the Grantee must notify DIT, in writing, and submit a revised budget and narrative explaining the reduction of costs. DIT will review the request and re-score the Project to ensure the match requirements set forth in G.S. §143B-1373 are satisfied. A reduction in the total Project budget may affect the match requirement detailed in Section 2(c) or may trigger cancelation of the Grant award.
  - ii. In addition, if the Grantee submits a request, in writing, to utilize the additional funds to serve other unserved areas that are not identified in the Project, the Grantee must provide the following:
    1. Specific address locations (street address and lat/long coordinates) of the proposed expanded service area;
    2. Revised narrative explaining the expanded scope of work;
    3. Revised budget and explanation of costs; and
    4. Revised Technical Report
  - iii. In the event that the Grantee requests an expanded scope of work, DIT will publicly

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post the request for no more than 30 days to allow for a protest and public comment period utilizing the standards set forth in G.S. §143B-1373

- iv. Additionally, the Grantee shall immediately notify DIT of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement or the Project. In its sole discretion, DIT may deem such a change in conditions, local law, or other event to constitute a Project Change.

**b. Approval by DIT Required.** There shall be no Project Changes unless expressly approved by DIT in a separate, written agreement stating, if applicable, the costs and schedule for completing the Project Change. DIT in its sole discretion may deny the requested Project Change, in which case the following alternatives would apply: (1) the Project may be completed without changes; (2) the grant may be rescinded by DIT if the work cannot be completed; (3) the grant to the current Grantee may be rescinded by DIT and awarded to an alternate grant recipient pursuant to G.S. § 143B-1373(1) and N.C.S.L. 2020-1105 § 4.17.(b) (9); or (4) the Grantee may withdraw from the award and return any grant funds paid to date, among other remedies as described herein. DIT in its sole discretion may approve the requested Project Change, after re-scoring the Project based on the revised budget and narrative to determine whether the match requirements set forth in G.S. §143B-1373 require modification of the grant award. If Grantee implements Project Changes without requesting the approval for the Change in writing from DIT, Grantee will be subject to the clawbacks and remedies set forth in Section 6 of this Grant Agreement, unless DIT (in its sole discretion) expressly waives this requirement of Project Change review in writing.

**c. Amendments to this Agreement**

- i. Amendments to this Grant Agreement requested by either Party shall only take effect if agreed to in writing by both DIT and Grantee.
- ii. An amendment is not required when there is a written request to transfer costs between the Project expense line items detailed in Exhibit A if all of the following criteria is met:
  - 1. Grantee provides justification to the satisfaction of DIT for the proposed revision;
  - 2. The requested revision adhered to the eligible activities and cost limitations of the Agreement;
  - 3. The grant amount, match amount, and the total Project cost are not modified; and
  - 4. The requested revision is less than 10% of the total Project cost.

**6. Termination by the Parties.**

**a. Termination by DIT.** If the Grantee fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, the Grantee agrees that DIT has the right to terminate this Grant Agreement by giving, as applicable, the Grantee written notice specifying the Termination Date of either agreement, within sixty (60) days. Upon such termination, DIT shall have no responsibility to make additional Grant payments. Upon such termination, the Grantee shall not expend any Grant funds without DIT's express written authorization and shall return all unspent Grant funds to DIT upon demand.

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- b. Termination by Grantee.** Grantee may terminate this Agreement, with or without cause, with ten (10) days' written notice to DIT. Upon such termination of this Agreement, Grantee shall return all disbursed funds and DIT will pursue all available remedies pursuant to Section 6(c).
- c. Grant Repayment Requirements and Remedies.**
- i. The Grantee acknowledges that the Grant by DIT is predicated upon the deployment of broadband infrastructure during the Construction Period and fulfilling the obligations of the Maintenance Period. The Grantee further agrees that for the first twelve months of the Maintenance Period, and each successive twelve months thereafter during the Maintenance Period, if the Grantee fails to meet its obligations, then the Grantee is responsible for the following repayment or "clawback" payments:
    1. If the Grantee fails to make service available to the number of Locations identified in Exhibit A after the completion of the Construction Period, then the Grantee shall repay to DIT, as directed, an amount equal to the product of (i)  $\$ \ll \text{Approved Grant Award divided total locations} \gg$  (the amount of Grant funds divided by the number of Locations and (ii) the number of Locations, minus the number of Locations actually created. Interest will be added in accordance with Section 6(c)(iii).
    2. Additionally, in the event that the Grantee fails to maintain its Locations as required under the Maintenance Period, the Grantee shall lose credit for any qualifying Location under this Grant Agreement by the same number of Locations that is short. For example, if the Grantee fails to maintain service by three (3) Locations prior to the END DATE, the number of Locations shall be reduced by three (3). The amount the Grantee must repay shall then be calculated in accordance with Section 6(c)(i)(1).
    3. DIT shall notify the Grantee in writing of the amount to be repaid and direct the Grantee to repay such amount directly to DIT. All such amounts shall be due immediately upon demand by the Governmental Unit or DIT. If not paid within thirty (30) days following demand, the unpaid amount due hereunder and under shall continue to bear interest for the period beginning after the demand until paid. Upon default in such payment, DIT may employ an attorney to enforce their respective rights and remedies, and the Grantee hereby agrees to pay the legal costs and reasonable attorneys' fees of DIT plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults.
  - ii. The repayment requirements and remedies addressed in this Section are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
  - iii. If Grantee breaches this agreement as described in Section 6 or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement in relation to the Project (including the performance thereof), the

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Grantee agrees that pursuant to G.S. §143C-6-23, DIT in its sole discretion may request the Office of State Budget and Management to either suspend disbursement of grant funds to Grantee, to prevent further use of grant funds already disbursed, and due to Grantee's noncompliance with grant rules, to recover from the Grantee any grant funds already disbursed determined as the amount disbursed from the Grant plus interest at the rate established under G.S. §105-241.21, computed from the date of the disbursement.

**d. Cessation, Bankruptcy, Dissolution, or Insolvency.**

- i. The Grantee agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Grantee contained in this Grant Agreement, subject to the prior written consent of DIT as set forth in Section 11(c) if such action constitutes an assignment of the Grantee's obligations under this Grant Agreement. If the Grantee so merges, consolidates, or sells its assets without such an undertaking being provided, it agrees under Section 6 to make that payment due under the Grant Agreement to DIT, upon request and as directed. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the Grant Agreement, and DIT may terminate the Grant Agreement upon written notice to the Grantee and hold the Grantee liable for any such payment provided for under Section 6 of this Grant Agreement.
- ii. Other than as provided for in Section 6(d)(i), if the Grantee ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Grantee shall give DIT immediate notice of the event, and shall pay the amount provided under Section 6 of this Grant Agreement to DIT, upon request, as directed and without regard to whether the effective period in Section 4 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.
- iii. If the Grantee fails to provide the State notice of ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material breach under this Grant Agreement. If there is such a cessation or such a proceeding, DIT may terminate the Grant Agreement upon written notice to the Grantee pursuant to Section 6(a). Upon such termination, the Business shall pay the amount shall pay the applicable clawback amount to DIT upon request, as directed and without regard to whether the effective period in Section 4 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.

7. **Availability of Funds.** The obligations of DIT to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant become unavailable, the Grantee agrees that DIT has the right to terminate this Grant Agreement by giving written notice specifying the Termination Date of the agreement. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Grantee shall not expend any Grant funds without DIT's express written authorization and shall return all unspent Grant funds to DIT upon demand.

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**8. Independent Status of the State, the Grantee and Any Third Parties.**

- a. The State (including, without limitation, DIT) and the Grantee are independent entities from one another and from any third party. The Grant Agreement, the Project, and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Grantee or between or among either of them or any third party. Nor shall the Grant Agreement or the Project be construed to make any employees, agents or members of the Grantee or any third party into employees, agents, members or officials of the State or to make employees, agents, members or officials of the Grantee into employees, agents, members or officials of the State. Neither the Grantee nor any third party shall have the ability to bind the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Grantee have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.
- b. The Grantee and any third party shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Grantee and any third parties shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this Project. All expenses incurred by the Grantee or any third party are their sole responsibilities, and neither the State (including, without limitation, DIT) shall be liable for the payment of any obligations incurred in the performance of the Project.
- c. **Subcontracting.** Grantee shall provide, upon request by DIT, copies of any agreements made by and between Grantee and any subcontractors for the purpose of performing services to fulfill Grantee's obligations under this Agreement. The Grantee remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Grantee. Any contracts made by the Grantee with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Grantee for any claim presented by the subcontractor. Notwithstanding any other term herein, Grantee shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

**9. Grantee Representations and Warranties.** The Grantee hereby represents and warrants that:

- a. The execution and delivery of this Grant Agreement has been duly authorized by all necessary Grantee action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Grantee is a party or by which it is bound.
- b. There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Grantee, threatened against or affecting it that could or might adversely affect the Project or any of the transactions

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contemplated by this Grant Agreement the validity or enforceability of this Grant Agreement, or the abilities of the Grantee to discharge their obligations under this Grant Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, DIT may require repayment from the Grantee based on Section 6 of this Grant Agreement and this Grant Agreement may be terminated by DIT effective upon notice.

- c. No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Grantee or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Grantee shall provide DIT with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
- d. The Grantee is solvent, is financially capable of performing the Project responsibilities, is a going concern, is duly authorized to do business under North Carolina law, and is not delinquent on any federal, state, or local taxes, licenses, or fees. If it is subsequently found that the Grantee was not solvent, was not financially capable of performing its Project responsibilities, was delinquent on its federal, state or local taxes, licenses or fees or, if applicable, was not a going concern or was not duly authorized to do business under North Carolina law, DIT may require repayment from the Grantee based on the Section 6 of this Grant Agreement.

**10. Liabilities and Losses.** The Grantee hereby agrees to release, indemnify and hold harmless the State (including, without limitation, DIT), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties arising out of any act or omission of the Grantee or any third party in connection with the performance of this Grant Agreement or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Grantee hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Grantee or of any third party or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

**11. Special Provisions and Conditions.**

- a. **Non-discrimination.** The Grantee agrees not to discriminate by reason of age, race, religion, color, sex, national origin, or disability related to the activities of this Grant Agreement.
- b. **Compliance with Laws.** The Grantee shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant

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Agreement or the Project.

- c. **Non-Assignability.** The Grantee shall not assign or transfer any interest in the Grant Agreement without the prior written consent of DIT; provided, however, that claims for money due to the Grantee from DIT under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- d. **Personnel.** The Grantee represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Grant Agreement. Such employees shall not be employees of DIT. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

**12. Access to Persons and Records.** Pursuant to G.S. §147-64.7, DIT, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Grantee insofar as they relate to transactions with any department, board, officer, commission, institution, or other agency of the State of North Carolina pursuant to the performance of this Agreement or to funds disbursed pursuant to this Agreement. The Grantee shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by DIT, if in DIT’s opinion, such requirement is imposed by federal or state law or regulation.

**13. Notice.** All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when (i) sent via electronic mail with delivery confirmation requested; (ii) personally delivered; or (iii) when deposited in the United States mail, certified, return receipt requested, first class, postage prepaid. Notices shall be addressed as follows:

If to DIT via US mail:	Attn: <b>Director, Broadband Infrastructure Office</b> North Carolina Department of Information Technology NC Broadband Infrastructure Office PO Box 17209 Raleigh, North Carolina 27619-7209 GREATgrant@nc.gov
If to DIT via Email	

If to the Grantee via US Mail:	Attn: <b>Authorized Representative</b> <<Grantee Name>> <<Address>> <<Authorized Representative Email>>
If to the Grantee via Email:	

**14. Construction, Jurisdiction and Venue.** This Grant Agreement shall be construed and governed by the laws of the State of North Carolina. The Grantee agrees and submits, solely for matters concerning this Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this Grant Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.

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15. **Entire Agreement.** This Grant Agreement supersedes all prior agreements between or among DIT and the Grantee with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both DIT and the Grantee.
16. **Titles and Headings.** Titles and Headings in this Contract are used for convenience only and do not define, limit, or proscribe the language of terms identified by such Titles and Headings.
17. **Severability.** Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
18. **No Waiver by the State.** Failure of the State (including, without limitation, DIT) at any time to require performance of any term or provision of this Grant Agreement shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
19. **Dispute Resolution.** The Parties agree that it is in their mutual interest to resolve disputes informally. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties after a reasonable period, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.
20. **Waiver of Objections to Timeliness of Legal Action.** The Grantee knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, DIT) to enforce its rights under this Grant Agreement. This waiver includes any objections the Grantee may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
21. **Force Majeure.** Except as provided for herein, neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, epidemic, pandemic, or other catastrophic natural event or act of God.
22. **Execution.** This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.

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**23. Acceptance.** If Grantee agrees to the Grant conditions as stated, please return the executed Agreement and any other documentation requested by DIT. This Grant may be withdrawn if DIT has not received such documents within thirty (30) days from the date of the cover letter from DIT to the Grantee accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the Parties hereto have executed this Grant Agreement as of the date first above written

**«Applicant»**

Signature: \_\_\_\_\_  
[SEAL]

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

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

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

**North Carolina Department of Information Technology**

Signature: \_\_\_\_\_  
[SEAL]

Printed Name: <<Name of Secretary and State CIO>>

Title: Secretary & State Chief Information Officer  
NC Department of Information Technology  
\_\_\_\_\_

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

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**EXHIBIT A**  
**SCOPE OF SERVICES**

<<Grantee Name>> will carry out the terms of this contract as follows:

**1. General Project Description and Justification:**

This project must provide access, as defined in Section 2 (a) (ii), to broadband service to all proposed locations at speeds of <<ENTER CLAIMED BASE SPEED MULTIPLIER>> to the following

<b>Homes:</b>	XX
<b>Agricultural Operations:</b>	XX
<b>Businesses:</b>	XX
<b>Community Anchor Points:</b>	XX
<b>Total Users:</b>	X

This project will serve the proposed locations in the eligible project area identified in the map below in Figure 1 and the electronic file entitled, "<<FILE NAME>>.zip".

Ineligible areas include the following:

Per Section 3(b) of this Contract Agreement:

"Obligation of Funds: Funds provided by the NC Department of Information Technology may not be obligated by the GRANTEE prior to the effective date or subsequent to the termination date of this Agreement."

**2. Project Cost and Funding:**

<b>Project Expense</b>	<b>GREAT Grant</b>	<b>&lt;&lt;GRANTEE NAME&gt;&gt;</b>	<b>Total</b>
<b>Total</b>			

**3. Project Reporting:**

<<Grantee Name>> will adhere to the conditions and regulations outlined in the Grant Agreement and file reports on the dates set forth in **Exhibit C** of this contract.

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**Figure 1**

<<INSERT MAP>>

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**EXHIBIT B**  
**PAYMENT SCHEDULE**

The Department of Information Technology will issue a lump sum grant payment. Prior to the awarded grant amount being disbursed, the Grantee must submit the following documentation:

1. Evidence that all matching dollars have been secured to complete the Project. Documentation can include but not limited to financial agreements, award letters, or bank statements that total the required match amount.
2. Evidence satisfactory to DIT that the Grantee is financially solvent.
3. Any and all required documentation requested by DIT as set out in current and future guidance.

In accordance with the agreement, the Grantee will submit the following documentation specified in Exhibit C or when requested:

1. Evidence that all invoices have been paid in full. Evidence may include a copy of cleared checks or wire transfer receipt issued toward Project expenses;
2. Copies of eligible Project invoices; and
3. Submittal of a progress report. Please reference Exhibit C for progress reporting requirements.

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant. Payments are subject to the availability of funds.

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**EXHIBIT C**  
**REPORTING SCHEDULE**

The Grantee is required to submit progress reports based on the following schedule:

Reporting Period	Due Date	Report Type
October X – 31, 2020	11/15/2020	Progress and Financial Report
November 1 – 30, 2020	12/15/2020	Progress and Financial Report
December 1 – 31, 2020	1/15/2021	Progress and Financial Report
January 1 – 31, 2021	2/15/2021	Progress and Financial Report
February 1 – 28, 2021	3/15/2021	Progress and Financial Report
March 1 – 31, 2021	4/15/2021	Progress and Financial Report
April 1 – 30, 2021	5/15/2021	Progress and Financial Report
May 1 – 31, 2021	6/15/2021	Progress and Financial Report Milestone Report Section 2 (f) (1)
June 1 – 30, 2021	7/15/2021	Progress and Financial Report
July 1 – 31, 2021	8/15/2021	Progress and Financial Report
August 1 – 30, 2021	9/15/2021	Progress and Financial Report
September 1 – 30, 2021	10/15/2021	Progress and Financial Report Milestone Report Section 2 (f) (2)
October 1 – 31, 2021	11/15/2021	Progress and Financial Report
November 1 – 30, 2021	12/15/2021	Progress and Financial Report
December 1 – 31, 2021	1/15/2022	Progress and Financial Report
January 1 – 31, 2022	2/15/2022	Progress and Financial Report Milestone Report Section 2 (f) (3)
February 1 – 28, 2022	3/15/2022	Progress and Financial Report
March 1 – 31, 2022	4/15/2022	Progress and Financial Report
April 1 – 30, 2022	5/15/2022	Progress and Financial Report
May 1 – 31, 2022	6/15/2022	Progress and Financial Report
June 1 – 30, 2022	7/15/2022	Progress and Financial Report
July 1 – 31, 2022	8/15/2022	Progress and Financial Report
August 1 – 30, 2022	9/15/2022	Progress and Financial Report
September 1 – October XX, 2022	10/15/2022	Progress and Financial Report Milestone Report Section 2 (f) (4)
October XX, 2022 - October XX, 2023	10/20/2023	Annual Progress Report Milestone Report Section 2 (f) (5)
October XX, 2023 - October XX, 2024	10/20/2024	Annual Progress Report Milestone Report Section 2 (f) (5)
October XX, 2024 - October XX, 2025	11/4/2025	Annual Progress Report Milestone Report Section 2 (f) (5)

The final report documentation is due at the time of Project completion or no later than 30 days after the grant end-date, whichever is sooner. The reporting schedule remains in effect for the duration of the grant.

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**Failure to submit progress reports as required:**

1. Can result in the termination of the grant;
2. Can result in the demand for immediate repayment of any funds paid by The Department of Information Technology pursuant to the Grant Agreement; and
3. Will negatively impact the grantee's eligibility for future Department of Information Technology grants.

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**EXHIBIT D**  
**Sample Progress and Final Report Form**  
**USE REPORT DESIGNATED BY DIT**

Progress Report

Final Report

**GRANTEE INFORMATION (to be completed by Grantee)**

**Reporting Period**

**Contract Information**

From: \_\_\_\_\_  
 (date)

Contract Ref# \_\_\_\_\_

To: \_\_\_\_\_  
 (date)

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

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

Project Contact Completing this Form: \_\_\_\_\_

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

Primary Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

**PROJECT SUMMARY**

Please provide a detailed description of the Project progress to date.

Technology Type	
Proposed Advertised Speed	
Changes to Data Caps For the Project Area That Differs From the Data Caps Listed in the Grant Agreement? If yes, please explain the change.	
Number of Households with access	
Number of Businesses with access	
Number of Agricultural Operations with access	
Number of Community Anchor Institutions with access	

**PLEASE ATTACH A SEPARATE DOCUMENT THAT IDENTIFIES SPECIFIC LOCATIONS THAT NOW HAVE ACCESS TO BROADBAND AS RESULT OF THIS PROJECT. PLEASE INCLUDE STREET ADDRESS AND LAT/LONG COORDINATES FOR EACH HOUSEHOLD, BUSINESS, AGRICULTURAL OPERATION, AND COMMUNITY ANCHOR INSTITUTION**

**Internet Service Provider (ISP) Certification and Attestation**

The attached statements the undersigned representative of the applicant certifies that the information in this progress report or final report are true, correct, and complete to the best of the signatory's knowledge and belief. The signatory further certifies:

- 1 as Authorized Representative, the signatory has been authorized to file this progress report or final report;
- 2 that the grantee has substantially complied with or will comply with all federal, state, and local laws, rules, regulations, and ordinances as applicable to this Project;
- 3 that the applicant certifies the financial and organizational strength regarding the ability to successfully meet the terms of the grant requirements and the ability to meet the potential for repayment of grant funds; and
- 4 attests that the Locations in the Project area have access to at least 10 mbps download and 1 mbps upload speeds.

\_\_\_\_\_  
 SIGNATURE OF AUTHORIZED REPRESENTATIVE

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 NAME AND TITLE