

## North Carolina BEAD Grant Agreement

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## ATTACHMENTS

Exhibit A – Definitions

Exhibit B – NCDIT disclosures required by 2 C.F.R. 200.332 and 09 NCAC 03M

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## Article 1. Overview

**Section 1.1 Parties.** The North Carolina Department of Information Technology (“NCDIT”), an agency of the State of North Carolina (“State”), enters into this grant agreement (“Agreement” or “Contract”) with the <<Subgrantee Name>>(the “Subgrantee”), a <<TYPE OF ENTITY>>. Together, NCDIT and Subgrantee are the “Parties.”

WHEREAS, the NCDIT is authorized to make Grant Funds available to qualified subgrantees under the North Carolina Broadband Equity, Access, and Deployment (BEAD) program, Session Law 2024-55 (S.L. 2024-55), as amended by Session Law 2025-89 (S.L. 2025-89), and governed in accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, the BEAD Notice of Funding Opportunity (NOFO), and BEAD Restructuring Policy Notice (RPN), including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and National Telecommunications and Information Administration (NTIA) Administrator may provide;

WHEREAS, the granting of North Carolina BEAD Program funds through this Agreement from NCDIT to Subgrantee for the benefit of End Users has been approved by the NCDIT;

WHEREAS, the granting of funds from NCDIT to Subgrantee will enable the development of broadband facilities for End Users for the delivery of services, particularly the increased availability of telemedicine services, distance learning, and telework;

WHEREAS, NCDIT and Subgrantee agree that this award is being provided by the State of North Carolina to Subgrantee for Subgrantee to carry out part of the Federal BEAD award received by North Carolina. Specifically, Subgrantee will use award funds for the deployment of a broadband network and the provision of Qualifying Broadband Service to End Users;

WHEREAS, NCDIT and Subgrantee agree that the major purpose of this award is a broadband infrastructure project;

WHEREAS, it is the intent of the Parties that this Agreement in all other respects is a “subaward” as that term is defined in 2 C.F.R. § 200.1 and that Subgrantee is a “subrecipient” as that term is defined in 2 C.F.R. § 200.1 and as evaluated under 2 C.F.R. § 200.331; and

WHEREAS, this award is a “fixed amount award” (“fixed amount subaward”) as defined in 2 C.F.R. § 200.1 and provided for in 2 C.F.R. 200.201, where the major purpose of the subaward is a broadband infrastructure project, and will be administered by NCDIT pursuant to the NTIA’s Uniform Guidance Policy Notice (UGPN).

NOW, THEREFORE, in consideration of the mutual promises contained herein, and incorporating by this reference the Definitions, the Parties hereby agree as mentioned in the below sections.

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**Section 1.2 Roles.** For the purposes of this Agreement, NCDIT is a recipient and a pass-through entity for the U.S. Department of Commerce, National Telecommunications and Information Administration Broadband Equity, Access and Deployment (BEAD) program, and Subgrantee is a subrecipient as defined by 2 C.F.R. 200.1.

**Section 1.3 Purpose.** The purpose of this Agreement is to establish the terms and conditions for the use funds that NCDIT has awarded to the Subgrantee to carry out the State's BEAD program. NCDIT awarded this funding: (1) based on the application filed by the Subgrantee and any subsequent materials supporting the application; (2) based on BEAD Program guidelines and other federal and state requirements and guidelines; and (3) for the deployment of broadband infrastructure to provide the locations identified in this Agreement with at least 100 megabits per second download and 20 megabits per second upload speeds by December 31, 2026, as described in the application (the "Project").

**Section 1.4 Source of Funding.** The State received Broadband Equity, Access and Deployment (BEAD) program funding from the U.S. Department of Commerce, National Telecommunications and Information Administration pursuant to the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, and NCDIT intends to pay for the cost of this Project using the \$1.53 billion in funds allocated to NCDIT by the North Carolina General Assembly for the State's BEAD program, as authorized and appropriated in S.L. 2022-69, S.L. 2022-74, S.L. 2023-134, S.L. 2024-55, and S.L. 2025-89.

**Section 1.5 General Compliance Requirements, Order of Precedence, and Terminology.** Subgrantee must perform its obligations under this Agreement in a manner that complies, and enables the NCDIT to comply, with all requirements contained in the following, listed in the order of precedence:

- i) IIJA, including Sec. 60102, codified as 47 U.S.C. § 1702, Grants for Broadband Deployment;
- ii) Specific Award Conditions applicable to North Carolina's BEAD award;
- iii) General Terms and Conditions for the NTIA BEAD Program Funds;
- iv) NTIA BEAD Restructuring Policy Notice (RPN)
- v) NTIA BEAD Notice of Funding Opportunity (NOFO);
- vi) Department of Commerce Financial Assistance General Terms and Conditions, including 2 C.F.R. Part 200;
- vii) North Carolina General Assembly S.L. 2024-55, as amended by 2025-89;

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- viii) North Carolina Administrative Code 09 NCAC .03M Uniform Administration of State Awards of Grants
- ix) North Carolina BEAD Program Initial Proposal, as amended, and Final Proposal;
- x) This Agreement (including Attachments hereto);
- xi) NCDIT Uniform Terms and Conditions (May 11, 2018);
- xii) NCDIT Special Terms and Conditions - Insurance Requirements for Vendors (May 8, 2018);
- xiii) Subgrantee's Application as accepted by NCDIT.

The foregoing BEAD Program requirements are incorporated by reference as if fully set forth herein and are deemed to be Agreement obligations of the Subgrantee, which clarify and provide guidance as to the applicable regulatory provisions relating to internal controls, subgrantee monitoring and management, and audit requirements that apply to the NCDIT and thereby to Subgrantee or subcontractors receiving such funds through this Agreement. These requirements are legally binding and enforceable under this Agreement.

In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner that emphasizes consistency and harmonization across all relevant authorities. Where harmonization is not reasonably possible, the Parties agree to prioritize following the language contained in these authorities in the enumerated order or precedence (i. – xii.), from highest to lowest priority, and in a manner that will maintain the integrity of the underlying Agreement. NCDIT shall have final interpretive authority, subject to NTIA review and approval, if required, to apply these provisions in a manner that maintains the integrity of the underlying Agreement.

**Section 1.6 Disclosures.** Federal regulations, specifically 2 C.F.R. 211(b), require NCDIT to provide the Subgrantee with specific information about this award. All required information, along with state disclosures required by 09 N.C.A.C. 03M, is listed in Exhibit B, "NCDIT Disclosures".

**Section 1.7 Term of Agreement.** The effective period of this Agreement shall commence on <<INSERT DATE>> ("Effective Date") and shall terminate on <<INSERT DATE>>, unless terminated on an earlier date by either Party in accordance with the terms of this Agreement (either one of which dates shall constitute the "Termination Date").

**Section 1.8 Period of Performance and Project Completion.**

- i) **Period of Performance.** The Period of Performance for this award is four (4) years, during which period Subgrantee shall begin providing services to each End User that

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desires broadband service within the Project area not later than four (4) years after the Effective Date. If applicable, the Period of Performance for this award concludes ten (10) years from the date upon which the Low Earth Orbit (LEO) Satellite Subgrantee certifies that broadband is available to every location covered by the LEO Project.

- ii) **Project Schedule.** Subgrantee shall develop and submit to NCDIT for written approval, with Subgrantee's Application or such other time as NCDIT shall require a Project Schedule in such form and detail to implement the scope of the funded activities as detailed in Article 2 and certain activities shall be incorporated into agreed upon milestone dates, as required by NCDIT. Once approved in writing by NCDIT the Project Schedule shall not be changed without the prior written approval of NCDIT.
- iii) **Federal Interest Period.** The period during which Subgrantee will hold in trust for the beneficiaries of the BEAD Program all real property and equipment acquired or improved in connection with this Agreement. The Federal interest in all real property and equipment acquired or improved as part of this Agreement will start upon acquisition or improvement thereof and continue for 10 years after the year of the Closeout Date. For example, if this award is closed out in 2027, regardless of the month, the Federal Interest Period will last until December 31, 2037.
- iv) **Extension of Period of Performance.** NCDIT may, in its sole discretion, and subject to NTIA review and prior approval, extend the Period of Performance by up to one (1) year if Subgrantee demonstrates to NCDIT that: (a) Subgrantee has a specific plan for use of the Grant Funds, with Project completion expected by a specific date not more than five (5) years after the Effective Date; (b) construction on the Project is underway; or (c) extenuating circumstances require an extension of time to allow the Project to be completed.
- v) **Project Completion**
  - (1) **Completion Notice and Final Inspection.** When (a) all construction has been completed, Subgrantee's architect/engineer has conducted its own final inspection, and any deficiencies have been corrected and approved in writing by the NCDIT, and (b) all Project Completion Criteria have been met, Subgrantee shall submit written certification ("Subgrantee Completion Certification") to NCDIT that the Project was placed into service, as defined in 47 U.S.C. § 1702(h)(4)(C) for last-mile broadband deployment projects, by the end of the Period of Performance and request that NCDIT certify completion of the Project and initiate closeout per Section 4.6. Upon receipt of the Subgrantee's Completion Certification, NCDIT shall within 10 business days request Subgrantee to produce any data NCDIT requires to confirm the completion of the Project. Within five business days of receipt of any requested information, NCDIT will schedule a final

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inspection to be attended by representatives of NCDIT, Subgrantee's architect/engineer, and Subgrantee or subcontractor(s). NCDIT will provide NTIA reasonable advance notice of the final inspection so that a representative of NTIA may participate.

- (2) **Acceptance and Rejection of Project.** Subgrantee's failure to meet any of the Project Completion Criteria or failure to meet any material obligation under this agreement shall be cause for rejection of the Project by NCDIT. A Project shall be considered accepted unless, within ten (10) business days of the final inspection, NCDIT notifies Subgrantee in writing (a) that the Project is rejected, (b) specifies the items that, if modified or added, will cause the Project to be accepted, and (c) specifies a timeline for resubmission of the notice of completion under this Section 1.8. Subgrantee shall promptly remedy any defect which prevents the work performed on the Project from satisfying the Project Completion Criteria or meeting any material obligation under this Agreement.
- (3) **Project Resubmission.** A rejected Project shall be resubmitted within the time period specified in writing by NCDIT. Subgrantee shall provide an updated Subgrantee Completion Certification to NCDIT when Subgrantee resubmits the Project for acceptance. NCDIT shall review the resubmitted Project within thirty (30) calendar days of receipt of the written notification. A resubmitted Project shall be considered accepted unless either: (1) within this period, NCDIT notifies Subgrantee in writing that the resubmitted Project is rejected and specifies the items that, if modified or added, will cause the resubmitted Project to be accepted; or (2) the NCDIT Office notifies the Subgrantee in writing that the review will take a longer period of time, and specifies that time, not to exceed sixty (60) calendar days. The Parties shall repeat this process until the resubmitted Project is accepted, or NCDIT determines that Subgrantee has triggered the non-performance section of this Agreement.
- (4) **Certificate of Completion.** NCDIT will provide to Subgrantee written certification of Project completion within ten (10) business days of final acceptance of the Project.

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## Article 2. Scope of Funded Activities

**Section 2.1 Scope of Project.** All work on the Project shall materially conform to the plans set forth in the Application submitted by Subgrantee, unless NCDIT approves a change to the Project, in which case the work shall conform to the Application plans and the change, as applicable. Any changes to the Project or key personnel must be approved in advance by the NCDIT.

- i) **Reliance by NCDIT.** The Application filed by the Subgrantee and any subsequent materials submitted to NCDIT supporting the Application, which have been relied upon by NCDIT in awarding this funding, are incorporated by reference into this Agreement.
- ii) **BEAD Program Guidelines.** NCDIT policy related to the performance of this Project is set out in the BEAD Program guidelines, which may be amended, modified, or supplemented and applied accordingly to this Agreement by NCDIT in its sole discretion. Guidelines and other documentation are available at <https://www.ncbroadband.gov/BEAD>.

### Section 2.2 Funding and Administrative Expenses.

- i) **BEAD Award.** NCDIT awards to the Subgrantee an amount not to exceed <<Approved Award Amount>> for infrastructure costs directly relating to the Project (“BEAD Award”). If NCDIT determines that the actual costs of the Project are less than the BEAD Award, NCDIT, after consultation with the Subgrantee and an opportunity to respond, may reduce the amount of the BEAD Award funding accordingly.
- ii) **Total Funding.** The total BEAD Award funding for the Project, including the sources of the funds and the percentages of each source are set forth in Exhibit D.
- iii) **Eligible Expenditures (BEAD NOFO § IV.B.7.a.ii.).** The NCDIT will reimburse the Subgrantee’s allowable actual costs, as further detailed in this Agreement, not exceeding the Grant Funds. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200. The NCDIT will reimburse Subgrantee for the federal share of properly documented allowable costs after review and approval as noted above. However, any costs incurred by Subgrantee prior to the Effective Date shall not be reimbursed absent specific written allowance from the NCDIT of pre-award costs. The Subgrantee’s costs for work performed after the Period of Performance, or after any performance period end date for a respective milestone, shall not be reimbursable. The NCDIT will only reimburse allowable costs described in this Agreement if those costs are actually incurred in performance of the work, and (a.) permitted to be reimbursed under the terms of this Agreement; (b.) reasonable and necessary to accomplish the work and for the goods and services provided; and (c.)

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equal to the actual net cost to Subgrantee (i.e., the price paid minus any items of value received by Subgrantee that reduce the cost actually incurred).

(1) As authorized by NTIA, and pursuant to exceptions of 2 C.F.R. §§ 200.333 and 200.201(b) approved by the Office of Management and Budget (OMB), NCDIT has elected to make this award as a fixed amount subaward and additionally, as allowed by NTIA, to require the Subgrantee to submit evidence of costs. Cost overruns shall be borne by the Subgrantee. The Subgrantee must report its expenses on a quarterly basis and Matching Funds using Generally Accepted Accounting Principles or other standard accounting practices and monitor the relative proportion of costs across key spending areas. See General Terms and Conditions for the NTIA BEAD Program Sections 40 and 51. NCDIT reserves the right to require more rigorous reporting scheduling, as frequent as on a weekly basis, based on risk or repeated non-compliance with terms and conditions.

(2) Eligible uses of funding include the following:

- Construction, improvement, and/or acquisition of facilities and telecommunications equipment required to provide qualifying broadband service, including infrastructure for backhaul, middle- and last-mile networks, and multi-tenant buildings.
- Long-term leases (for terms greater than one year) of facilities required to provide qualifying broadband service, including infeasible right-of-use (IRU) agreements.
- Deployment of internet and Wi-Fi infrastructure within an eligible multi-family residential building.
- Engineering design, permitting, and work related to environmental, historical and cultural reviews.
- Personnel costs, including salaries and fringe benefits for staff and consultants providing services directly connected to the implementation of the BEAD Program (such as project managers, program directors, and subject matter experts).
- Network software upgrades, including, but not limited to, cybersecurity solutions.
- Training for cybersecurity professionals who will be working on BEAD-funded networks.

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- Workforce development, including Registered Apprenticeships and pre-apprenticeships, and community college and/or vocational training for broadband-related occupations to support deployment, maintenance, and upgrades.
- (3) Award Funds shall be used solely for allowable reimbursable costs incurred for implementation of the Project and for no other purpose.
  - (4) The use of Award Funds will adhere to the terms of this Agreement, the authorities identified in Article 1 of this Agreement, and the restrictions on pre-implementation activities set forth in Exhibit N (Environmental and Historic Preservation Review Procedures) to this Agreement. The Parties understand and agree that the NCDIT may not reimburse Subgrantee for costs that the Federal Grant Officer determines are not eligible for reimbursement pursuant to North Carolina's BEAD Program award.
  - (5) Subgrantee acknowledges that for a cost to be reimbursable under this agreement, it must "be reasonable, necessary, allocable, and allowable for the proposed Project or other eligible activity and conform to generally accepted accounting principles." (BEAD NOFO at 81, § V.H.1) and is subject to 2 C.F.R. Part 200. Subgrantee further acknowledges that while the federal cost principles do not govern fixed amount subawards, NCDIT will look to those principles as a guide when reviewing disbursement requests.
  - (6) Subgrantee shall be responsible for all Project costs that exceed the amount of the Award Funds. In the event the available Award Funds are insufficient to satisfy all Project costs, Subgrantee shall nevertheless be responsible for fulfilling all of its obligations under this Agreement.
  - (7) Subgrantee is responsible for reimbursing the NCDIT for any Grant Funds that are determined by NCDIT to be ineligible, misused, misappropriated, or inadequately documented under this Agreement. If NCDIT determines that any provision of this Agreement has been breached by Subgrantee, in addition to any other remedies available under this Agreement, the NCDIT may require and be entitled to reimbursement of any or all such Grant Funds. Any reimbursement required by NCDIT, with or without termination of this Agreement, shall be due within thirty (30) calendar days after giving written notice to the Subgrantee. The NCDIT also reserves the right to recover such Grant Funds by any other legal means, including litigation and drawing the funds in any letter of credit, performance or payment bond. The Subgrantee must indemnify, defend and hold harmless the NCDIT for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered.

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- iv) **Fixed Amount Subaward (NC S.L. 2024-55, Sec. 10.2.(d)).** Pursuant to S.L. 2024-55, the award is a fixed amount subaward for purposes of the federal requirements within the meaning of the Policy Notice on Tailoring the Application of the Uniform Guidance to the BEAD Program issued by the NTIA. The Grantee will reimburse the Subgrantee's allowable actual costs, as set forth in subsection (1). above, and as further detailed in this Agreement, not exceeding the Grant Funds.
- v) **Non-Eligible Expenditures.** In addition to any other use of Award Funds prohibited or made ineligible by state or federal law, regulation, or policy, the following are prohibited as uses of Award Funds (whether by Subgrantee or Subgrantee's lower tier subgrantees or subcontractors), and are not reimbursable as an allowable cost under this Agreement:
- **Prohibition Against Payment of Bonus or Commissions:** Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.
  - **Political Activity:** Any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.
  - **Prohibited Equipment and Services:** Purchase or support of (a) any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)), and (b) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China.
  - **Incremental Profits and Fees:** A profit, fee, or other incremental charge above actual cost. The Parties expressly acknowledge that this prohibition does not extend to program income, which Subgrantee may retain without restriction, including retaining program income for profit.
  - **Collective Bargaining:** Direct or indirect support of or opposition to collective bargaining.

**Section 2.3 Subgrantee Duties.** Subgrantee explicitly acknowledges the following obligations:

- i) **Standard of Work.** Subgrantee shall ensure that all work associated with the Project is performed in a workman like fashion and in keeping with prevailing industry standards.
- ii) **Subgrantee Responsibilities of Work.** Notwithstanding any other provision of this Agreement, the Parties agree that Subgrantee is solely responsible for:

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- Meeting all deadlines in approved plans and specifications;
- Inspecting the Project and all grant funded activities; however, NCDIT shall have a right at any time to inspect work-in-progress, or test and analyze all work purchased or constructed in whole or in part using funds provided by NCDIT, including inspections by a professional engineer, to determine whether in NCDIT's opinion the work is being performed in accordance with the provision of this Agreement and in an equitable and nondiscriminatory manner;
- Providing for required construction licensing, safety training, permits and adequate construction inspection so as to comply with all local, state, and federal laws;
- Promptly paying costs incurred for the Project, including but not limited to all grant funded activities, and ensuring that all parts of the Project remain encumbrance free and in good standing from a financial perspective;
- Monitoring and ensuring compliance of subcontractor compliance with federal, state, and local requirements;
- Complying with its approved Low-Cost Service Offer (LCSO); and,
- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.
- Once the network has been deployed, shall provide public notice, online and through other means, of that fact to the locations and areas to which broadband service has been provided and share the public notice with the eligible entity that awarded the subgrant; and, shall carry out public awareness campaigns in service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers.

iii) **Service Obligations for Period of Performance and Federal Interest Period for Other Broadband Infrastructure Grants**

(1) **Broadband Access and Speeds.**

- The Subgrantee shall deploy infrastructure to the approved locations required by this Grant Agreement and, upon completion of construction, shall offer to

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those Locations the minimum download, upload and latency speeds identified in the Subgrantee's application.

- At a minimum, the Project shall deliver reliable broadband service to each of the End Users with speeds of not less than one hundred (100) Mbps for downloads and twenty (20) Mbps for uploads. In addition, ninety-five percent (95%) of latency measurements during testing windows must fall at or below one hundred (100) milliseconds round-trip time. Connections to eligible Community Anchor Institutions, as defined in the BEAD Guidelines, shall be capable of delivering service at speeds not less than one (1) Gigabit per second for downloads and one (1) Gigabit per second for uploads. Subgrantee shall ensure that such connections can be used to provide business data services.
  - The Subgrantee shall provide to NCDIT evidence consistent with the Federal Communications Commission attestation that the Subgrantee is providing access and making available the proposed speed, or a faster speed, to the targeted address points ("Locations") as described in Exhibit L to this 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.
  - Each Project network's outages shall not exceed, on average, forty-eight (48) hours over any three-hundred sixty-five (365) day period except in the case of natural disasters or other force majeure occurrence. Subgrantee shall ensure a prospective network is designed to meet this requirement and shall develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.
- (2) **Access to Service.** For the purposes of this Agreement, broadband access is considered available if the Subgrantee can provide Qualifying Broadband Service to an End User immediately or within ten (10) business days upon request and without cost to the customer other than standard connection fees.
- (3) **Low-Cost Service Option.** Subgrantee must offer the Low-Cost Service Option ("LCSO") to Eligible Subscribers as set forth in Section 6 of this Agreement.
- (4) **Conduit Access Points.** Any work that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for any project that involves laying fiber optic cables or conduit underground or along a roadway. Conduit access point must be

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identified and certified by a Professional Engineer in Subgrantee's engineering design and as-built network and route information.

- (5) **Wholesale Obligation on Default.** The Parties agree that if Subgrantee at any time during the Federal Interest Period is no longer able to provide Broadband Service to the End Users at any time on a retail basis, remedial action will be taken to ensure continuity of service. Subgrantee shall, after consultation with and as approved in writing by the NCDIT and NTIA, either (a) sell Project network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities; (b) sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program; or, if applicable, (c) obtain comparable satellite or similar service. The NCDIT may require Subgrantee to take the appropriate remedial action so long as such action results in continued retail service to End Users in the grant area.

iv) **Project Milestones**

- (1) **Work Schedule.** Subgrantee shall develop and submit with Subgrantee's Application a proposed Work Schedule, with adequate pricing data to justify project costs, milestone dates, and deployment deadlines, consistent with Exhibit E, for the purposes of managing the construction, installation, overall deployment, and any related report reporting. Subgrantee and NCDIT shall work collaboratively to finalize the proposed Work Schedule Subgrantees within twenty (20) business days after the Effective Date of this Agreement, in such form and detail including categories of cost as required by NCDIT. Once approved in writing by NCDIT, the Work Schedule may not be changed without the prior written approval of NCDIT.

- (2) **Schedule of Values.** Subgrantee shall develop and submit with Subgrantee's Application, a proposed Schedule of Values for the cost of performance through completion of the Project. Subgrantee and NCDIT shall work collaboratively to finalize the Subgrantee's proposed Schedule of Values within twenty (20) business days after the Effective Date of this Agreement, in such form and detail including categories of cost as required by NCDIT. Once approved in writing by NCDIT, the Schedule of Values may not be changed without the prior written approval of NCDIT.

- v) **Reporting Requirements (47 U.S.C. § 1702(j) and 09 NCAC 03M).** Subgrantee will adhere to the conditions and regulations for reporting, as outlined in this Agreement.

Subgrantee shall file reports with NCDIT, NIST, and/or NTIA as specified in Exhibit H. Subgrantee acknowledges that the reporting requirements set forth in this Agreement (including Exhibit H) may be updated from time to time, and Subgrantee shall comply

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with any other reasonable reporting requirements determined by NCDIT to meet the reporting requirements established by the NTIA Assistant Secretary and certify that the information in the report is accurate. Subgrantee further acknowledges that NCDIT must make all Subgrantee reports available to NTIA upon request.

Subgrantee shall maintain sufficient records to substantiate all information submitted in reports under this Agreement.

NCDIT will conduct an implementation meeting with a grant recipient within thirty (30) calendar days of Effective Date and will make reporting templates and instructions available at or shortly after the implementation meeting. NCDIT and Subgrantee agree to work in good faith to identify and implement any changes to reporting requirements and protocols in a reasonable and timely manner.

- vi) **Matching Funds.** Subgrantee shall provide Matching Funds in the amount of [\$ ], as described in the approved project plan and budget specified in Exhibit D to this Agreement. Payments made under this Agreement shall be proportional to the amount of match committed by the Subgrantee, and this match percentage will apply to each payment. Matching Funds are not subject to the retainage under Article 3, Disbursement Milestones. Each match submission shall include a legally binding attestation.

Subgrantee's Matching Funds must be maintained in the matching percentage specified in Exhibit D throughout the disbursements under this Agreement, even if Subgrantee's actual costs are less than as specified in Exhibit D.

Subgrantee shall have secured the full amount of Matching Funds prior to the Effective Date. Subgrantee shall provide a Letter of Commitment to NCDIT within <<XX>> calendar days after provisional selection affirming that the amount designated as Matching Funds has been legally appropriated for the purposes of this Agreement by its authorized representatives, is set-aside solely to be used as Matching Funds for Subgrantee's Work under this Agreement, and is not subject to conditions restrictions, or encumbrances which could prevent Subgrantee's use of the Matching Funds. Funds from other federal programs (including funds from the FCC's Universal Service Fund programs) may not be used as Matching Funds.

Subgrantee shall prioritize the use of Matching Funds over Grant Funds in performance of its obligations under this Agreement. Matching Funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are made consistent with the requirements set forth in 2 C.F.R. Part 200. NCDIT may at any time verify Matching Funds, including but not limited to comparing facility in-kind matches with current mortgage statements or rental rates, or time keeping for services spent, such as time sheets, time and effort reports, and hourly rate of pay (to include

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benefits), on BEAD Program work. All matching funds must meet the requirements for reasonable allowable costs under this Agreement.

Subgrantee shall retain records detailing the source, amount, quantity, time, and delivery of each match service through the life of this Agreement and closeout consistent with the requirements of 2 C.F.R. § 200.306 and the BEAD Program.

vii) **Letter Of Credit/Performance Bond Requirements (BEAD NOFO, UG and NCGS).**

Prior to entering into this Agreement, upon request by NCDIT the Subgrantee shall obtain an irrevocable standby letter of credit, or a performance and/or payment bond(s) using the model(s) provided by NCDIT, equal to or exceeding twenty-five (25) percent of the total award amount for a letter of credit from a bank or a credit union or 100% of the subaward amount in case of a performance bond from an acceptable surety. The Subgrantee must retain the letter of credit or bond(s) until the final milestone in the disbursement is achieved and confirmed complete by NCDIT. Any letter of credit shall include a legal opinion, satisfactory to NCDIT, addressing bankruptcy considerations.

(1) **Conditional Programmatic Waivers.** The Subgrantee may request a waiver of the primary letter of credit requirement by demonstrating compliance with one of the following alternatives:

(a) Credit Union Option:

(i) Use of a United States credit union that is insured by the National Credit Union Administration. Must maintain all other requirements of the primary letter of credit option.

(b) Performance Bond Option:

(i) Obtain a performance bond equal to 100% of the award amount;

(ii) Must be issued by a company holding a certificate of authority as acceptable surety on federal bonds (U.S. Department of Treasury Circular 570);

(iii) No bankruptcy opinion letter required; and

(iv) All other documentation must be acceptable to NCDIT.

(c) Milestone-Based Reduction Option:

(i) Begin with standard 25% letter of credit or 100% performance bond.

(ii) May reduce security amount upon verified completion of deployment milestones that are verified and approved by NCDIT based on demonstrated progress in Project building completion.

(iii) Reductions must follow the Project Milestones.

(iv) New or renewed security documentation required for each approved reduction.

(v) Final release of security upon verification of 100% project completion.

(vi) All reductions subject to NCDIT's prior written approval.

(d) Reimbursement-Based Option:

(i) Available when funding is provided on reimbursement basis;

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- (ii) Initial security amount of 10% of the award amount;
- (iii) Reimbursement periods limited to six months;
- (iv) Must maintain 10% security until either:
  - 1. 100% project completion, or
  - 2. End of performance period

(2) **Documentation Requirements.** All letters of credit, performance bonds, and related documentation must:

- (a) Use the model(s) provided by NCDIT;
- (b) Be acceptable in all respects to NCDIT;
- (c) Be maintained in good standing throughout the required period; and
- (d) Be updated as required for any approved reductions or modifications.

viii) **Cybersecurity and Supply Chain Risk Management (47 U.S.C. § 1702(g)(1)(B)).**

Subgrantee shall comply with prudent cybersecurity and supply chain risk management practices throughout the period of performance, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Federal Communications Commission.

(1) **Cybersecurity Requirements.** Subgrantee shall:

- (a) Maintain a cybersecurity risk management plan that is:
  - (i) Operational, if the Subgrantee is currently providing service; or
  - (ii) Ready to be operationalized upon providing service, if the Subgrantee is not yet providing service;
- (b) Ensure the plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity and implements the standards and controls set forth in Executive Order 14028;
- (c) Reevaluate and update the plan on a periodic basis and as events warrant; and
- (d) Submit any substantive changes to the plan to NCDIT within thirty (30) calendar days of such changes.

(2) **Supply Chain Risk Management Requirements.** Subgrantee shall:

- (a) Maintain a supply chain risk management (SCRM) plan that is:
  - (i) Operational, if the Subgrantee is currently providing service; or

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- (ii) Ready to be operationalized upon providing service, if the Subgrantee is not yet providing service;
  - (b) Base the plan on key practices outlined in NIST publication NIST Internal or Interagency Report (NISTIR) 8276 and related Cyber Supply Chain Risk Management (C-SCRM) guidance from NIST, including NIST Special Publication (SP) 800-161 Rev. 1;
  - (c) Reevaluate and update the plan on a periodic basis and as events warrant; and
  - (d) Submit any substantive changes to the plan to NCDIT within thirty (30) calendar days of such changes.
- (3) **Third-Party Requirements.** If Subgrantee relies in whole or in part on network facilities owned or operated by a third party, Subgrantee shall obtain attestations from such third parties regarding their compliance with the cybersecurity and supply chain risk management requirements outlined above.

All plans and attestations shall be in the form set forth in Exhibit M. NCDIT may provide these materials to NTIA upon request.

#### **Section 2.4 Low Earth Orbit (LEO) Satellite Special Provisions (BEAD RPN, Appendix B).**

LEO projects are subject to the terms and conditions in Exhibit P – LEO Capacity Subgrant Template and Requirements. The LEO Subgrantee shall be bound by all provisions of this Agreement, and where appropriate, an alternate provision therein is specifically stated to apply to a LEO Subgrant and the LEO Subgrantee, the stated alternate provision for a LEO Subgrant(ee) in Exhibit P shall apply, with all other terms, conditions, and provisions of this Agreement remaining in full force and effect.

#### **Section 2.5 Material Changes and Project Changes.**

- i) **Material Changes.** A material change is any material alteration in, change to, or reduction of the Project, including without limitation, reduction in the number of Locations to be served by the Project, reduction in the Project area, change in total Project cost by 10% or more, , or the extension of the term of the Agreement (“Material Change”). An amendment to this Agreement is required for a Material Change, and such Material Change shall not take effect unless and until such amendment is executed pursuant to the terms of this Agreement. Prior to implementing a proposed Material Change, the Subgrantee shall submit the proposal to NCDIT for review and approval. NCDIT must review and approve in writing prior to the amendment taking effect. Amendments to this Agreement requested by either Party shall only take effect if agreed to in writing by both NCDIT and the Subgrantee.

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- ii) **Project Changes.** A project change is any non-material alteration in, change to, or reduction of the Project, including without limitation, change in Key Personnel, project milestones, a change in total Project cost by less than 10%, or transfer costs between Project expense line items detailed in Exhibit D and the EBS (“Project Change”). For a request to transfer costs between line items, all of following criteria must be met: (a) the Subgrantee provides justification to the satisfaction of NCDIT for the proposed revision; (b) the requested revision adhered to the eligible activities and cost limitations of this Agreement; (c) the BEAD Award funds, Project funding amount, match amount, and the total Project cost are not modified; and (d) the requested revision is less than 10% of the total Project cost.

There shall be no Project Changes unless expressly approved by NCDIT. Prior to implementing a proposed Project Change, the Subgrantee shall submit the proposal to NCDIT for review and approval and provide such detail and documentation necessary for NCDIT to evaluate the proposed project change. Any NCDIT-approved Project Change shall be made in writing by an authorized representative of NCDIT.

NCDIT 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 BEAD Award Project funding may be rescinded by NCDIT if the Project cannot be completed; (3) the BEAD Award funding to the current Subgrantee may be rescinded by NCDIT and awarded to an alternate Subgrantee pursuant to the BEAD Statutes; or (4) the Subgrantee may withdraw from the Project and return any Project funds received to date, among other remedies as described herein.

If the Subgrantee implements any Project Change without requesting the approval for the Project Change in writing from NCDIT, it will be subject to the clawbacks and remedies set forth in Section 7 and 8 of this Agreement, unless NCDIT (in its sole discretion) expressly waives this requirement of Project Change review in writing. ....

- iii) **Reduction in Scope.** In the event the Subgrantee requests to reduce the scope of the Project, including without limitation, a reduction of the number of locations and reduction in the eligible project area, NCDIT may cancel this Agreement pursuant to Article 7 (Termination and Remedies) of this Agreement.
- iv) **Changes that Affect Performance.** The Subgrantee shall immediately notify NCDIT of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Agreement or the Project. In its sole discretion, NCDIT may deem such a change in conditions, local law, or other event to constitute a Material Change or a Project Change.

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- v) **Extensions of Time.** Any requests for extensions of time may either be deemed a Material Change or a Project Change in the sole discretion of NCDIT and, if applicable, subject to approval of NTIA.
- vi) **Budget Changes.** If a Project or Material Change to the Subgrantee's budget has been requested, Reimbursement Requests may be delayed pending the approval of the Project or Material Change. If changes to the Subgrantee's budget have been made without the prior approval of NCDIT, no Reimbursement shall be made until the process outlined in Section 2.5 has been completed.
- vii) **Cost Overrun or Underrun.** In the event of a cost overrun or an increase in the total Project cost, the amount of NCDIT's BEAD Award to the Subgrantee shall not change. The Subgrantee shall bear sole responsibility for any and all increased costs related to the Project. In the event of a change in the total Project Budget that is 10% or more or a cost underrun, the Subgrantee must notify NCDIT, in writing, and submit a revised budget and narrative explaining the Project Budget change or reduction of costs.

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## Article 3. Compensation

**Section 3.1 Disbursement of Funds by NCDIT.** NCDIT shall reimburse the Subgrantee for approved BEAD Award funds in accordance with the Payment Schedule attached hereto as Exhibit I, after receipt of (a) written requests for payment from the Subgrantee utilizing NCDIT's request form and certification that the conditions for such payment under this Agreement have been met and that the Subgrantee is entitled to receive the amount requested, and (b) any other documentation that may be required by NCDIT.

### **Section 3.2 Availability of Funds and Maximum Amount.**

- i) **Availability of Funds.** The obligations of NCDIT to pay any amounts under this Agreement to the Subgrantee are contingent upon the availability and receipt of BEAD funds by NCDIT, the continued appropriation of such funds for the purpose set forth in this Agreement, and the Subgrantee's continued eligibility to receive such funds. If the amount of BEAD funds that NCDIT receives is reduced or BEAD funds for the Project become unavailable, the Subgrantee agrees that NCDIT has the right to reduce the amount of BEAD Award funds awarded to the Subgrantee under this Agreement or to terminate this Agreement pursuant to Section 7.7 of this Agreement. NCDIT may deny payment for the Subgrantee's Eligible Expenditures where invoices or other reports are not submitted by the deadlines specified in this Agreement or for failure of the Subgrantee to comply with the terms and conditions of this Agreement.
- ii) **Maximum Amount.** Disbursements to Subgrantee are limited to the unpaid, obligated balance of the Grant Funds subject to the agreed-upon match percentage. The NCDIT shall have no obligation to pay Subgrantee any amount under this Agreement that exceeds the Grant Funds available to and received by the NCDIT. Subgrantee acknowledges and agrees that NCDIT can only disburse funds that it has actually received from NTIA for this Project, and that all disbursements must be approved for payment according to the terms of this Agreement. Furthermore, NCDIT's ability to pay Subgrantee is contingent upon NCDIT's receipt of BEAD Program funds allocated for this Project, and no other funding sources are available for disbursement under this Agreement. Subgrantee acknowledges and agrees that the NCDIT is only obligated to pay to Subgrantee the amount of Grant Funds actually received by the NCDIT and approved for payment for the Project work and that the sole source of funding for payments to Subgrantee under this Agreement is payment to the NCDIT of the Grant Funds allocated to the Project. Payment to the NCDIT of the Grant Funds allocated to the Project is a condition precedent to the NCDIT's obligation to pay Subgrantee. Unless other sources of funding are disclosed herein, Subgrantee represents that, as of the Effective Date, it has no knowledge of any other federal, state, or local funding commitments for the Project or service area, and that it has not applied for – or, if applied for, will immediately withdraw – funding from any other federal, state, or local government body for the Project or service area.

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**Section 3.3 Disbursement Milestones.** Grant Funds shall be disbursed in the amounts based upon the approved Schedule of Values and Work Schedule, minus appropriate retainage as determined by NCDIT on the Project (retainage not to exceed 10% of the total contract value) and upon NCDIT's determination that Subgrantee has achieved the milestone dates and other conditions set forth in Exhibit E to this Agreement. All payment applications and payments shall be made in compliance with the terms of this Agreement, as outlined in Exhibit E. Subgrantee agrees that NCDIT is permitted to retain a 10% retention on the Project on each milestone payment until completion of the work, at which time all retention shall be released.

The final milestone payment shall not be paid without an approved Project Completion Report. Subgrantee's request for final payment shall be submitted within ninety (90) calendar days of the date NCDIT issues written certification of Project completion.

**Section 3.4 Disbursement Requests.** Subgrantee must submit with each request for disbursement:

- i) Certification that qualifying broadband is available at the relevant percentage of locations;
- ii) A report showing the amount of Matching Funds expended in connection with the provision of qualifying broadband to the locations addressed by the request for disbursement; and
- iii) One of the following:
  - (1) A report showing Project expenses using Generally Accepted Accounting Principles or other standard accounting practices; or
  - (2) A report showing the relative proportion of costs across the following key spending areas:
    - professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.);
    - construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.);
    - outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.);
    - network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.);

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- operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.);
- customer premise equipment;
- contingency funds; and
- all other expenses; or
- A report demonstrating that the Project's projected cost per location reached is consistent with the Project budget.

Subgrantee shall submit certified disbursement requests within forty-five (45) calendar days of reaching a BSL milestone, minus the applicable retention, including all documentation consistent with the disbursement table in Exhibit E and BEAD program requirements. In the sole discretion of the NCDIT, it will require further evidence of costs to validate the actual value of broadband infrastructure projects to ensure no overpayment of the grant funds and to ensure that the match requirements have been met as defined in this agreement.

**Section 3.5 Disbursement Procedures.** Grant Funds shall be disbursed to the Subgrantee via Automated Clearing House ("ACH") transfer or check, provided that Subgrantee has submitted to NCDIT a completed vendor substitute W-9 form and, in the case of ACH transfer, an ACH authorization form or form provided by NCDIT to facilitate an electronic transfer of funds.

The acceptance of an invoice by NCDIT shall not constitute acceptance of any work performed or deliverables provided under this Agreement. Subgrantee agrees that, while reimbursement by the NCDIT will occur as milestones are achieved and work is properly invoiced pursuant and subject to the other terms of this Agreement, ultimate acceptance by NCDIT of all work will need to be verified pursuant to the process detailed in Section 1.8 of this Agreement. All payments will also be consistent with all local, state and federal laws.

The NCDIT will use reasonable best efforts to issue Grant Funds to Subgrantee within forty-five (45) days of approval of documentation submitted by the Subgrantee for each applicable milestone, minus the appropriate 10% retention for the Project. Subject to Section <<X>>, eligible expenditures may not be incurred prior to the Effective Date or subsequent to the termination date of the grant. Payments are further subject to the availability of funds.

**Section 3.6 Repayment Requirements and Remedies.**

- i) **Repayment or Clawbacks.** The Subgrantee acknowledges that the BEAD Award funding by NCDIT is predicated upon the deployment of broadband infrastructure during the of the Period of Performance. The Subgrantee further agrees that during

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the Period of Performance, if it fails to meet its obligations, then it is responsible for the following repayment or “clawback” payments:

- If the Subgrantee fails to make service available to the number of Locations identified in Exhibit B after the completion of the Construction Period, then the Subgrantee shall repay to NCDIT, as directed, an amount equal to the product of (i) <<Approved Award divided by Total Locations>> (the amount of 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 3.6.
  - Additionally, in the event that the Subgrantee fails to maintain its Locations as required under the Period of Performance, it shall lose credit for any qualifying Location under this Agreement by the same number of Locations that are short. For example, if the Subgrantee fails to maintain service by three (3) Locations, the number of Locations shall be reduced by three (3). The amount the Subgrantee must repay shall then be calculated in accordance with this subsection.
  - NCDIT shall notify the Subgrantee in writing of the amount to be repaid and direct the Subgrantee to repay such amount directly to NCDIT. All such amounts shall be due immediately upon demand by NCDIT. If not paid within thirty (30) days following demand, the unpaid amount due shall continue to bear interest at the rate set out by N.C.G.S. §24-1 for the period beginning upon the demand until paid. Upon default in such payment, NCDIT may employ an attorney to enforce its rights and remedies, and the Subgrantee hereby agrees to pay the legal costs and reasonable attorneys’ fees of NCDIT plus all other reasonable expenses incurred by NCDIT in exercising any of its rights and remedies upon such default.
- ii) **Non-Exclusive Remedy.** The repayment requirements and remedies addressed in this Section are in addition to those repayment requirements and other remedies set forth elsewhere in this Agreement, including the requirements to repay all funds received, and in 2 C.F.R. § 200.339. No remedy conferred or reserved by or to the State in this Agreement 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 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) **Improper or Ineligible Payments.** Any item of expenditure by the Subgrantee under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of NCDIT, the US Department of Commerce, the NC Department of State Treasurer, or other federal or state instrumentality to be improper, ineligible, in violation of federal or state law, or the terms of this Agreement,

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or involving any fraudulent, deceptive, or misleading representations or activities of the Subgrantee, shall become the Subgrantee's liability, and shall be paid solely by the Subgrantee, immediately upon notification of such, from funds other than those provided by NCDIT under this Agreement. This provision shall survive the expiration or termination of this Agreement.

- iv) **Recovery of Award Funding.** In accordance with 09 N.C.A.C. 03M .0802, NCDIT shall take appropriate administrative action to recover from the Subgrantee all BEAD Award funds disbursed in connection with this Agreement in the event that the Subgrantee: (1) is unable to fulfill the obligations of this Agreement; (2) is unable to accomplish the purposes of the award; (3) is noncompliant with the reporting requirements set forth in this Agreement and in 09 N.C.A.C. 03M; or (4) has inappropriately used BEAD Award funds disbursed in connection with this Agreement.

NCDIT must seek the assistance of the Attorney General in the recovery and return of BEAD Award funds disbursed in connection with this Agreement if legal action is required. NCDIT is required to report to the Office of State Budget and Management, the Attorney General, and the State Bureau of Investigation any apparent violations of a criminal law or malfeasance, misfeasance, or nonfeasance in connection with the Subgrantee's use of BEAD Award funds disbursed in connection with this Agreement.

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## Article 4. Financial Accountability and Grant Administration.

**Section 4.1 Financial Management.** The Subgrantee shall adopt such financial management procedures as will permit the preparation of reports required by the Federal Funding Accountability and Transparency Act (<https://www.congress.gov/109/plaws/publ282/PLAW-109publ282.pdf>) and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the relevant statutes, regulations, and terms and conditions herein. The Subgrantee's financial management procedures shall allow it to comply with the requirements of 2 C.F.R. 200.302.

**Section 4.2 Limitations on Expenditures.** NCDIT shall only reimburse the Subgrantee for documented expenditures incurred during the Agreement Term that are: (i) reasonable and necessary to carry out the scope of Covered Services described in Exhibit B; (ii) documented by contracts or other evidence of liability consistent with the established Parties' procedures; and (iii) incurred in accordance with all applicable requirements for the expenditure of funds payable under this Agreement. NCDIT may not reimburse or otherwise compensate the Subgrantee for any expenditures incurred or services provided prior to the Effective Date except as provided in Section 2.2 of this Agreement or following the earlier of the expiration or termination of this Agreement.

**Section 4.3 Financial and Other Reports.** The Subgrantee shall maintain detailed, itemized documentation and other necessary records of all expenses incurred pursuant to this Agreement. The Subgrantee shall submit to NCDIT such reports and back-up data as may be required by the federal government or NCDIT, including such reports which enable NCDIT to submit its own reports to the federal government, in accordance with the schedule set forth in Exhibit G. This provision shall survive the expiration or termination of this Agreement with respect to any reports which the Subgrantee is required to submit to NCDIT following the expiration or termination of this Agreement.

**Section 4.4 Cost Principles.** Pursuant to 09 N.C.A.C. 03M .0201, all expenditures by the Subgrantee of funds awarded under this Agreement shall be in accordance with the cost principles outlined in the Code of Federal Regulations, 2 CFR Part 200, Subpart E (2 C.F.R. §§ 200.400-200.476). It is the Subgrantee's responsibility to ensure adherence to the cost principles established in the Code of Federal Regulations, 2 CFR Part 200, Subpart E, subject to the exceptions listed in the General Terms and Conditions for the NTIA BEAD Program Funds and UGPN.

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**Section 4.5 Audits.** The Grantee certifies compliance with the provisions of 2 CFR 200.501-200.521, if applicable, and continued compliance with these provisions during the Term of this Agreement. Pursuant to 09 N.C.A.C. 03M .0205, a Grantee that receives, holds, uses, or expends award funds in an amount equal to or greater than the dollar amount requiring audit as listed in 2 C.F.R. 200.501(a) within its fiscal year shall have a single or program-specific audit prepared and completed in accordance with Generally Accepted Government Auditing Standards, also known as the Yellow Book. If the Grantee is not required to have a single audit as defined by 2 CFR 200.501, U.S. Department of the Treasury requirements, or the Single Audit Act, or a single audit as defined by 09 N.C.A.C. 03M .0102, then the Grantee shall have a financial audit performed at least annually by an independent Certified Public Accountant. The Grantee shall provide notice of the completion of any required audits and will provide access to such audits and other financial information related to this Agreement upon request. The Grantee certifies that it will provide NCDIT with notice of any adverse findings which impact this Agreement. This obligation extends for one (1) year beyond the expiration or termination of this Agreement. The costs of audits shall not be allowable charges under this Agreement.

Non-Federal Entities: If Subgrantee is subject to the provisions of Subpart F of 2 C.F.R. Part 200 and expends \$1,000,000 or more in a year in federal awards during its fiscal year, Subgrantee must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200, including but not limited to the provisions of 2 C.F.R. § 200.501, "Audit Requirements" and North Carolina BEAD Program specific requirements.

Within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>).

In accordance with 2 C.F.R. § 200.425 (Audit services), Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Federal Grant Officer.

Other Entities, including For-Profit Entities: If Subgrantee is not subject to the provisions of Subpart F of 2 C.F.R. Part 200, it must submit to the Grants Officer either:

- i) Financial related audit of each Department of Commerce award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or
- ii) Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

Audits are to be performed annually. Within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to

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the Grants Officer. In accordance with 2 C.F.R. § 200.425, Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

Subgrantee shall perform all necessary efforts to assist NCDIT in verifying for the benefit of NCDIT and federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Subgrantee's Application, beginning on the Effective Date. Subgrantee shall prepare appropriate audited financial statements, including the schedule of expenditures of Federal Awards in accordance with 2 C.F.R. § 200.510 and provide NCDIT with access to personnel, accounts, books, records, supporting documentation, and other information as needed. If Subgrantee fails to spend or fails to document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within that timeframe, Subgrantee agrees to immediately return to the NCDIT any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to the NCDIT, upon request, within ten (10) business days.

All invoices are subject to audit for three (3) years from date of NCDIT's approval of Subgrantee's Project Completion Report.

**Section 4.6 Closeout.** Closeout will be conducted on the timelines and in the manner set forth in 2 C.F.R. § 200.344. NCDIT may request and Subgrantee shall provide supporting information as reasonably necessary to complete closeout. Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 C.F.R. § 200.345, or (b) any of Subgrantee's obligations that survive closeout and remain in force during the Federal Interest Period as described in Section 1.8.iii). below, or the Period of Performance for a LEO Subgrant as described in Exhibit P, below.

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## Article 5. Cooperation in Monitoring and Evaluation.

### Section 5.1 NCDIT's Responsibilities.

- i) **Project Monitoring.** NCDIT will monitor this Project in accordance with 2 C.F.R. § 200.208 and 2 C.F.R. § 200.332 and the provisions of 09 N.C.A.C. 03M .0401 to ensure that adequate progress is being made towards achieving the Project milestones described in Section 2.3.c, and that funds are expended (1) for eligible uses only consistent with the purpose for which the funds were awarded, (2) according to the approved Project Budget, (3) in compliance with all relevant laws, regulatory requirements, cost principles, and provisions of this Agreement. NCDIT will also monitor whether the Subgrantee has met all reporting requirements of this Agreement and the Subgrantee's compliance with all terms of this Agreement. Monitoring will include, at NCDIT's discretion, progress reports, site visits, financial reviews, and audits. The frequency and type of monitoring will depend on the Subgrantee's risk level as determined by the risk assessment.
- ii) **Risk Assessment.** NCDIT shall conduct risk assessments in accordance with 2 C.F.R. § 200.332(b) to determine the appropriate monitoring needs of the Project. NCDIT may reassess this risk at any time during this Agreement in accordance with NCDIT's risk assessment process and federal regulations, including but not limited to 2 C.F.R. § 200.332, 2 C.F.R. § 200.206, and 2 C.F.R. § 200.208. Upon completion of the initial risk assessment or any reassessment during the performance period, NCDIT shall determine, at its sole discretion, whether a Project is Low Risk, Medium Risk, or High Risk and implement or change monitoring and reporting requirements accordingly.
- iii) **Compliance Audits.** In connection with disbursing funds to the Subgrantee, NCDIT will be subject to periodic audits by the Office of State Budget and Management, the Office of the State Auditor, or NCDIT's internal auditor to ensure compliance with the provisions of 09 N.C.A.C. 03M and may be required to provide documentation in connection with that audit. NCDIT shall develop a compliance supplement report that describes the standards of compliance and audit procedures to give direction to independent auditors, which NCDIT will provide to the State and Local Government Finance Division in the North Carolina Department of State Treasurer for inclusion in the North Carolina State Compliance Supplement.

### Section 5.2 Subgrantee's Responsibilities

- i) **Compliance with 09 N.C.A.C. 03M.** The Subgrantee acknowledges and agrees that as a condition of receiving the award pursuant to this Agreement, the Subgrantee will comply with the provisions of 09 N.C.A.C. 03M;

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- ii) **Use of Funds.** In accordance with 09 N.C.A.C. 03M .0202, the Subgrantee will ensure that any funds received under this Agreement are utilized for their intended purpose and shall expend those funds in compliance with requirements established by 09 N.C.A.C. 03M and this Agreement;
- iii) **Cooperation in Monitoring.** Monitoring the progress of the Project and all grant funded activities; the Subgrantee hereby agrees to cooperate fully and in a timely fashion with NCDIT's monitoring of the Project and waives any objection to NCDIT's determination of the Project's risk level or monitoring needs. NCDIT shall have the right to advise Subgrantee of any specific areas of concern and may impose specific award conditions or other corrective action as a result of monitoring findings, including but not limited to information from Subgrantee or subcontractors related to budgets, expenses, receipts, and financial reports;
- iv) **Reporting Progress and Compliance.** The Subgrantee shall submit Progress Milestones and Progress reports. The Subgrantee further agrees that it will: (1) provide the information required by NCDIT for NCDIT to comply with the procedures for disbursement of funds; (2) maintain reports and accounting records that support the allowable expenditure of BEAD Award funds and make available all reports and records for inspection by NCDIT, the Office of State Budget and Management, and the Office of the State Auditor for oversight, monitoring, and evaluation purposes; and (3) ensure that any subrecipients (a) comply with all reporting requirements established by 09 N.C.A.C. 03M and this Agreement and (b) report to NCDIT.
- v) **Recordkeeping and Audits.** NCDIT and Subgrantee shall support BEAD Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the Department of Commerce and external program evaluators.
  - i. **Recordkeeping.** Subgrantee agrees to keep financial records, including budgets, expenses, receipts, financial reports, supporting documents, statistical records, and all other records pertinent to Award Funds, the Project, and this Agreement and make them available to the NCDIT upon request and for not less than a period of five (5) years after the Closeout Date. This should include all Subgrantee network designs, diagrams, project costs, build-out timelines and milestones for project implementation, and capital investment schedules submitted as a part of the application process.

Subgrantee acknowledges that Joint Legislative Commission on Governmental Operations, Office of the State Auditor, Office of State Budget and Management, NTIA, NIST, Department of Commerce Office of

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Inspector General, the Comptroller General of the United States, and the NCDIT, or any of their authorized representatives, shall have the right of access to any documents, papers, or other records which are pertinent to Award Funds, the Project, and this Agreement, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to Subgrantee's personnel for the purpose of interview and discussion related to such documents.

- ii. **Audits.** Subgrantees must maintain adequate financial systems and financial records to accurately account for awarded funds. The NCDIT, NTIA, the Department of Commerce Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time, as described in Section 4.5.
- iii. **Protected and Proprietary Information.** Notwithstanding any other provision of this Agreement, Subgrantee and the NCDIT agree that all records related to the North Carolina BEAD program are public records as provided by the North Carolina Public Records Law, N.C.G.S. § 132-1 et seq., subject to exceptions to production related thereto including without limitation trade secret and proprietary information; provided, however, that the Subgrantee provide an adequate restrictive legend on each page and for all information that it deems protected and proprietary.

In accordance with 2 C.F.R. § 200.303(e), NCDIT and Subgrantee will take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with this Agreement. NCDIT shall give Subgrantee reasonable written notice of any request for production of public records that may seek production of such materials to allow Subgrantee to seek such appropriate court protection from production as Subgrantee deems appropriate.

**Section 5.3 N.C. Administrative Code Reporting and Audit Requirements.** This Agreement incorporates the reporting levels established under 09 N.C.A.C. 03M .0205(a). The Grantee shall follow the reporting level requirement applicable as of the end of each reporting period under this Agreement.

- i) **Required Reporting.** In addition to the Project progress reports set out in Section 2.3, the Grantee shall provide reports pursuant to the reporting requirements specified in 09 N.C.A.C. 03M .0205(b) on an annual basis during the term of this Agreement.

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- ii) **Filing of Reports.** Subgrantees shall file all reports with NCDIT in the format and method provided by NCDIT no later than three (3) months after the end of the Subgrantee's fiscal year, unless the same information is already required through more frequent reporting. Audits must be provided to NCDIT no later than nine (9) months after the end of the Subgrantee's fiscal year.
- iii) **Copies Acceptable.** Notwithstanding the foregoing provisions, a Subgrantee may satisfy the reporting requirements of Section 5.3.b. by submitting a copy of the report required under federal law with respect to the same funds.
- iv) **Other Reports.** The Subgrantee shall provide NCDIT with any other reports as required by State or federal law.

**Section 5.4 Interventions.** If NCDIT determines the Subgrantee is not maintaining adequate progress towards Project milestones or is not engaging in the appropriate expenditure of funds, NCDIT may impose additional reporting requirements and/or award conditions. These additional requirements and/or conditions may include: withholding authority to proceed to the next phase until receipt of evidence of acceptable performance and/or progress within a given period; requiring additional, more detailed financial reports; requiring additional Project monitoring; requiring the Subgrantee to obtain technical or management assistance; and establishing prior approvals. NCDIT will notify the Subgrantee of these additional requirements and/or conditions in accordance with 2 C.F.R. § 200.208(d).

**Section 5.5 Access to Persons and Records.** Pursuant to N.C.G.S. § 120-75.1, § 147-64.7 and 2 C.F.R. § 200.337, NCDIT, the Office of State Budget and Management, the Office of the State Auditor, Joint Legislative Commission on Governmental Operations, the Department of Commerce Office of Inspector General, the U.S. Government Accountability Office, the Comptroller General of the United States, and any other appropriate state or federal agency, or any authorized representatives of these entities, are authorized to examine all books, records, papers, and accounts of the Subgrantee insofar as they relate to the performance of this Agreement or to funds disbursed pursuant to this Agreement. The Subgrantee shall maintain and hereby agrees to retain all records, books, papers, and other documents covered by this section for a period of five years after the Closeout Date, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit, or other inquiry involving this Agreement. The Subgrantee shall make all records, books, papers and other documents that relate to this Agreement available at all reasonable times for inspection, review and audit by the authorized representatives of NCDIT, the Office of State Budget and Management, the Office of the State Auditor, Joint Legislative Commission on Governmental Operations, the U.S. Department of Commerce, the U.S. Government Accountability Office, and any other authorized state or federal oversight office. Additional audit or reporting requirements may be required by NCDIT, if in NCDIT's opinion, such requirement is imposed by federal or state law or regulation.

**Section 5.6 Personnel.** The Subgrantee represents that it has, or will secure at its own expense, **This DRAFT BEAD Grant Contract Agreement is a DRAFT to be used for planning purposes and information for eligible and potential BEAD applicants. NCDIT reserves the right to modify or update this document as necessary to effectuate the goals of the BEAD program and remain compliant with state, federal or NTIA requirements or for any other reason to administer the BEAD program.**

all personnel required to monitor, carry out, and perform the scope of services of this Agreement. Such employees shall not be employees of NCDIT. The Subgrantee shall identify all personnel who will be involved in performing the scope of services of this Agreement and otherwise administering this Agreement, including at least one project manager and one fiscal officer (“Key Personnel”). Such Key Personnel shall be fully qualified and shall be authorized under state and local law to perform such services. Changes to Key Personnel do not constitute a Material Change under Section 2.5 of this Agreement; however, the Subgrantee shall notify NCDIT of any changes to Key Personnel within thirty (30) days of the change in accordance with Section 8.13.

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## Article 6. Compliance with Agreement and Applicable Laws

**Section 6.1 General Compliance (2 CFR, 09 NCAC 03M).** The Subgrantee shall perform all Covered Services funded by this Agreement in accordance with this Agreement, the award agreement between the State of North Carolina and the U.S. Department of Commerce, and all applicable federal, state and local requirements, including all applicable statutes, rules, regulations, executive orders, directives or other requirements. Such requirements may be different from the Subgrantee's current policies and practices. While NCDIT may assist the Subgrantee in complying with all applicable requirements, the Subgrantee remains responsible for ensuring its compliance with all applicable requirements.

**Section 6.2. Expenditure Authority.** This Agreement is subject to the laws, regulations, and guidance documents authorizing and implementing the BEAD grant, including, but not limited to, the following:

- **Authorizing Statute.** Infrastructure Investments and Job Act (IIJA) and North Carolina's S.L. 2024-55, as amended by S.L. 2025-89;
- **Guidance Documents.** Applicable guidance documents issued from time-to-time by the U.S. Department of Commerce and NTIA, including the BEAD NOFO, RPN and any subsequent guidance; and
- **Other Regulations, Statutes and Rules.** Applicable provisions of the Uniform Guidance (2 C.F.R. Part 200); S.L. 2024-55, as amended by S.L. 2025-89, and any subsequent amendments and technical changes; 09 N.C. Admin. Code. 03M; and all applicable laws of the State of North Carolina.

**Section 6.3. Federal Grant Administration Requirements.** The Subgrantee shall comply with any applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200 (UG), as adopted by the Department of Commerce and NTIA, subject to the exceptions listed in the General Terms and Conditions for the NTIA BEAD Program Funds and UGPN. These requirements dictate how the Subgrantee must administer the award and how NCDIT must oversee the Subgrantee.

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**Section 6.4. Property, Exceptions for Supplies, Intangible Property.** Subgrantee shall retain ownership interests and rights in the network and in any property, materials, equipment, supplies, and facilities it constructs or purchases for the Project pursuant to this Agreement. Subgrantee agrees to abide by the property requirements set forth in 2 C.F.R. 200.311-316, as amended in applicable guidance or regulations issued by the U.S. Department of Commerce or other federal agency after the Effective Date of this Agreement.

**Section 6.5. Universal Identifier and System for Award Management (SAM).** The Subgrantee shall provide and/or obtain and provide to NCDIT, a unique entity identifier assigned by the System for Award Management (**SAM**), which is accessible at [www.sam.gov](http://www.sam.gov).

**Section 6.6. Federal Funding Accountability and Transparency Act of 2006.** The Subgrantee shall provide NCDIT with all information requested by NCDIT to enable NCDIT to comply with the reporting requirements of the Federal Funding Accountability and Transparency Act of 2006 (31 U.S.C. 6101 note).

**Section 6.7. Licenses, Certifications, Permits, Accreditation.** The Subgrantee shall obtain and keep current any license, certification, permit, or accreditation required by federal, state, or local law and shall submit to NCDIT proof of any licensure, certification, permit or accreditation upon request.

**Section 6.8 Build America, Buy America Requirements (IIJA Sec 70912(2)).** Congress passed the Build America, Buy America Act (BABA) on November 15, 2021, as part of the IIJA. BABA established domestic content procurement preference requirements for federal financial assistance projects for infrastructure, including the BEAD Program, consistent with IIJA § 70912(2).

Subgrantee shall comply with BABA consistent with applicable legal authorities, such as the IIJA, Executive Order 14005, 2 C.F.R. part 184, Office of Management and Budget (“OMB”) Memo M-24-02, and any applicable waivers issued by the Department of Commerce or NTIA, to include the NTIA Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program (effective Feb. 22, 2024). All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

**Section 6.9 Low-Cost Service Option Requirements (47 U.S.C. § 1702(h)(5)).** Subgrantee must make available an LCSO to Eligible Subscribers. The LCSO must offer speeds of at least 100/20 Mbps and latency performance of no more than 100 milliseconds.

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Pursuant to the NTIA Restructuring Policy Notice, the term “Eligible Subscriber” means any household seeking to subscribe to broadband internet access service that is eligible for the FCC’s Lifeline Program. The Subgrantee is responsible for verifying LCSO eligibility and may ask potential subscribers to provide the same documentation necessary to confirm eligibility as is required under the Lifeline program.

Subgrantee must offer a LCSO throughout the 10-year federal interest period, or in the case of a low Earth orbit subgrant, the 10-year period of performance. If the Subgrantee seeks to change the cost of the LCSO, then it must state the methodology it will use to set the LCSO in the future (e.g., tied to inflation or changes in the FCC’s urban rate benchmark, etc.) consistent with the methodology provided in its application. If no methodology was provided in the application the Subgrantee must provide the methodology to NCDIT in writing prior to changing the cost of the LCSO.

**Section 6.10 Conduit Access Requirements (47 U.S.C. §1702(h)(4)(D)).** Pursuant to 47 U.S.C. § 1702(h)(4)(D) the Subgrantee shall include interspersed conduit access points at regular and short intervals. The subgrantee shall include the approximate distance and interval length of the access points in its reports to NCDIT.

**Section 6.11 Reporting Waste, Fraud and Abuse (2 C.F.R. Part 200).** Pursuant to the BEAD NOFO Section IX.G. the Subgrantee has an obligation to minimize the opportunity for waste, fraud, and abuse through compliance with the reporting requirements set forth in Section I.E of the BEAD NOFO, the obligations set forth in 2 C.F.R. Part 200 and the Department of Commerce Financial Assistance Standard Terms and Conditions and by publicizing the telephone numbers and email addresses for the North Carolina <<XXX>> and Subgrantees’ internal ethics office (or comparable entity) for the purpose of reporting waste, fraud or abuse in the program.

## **6.12 Environmental and National Historical Preservation (BEAD NOFO, §VII.D.4. and Restructuring Policy Notice, §6)**

- i) **General Environmental and Historic Preservation Review Requirements.** Subgrantee must comply with the requirements of all applicable federal, state, and local environmental statutes, laws, and standards, including as set forth in Exhibit N to this Agreement. Subgrantee will provide all information necessary in a timely manner to facilitate NCDIT’s use of NTIA’s Environmental Screening and Permitting Tracking Tool (ESAPTT) as required by the BEAD Restructuring Policy Notice.

Subgrantee shall not initiate or allow any grant funded implementation/construction activities—except for the limited permissible activities identified in the “Uses Prior to Implementation” subsection below—prior to the following:

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- (1) The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, et seq.) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
  - (2) The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470, et seq.) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
  - (3) The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. § 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. § 1251, et seq.), as applicable; and
  - (4) Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.
- ii) **NEPA Compliance.** To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, NCDIT shall:
- (1) Serve as a “joint lead agency” in its capacity as the State (or Territory) agency administering the BEAD program in accordance with 42 U.S.C. § 4336a(a)(1)(B) and carry out the duties described in 42 U.S.C. § 4336a(a)(2);
  - (2) Complete an evaluation of the sufficiency, applicability and accuracy of the analysis in First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for North Carolina;
  - (3) The Parties agree that:
    - a. Subgrantee will not commence implementation, and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified below;

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- b. Subgrantee must prepare any required NEPA documents in a timely manner and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. § 4336g(a); and
- c. Subgrantee must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

(4) NCDIT will certify the sufficiency of all Subgrantee decision documents either by:

- a. preparing such documents; or
- b. by supervising Subgrantees' preparation of draft documents, independently reviewing those drafts, and verifying that decision documents meet the requirements of NEPA prior to transmittal to NTIA;

(5) Subgrantee shall, as directed by NCDIT:

- a. Submit all decision documents—including any supporting environmental documentation required or requested by NTIA for review.

iii) **NHPA Compliance.** To ensure the timely completion of historic preservation review for all BEAD-funded activities, Subgrantee shall provide all such information as NCDIT requires to:

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- (1) At the earliest possible time, provide the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant funded activities;
  - (2) Provide notified Tribes with information regarding grant funded activities via their preferred communication means, as identified in TCNS;
  - (3) Apply the Advisory on Historic Preservation (ACHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
  - (4) Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant funded activity may impact a historic property of religious or cultural significance to a Tribe; and
  - (5) Provide all consulting parties with the statutorily required time to respond to its determination of a grant funded activity's effect on historic properties.
- iv) **Further Environmental and Historic Preservation Review Guidance.** The Parties acknowledge that NTIA will issue further implementation guidance regarding NCDIT's and Subgrantee's responsibilities under this condition. That guidance will include instructions on the following topics, among others:

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- (1) How the NCDIT should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS sections;
- (2) How the NCDIT and/or Subgrantee should evaluate what level of environmental review is appropriate and determine what type of decision document is required for a grant funded activity to proceed;
- (3) NTIA's criteria for determining whether each type of decision document meets the requirements of NEPA;
- (4) How the NCDIT and/or Subgrantee should format decision documents;
- (5) How the NCDIT should submit decision documents and any other required environmental documentation to NTIA;
- (6) How the NCDIT will work with cooperating agencies;
- (7) How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
- (8) NTIA's process for notifying the NCDIT that a decision document meets the requirements of NEPA.

Subgrantee shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of the above activities. Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—e.g., best management practices or other measures necessary to reduce environmental impacts. Subgrantee shall provide any related information requested by NCDIT or by NTIA (directly or through NCDIT) to ensure both initial and ongoing compliance with all requirements described above.

- v) **Uses of Award Funds Prior to Implementation.** Subject to Section 2.2.iii) of this Agreement, the allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:

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- (1) Pre-construction planning, including collecting information necessary to complete environmental reviews;
- (2) Applications for environmental permits;
- (3) Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- (4) Administrative costs;
- (5) Pre-award application costs incurred solely by the Subgrantee that receives this Subgrant award.
- (6) Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- (7) Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts or agreements to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements)

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated. Subgrantee shall notify NCDIT within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

The Parties acknowledge that any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements

- vi) **Archaeological Resources.** Burial sites, human remains, and funerary objects are subject to the requirements of all applicable federal, tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantee must notify NCDIT of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees should have an archaeologist

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who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subgrantee must immediately stop working in that area, secure that area, and keep information about the discovery confidential, except to notify NCDIT, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the NCDIT and NTIA.

**Section 6.13 Clean Air Act.** The Subgrantee agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Subgrantee agrees to report each violation to NCDIT and understands and agrees that NCDIT will, in turn, report each violation as required to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. The Subgrantee agrees to include these requirements in any subcontract exceeding \$150,000 funded, in whole or in part, with funds provided by NCDIT pursuant to this Agreement.

**Section 6.14 Federal Water Pollution Control Act.** The Subgrantee agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Subgrantee agrees to report each violation to NCDIT and understands and agrees that NCDIT will, in turn, report each violation as required to assure notification to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office. The Subgrantee agrees to include these requirements in any subcontract exceeding \$150,000 funded, in whole or in part, with funds provided by NCDIT pursuant to this Agreement.

**Section 6.15 Debarment and Suspension.** Due to its receipt of IJJA funds, NCDIT is a participant in a non-procurement transaction (defined at 2 C.F.R. § 180.970) that is a covered transaction pursuant to 2 C.F.R. § 180.210 and 31 C.F.R. § 19.210. Therefore, this Agreement is a lower-Tier covered transaction for purposes of 2 C.F.R. Part 180 and 31 C.F.R. Part 19 if the amount of this Agreement is greater than or equal to \$25,000.

- i) **Non-Exclusion Certification.** The Subgrantee hereby certifies as of the date hereof, that the Subgrantee, the Subgrantee's principals (defined at 2 C.F.R. § 180.995), and the affiliates (defined at 2 C.F.R. § 180.905) of both the Subgrantee and the Subgrantee's principals are not excluded individuals (defined at 2 C.F.R. § 180.935) and are not disqualified (defined at 2 C.F.R. § 180.935), or otherwise determined ineligible to participate in federal assistance awards or contracts. If any of the foregoing persons are excluded or disqualified and the federal awarding agency has not granted an exception pursuant to 31 C.F.R. § 19.120(a), then: (1) this Agreement shall be void, (2) NCDIT shall not make any payments of federal financial assistance

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to the Subgrantee, and (3) NCDIT shall have no obligations to the Subgrantee under this Agreement.

- ii) **Compliance with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19.** The Subgrantee must comply with the Office of Management and Budget (OMB) Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 C.F.R. Part 180, Subpart C, and as adopted by the U.S. Department of the Treasury at 31 C.F.R. Part 19 and must include a requirement to comply with these regulations in any lower-Tier covered transaction into which it enters. The Subgrantee hereby certifies that it will comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19. This certification is a material representation of fact relied upon by NCDIT, and all liability arising from an erroneous representation shall be borne solely by the Subgrantee.
- iii) **Remedies for Non-Compliance.** If it is later determined that the Subgrantee did not comply with 2 C.F.R. Part 180, Subpart C and 31 C.F.R. Part 19, in addition to remedies available to NCDIT, the federal government may pursue available remedies, including but not limited to, suspension and/or debarment.
- iv) **Subcontractor Certification.** The Subgrantee hereby certifies that none of the subcontractors it has proposed to perform work under this Agreement are listed under the State Debarred Vendors listing (<https://ncadmin.nc.gov/documents/nc-debarred-vendors>), or in the past five (5) years have been suspended or debarred from doing business with the federal or any state government. The Subgrantee agrees that it will notify NCDIT immediately if it or any of its principals is placed on the list of parties excluded from federal procurement or nonprocurement programs available at [www.sam.gov](http://www.sam.gov).

**Section 6.16 Byrd Anti-Lobbying Amendment.** The Subgrantee shall comply with the restrictions on lobbying in 31 CFR Part 21.

The Subgrantee certifies to NCDIT, and the Subgrantee shall cause each Tier below it to certify to the Tier directly above such Tier, that it has not used and will not use federally appropriated funds to pay any person or organization to influence or attempt to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The Subgrantee shall, and shall cause each Tier below it, to disclose any lobbying with non–federally appropriated funds that takes place in connection with obtaining any federal award. Such disclosures (to be set forth on Standard Form-LLL, contained in 31 C.F.R. Part 21, Appendix B) shall be forwarded from Tier to Tier up to NCDIT, which will, in turn, forward the certification(s) to the federal awarding agency. The Subgrantee shall cause the language of this Section to be included in all subcontracts. This certification is a material representation of fact upon which NCDIT has relied when entering into

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this Agreement, and all liability arising from an erroneous representation shall be borne solely by the Subgrantee.

If this Agreement exceeds \$100,000, the Subgrantee also must file with NCDIT the certification in Exhibit J, "Byrd Anti-Lobbying Certification", which is attached hereto and incorporated herein. Any subcontractor with a subcontract (at any Tier) exceeding \$100,000 must also file with the Tier above it the certification in Exhibit J.

**Section 6.18 Copeland Anti-Kickback Act.** In accordance with the Copeland Anti-Kickback Act, as supplemented by the Department of Labor regulations at 29 CFR Part 3, the Subgrantee understands and agrees that it is prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. NCDIT shall report any and all suspected or reported violations of this Section to the Federal awarding Agency.

**Section 6.19 Contract Work Hours and Safety Standards Act.** Contracts awarded by NCDIT in excess of one-hundred thousand dollars (\$100,000.00) that involve the employment of mechanics or laborers are required to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor Regulations at 29 CFR Part 5. The Subgrantee understands and agrees that it will compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours, and that work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The Subgrantee further understands and agrees that no mechanic or laborer is required to work in surroundings or under working conditions that are unsanitary, hazardous, or dangerous.

**Section 6.20 Prohibition on Contracting for Covered Telecommunications Equipment or Services.** Pursuant to 2 C.F.R. § 200.216, the Subgrantee agrees not to expend funds it receives pursuant to this Agreement to procure or obtain, or to enter into, extend, or renew a contract to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Covered telecommunications equipment is defined in 2 C.F.R. § 200.216.

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**Section 6.21 Program Fraud and False or Fraudulent Statements or Related Acts.** The Subgrantee acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to its actions pertaining to this Agreement. Making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in state or federal awards or contracts, and/or any other remedy available by law.

**Section 6.22 Protections for Whistleblowers.** In accordance with 41 U.S.C. § 4712, the Subgrantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing, to any of the list of persons in 41 U.S.C. § 4712(a)(2), information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The Subgrantee is hereby notified that it is required to: (a) inform its employees that they are subject to the whistleblower rights and remedies of the program; (b) inform its employees in writing of employee whistleblower protections under 41 U.S.C §4712 in the predominant native language of the workforce; and (c) include such requirements in any agreement made with a subcontractor or subgrantee.

**Section 6.23 Equal Opportunity & Other Requirements.** The Subgrantee shall adopt and enact a nondiscrimination policy consistent with the requirements in this Section. The Subgrantee acknowledges that NCDIT is bound by and agrees, to the extent applicable to the Subgrantee, to abide by the provisions contained in the federal statutes enumerated below and any other federal statutes and regulations that may be applicable to the expenditure of IJJA funds:

- i) **Assurances of Compliance with Title VI of the Civil Rights Act of 1964.** The Subgrantee and any subcontractor, or the successor, transferee, or assignee of the Subgrantee or any subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the U.S. Department of the Treasury's Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this Agreement. Title VI also provides protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury's Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this Agreement.

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- ii) **Disability Protections.** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- iii) **Age Discrimination.** The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance
- iv) **Americans with Disabilities.** Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability in programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies there
- v) **Fair Housing Laws.** The Subgrantee shall comply with the Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

**Section 6.24 Use of Name.** Neither party to this Agreement shall use the other party’s name, trademarks, or other logos in any publicity, advertising, or news release without the prior written approval of an authorized representative of that party. The parties agree that each party may use factual information regarding the existence and purpose of the relationship that is the subject of this Agreement for legitimate business purposes, to satisfy any reporting and funding obligations, or as required by applicable law or regulation without written permission from the other party. In any such statement, the relationship of the parties shall be accurately and appropriately described

**Section 6.25 Other Federal Construction Requirements.** Subgrantee shall perform its obligations under this Agreement in accordance with the federal construction requirements set forth in Exhibit R.

**Section 6.26 Conflicts of Interest; Gifts and Favors**

- i) **Disclosure of Potential Conflicts.** The Subgrantee understands that (1) NCDIT will use BEAD Program funds under the Infrastructure Investment and Jobs Act (IIJA) to pay for the cost of this Agreement and (2) the expenditure of IIJA funds is governed by the Conflict of Interest Policy of NCDIT, the federal requirements (including, without limitation, 2 C.F.R. § 200.112 and 2 C.F.R. § 200.318(c)), Department of Commerce Financial Assistance Standard Terms and Conditions Section F, and North Carolina law (including, without limitation, N.C.G.S. §§ 14-234(a)(1) and - 234.3(a)). The Subgrantee must disclose in writing to NCDIT any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112 and the BEAD Notice of Funding Opportunity requirements.

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- ii) **Conflict Certification.** The Subgrantee certifies to NCDIT that as of the date hereof, to the best of its knowledge after reasonable inquiry, no employee, officer, or agent of NCDIT involved in the selection, award, or administration of this Agreement (each a “Covered Individual”); no member of a Covered Individual’s immediate family; no partner of a Covered Individual; and no organization (including the Subgrantee) which employs or is about to employ a Covered Individual; has a financial or other interest in, or has received a tangible personal benefit from, the Subgrantee. Should the Subgrantee obtain knowledge of any such interest or any tangible personal benefit described in the preceding sentence after the date hereof, it shall promptly disclose the same to NCDIT in writing.
- iii) **Value Certification.** The Subgrantee certifies to NCDIT that it has not provided, nor offered to provide, any gratuities, favors, or anything of value to an officer, employee, or agent of NCDIT. Should the Subgrantee obtain knowledge of the provision, or offer of any provision, of any gratuity, favor, or anything of value to an officer, employee, or agent described in the preceding sentence after the date hereof, it shall promptly disclose the same to NCDIT in writing.
- iv) **Conflict of Interest Policy.** Pursuant to N.C. Gen. Stat. § 143C-6-23(b), every Subgrantee shall file with NCDIT a copy of Subgrantee’s policy addressing conflicts of interest that may arise involving the Subgrantee’s management employees and the members of its board of directors or other governing body. The policy shall address situations in which any of these individuals may directly or indirectly benefit, except as the Subgrantee’s employees or members of its board or other governing body, from the Subgrantee’s disbursing of State funds, and shall include actions to be taken by the Subgrantee or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. The policy shall be filed before the disbursing State agency may disburse the grant funds.

## **Section 6.27 Miscellaneous Provisions and Conditions**

- i) **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 Fed. Reg. 19,216 (Apr. 18, 1997), NCDIT encourages the Subgrantee to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
- ii) **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 Fed. Reg. 51,225 (Oct. 6, 2009), NCDIT encourages the Subgrantee to adopt and enforce policies that ban text messaging while driving.
- iii) **Energy Efficiency.** All participants in the projects funded hereby shall recognize mandatory standards and policies relating to energy efficiency, which are contained

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in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

- iv) **Publications.** Any publications related to the Project must be paid for independently by the Subgrantee (i.e., not with BEAD Award funds) and must display the following language: “This project [is being][was] supported, in whole or in part, by funds awarded to the State of North Carolina by the NTIA.”
- v) **Federal Seals, Logos, and Flags.** The Subgrantee shall not use the seal(s), logos, crests, or reproductions of flags of the federal funding agency or likenesses of any federal agency officials without specific pre-approval of the relevant federal agency.

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**Article 7. Non-Performance, Termination, and Other Remedies.** Non-performance, termination, and other remedies for non-performance will be handled consistent with the authorities set forth in Article 1. of this Agreement. When a determination or decision regarding non-performance is to be made, NCDIT will make such determination or decision by exercising good faith and reasonable discretion.

**Section 7.1 Termination by NCDIT for Default.** If the Subgrantee fails to fulfill in a timely and proper manner its obligations required under this Agreement or violates or fails to comply with any of the covenants or stipulations under this Agreement or any applicable laws, rules, and regulations, and such default is not cured within sixty (60) calendar days of the receipt of written notice of such default, then NCDIT shall have the right to terminate this Agreement on any future date after giving the Subgrantee written notice of termination of this Agreement at least ten (10) calendar days in advance of the Termination Date. Any termination notice under this Section shall specify the Termination Date and this Agreement shall terminate automatically upon such Termination Date. Upon termination of this Agreement under this Section, (1) NCDIT shall have no responsibility to make additional payments to the Subgrantee; and (2) the Subgrantee shall not expend any additional funds for which it will seek reimbursement without NCDIT's prior and express written authorization and shall return all funds received to NCDIT upon demand. 2 C.F.R. § 200, app. II(B).

**Section 7.2 Immediate Termination by NCDIT.** NCDIT may terminate this Agreement immediately upon discovery of the Subgrantee's commission of fraud of BEAD Award funds.

**Section 7.3 Termination by Mutual Consent.** In accordance with 09 N.C.A.C. 3M.0703(11), this Agreement may be terminated at any time upon the mutual consent of NCDIT and the Subgrantee upon sixty (60) days prior written notice to the other Party.

**Section 7.4 Termination Procedures.** All notices of termination shall be given in accordance with the notice provisions in Section 8.13 of this Agreement. If this Agreement is terminated under this Article 7, the Subgrantee may not incur new obligations for the terminated portion of this Agreement after the Subgrantee has received the notification of termination. The Subgrantee must cancel as many outstanding obligations as possible. Costs incurred after receipt of the termination notice will be disallowed. The Subgrantee shall not be relieved of liability to NCDIT because of any breach of Agreement by the Subgrantee. NCDIT may, to the extent authorized by law, withhold payments to the Subgrantee for the purpose of set-off until the exact amount of damages due NCDIT from the Subgrantee is determined. Termination of duties of performance do not terminate the Subgrantee's duties with respect to closeout reporting, record retention, access to records, and compliance with government audits.

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**Section 7.5 Sanctions for Noncompliance.** NCDIT is required to ensure that the Subgrantee complies with the applicable provisions of 09 N.C.A.C. 03M. Pursuant to 09 N.C.A.C. 03M .0401, upon NCDIT's determination that the Subgrantee is noncompliant with 09 N.C.A.C. 03M and/or the terms of this Agreement, NCDIT shall take all appropriate action in accordance with 09 N.C.A.C. 03M .0800 as follows:

- i) **Grantee Noncompliance.** When the Subgrantee does not comply with the requirements of 09 N.C.A.C. 03M, NCDIT shall: (1) communicate the requirements to the Subgrantee; (2) require a response from the Subgrantee upon a determination of noncompliance; (3) suspend payments to the Subgrantee until the Subgrantee comes in compliance.
- ii) **Misuse of Funds.** When NCDIT discovers evidence of management deficiencies or criminal activity leading to the misuse of funds, NCDIT shall notify the Office of State Budget and Management and take the appropriate action or actions, including without limitation: (1) suspending payments until the matter has been fully investigated and corrective action has been taken; (2) terminating this Agreement and taking action to retrieve unexpended funds or unauthorized expenditures; and/or (3) reporting possible violations of criminal statutes involving misuse of State property to the State Bureau of Investigation, in accordance with N.C.G.S. § 143B-1208.1.
- iii) **Notice Period.** Upon determination of noncompliance with requirements of this Agreement that are not indicative of management deficiencies or criminal activity, NCDIT shall give the Subgrantee sixty (60) days written notice to take corrective action. If the Subgrantee has not taken the appropriate corrective action after the 60-day period, NCDIT shall notify the Office of State Budget and Management and take the appropriate action or actions, including without limitation: (1) suspending payments pending negotiation of a plan of corrective action; (2) terminating the contract and taking action to retrieve unexpended funds or unauthorized expenditures; and/or (3) offsetting future payments with any amounts improperly spent.

**Section 7.6 Non-Performance Administrative Sanctions, Damages, Penalties.**

- i) **General Authority.** NCDIT and NTIA may enforce applicable rules and laws by imposing administrative measures or damages for nonperformance, or penalties for failure to meet statutory obligations, BEAD Program policies, or for wasteful, fraudulent, or abusive expenditure of Award Funds. Such administrative sanctions, damages, or penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation and clawback of funds, and suspension and debarment of organizations or personnel.

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- ii) **Additional Conditions.** Administrative sanctions or damages for non-performance by Subgrantee may include the imposition of additional conditions, as described in 2 C.F.R. § 200.208.
- iii) **Remedies when Additional Conditions are Insufficient.** If NCDIT or NTIA determines that non-performance cannot be remedied by imposing additional conditions, the NCDIT or NTIA may take one or more of the following actions, as appropriate in the circumstances:
- Temporarily withhold cash payments pending correction of the deficiency by Subgrantee or more severe enforcement action by the NCDIT or NTIA.
  - Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
  - Wholly or partly suspend or terminate this Agreement.
  - In the case where the funded network fails to meet a required speed or latency network standards the Subgrantee will be required to improve the network until the minimum performance standards are met or up to the entire award will be forfeited.
  - Recommend the initiation of suspension or debarment proceedings by the Department of Commerce as authorized under 2 C.F.R. part 180 and implementing regulations.
  - Withhold further North Carolina BEAD Program awards.
  - Submit a claim on any applicable bonds and/or collect from any letters of credits or certificates of deposits.
  - Take other legal or equitable remedies that may be available.
- iv) **Clawback of Funds.** If NCDIT or NTIA determine that Subgrantee has failed to comply with any material requirement under applicable law or this Agreement, including but not limited to Section XIV.B.1., above, and Subgrantee cannot or will not remedy such failure, NCDIT may require Subgrantee to return up to the entire amount of the Grant Funds to NCDIT, at the discretion of NCDIT. If the Subgrantee fails to timely return all Grant Funds, NCDIT will initiate collection efforts which include, but are not limited to, withdrawing funds from the letter of credit or performance bond.

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If Subgrantee fails to provide the minimum advertised connection speed and cost at the advertised rate described in Exhibit D to this Agreement, Subgrantee shall forfeit any Grant Funds, up to the entire amount received through the North Carolina BEAD Program. NCDIT will use its discretion to determine the amount forfeited. If Subgrantee is required to forfeit Grant Funds under this provision, Subgrantee is liable for up to the amount disbursed plus interest. The number of subscribers that subscribe to Broadband Service offered by Subgrantee in the Project area shall not be a measure of performance under this Agreement for the purposes of this provision.

The Parties acknowledge that NTIA may pursue clawback of funds directly from the NCDIT if the NCDIT fails to ensure Subgrantee accountability to the fullest extent of the law. To the extent NTIA successfully pursues clawback from the NCDIT on these grounds, Subgrantee shall reimburse the NCDIT in an amount equal to the clawback, including being obligated to indemnify, defend, and hold harmless NCDIT for any costs, expenses, collection fees, attorneys' fees or other damages that NCDIT sees fit to seek as a result of Subgrantees' failure to comply with the terms of this Agreement. The extent of this duty to indemnify, defend and hold NCDIT harmless for all costs associated with a material default of this nature by the Subgrantee shall be upheld to the fullest extent allowed by

North Carolina and federal law. Subgrantee agrees, acknowledges and understands that any default under this provision shall require payment of all of these costs and expenses, as requested by NCDIT at NCDIT's discretion, and shall be due and payable upon written demand by NCDIT. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid.

- v) **Reversion.** Subject to the exception set forth in Section XV.E., below, if Subgrantee fails to perform and fails to return the full forfeited amount required pursuant to this Section, the ownership and use of the broadband infrastructure funded by the North Carolina BEAD Program shall revert to the NCDIT. Subgrantee shall be obligated to indemnify, defend, and hold harmless NCDIT for any costs, expenses, collection fees, attorneys' fees or other damages that NCDIT sees fit to seek as a result of Subgrantees' failure to comply with the terms of its Grant Award. The extent of this duty to indemnify, defend and hold NCDIT harmless for all costs associated with a material default of this nature by the Subgrantee shall be upheld to the fullest extent allowed by North Carolina and federal law. Subgrantee agrees, acknowledges and understands that any default under this provision shall require payment of all of these costs and expenses, as requested by NCDIT at NCDIT's discretion, and shall be due and payable upon written demand by NCDIT. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid.

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- vi) **Make Whole.** Notwithstanding any other provision of this Agreement, if Subgrantee fails to complete the Project in any respect, Subgrantee, at the discretion of NCDIT, may be required to reimburse the NCDIT the actual cost to finish the Project. The actual cost to finish the Project shall be determined by NCDIT. If NCDIT determines that Subgrantee has made a good faith effort to complete the Project, NCDIT, in its sole discretion, will not require Subgrantee to reimburse the NCDIT an amount greater than the remaining North Carolina BEAD Program cost per End User as set forth in Exhibit C to this Agreement. Subgrantee shall be obligated to indemnify, defend, and hold harmless NCDIT for any costs, expenses, collection fees, attorneys' fees or other damages that NCDIT sees fit to seek as a result of Subgrantees' failure to comply with the terms of its Grant Award. The extent of this duty to indemnify, defend and hold NCDIT harmless for all costs associated with a material default of this nature by the Subgrantee shall be upheld to the fullest extent allowed by North Carolina and federal law. Subgrantee agrees, acknowledges and understands that any default under this provision shall require payment of all of these costs and expenses, as requested by NCDIT at NCDIT's discretion, and shall be due and payable upon written demand by NCDIT. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid.

**Section 7.7 Termination Due to Unavailability of Funds.** If BEAD funds for the Project become unavailable for any reason, including without limitation, a change in the State or federal laws, NCDIT shall have the right to terminate this Agreement after giving the Subgrantee written notice of termination of this Agreement at least twenty (20) calendar days in advance of the Termination Date. The notice of termination shall contain the effective Termination Date of this Agreement. Upon notice, the Subgrantee shall not expend any BEAD Award funds without NCDIT's express written authorization. Upon termination of this Agreement, the State shall have no responsibility to make additional payments to the Subgrantee.

**Section 7.8 Termination for Convenience.** The NCDIT may terminate this Agreement, in whole or in part, at any time it determines that such termination is in the best interest of the NCDIT or the State of North Carolina. If the NCDIT wishes to terminate this Agreement under this Section, it shall deliver a termination notice to the Subgrantee stating that this Agreement will terminate on the date specified which must be a minimum of thirty (30) calendar days after the date the Subgrantee receives such termination notice. This Agreement will terminate on the date specified in the termination notice. Within ninety (90) calendar days after such termination for convenience, the Subgrantee may submit a termination settlement proposal to the NCDIT for reasonable and documented allowable costs for which the Subgrantee has not been previously reimbursed. The cost principles and cost reimbursement procedures under 2 C.F.R. Part 200 shall apply to any such termination for convenience.

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## Article 8. General Conditions

### Section 8.1 Representations and Warranties

- i) **The Parties' Representations and Warranties.** The Parties acknowledge that each has been represented in negotiations for, and the preparation of, this Agreement by counsel of its own choosing (or has had the opportunity to retain counsel for those purposes), that each has read this Agreement or has had it read to them and explained by counsel, that each understands and is fully aware of its contents and of its legal effect, that each is knowingly and voluntarily entering into this Agreement. The execution and performance of this Agreement have been duly authorized by all necessary laws, resolutions and entity action, and this Agreement constitutes the valid and enforceable obligations of the Parties in accordance with its terms. Each Party and its respective signatory hereto avers that its signatory is authorized, empowered, and directed on behalf of the Party to execute this Agreement and thereby bind the Party and others as set forth in Section 8.5 of this Agreement.
- ii) **Grantee's Representations and Warranties.** The Subgrantee hereby represents and warrants that:
- The execution and delivery of this Agreement has been duly authorized by all necessary Subgrantee action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Subgrantee is a party or by which it is bound.
  - 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 Subgrantee, threatened against or affecting it that could or might adversely affect the Project or any of the transactions contemplated by this Agreement the validity or enforceability of this Agreement, or the abilities of the Subgrantee to discharge their obligations under this Agreement. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, NCDIT may require repayment from the Subgrantee based on Section 3.3, Article 7, and Section 8.4 of this Agreement and this Agreement may be terminated by NCDIT effective upon notice.
  - No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Agreement by the Subgrantee or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Subgrantee shall provide NCDIT with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Agreement.

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- The Subgrantee 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 Subgrantee 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, NCDIT may require repayment from the Subgrantee based on Section 3.3, Article 7, and Section 8.4 of this Agreement.

**Section 8.2 Indemnification.** The Subgrantee assumes all liability for any and all injuries, damages, or claims in any way associated with this Agreement or the Project. Subgrantee must defend, indemnify and hold harmless the NCDIT and all its officers, agents, and employees from all suits, actions or claims of any character brought for or on account of any injuries or damages received by related to the Project, including reasonable attorneys' fees and costs for enforcement. Subgrantee must defend, indemnify and hold harmless the NCDIT and all its officers, agents and employees from all suits, actions or claims of any character brought for or on account of any obligations arising out of agreements between itself and lower tier subgrantees, subcontractors, suppliers, vendors, materialmen, and Subgrantee personnel to perform services or otherwise supply products or services. Subgrantee must, if any claim is submitted that subjects it or NCDIT to any claim for injuries, damages or injury, defend, indemnify and hold NCDIT harmless for those injuries, including paying for any legal defense with a law firm of NCDIT's choosing. Subgrantee shall pay all reasonable legal expenses, including all attorneys' fees and costs associated with any potential defense of any claim that may be brought against NCDIT.

The Subgrantee must also hold the NCDIT harmless for any audit disallowance irrespective of whether the audit is ordered by federal or state agencies or by the courts. If an audit is required by federal law and if the Subgrantee is also the recipient of funds by or through NCDIT under the same or a separate grant or contract program, then NCDIT-funded programs must also be included in the scope of the federally required audit.

**Section 8.3 Insurance.** The Subgrantee must provide the equivalent insurance coverage for real property and equipment acquired or improved with this award as provided to property owned by the Subgrantee. In addition, the Subgrantee, must, at a minimum, provide and maintain during the term of this Agreement insurance coverage that meets the following coverage and limit requirements:

- i) **Small Purchases Requirements.** For Small Purchases as defined under 01 N.C.A.C. 05A .0112(35) and 05B .0301(1), the minimum applicable insurance requirements for Worker's Compensation and Automobile Liability will apply as required by North Carolina law. The Purchasing Agency may require Commercial

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General Liability coverage consistent with the assessed risks involved in the procurement.

ii) **Requirements for Contracts Between Small Purchase and \$1,000,000.00.** For Contracts valued in excess of the Small Purchase threshold, but up to \$1,000,000.00 the following limits shall apply:

- Worker's Compensation - The Subgrantee shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$250,000.00, covering all of Subgrantee's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Subgrantee shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$500,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired, and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$250,000.00 bodily injury and property damage; \$250,000.00 uninsured/under insured motorist; and \$2,500.00 medical payment.

iii) **Requirements for Contracts in Excess of \$1,000,000.00.** For Contracts valued in excess of \$1,000,000.00 the following limits shall apply:

- Worker's Compensation - The Subgrantee shall provide and maintain Worker's Compensation Insurance, as may be required by the laws of North Carolina, as well as employer's liability coverage, with minimum limits of \$500,000.00, covering all of Subgrantee's employees who are engaged in any work under the Contract in North Carolina. If any work is sub-Contracted, the Subgrantee shall require the sub-contractor to provide the same coverage for any of its employees engaged in any work under the Contract within the State.
- Commercial General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000.00 Combined Single Limit. Defense costs shall be in excess of the limit of liability.
- Automobile - Automobile Liability Insurance, to include liability coverage covering all owned, hired and non-owned vehicles, used within North Carolina in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily

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injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment.

The Subgrantee's insurance coverage shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the NC Commissioner of Insurance to do business in North Carolina. The Subgrantee shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement. If the Subgrantee fails at any time to maintain and keep in force the required insurance, and such default is not cured within ten (10) calendar days of the receipt of written notice of such default, then NCDIT may cancel and terminate this Agreement on any future date after giving the Subgrantee written notice of termination of this Agreement. The limits of coverage under each insurance policy maintained by the Subgrantee shall not be interpreted as limiting the Subgrantee's liability and obligations or the indemnification requirements under this Agreement.

The insurer must provide NCDIT with a Certificate of Insurance reflecting the coverages required in this Section. All Certificates of Insurance shall reflect thirty (30) days written notice by the insurer in the event of cancellation, reduction, or other modification of coverage. In addition to this notice requirement, the Subgrantee must provide NCDIT prompt written notice of cancellation, reduction, or material modification of coverage of insurance. If the Subgrantee fails to provide such notice, the Subgrantee assumes sole responsibility for all losses incurred by NCDIT for which insurance would have provided coverage.

#### **Section 8.4 Cessation, Bankruptcy, Dissolution, or Insolvency.**

- i) **Mergers, Consolidation, or Sale.** The Subgrantee 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 Subgrantee contained in this Agreement, subject to the prior written consent of NCDIT if such action constitutes an assignment of the Subgrantee's obligations under this Agreement. If the Subgrantee so merges, consolidates, or sells its assets without such an undertaking being provided, it agrees under Section 3.3, Article 7, and this Section of this Agreement to make that payment due under this Agreement to NCDIT, upon request and as directed. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under this Agreement, and NCDIT may terminate this Agreement upon written notice to the Subgrantee and hold the Subgrantee liable for any such payment provided for under Section 3.3, Article 7, and this Section of this Agreement.

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- ii) **Notice of Cessation, Bankruptcy, Dissolution or Insolvency.** Other than as provided for in this Section, if the Subgrantee ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Subgrantee shall give NCDIT immediate notice of the event, and shall pay the amount provided under Section 3.3, Article 7, and this Section of this Agreement to NCDIT, upon request, as directed and without regard to whether the effective period in Section 3.1 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.
  
- iii) **Remedies on Failure to Provide Notice.** If the Subgrantee fails to provide NCDIT 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 Agreement. If there is such a cessation or such a proceeding, NCDIT may terminate this Agreement upon written notice to the Subgrantee pursuant to Section 7.1. Upon such termination, the Subgrantee shall pay the applicable clawback amount to NCDIT upon request, as directed and without regard to whether the effective period in Section 3.1 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law and, if the matter is under the jurisdiction of a Bankruptcy Court, with approval of the Bankruptcy Court.

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**Section 8.5 Binding Effect.** The Terms of this Agreement are and shall be binding upon each of the Parties hereto, their heirs, executives, representatives, agents, attorneys, partners, successors, predecessors-in-interest, members, managers, member-managers, and assigns, and upon all other persons claiming any interest in the subject matter hereto through any of the Parties. The Subgrantee must disclose this Agreement to any such person or entity described in this Section.

**Section 8.6 Entire Agreement.** This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. This Agreement supersedes all prior agreements between or among NCDIT and the Subgrantee with regard to the Project and expresses the parties' entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to the provisions set forth in Section 2.5.

**Section 8.7 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.

**Section 8.8 Severability.** Each provision of this Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein and the remainder of this Agreement shall remain in full force and effect to the extent permitted by law.

**Section 8.9 Independent Status of the State, the Subgrantee, and Any Third Parties.**

- i) **Independent Entities.** The State (including, without limitation, NCDIT) and the Subgrantee are independent entities from one another and from any third party. This 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 Subgrantee or between or among either of them or any third party. Nor shall this Agreement or the Project be construed to make any employees, agents or members of the Subgrantee or any third party into employees, agents, members or officials of the State or to make employees, agents, members or officials of the Subgrantee into employees, agents, members or officials of the State. Neither the Subgrantee 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 Subgrantee 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.

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- ii) **Grantees Responsibility for Expense and Insurance.** The Subgrantee 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 Subgrantee 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 Subgrantee, or any third party are their sole responsibilities, and neither the State (including, without limitation, NCDIT) shall be liable for the payment of any obligations incurred in the performance of the Project.

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**Section 8.10 Non-Assignability.** The Subgrantee shall not assign or transfer any interest in this Agreement without the prior written consent of NCDIT. Claims for money due to the Subgrantee from NCDIT under this Agreement may be assigned to any commercial bank or other financial institution with NCDIT prior written approval. To the extent that NCDIT provides written approval to the Subgrantee to assign or transfer any interest in this Agreement, the Subgrantee is not relieved of any of the duties and responsibilities of this Agreement and shall obtain agreement from the assignee to abide by the standards contained in 09 N.C.A.C. 03M. Unless NCDIT otherwise agrees in writing, the Subgrantee and all assigns are subject to all NCDIT's defenses and are liable for all the Subgrantee's duties that arise from this Agreement and all NCDIT's claims that arise from this Agreement.

**Section 8.11 Subcontracting.** The Subgrantee shall provide, upon request by NCDIT, copies of any agreements made by and between the Subgrantee and any subcontractors for the purpose of performing services to fulfill the Subgrantee's obligations under this Agreement. The Subgrantee remains responsible for and is not relieved of any of the duties and responsibilities of this Agreement. The Subgrantee remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Subgrantee, including those in 09 N.C.A.C. 03M, and shall provide information in their possession that is needed by the Subgrantee to comply with these standards. NCDIT is indemnified by the Subgrantee for any claim presented by a subcontractor, and any contracts made by the Subgrantee with a subcontractor after the Effective Date of this Agreement for performance of work under this Agreement 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 Subgrantee for any claim presented by the subcontractor. Notwithstanding any other term herein, the Subgrantee shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

**Section 8.12 No Waiver by the State.** Failure of the State (including, without limitation, NCDIT) at any time to require performance of any term or provision of this 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 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. No action or failure to act by the State constitutes a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as specifically agreed in writing.

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**Section 8.13 Notices.** All notices required or permitted by this Agreement shall be in writing and shall be deemed given when (i) sent via electronic mail with delivery confirmation requested; or (ii) when deposited in the United States mail, certified, return receipt requested, first class, postage prepaid. Notices shall be addressed as follows:

If to NCDIT via US mail:Attn:Director, Broadband Infrastructure Office

North Carolina Department of Information Technology

NC Broadband Infrastructure Office

P.O. Box 17209

Raleigh, North Carolina 27619-7209

Cc:Christina Strickland, General Counsel to the Division of Broadband and Digital Opportunity

North Carolina Department of Information Technology

NC Broadband Infrastructure Office

P.O. Box 17209

Raleigh, North Carolina 27619-7209

If to NCDIT via Email XX

bead@nc.gov

cc: christina.strickland@nc.gov

If to the Subgrantee via US Mail:Attn:<<Authorized Representative>>

<<GRANTEE NAME>>

<<Address>>

<<City>>, <<State>> <Zip Code>>

If to the Subgrantee via Email:<<Authorized Representative Email>>

**This DRAFT BEAD Grant Contract Agreement is a DRAFT to be used for planning purposes and information for eligible and potential BEAD applicants. NCDIT reserves the right to modify or update this document as necessary to effectuate the goals of the BEAD program and remain compliant with state, federal or NTIA requirements or for any other reason to administer the BEAD program.**

If, at any time during the term of this Agreement, the Subgrantee's Authorized Representative changes from the individual identified in this Agreement, the Subgrantee must provide written notice of such change to NCDIT pursuant to this Section within ten (10) calendar days of any such change.

**Section 8.14 Public Records Act Compliance and Confidentiality.** The Subgrantee may designate appropriate portions of documents or information provided to NCDIT as confidential, consistent with and only to the extent permitted under N.C. Gen. Stat. § 132-1, et seq. or other applicable law, by marking the top and bottom of each page containing confidential information with the following legend in boldface type: "CONFIDENTIAL". By so marking any page, the Subgrantee warrants that it has formed a good faith belief that the portions marked "CONFIDENTIAL" meet the requirements of the applicable law. NCDIT may serve as custodian of Subgrantee's confidential information and not as arbiter of claims against its assertion of confidentiality. In the event that NCDIT is served with a subpoena, discovery request, or public record request for information that has been designated by the Subgrantee as confidential information, NCDIT shall forward written notification thereof to the Subgrantee, along with the subpoena or other request. NCDIT shall not, pursuant to the subpoena or other request, produce documents or information designated by the Subgrantee as confidential information without Subgrantee's written consent or unless ordered to do so by a court of competent jurisdiction.

**Section 8.15 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.

**Section 8.16 Waiver of Objections to Timeliness of Legal Action.** The Subgrantee 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, NCDIT) to enforce its rights under this Agreement. This waiver includes any objections the Subgrantee may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

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**Section 8.17 Force Majeure.** Neither the NCDIT nor Subgrantee shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out unforeseeable causes beyond the Parties' reasonable control. Such causes may include Acts of God or of a public enemy, fires, floods, epidemics, pandemics, and quarantine restrictions. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement. Typical weather patterns are foreseeable and shall not constitute cause pursuant to this paragraph. NCDIT shall determine whether a delay or failure results from an Act of God or force majeure based on its review of all facts and circumstances.

**Section 8.18 Construction, Jurisdiction and Venue.** This Agreement shall be construed and governed by the laws of the State of North Carolina. The Subgrantee agrees and submits, solely for matters concerning this 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 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.

**Section 8.19 Execution.** This 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.

**Section 8.20 Acceptance.** If the Subgrantee agrees to the conditions as stated, please return the executed Agreement and any other documentation requested by NCDIT. This Agreement may be withdrawn if NCDIT has not received such documents within fifteen (15) days from the date of the cover letter from NCDIT to the Subgrantee accompanying this Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the Parties, intending to be legally bound hereby, have read, signed, and caused this Agreement to be executed.

<<Grantee Name>>

Signature:

Printed Name:

Title:

Date:

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North Carolina Department of Information Technology

Signature:

Printed Name:

Nathaniel Denny

Title:

Deputy Secretary for the Division of Broadband and Digital Equity

NC Department of Information Technology

Date:

### **Section 8.21 Other Provisions**

i) **Amendments and Modifications.**

This Agreement may only be amended or modified through a written instrument signed by the NCDIT and Subgrantee.

ii) **Governing Law.**

This Agreement shall be governed under the laws of the State of North Carolina. Any dispute arising between the Parties shall only be brought pursuant to Exhibit S, "Disputes." Nothing in this Agreement is intended to waive, nor shall it act as a waiver of, the sovereign immunity of the State of North Carolina. To the extent there is no applicable state law, the substantive law of federal procurement and non-procurement actions shall apply.

iii) **Notice.**

All communications and notices provided for hereunder shall be in writing and mailed, emailed, or delivered to the Parties hereto at their business addresses set forth below or, as to each party, at such other address as shall be designated by such party in a written notice to the other Parties.

Any notice from the Subgrantee requesting a modification or amendment of this Agreement must be provided in writing and delivered to the NCDIT by certified mail, registered mail, or by courier service providing proof of delivery, which are deemed received upon actual delivery as evidenced by a signed receipt or delivery

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confirmation. Notice by email alone shall not constitute effective notice of the Subgrantee's requested modification or amendment. The notice must include a detailed description of the relevant provisions(s) of this Agreement, events, date(s) of occurrence(s), issue(s), and documentation supporting a requested modification or amendment. A copy of the notice must be contemporaneously submitted to the designated broadband e-mail address shown immediately below. Failure to comply with these notice and delivery requirements may result in a waiver or rejection of a modification or amendment, unless expressly waived in writing by the NCDIT.

If to the NCDIT/Office, then to:

NCDIT Attention: State Broadband Director xx

xx

Phone: [Phone]

Email: [Designated BEAD Broadband Email]

With a copy to:

NCDIT Attention: General Counsel

xx

Phone: [Phone]

E-mail: [Designated BEAD Broadband E-mail]

If to Subgrantee, then to:

[Name]

Attention:

[Address 1]

[Address 2]

Phone: [Phone]

Email: [Email]

Communications may be exchanged by e-mail upon the written agreement of the Parties, but e-mail communications are not binding upon the NCDIT and cannot change the terms of this Agreement, the scope of work, exhibit, schedule or any other Agreement document, nor effectuate any change that requires a written amendment, approval, or change. The use of e-mails is for information only. A separate written formal notice, amendment, or document, in complete and appropriate form, may be attached to an e-mail. By typing its name or inserting an electronic signature on this Agreement or any formal notice, amendment, or document and sending same to the NCDIT or Office electronically, the Subgrantee is signing electronically. The Subgrantee agrees its electronic signature ("E-Signature") is the legal and binding equivalent of its manual or handwritten signature and that no certification authority or other third party verification is necessary to validate its E-Signature.

iv) **Successors and Assigns.**

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This Agreement shall be binding upon and inure to the benefit of the NCDIT and Subgrantee and their successors and assigns.

v) **Terms and Conditions.**

Subject to the terms of Article 2 of this Agreement, in the event of any conflict or inconsistency between the terms and conditions hereof and any terms or conditions set forth in any document relating to the transactions contemplated by this Agreement, the terms and conditions set forth in this Agreement shall prevail.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date of the last signature below.

**NCDIT**

**[SUBGRANTEE]**

By: State Broadband Director NCDIT

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

[Signatory], [Title]  
[Subgrantee]

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

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

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## Exhibit A: Definitions

“**NCDIT**” means the N.C. Department of Information Technology, a North Carolina state agency.

“**Application**” means Subgrantee’s approved North Carolina BEAD program application, attached hereto as Attachment 2 and incorporated by reference to this Agreement.

“**Assistant Secretary**” means the Assistant Secretary of Commerce for Communications and Information and National Telecommunications and Information Administration (“NTIA”) Administrator.

“**North Carolina BEAD Program**” means the State of North Carolina’s BEAD program as administered by the Office.

“**Award Funds**” means Grant Funds and Matching Funds (i.e., all of the funds associated with this Agreement).

“**BEAD program**” means the Broadband Equity, Access, and Deployment Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law No. 117-58, 135 Stat. 429 (Nov. 15, 2021). “**BEAD NOFO**” means the NTIA BEAD program Notice of Funding Opportunity (May 13, 2022) (Funding Opportunity Number NTIA-BEAD-2022) available at: <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

“**BEAD RPN**” means the NTIA BEAD Restructuring Policy Notice (June 6, 2025), available at <https://www.ntia.gov/sites/default/files/2025-06/bead-restructuring-policy-notice.pdf>.

“**Broadband Service**” has the meaning given the term “broadband internet access service” in Section 8.1(b) of title 47, Code of Federal Regulations (“C.F.R.”), or any successor regulation.

“**CAI**” means a Community Anchor Institution within the State of North Carolina as identified by the Office.

“**Closeout Date**” is the date when the Office determines Subgrantee has satisfied all state and federal reporting requirements related to the Project and completes close out of this award pursuant to 2 C.F.R. § 200.344.

“**DOC**” means the United States Department of Commerce.

“**DOC GT&Cs**” means the Department of Commerce Financial Assistance General Terms and Conditions (May. 19, 2025), including the obligations set forth in 2 C.F.R. Part 200.

“**Effective Date**” is the date of the last signature when all Parties have fully signed this Agreement.

“**End User**” means a Broadband Serviceable Location included within the scope of Subgrantee’s Application.

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**“Federal Grant Officer”** means the National Institute of Standards and Technology (“NIST”) grant officer identified on the North Carolina’s BEAD program CD-450.

**“Federal Interest Period”** is the period during which Subgrantee will hold in trust for the beneficiaries of the BEAD program all real property and equipment acquired or improved in connection with this Agreement. The Federal interest in all real property and equipment acquired or improved as part of this Agreement will start upon acquisition or improvement thereof and continue for 10 years after the year of the Closeout Date. For example, if this award is closed out in 2027, regardless of the month, the Federal Interest Period will last until December 31, 2037.

**“Grant Funds”** means the North Carolina BEAD program funding awarded for this Project as identified in Attachment 1 (the Total Amount of the Federal Award committed to Subgrantee by the Office).

**“GT&Cs for the BEAD Program”** means the General Terms and Conditions for the NTIA Broadband Equity, Access & Deployment Program (BEAD) Program Funds (April 2024)

**“Initial Proposal”** means the North Carolina BEAD program Initial Proposal (Volumes I and II), as approved by NTIA on Aug. 5, 2024, and as subsequently amended or finalized, available at <https://www.azcommerce.com/broadband/initiatives/bead>.

**“LCSO”** means the Low-Cost Service Option as proposed in Subgrantee’s Application.

**“LEO Subgrant”** means this Agreement as modified or supplemented by Attachments 4.b., 12, and elsewhere herein where an alternate provision is specifically stated to apply to a LEO Subgrantee, with all other terms, conditions, and provisions of this Agreement remaining in full force and effect.

**“LEO Subgrantee”** means a subgrantee under this Agreement, if applicable, that is providing capacity on a Low Earth Orbit (LEO) satellite network to deliver Qualifying Broadband Service in accordance with all other terms, conditions, and provisions of this Agreement.

**“Matching Funds”** means funds or in-kind contributions provided by Subgrantee or the NCDIT to meet or exceed the BEAD program’s non-federal match requirement.

**“NIST”** is the National Institute of Standards and Technology, the entity within the United States Department of Commerce that administers BEAD program grants.

**“NTIA”** is the National Telecommunications and Information Administration, the entity within the United States Department of Commerce responsible for implementing the BEAD program.

**“Office”** is the NCDIT Broadband Infrastructure Office.

**“Priority Broadband Project”** means a project that provides broadband service at speeds of no less than 100 megabits per second for downloads and 20 megabits per second for uploads, has a latency less than or equal to 100 milliseconds, and can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services.

**“Project”** means the planned and actual installation of broadband facilities and the provision of

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Qualifying Broadband Service as described in Subgrantee's Application, which is incorporated herein by reference and attached as Attachment 2.

**"Project Completion Criteria"** are the minimum criteria for Project completion set forth in Attachment 3 and the Application (and any changes approved by the Office, if applicable).

**"Project Property"** means real property or equipment acquired or improved using Award Funds.

**"Project Schedule"** means the schedule for performance and completion of the Project by Subgrantee and approved in writing by the Office.

**"Qualifying Broadband Service"** to a location that is not a CAI is a Reliable Broadband Service with (i) a speed of not less than 100 Mbps for downloads; and (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds. "Qualifying Broadband Service" to a CAI is Reliable Broadband Service with (i) a speed of not less than 1 Gbps for downloads and uploads alike and (ii) latency less than or equal to 100 milliseconds.

**"Reliable Broadband Service"** (RBS) means broadband service that the Broadband DATA Maps show is accessible to a location via: (i) fiber-optic technology; (ii) Cable Modem/Hybrid fiber-coaxial (HFC) technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum, entirely unlicensed spectrum, a hybrid of licensed and unlicensed spectrum; or (v) Low Earth Orbit (LEO) satellite services, so long as the technologies employed meet the technical performance requirements in the BEAD NOFO, as redefined by BEAD RPN, and the IJJA.

**"Schedule of Values"** is the schedule of costs for performance and completion of the Project by Subgrantee and approved in writing by the Office.

**"UGPN"** is the NTIA Uniform Guidance Policy Notice (Dec. 26, 2023), titled "Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD program."

**"Underserved Location"** means a broadband-serviceable location that is (a) not an unserved location, and (b) that the Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with—(i) a speed of not less than 100 Mbps for downloads; (ii) a speed of not less than 20 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.

**"Unserved Location"** means a broadband-serviceable location that the Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with — (i) a speed of not less than 25 Mbps for downloads; (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds.

Capitalized terms not otherwise defined herein shall have the same meaning ascribed thereto in the BEAD NOFO.

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## Exhibit B: NCDIT Disclosures required by 2 C.F.R. 200.332 and 09 NCAC 03M

2 C.F.R. 200.332 Required Disclosures	
Disclosure	Contract Location
(1) Federal award identification.	
Subrecipient name	Section 1.1
Subrecipient's unique entity identifier;	Cover letter; Exhibit B
Federal Award Identification Number (FAIN);	Section 1.4
Federal Award Date of award to the recipient by the Federal agency;	Cover letter
Subaward Period of Performance Start and End Date;	Sections 1.7 – 1.9
Subaward Budget Period Start and End Date;	Section 2.1; Exhibit B
Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	Section 2.2.a.; Exhibit B
Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;	Section 1.4; Exhibit B
Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	Section 1.4; Exhibit B
Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	Section 1.3
Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;	Sections 1.1; 8.13
Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;	Section 1.4
Identification of whether the award is R&D; and	No
Indirect cost rate for the Federal award per § 200.414.	Not Applicable
(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;	Section 1.3
(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;	Sections 2.3/2.4; 5.5; 6.6
(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient;	N/A

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(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and	Section 5.5
(6) Appropriate terms and conditions concerning closeout of the subaward.	Sections 4.6; 7.4

<b>09 NCAC 03M .0703 Required Contract Provisions</b>	
<b>Provision</b>	<b>Contract Location</b>
(1) A specification of the purpose of the award, services to be provided, objectives to be achieved, and expected results;	Section 1.3
(2) The source of funds (such as federal or state) must be identified, including the CFDA number and percentages of each source where applicable.	Section 1.4
(3) Account coding information sufficient to provide for tracking of the disbursement through the disbursing agency's accounting system.	Cover Letter; Agreement Header
(4) Agreement to maintain all pertinent records for a period of five years or until all audit exceptions have been resolved, whichever is longer.	Section 2.3/2.4
(5) Names of all parties to the terms of the contract. For the recipient or subrecipient, each contract shall contain the employer/tax identification number, address, contact information, and the recipient's or subrecipient's fiscal year end date.	Sections 1.1; 8.13
(6) Signatures binding all parties to the terms of the contract.	Section 8.19
(7) Duration of the contract, including the effective and termination dates.	Section 1.7
(8) Amount of the contract and schedule of payment(s).	Section 2.2; Exhibit F
(9) Particular duties of the recipient.	Section 2.3/2.4
(10) Required reports and reporting deadlines.	Exhibit D
(11) Provisions for termination by mutual consent with 60 days written notice to the other party, or as otherwise provided by law.	Section 7.3
(12) A provision that the awarding of State financial assistance is subject to allocation and appropriation of funds to the agency for the purposes set forth in the contract.	Sections 2.2; 2.4
(13) Provision that requires reversion of unexpended State financial assistance to the agency upon termination of the contract.	Sections 2.3/2.4; 2.5; 3.4

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(14) A provision that requires compliance with the requirements set forth in this Subchapter, including audit oversight by the Office of the State Auditor, access to the accounting records by both the funding entity and the Office of the State Auditor, and availability of audit work papers in the possession of any auditor of any recipient of State funding.	Sections 2.3/2.4; 4.5; 5.1; 5.2; 5.3; 5.5
(15) A clause addressing assignability and subcontracting, including the following:	
(a) The recipient or subrecipient is not relieved of any of the duties and responsibilities of the original contract.	Section 8.11
(b) The subrecipient agrees to abide by the standards contained in this Subchapter and to provide information in its possession that is needed by the recipient to comply with these standards.	Article 6; Section 8.11

### Public Records Statement

Pursuant to N.C. General Statutes, Chapter 132, public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this state that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. Except as otherwise designated under N.C.G.S. 132-1.2 (Confidential Information), public records shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

### Policies

All NCDIT policies will be made available upon request.

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**Exhibit C: Federal Award Identification Number and Approved  
Application**

*To be incorporated*

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**Exhibit D: Scope of Services**

Subgrantee, \_\_\_\_\_, Application # \_\_\_\_\_ (<<County>>), will carry out the terms of this contract as follows:

**1. Scope of the Project**

The Subgrantee shall deploy infrastructure indicated in the approved, detailed network design to the approved Locations required by this Agreement and, upon completion of construction, shall offer to those Locations broadband service at speeds of no less than 100 megabits per second for downloads and 20 megabits per second for uploads, has a latency less than or equal to 100 milliseconds, and can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services.

**2. Project Budget**

The proposed budget attached to this Exhibit and the budget information submitted in EBS by the Grantee is incorporated herein by reference and approved by NCDIT. This budget is for accountability and reporting purposes. This will ensure that the subgrantee is consistent with the project. Any changes to the project budget must be made in compliance with Section 2.5 of this Agreement. A change of 10% or more constitutes a Material Change and an Amendment to this Agreement is required. A change of less than 10% constitutes a Project Change and the criteria of Section 2.5.b. must be met, approved, and attached as a supplement to this Exhibit.

<b>Project Expenses</b>	<b>BEAD Award</b>	<b>Matching Amount (ISP Fund)</b>	<b>Total</b>
Easements			
Materials			
Construction/Installation			
Testing			
Engineering			
Lease/Collocation Fees (one-time fees)			
Other			
Other			
Other			
<b>Total</b>			
<b>Match Percentage</b>			

**3. BEAD Award and Matching Funds**

The BEAD Award amount in paragraph 2 above and as stated in Section 2.2 of this Agreement is incorporated herein.

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#### 4. Locations

The Grantee must make broadband service available to all Broadband Serviceable Locations (BSLs) approved for this Project. The BSLs represent address-level locations submitted in the BEAD Grant Program Application and any adjustments due to the protest process or ineligible locations, as required by NCDIT. A data file of locations approved by NCDIT for this Project is reflected within Exhibit L. Broadband deployments must make broadband service available to the total number of locations outlined in the table below.

<b>BSLs</b>	
<b>Community Anchor Institutions:</b>	
<b>Total Locations:</b>	

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## Exhibit E: Project Milestones

Documentation for deliverables must accompany the relevant Progress Reports and any other requested documentation, demonstrating achievement of the following milestones. All reporting requirements, content, and formats shall be in accordance with Exhibit G – Reporting Schedule for Progress Reports. This Exhibit reflects the timing of reports as tied to milestones and payments.

### Milestone: Grant Agreement Execution & Financial Security Instruments

- Execute BEAD Subaward Agreement with NCDIT
- Submit Letter of Credit or Performance Bond
- **Timing:** Months 1 – 3

### Milestone: Program Mobilization

- Identify Key Personnel
- Register Key Personnel with NTIA and/or NCDIT reporting portals
- Meet with relevant NCDIT staff to review grant agreement terms and conditions
- **Timing:** Months 1 – 3

### Milestone: Final Engineering & Design

- Complete detailed network design for awarded project areas
- Submit final design package signed and sealed by a licensed PE to NCDIT for approval
- Milestone payment upon approved design and submission of first **Quarterly Progress Report** (as defined in Exhibit G; due within 15 days after quarter-end).
- **Timing:** Months 3 – 9
- **Payment:** 5% of Award Amount

### Milestone: Permitting & Environmental Compliance

- Upload NEPA compliance documentation into NTIA's ESAPTT system
- Provide a list of all required permits
- Secure pole attachment agreements, rights of way, and environmental clearances
- Milestone payment upon submission and acceptance of NEPA compliance documentation (cumulative 10% of Award)
- **Timing:** Months 4 – 12

### Milestone: Initial Community Engagement (Optional & Not Binding for Payment)

- Conduct local government and stakeholder briefings
- Publish construction timeline for affected communities
- **Timing:** Months 6 – 12

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### Milestone: Procurement & Materials Readiness

- Provide evidence of material and equipment orders
- Provide Buy America compliance certifications
- **Timing:** Months 13 – 18

### Milestone: Construction Phase I

- Build  $\geq 25\%$  of planned route miles or equivalent backbone
- Install infrastructure/equipment (OLTs, cabinets, hand holes, hubs)
- Milestone payment upon verification of 25% completion and evidence of procurement (cumulative 35% of Award)
- **Timing:** Months 16 – 24

### Milestone: Construction Phase II

- Build  $\geq 50\%$  of planned route miles or equivalent backbone
- Provide broadband access to  $\geq 50\%$  of required BEAD locations
- Conduct agreed speed tests
- Milestone payment upon verification of completion (cumulative 60% of Award)
- **Timing:** Months 25 – 36

### Milestone: Construction Final Phase

- Complete all remaining construction
- Provide broadband access to 100% of required BEAD locations
- **Timing:** Months 37 – 44

### Milestone: Final Testing & Validation

- Demonstrate speed test compliance
- Validate locations through NCDIT Mapping
- Submit cybersecurity compliance attestation
- Milestone payment upon successful completion (cumulative 90% of Award; 10% retained for Final Report)
- **Timing:** Months 42 – 46

### Milestone: Final Report

- Submit the Project Completion Report (Exhibit F) and final **Performance (Technical) Report** similar to a semiannual report or annual report (Exhibit G)
- Submit final engineer certification
- Milestone payment upon successful submission and acceptance of Final Report (remaining 10% of Award)
- **Timing:** Months 42 – 48
- **Due Dates:** Within 90 days after expiration of the Period of Performance

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### Milestone: Quarterly Reporting & Cost Evidence

- Submit **Quarterly Progress Reports** (see Exhibit G for full content, including miles constructed, end users served, expenditures, and utility damage reporting)
- Submit invoices and cost evidence
- **Timing:** Ongoing (beginning first calendar quarter-end)
- **Due Dates:** Reports due no later than the 15th day after each calendar quarter-end

### Milestone: Semiannual Reports

- Submit **Semiannual Progress Reports** (see Exhibit G for full content, including locations served, service uptake, facility construction, and required certifications)
- **Timing:** Month 6 and ongoing every six months
- **Due Dates:** Reports due no later than 15 days after every sixth month

### Milestone: Annual Reports

- Submit **Annual Progress Reports** (see Exhibit G for full content, including number of locations with access, subscription data, speed test evidence, fees paid, delays, compensation disclosures, etc.)
- Meet with NCDIT staff annually to review project status
- **Timing:** Month 12 and annually thereafter
- **Due Dates:** Reports due no later than 30 days after every 12<sup>th</sup> month

### Milestone: Technical Site Visits

- NCDIT site inspections during each construction phase
- **Timing:** Ongoing, at least once per construction phase per provider

### Summary

Milestone	Timing	% Award Paid	Cumulative % Award Paid
<b>Final Design, NEPA Compliance, Permitting Plan Approved</b>	Year 1	10%	10%
<b>Construction Phase I</b>	Year 2	25%	35%
<b>Construction Phase II</b>	Year 3	25%	60%
<b>Construction Phase III</b>	Year 4	30%	90%
<b>Final Report</b>	Year 4	10%	100%

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## Exhibit F: Project Completion Criteria

1. A "Project Completion Report" signed by an officer of Subgrantee must include:
  - a. An attestation by an officer of Subgrantee that the Project as described in Exhibit D has been completed in all material respects, to include, but not limited to:
    - (1) Qualifying Broadband Service
      - (a) Subgrantee has deployed a network capable of providing Qualifying Broadband Service to all End Users at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN; or
      - (b) LEO Subgrantee has initiated broadband service capable of providing Qualifying Broadband Service to all End Users in the Project area at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN;
    - (2) Installation/Initiation
      - (a) Subgrantee is capable of performing a standard installation of Qualifying Broadband Service at all End Users, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted; or
      - (b) LEO Subgrantee is capable of initiating Qualifying Broadband Service to all End Users in the Project Area, at a standard charge, at the speed and latency standards specified in the Application within ten (10) business days of a request to any covered Broadband Serviceable Locations (BSLs) in the Project area, with no charges of delays attributable to the extension of the service.
    - (3) Subgrantee is capable of providing Qualifying Broadband Service to all CAIs included in the Project area at the speed and latency standards specified in the Application, the BEAD NOFO, and BEAD RPN; and
    - (4) Subgrantee has completed all Critical Resiliency Need-Subproject Area (CRN-SPA) commitments identified in the Application.
    - (5) Subgrantee has provided all Matching Funds identified in Subgrantee's Application, this Agreement, or otherwise.
  - b. A technical report certified by a Professional Engineer that is sufficient to demonstrate, in the Office's sole discretion, that the Project is capable of delivering broadband internet access service to all End Users and CAIs at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN.
2. To the extent it relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Exhibit M.

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## Exhibit G: Reporting Schedule for Progress Reports

### Quarterly Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Broadband Infrastructure Office a “Quarterly Progress Report” for the Project on a quarterly basis for the period ending the last calendar day of a calendar quarter, due no later than 15th day following the end of each reporting period or the next business day following the 15<sup>th</sup> day. The report shall include, at a minimum:

1. Miles of Project network constructed (if applicable);
2. End Users that obtained access to broadband service during the reporting period;
3. Award Funds expended, reported in a manner consistent with the requirements of Section VI.F. of this Agreement; and
4. All instances of known damage to existing underground utilities that occur during the construction or installation of broadband infrastructure funded by the North Carolina BEAD Program (if applicable), in a manner and form specified by the office.

### Semiannual Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the office a “Semiannual Progress Report” for the Project on a semi-annual basis for the periods beginning on January 1 and ending June 30 and beginning on July 1 and ending on Dec. 31 (or any portion thereof) no later than 15 calendar days following the end of each reporting period. The Semiannual Progress Report content is subject to revision at NCDIT’s discretion and updates provided by NTIA. Based on the BEAD NOFO and BEAD RPN, the information currently required includes, at a minimum:

1. A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. § 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed or initiated as LEO broadband service and the status of each project;
2. New Project locations served within the relevant reporting period and, for each such service and whether service taken (if applicable);
3. Include an aggregate percentage of customers taking service at new locations served within each Project area;
4. Whether each address or location identified in item 2 is residential, commercial, or a community anchor institution;
5. A description of the types of facilities that have been constructed and installed, or initiated as broadband service;
6. A description of the peak and off-peak actual speeds of the broadband service being offered;
7. A description of the maximum advertised speed of the broadband service being offered;

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8. A description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
9. List all middle mile interconnection agreements made to Subgrantee during the reporting period, and their current status;
10. The number and amount of contracts and subcontracts awarded by Subgrantee;
11. Any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects, including (i) fiber-optic technology; (ii) Cable Modem/Hybrid fiber-coaxial (HFC) technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum, entirely unlicensed spectrum, a hybrid of licensed and unlicensed spectrum; or (v) Low Earth Orbit (LEO) satellite services.
12. A SF-425, Federal Financial Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Financial Reports;
13. A SF-429, Real Property Status Report Federal Financial Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Real Property Status Reports;
14. A SF-428, Tangible Personal Property Status Report that meets the requirements described in the DOC GT&Cs, Section A.01 for Tangible Personal Property Status Reports;
15. Certification by an officer of Subgrantee that:
  - a. That Subgrantee has informed its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712 in the predominant native language of the workforce, and required its subcontractors and subgrantees to do the same.
  - b. The information in the Semiannual Progress Report is accurate.
  - c. Subgrantee complies with the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3702 and 3704, as supplemented by 29 C.F.R. part 5.
  - d. Subgrantee complies with Federal Fair Labor Standards Act, as amended (29 U.S.C. §§ 201-219), as supplemented by 29 C.F.R. part 516), including provisions thereof related to collective bargaining.

## Annual Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the office an “Annual Progress Report” for the Project on an annual basis for the period ending Dec. 31 of each year (or any portion thereof) no later than 30 calendar days following the end of each reporting period. The Annual Progress Report content is subject to revision at NCDIT’s discretion and updates provided by NTIA. Based on the BEAD NOFO and BEAD RPN, the information currently required includes, at a minimum:

1. A summary of the items contained in the Subgrant Agreement;
2. The number of residential and commercial locations that have access to Qualifying Broadband Service as a result of the Project;
3. The percentage of End Users in the project area who have access to Qualifying Broadband

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Service and the percentage of End Users with access who actually subscribe to the Qualifying Broadband Service;

4. The average number of subscriptions for residential and commercial Qualifying Broadband Service in the Project area;
5. Any right-of-way fees, permit fees, or franchise fees paid to a local government, state government, railroad, private entity, or person in connection with the Project during the term of this Agreement;
6. Any delays encountered when obtaining a right-of-way permission;
7. Evidence consistent with the Federal Communications Commission attestation that the Subgrantee is making available the proposed advertised speed, or a faster speed, as set forth in Exhibit C; and
8. Unless Subgrantee meets one of the exceptions set forth in 2 C.F.R. § 170.110, Subgrantee shall provide executive compensation information to the office in accordance with 2 C.F.R. Part 170 and pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). See DOC GT&C G.05.0.

### **Reporting Requirements on Expiration of the Period of Performance**

Subgrantee shall submit a final Form SF-425 and a final Performance (Technical) Report to the office within 90 calendar days after the expiration of the Period of Performance.

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**Exhibit H: Progress Report Template**  
**BEAD Grant Program Progress Report Form DRAFT**

Download “How to Submit Progress Reports” for assistance. Upload Progress Reports to [EBS.NC.GOV](https://EBS.NC.GOV).

**Grantee Information**

Grantee Name: \_\_\_\_\_  
 Contact Completing this Form: \_\_\_\_\_ Title: \_\_\_\_\_  
 Primary Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

**Reporting Period**

**Contract Information**

Date From: \_\_\_\_\_ Grant Agreement#: \_\_\_\_\_  
 Date To: \_\_\_\_\_ Project Title: \_\_\_\_\_  
 Project County: \_\_\_\_\_ Technology Type: \_\_\_\_\_

**Project Updates**

**Please provide a description of accomplishments achieved and problems or delay encountered during this reporting period on the categories below.**

**Design/Engineering:**

Provide a *rough* estimate of how much of the design/engineering work has been completed for the total project, including all project areas. (Please check one.) Provide any updates or challenges with the design/engineering work for this project.

- Less than 25% complete
- 25-75% complete
- 75-99.9% complete
- 100% complete

**Securing Assets:**

Provide any updates on securing the following relevant items: rights-of-way; easements; other land; access to poles and completion of make-ready work; access to towers. Provide any challenges that may significantly impact your project design. For WISPs, please list the actual macro towers being utilized and whether leases have been secured.

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**Materials/Supplies:**

Provide any updates on materials/supplies being purchased for the project. Provide any anticipated significant challenges or delays these purchases will have on the project.

**Staffing/Contractors:**

Provide any updates with staffing/labor for the project. Provide any challenges or changes to staffing/labor since the previous reporting period. Provide whether design/engineering and construction labor is primarily in-house or contractors.

*Design/Engineering:*

- In-House Staff
- Contractors
- Both

Please list names of primary contractors.

  
  
  
  
  
  
  
  
  

*Construction/Installation:*

- In-House Staff
- Contractors
- Both

Please list names of primary contractors.

**Milestones:**

Provide the status of any remaining milestone requirements listed in Exhibit E of the Grant Agreement for this reporting period.

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**Project Expenditures**

Provide the total expenditures for all eligible expenditures as defined in Section 2.2 of the Grant Agreement for the reporting period and cumulative to date. Provide any justifications for expenditures or cost overruns, as applicable. Attach financial documentation as needed to this report.

Project Expenses	Total Expenditures (Reporting Period)	Total Expenditures (Cumulative – To Date)
Easements		
Materials		
Construction/Installation		
Testing		
Engineering		
Lease/Collocation Fees (one-time fees)		
Other (Specify)		
Justification:		

**Provision of Service:**

Is service available yet to any BEAD locations (potential subscribers) within this project?

Yes

No

If yes, please provide estimated numbers below:

	Estimated number of locations
BEAD Broadband Serviceable Locations with broadband access:	
BEAD Community Anchor Institutions with access	

**GRANTEES ARE REQUIRED TO REPORT ONLY ON BEAD GRANT LOCATIONS. DO NOT SUBMIT ADDITIONAL LOCATIONS OUTSIDE OF THE CONTRACTED BEAD GRANT AGREEMENT. IF ADDITIONAL LOCATIONS ARE INCLUDED, THE REPORT WILL BE RETURNED TO THE GRANTEE.**

**Broadband Access:**

*Broadband access is considered available if service can be provided to the BEAD location(s) immediately or within 10 business days upon request and without cost to the customer other than standard connection fees.*

If you have completed the construction and deployment of this BEAD grant, and made service available to all required BEAD locations, please indicate below:

Yes (all construction has been completed and service availability to all locations is complete.)

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## Broadband Provider Certification and Attestation

The undersigned representative of the Grantee certifies that the information in this progress report is 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;
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 Grantee 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 project area described in Exhibit B of the Grant Agreement is eligible.

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**SIGNATURE OF AUTHORIZED REPRESENTATIVE**

---

**DATE**

---

**TYPED NAME AND TITLE**

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## **Exhibit I: Payment Process and Schedule**

NCDIT requires requests for payments to be submitted in accordance with the respective Project Milestones, as specified in Exhibit E. NCDIT reserves the right to request additional progress reports to accompany the request for payment. With exception to those eligible expenditures incurred in accordance with Section 2.2, eligible expenditures may only be incurred during the Period of Performance.

To receive payment of funds, the Grantee must submit the following documentation:

1. Satisfactory completion of Project Milestones
2. Payment Request through the NCDIT Enterprise Business Services on-line portal, in accordance with the process outlined in Article 3;
3. Proof progress reports are in good standing;
4. Any additional documentation requested by NCDIT related to the Project, including but not limited to the following:
  - mapping information and
  - verification of broadband service to the committed location
5. A request for budget changes must be approved prior to submitting a reimbursement request. If a grantee's budget has changed and does not match the Grant Agreement and the budget in the EBS Portal, the reimbursement request will be rejected in the NCDIT.

NCDIT will pay up to 90% of the award subject to the Project Milestones detailed in Exhibit E. The final 10% of the award amount is retained one final claim to be submitted for a request for payment within 90 days from the end date of the Period of Performance. This Payment Request is subject to NCDIT receiving and approving the following documentation:

1. Copies of eligible expenditure invoices, proof of payment, or in-kind contributions to verify and validate the expenditure of the grant and match in accordance with this Agreement.
2. The "Project Completion Report," detailed in Exhibit F; and
3. The "Final Report" referenced in Exhibit E and detailed in Exhibit G and
4. Mapping files, in the NCDIT approved format that identifies all contracted locations having broadband access.

Payments are subject to the availability of funds. NCDIT will use best efforts to issue the funds due to the Grantee within 30 days of approval of the documentation submitted by the Grantee.

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## Exhibit J: Byrd Anti-Lobbying Certification

Grantee certifies to the best of their knowledge and belief, that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Undersigned shall complete and submit Standard Form- LLL, "Disclosure form to Report Lobbying," in accordance with its instructions. A copy of this form is contained in 31 C.F.R. Pt. 21, App. B.
3. Grantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made and entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Grantee certifies and affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Grantee understands and agrees that the provisions of 31 U.S.C. Chapter 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Authorized Representative

Print Name

Date

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## Exhibit K: Key Personnel of the Grantee BEAD GRANT PROGRAM

**Purpose:** The purpose of this document is for the awardee to identify and determine the responsibilities of a representative from the company with regards to administering the BEAD Grant Project. This document will establish the appropriate contacts from the awardee, assign responsibility and delegate authority to appropriate staff to ensure compliance with the executed grant agreement.

The Grantee's Project Contacts table can be edited, and additional rows may be added, as needed, by the user. **Please include a copy of a letter on company letterhead by the principal or legal counsel certifying the roles of the representatives listed in the table.**

### Definitions

**Awardee Name:** Legal name of the awardee as indicated in the submitted application

**Application #:** The application number assigned by the Enterprise Business Service (EBS) online application portal at the time of application submission. You may also reference the application # in the award letter.

**Unique Entity Identifier (UEI):** Awardees must have an active Unique Entity Identifier. This is required due to the use of federal funds per [2 CFR 200.206 \(link\)](#). At the time of application, the identifier was referred to as the System Award Management (SAM) ID and used the DUNS number as part of the registration process. The SAM.gov transitioned from using DUNS numbers to the UEI on April 4, 2022. If your organization does not have a UEI, please register or update your information at this link: [SAM.gov | Home](#).

**Principal:** The person that has the authority to enter a legally binding contract with the State of North Carolina.

**Legal Counsel:** The person that serves as legal counsel on behalf of the company and will review the grant agreement from the N.C. Department of Information Technology.

**Fiscal Representative:** The person that will submit claims for reimbursement.

**Authorized Representative:** The person that is responsible for certifying and submitting progress report documentation.

**Construction Manager and/or Engineer:** The person that is responsible for questions about the construction of broadband infrastructure.

**Authorized User(s) for the EBS on-line portal:** The person that has access to the Enterprise Business Services (EBS) online portal. Please ensure that the authorized user has a valid [NCID username and password \(register here\)](#). In addition, ensure that the user has received authorization to access the [EBS \(register here\)](#).

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**Awardee Name:** \_\_\_\_\_

**Application #:** \_\_\_\_\_

**Unique Identify Identifier (as registered with SAM.gov)** \_\_\_\_\_

**Tax Identification #:** \_\_\_\_\_

**Awardee Fiscal Year End Date:** \_\_\_\_\_

<b>Responsibility</b>	<b>Full Name, Title</b>	<b>Contact Information Business Name Mailing Address Email Address and Phone</b>
Principal		
Legal Counsel		
Fiscal Representative		
Authorized Representative		
Construction Manager and/or Engineer		
Authorized User(s) for the Enterprise Business Services (EBS) on-line portal		
Reserved for other representatives		
Reserved for other representatives		

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## **Exhibit L: Mapping Files**

The Subgrantee must make broadband service available to all households and businesses approved for this project. The household and business locations represent address-level locations submitted in the BEAD Grant Program Application and any adjustments due to the protest process or ineligible locations as required by NCDIT.

The data file listing the locations submitted by Subgrantee and approved by NCDIT for this Project is considered a part of this Grant Agreement and is incorporated into the Agreement by reference. A copy of this data file listing these final locations, as previously agreed upon by the Parties, is being provided to the Subgrantee as a csv file in a separate email with the following naming structure: (Application number\_AWARD\_LOCATIONS.csv). The approved and required locations are outlined in the data file, which includes addresses and coordinates from the AddressNC statewide address dataset. The full address field contains the complete address provided by the local county addressing authority. Also provided for each location are decimal degrees coordinates, state plane latitude and longitude, U.S. National Grid Coordinates and Google Plus Codes that can be used to map the locations in a variety of mapping platforms.

A map of the locations is also included in this Exhibit.

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## Exhibit M: Cybersecurity and Supply Chain Risk Management Plan

[Signatory], [Title], [Entity] hereby attests that:

1. [Entity] has a cybersecurity risk management plan (“CRM Plan”) in place that is: Operational, if [Entity] is providing service prior to the award of the grant; or Ready to be operationalized upon providing service, if [Entity] is not yet providing service prior to the grant award;
2. The CRM Plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
3. The CRM Plan will be reevaluated and updated on a periodic basis and as events warrant;
4. If [Entity] makes any substantive changes to the CRM Plan, a new version will be submitted to the Office within thirty (30) calendar days. [Entity] acknowledges that the Office must provide [Entity]’s CRM Plan to NTIA upon NTIA’s request.

Signatory further attests:

1. Subgrantee has a supply chain risk management plan (“SCRM Plan”) in place that is either:
2. Operational, if [Entity] is already providing service at the time of the grant; or
3. Ready to be operationalized, if [Entity] is not yet providing service at the time of grant award;
4. The SCRM Plan is based upon the key practices discussed in the NIST publication NIST Internal or Interagency Report (NISTIR) 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST Special Publication (SP) 800-161 Rev. 1, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
5. The SCRM Plan will be reevaluated and updated on a periodic basis and as events warrant;
6. If [Entity] makes any substantive changes to the SCRM Plan, a new version will be submitted to the Office within thirty (30) calendar days. [Entity] acknowledges that the Office must provide [Entity]’s SCRM Plan to NTIA upon NTIA’s request.

[Entity]

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

[Signatory], [Title], [Entity]

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

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## Exhibit N: Environmental & Historic Preservation Review Procedures

### I. General Environmental and Historic Preservation Review Requirements

Subgrantee shall not initiate or allow any grant funded implementation activities—except for the limited permissible activities identified in the “Uses Prior to Implementation” subsection below—prior to the following:

- The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, *et seq.*) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. § 470, *et seq.*) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
- The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. § 1531, *et seq.*), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. § 1251, *et seq.*), as applicable; and
- Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

The BEAD RPN has added the Environmental Screening and Permitting Tracking Tool (ESAPTT) to support NTIA’s goal of issuing NEPA approvals.

### II. NEPA Compliance

To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, the Office shall:

- Serve as a “joint lead agency” in its capacity as the State (or Territory) agency administering the BEAD program in accordance with 42 U.S.C. § 4336a(a)(1)(B) and carry out the duties described in 42 U.S.C. § 4336a(a)(2);
- Complete an evaluation of the sufficiency, applicability and accuracy of the analysis in First Responder Network Authority (FirstNet) Regional Programmatic Environmental Impact Statement (PEIS) chapter as it applies to anticipated implementation activities for North Carolina;
- The Parties agree that:
  - Subgrantee will not commence implementation, and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited

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permissible activities identified below;

- Subgrantee must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. § 4336g(a); and
- Subgrantee must provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

The Office will certify the sufficiency of all Subgrantee decision documents either by:

- preparing such documents; or
- by supervising Subgrantees' preparation of draft documents, independently reviewing those drafts, and verifying that decision documents meet the requirements of NEPA prior to transmittal to NTIA;

Subgrantee shall, as directed by the Office:

- Submit all decision documents—including any supporting environmental documentation required or requested by NTIA for review.

### **III. NHPA Compliance**

To ensure the timely completion of historic preservation review for all BEAD-funded activities, Subgrantee shall provide all such information as the Office requires to:

- At the earliest possible time, provide the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC's Tower Construction Notification System (TCNS) when required for grant funded activities;
- Provide notified Tribes with information regarding grant funded activities via their preferred communication means, as identified in TCNS;
- Apply the Advisory on Historic Preservation (AHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities or any other applicable program comment or program alternative developed to address the Section 106 review of communications facilities;
- Notify NTIA of any Tribal request for government-to-government consultation or any identification that a grant funded activity may impact a historic property of religious or cultural significance to a Tribe; and
- Provide all consulting parties with the statutorily required time to respond to its determination of a grant funded activity's effect on historic properties.

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#### **IV. Further Environmental and Historic Preservation Review Guidance**

The Parties acknowledge that NTIA will issue further implementation guidance regarding the Office's and Subgrantee's responsibilities under this condition. That guidance will include instructions on the following topics, among others:

- How the NCDIT should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS sections;
- How the NCDIT and/or Subgrantee should evaluate what level of environmental review is appropriate and determine what type of decision document is required for a grant funded activity to proceed;
- NTIA's criteria for determining whether each type of decision document meets the requirements of NEPA;
- How the NCDIT and/or Subgrantee should format decision documents;
- How the NCDIT should submit decision documents and any other required environmental documentation to NTIA;
- How the NCDIT will work with cooperating agencies;
- How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
- NTIA's process for notifying the NCDIT that a decision document meets the requirements of NEPA.

Subgrantee shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of the above activities. Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—*e.g.*, best management practices or other measures necessary to reduce environmental impacts. Subgrantee shall provide any related information requested by the Office or by NTIA (directly or through the Office) to ensure both initial and ongoing compliance with all requirements described above.

#### **V. Uses of Award Funds Prior to Implementation**

Subject to Section VIII.A. of this Agreement, the allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;

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- Pre-award application costs incurred solely by the Subgrantee that receives this Subgrant award.
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts or agreements to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated. Subgrantee shall notify the Office within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

The Parties acknowledge that any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements.

## **VI. Archaeological Resources**

Burial sites, human remains, and funerary objects are subject to the requirements of all applicable federal, tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantee must notify the Office of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify the Office, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of the NCDIT and NTIA.

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## Exhibit O: Property Standards and Documentation of the Federal Interest (2 CFR 200)

### Property Standards

1. Subgrantee is not required to comply with the Procurement Standards set forth in 2 C.F.R. §§ 200.318-320 and 200.324-326. All other Procurement Standards, *i.e.*, 2 C.F.R. §§ 200.317, 200.321-200.323 and 200.327, remain as requirements.
2. Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 C.F.R. § 200.313(d), pursuant to an exception from OMB.

If Subgrantee does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 C.F.R. § 200.313(d).

3. Subgrantee must comply with the use and equipment disposition requirements of 2 C.F.R. §§ 200.313(c)(4) and 313(e) as follows:
  - a. If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subgrantee may treat the equipment to be replaced as “trade-in” even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC GT&Cs § A.01) to the DOC to ensure adequate tracking of the federal percentage of participation in the cost of the grant funded activities. Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.
  - b. Subgrantee may sell, lease, or transfer Project Property only after (i) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (ii) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving Project Property in subsequent guidance.
  - c. Subgrantee must notify the Office and NTIA upon the filing of a petition under the United States Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee’s ability to perform in accordance with its subgrant.
4. Subgrantees must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Specific requirements are set forth in Attachment 9.a to this Agreement.
5. Subgrantee may encumber Project Property only after provision of notice to NTIA and to the Federal Grant Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to

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receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a pari-passu basis, 50% of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

6. Pursuant to exceptions approved by OMB as described in the UGPN, the property standards set forth in 2 C.F.R. § 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.
7. Subgrantee must comply with 2 C.F.R. § 200.316. Pursuant to this Section and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, for the duration of the Federal Interest Period, Subgrantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
8. Subgrantee must comply with the insurance requirements of 2 C.F.R. § 200.310.
9. Subgrantee must comply with 2 C.F.R. § 200.312 to the extent any federally owned real property or equipment is used by Subgrantee.

## Specific Requirements to Document the Federal Interest in Project Property

### 1. Covenant of Purpose, Use and Ownership

To document the Federal interest in BEAD-funded real property, Subgrantee must prepare and properly record a "Covenant of Purpose, Use and Ownership" (Covenant). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA or the NCDIT. Rather, pursuant to the Covenant, Subgrantee acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period.

NTIA will provide a suggested sample form to use for the Covenant to record notice of the Federal interest in real property. Subgrantee acknowledges that the Covenant will be recorded in all relevant jurisdictions related to any and all Grant funds issued to Subgrantee to ensure that the Covenant is properly recorded. Subgrantee shall be obligated to indemnify, defend, and hold harmless NCDIT for any costs, expenses, collection fees, attorneys' fees or other damages that NCDIT sees fit to seek as a result of Subgrantees' failure to comply with this requirement.

### 2. UCC-1 Filing and Attorney's Certification

Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, Subgrantee shall properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the State's Uniform Commercial Code (UCC). This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant or subgrant, as applicable. The UCC filing(s) must include the below or substantively similar language providing public notice of the Federal interest in the equipment acquired with

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BEAD funding. Also, a clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1.

The UCC filing must include the below or substantively similar language:

*The Equipment set forth at Attachment A hereto was acquired with funding under a financial assistance award (22-20-B061) issued by the National Institute of Standards and Technology, U.S. Department of Commerce. As such, the U.S. Department of Commerce retains an undivided equitable reversionary interest (Federal interest) in the Equipment for ten years after the end of the year in which the award is closed out in accordance with 2 C.F.R. § 200.344.*

In addition, within 15 calendar days following the required UCC filing(s), Subgrantee shall provide the Office and the Federal Grant Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with Award Funds including all subgrants, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney's Certification), that the UCC filing was properly executed and filed in accordance with applicable state law. The Attorney's Certification must include the below or substantively similar language:

*NIST Award Number: 22-20-B061*

*Pursuant to 28 U.S.C § 1746, I hereby certify as follows:*

*I am legal counsel at \_\_\_\_\_.*

*I am licensed to practice law in the State of having been a license holder of said state and in good standing since \_\_\_\_\_.*

*Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the \_\_\_\_\_ on \_\_\_\_\_, 202x, bearing the following filing information [insert filing data, e.g., instrument number, etc.] and consists of \_\_\_ recorded pages as certified by the Secretary of State of \_\_\_\_\_.*

*I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above. I certify under the penalty of perjury that the foregoing is true and correct.*

*Executed on this \_\_\_ day of \_\_\_\_\_. (Attorney name and title)*

*(Address and phone number)*

In addition, during the estimated useful life of the Project Property, Subgrantee shall timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the Office and the Federal Grant Officer within 15 calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to the Office, NTIA, and the Federal Grant Officer.

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## **Exhibit P: LEO Capacity Subgrant Template and Requirements Federal Construction Obligations**

The N.C. Department of Information Technology (“NCDIT”), is authorized to make Grant Funds available to qualified subgrantees under the North Carolina BEAD Program to provide and Low Earth Orbit (“LEO”) satellite services, governed in accordance with the Infrastructure Investment and Jobs Act (“IIJA”), Public Law No. 117-58, the BEAD NOFO, and BEAD RPN, including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and National Telecommunications and Information Administration (“NTIA”) Administrator may provide; and

**WHEREAS**, the NCDIT, through its State Broadband Office (“Office”), and [\_\_\_\_], a provider of Low Earth Orbit (LEO) satellite service (the “LEO Subgrantee”) (collectively, the “Parties”) have entered into the accompanying Subgrant Agreement (“Agreement”); and

**WHEREAS**, the Parties seek to leverage the LEO Subgrantee’s recognized capabilities in advanced LEO satellite technologies and service delivery; and

**WHEREAS**, the LEO Subgrantee shall be bound by all provisions of the accompanying Agreement, and where appropriate, an alternate provision therein is specifically stated to apply to a LEO Subgrant and the LEO Subgrantee, the stated alternate provision for a LEO Subgrant(ee) shall apply, with all other terms, conditions, and provisions of this Agreement remaining in full force and effect.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and incorporating by reference the accompany Agreement and Attachments, and intending to be legally bound, the Parties agree as follows to these additional Agreement provisions:

### **I. LEO Satellite Capacity for the BEAD Program**

1. In the BEAD RPN, the NTIA has stated that all broadband technologies that meet the performance requirements of the IIJA, BEAD NOFO, and BEAD RPN are eligible to participate in the BEAD Program.
2. Certain portions of the BEAD NOFO and BEAD RPN address unique issues related to services provided by a LEO Subgrantee. When funding traditional broadband service, the Federal government takes an interest in the physical plant to ensure performance. With LEO service there is no defined network dedicated to fixed locations in which the Federal government can take an interest to ensure performance.
3. To meet BEAD program needs, the LEO Subgrantee is required to reserve sufficient capacity to deliver broadband service that meets the BEAD performance and technical requirements to each BSL in a Project area. These conditions apply even if only a portion of the BEAD funds under this Agreement goes to reimburse a Subgrantee for the reservation of capacity on the LEO’s network to deliver last-mile broadband service.
4. The Parties have defined a common set of requirements and objectives as the basis of the technical and performance terms of the LEO Subgrantee’s providing capacity for provide high-speed, Qualifying Broadband Service for the NCDIT’s BEAD Program.

### **II. Required Conditions for LEO Capacity**

1. The LEO Subgrantee must begin providing broadband service to each customer that

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desires broadband service not later than four years from the date of the Subgrant Agreement.

2. The LEO Subgrantee shall be deemed to have begun to provide service when it certifies to the Office that the LEO Subgrantee can initiate broadband service within ten (10) business days of a request to any covered BSL in the Project area, with no charges or delays attributable to extension of the service.
3. The Office shall require a Period of Performance that concludes ten (10) years from the date upon which the LEO Subgrantee certifies to the Office that Qualifying Broadband Service is available to every location covered by the Project.
  - a. The LEO Subgrantee must continue to offer access to broadband service to each BSL served by the Project throughout the Period of Performance. If a customer receiving service at a BSL moves, the LEO Subgrantee must continue to offer service to the BSL under the terms of the Subgrant if subsequent occupants request service.
  - b. Although NTIA does not take a Federal interest in equipment or property acquired or improved by the LEO Subgrantee with this Subgrant, the consumer and taxpayer protections set forth in the BEAD NOFO apply to the LEO Subgrantee for the duration of the ten (10) year Federal interest period.

### III. LEO Subgrantee Disbursements

1. Disbursement to the LEO Subgrantee shall be made on a reimbursement basis in accordance with terms of this Agreement and Exhibit P, which established the agreed upon framework the Parties. Payments to the LEO Subgrantee may be based on the following:
  - a. Equal installments throughout the Period of Performance for each location where capacity is reserved.
  - b. Subscriber metrics (milestones).
2. Upon request by the LEO Subgrantee, and at the sole discretion of the Office, the Office may advance up to 50% of total cost of the LEO Subgrant:
  - a. At the time the LEO Subgrantee certifies the availability of service throughout the Project area; or
  - b. Upon the LEO Subgrantee meeting subscription milestones established in Exhibit P. (e.g., 50% of the locations in the Project area subscribing to the Subgrantee's Qualifying Broadband Service); or
  - c. A combination of III(2)(a) and III(2)(b).
  - d. If the Office elects to advance a portion of the LEO Subgrant, the remaining portion shall be distributed in equal installments across the remaining Period of Performance. Eligible Entities may provide payment in yearly, semi-annual, or quarterly installments.

### IV. Letter of Credit/Bonding Requirements

1. Pursuant to Section X.H. of the Agreement, prior to entering into this Agreement, upon request by the Office the LEO Subgrantee shall obtain an irrevocable standby letter of credit, a performance and/or payment bond(s), or certificates of deposit using the model(s) provided by the Office, equal to or exceeding twenty-five (25) percent of the total award amount. The LEO Subgrantee must retain the letter of credit or bond(s) until the final milestone or installment in the disbursement is achieved, whichever is later, and confirmed complete by the Office.

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- a. The LEO Subgrantee may reduce its Letter of Credit or performance bond by 50% at the point it certifies to Office that Qualifying Broadband Service is available to each location in the Project area.
  - b. The Letter of Credit can be reduced by an additional 25% of the original amount after the subscription rate reaches at least 25% of all locations in the Project area, and may be closed out once the subscription rate reaches 50%.
  - c. Regardless of the subscription rate, the Letter of Credit may be terminated four (4) years after the LEO Subgrantee certifies that it can initiate broadband service within ten (10) business days of a request to any covered BSL in the Project area.
2. In addition to Letter of Credit or Bonding requirements, the LEO Subgrantee shall submit audited financial statements to the Office demonstrating its financial capacity to undertake the commitments of a subgrantee in all areas in which the Subgrantee provider seeks to serve. The Office will provide the audited financial statements to NTIA to verify the financial capability of the LEO Subgrantee, and the LEO capacity subgrantee shall obtain and provide a financial certification letter from NTIA demonstrating its financial capacity to undertake the commitments of a subgrantee.

## V. Consumer Premises Equipment

1. In light of the advantages conferred on the LEO Subgrantee by the unique structure BEAD LEO broadband service and the higher costs of Consumer Premises Equipment (“CPE”) essential for delivery of broadband service via LEO satellite, the LEO Subgrantee must provide all necessary CPE at no cost as part of the standard installation for each new subscriber (i.e., for each new resident or group of residents) at the BEAD-funded location throughout the Period of Performance.
2. If the same subscriber requests additional CPE after installation, the LEO Subgrantee may charge customary rates unless the request is made due to equipment malfunction or damage caused by a weather event.

## VI. Additional Terms

1. The Parties will definitize any additional terms are necessary and consistent with this Agreement and to give effect to the terms set forth in this Exhibit P.
2. The Parties agree that the initial draft of such additional proposed commercial terms will be prepared by Subgrantee and provided to the Office not later than ten (10) business days after the Subgrantee has been notified of a provisional award.
3. Proposed additional commercial terms that contradict the federal or state BEAD Program requirements, or reduce a Subgrantee’s obligations under the IJJA, the BEAD NOFO, the BEAD RPN, or any other applicable regulation or NTIA guidance, will not be submitted by the Subgrantee and will not be considered by the Office.
4. The Parties will work diligently to add any mutually agreeable terms to this Agreement not later than August 15, 2025, to allow the Office to submit a Final Proposal to NTIA not later than September 4, 2025. The Office retains the right, in its sole discretion, to determine if the Subgrantee has provided adequate additional terms, if necessary, to support submission of this Agreement to the NTIA as part of its Final Proposal.

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5. The Parties will work diligently to add any mutually agreeable terms to this Agreement not later than August 15, 2025, to allow the Office to submit a Final Proposal to NTIA not later than September 4, 2025. The Office retains the right, in its sole discretion, to determine if the Subgrantee has provided adequate additional terms, if necessary, to support submission of this Agreement to the NTIA as part of its Final Proposal.
6. Subgrantee will include key project indicators (“KPIs”) in their Progress Reports about the performance of the service to the Project area, including, but not limited to, service speed, latency, and reliability. KPIs will demonstrate how the Subgrantee is managing bandwidth utilization and capacity management to ensure sufficient LEO network capacity is maintained for peak demand periods.

## VII. LEO Subscription Milestones

LEO Subscription Milestone	Description
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 1
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 2
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 3
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 4
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 5
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 6
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 7
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 8
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 9
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 10
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 11
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 12
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 13
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 14
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 15
<<XX>>% of the locations in the Project area subscribing to the Subgrantee’s Qualifying Broadband Service	Quarter 16

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## **Exhibit Q: ULFW Technical Specifications and Mitigation Requirements**

During the term of this agreement and the federal period of interest the Subgrantee shall meet the BEAD technical requirements of service of a minimum of 100 Mbps download, 20 Mbps upload and latency of less than 100 ms. To consistently meet these service thresholds the Subgrantee shall make efforts to implement mitigation strategies to meet those requirements for each BSL, even if subscribership to the Subgrantee's network exceeds the Subgrantee's expectations and avoid disruptions of service.

All representations and statements regarding the network design made in the application are incorporated herein as part of this grant agreement. Any changes to the network design will be considered a material change and the Subgrantee must follow the procedures and instructions for making a material change to the grant agreement in Section 2.5.

To ensure that the Subgrantee will have sufficient capacity to meet the statutory speed requirement of 100 Mbps download and 20 Mbps upload, the network design for ULFW projects must provide in its reporting the ability to provide at least 5 Mbps (100Mbps downstream service, to be scaled for higher speed commitments) of simultaneous capacity to each BSL in the project area.

The Subgrantee should consider the following measures to ensure sufficient capacity and include all relevant information in its reporting:

- Reserved base station capacity to account for periods of higher interference;
- Adherence with network equipment manufacturer best practices or guidance regarding items such as:
  - Capacity/loading of base station radios with respect to number of, and provisioned bandwidth of, subscribers.
  - Minimum signal strength necessary to meet speed and latency requirements.
  - Backhaul requirements for base station deployments.

The Subgrantee may not seek additional Grant Funds to implement such measures or add such equipment / facilities.

### **Mitigating Potential Interference:**

The following are examples of mitigation strategies that the Subgrantee may adopt to address the technical issues associated with ULFW deployments, which should be included as part of its reporting:

- Beam forming and/or beam nulling antenna arrays at both base station and subscriber radios;
- Interference mitigation (in addition to beam forming/nulling) technologies;
- Advanced non-line-of-sight capabilities or design considerations;
- Reserved base station capacity to account for periods of higher interference;
- Conservative link budgets to account for potential interference/congestion losses; and

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- Adherence with network equipment manufacturer best practices or guidance regarding items such as minimum signal strength necessary to meet speed and latency requirements.

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## Exhibit R: Federal Construction and Other Federal Obligations

### I. Federal Construction Obligations

#### 1. Energy Efficiency

Subgrantee shall apply, where feasible, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction of the Project.

#### 2. Signage and Public Acknowledgements

Subgrantee is required to post signage and to include public acknowledgements in published and other collateral materials (e.g. press releases, marketing materials, webpages, plaques) satisfactory to the Office, NTIA and NIST that identifies grant funded activities and indicates that those activities are “funded by the Infrastructure Investment and Jobs Act.” Subgrantee is required to use the Official Investing in America emblem in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. Subgrantee should use best efforts to use recycled or recovered materials when procuring signs.

### II. Other Federal Obligations

#### 1. Prevention of Waste, Fraud and Abuse

##### a. Training

Consistent with the principles in 2 C.F.R. Part 200, at any time(s) during the Period of Performance, the Office or NTIA may direct a member or members of Subgrantee’s key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing Subgrantee’s finances and overseeing any contractors, subcontractors or lower tier subgrantees (for financial matters and/or general oversight related to the grant).

NTIA or the Office will provide instructions on when and how to take such training(s), and costs incurred by Subgrantee relative to the training (e.g., staff time) are eligible for reimbursement pursuant to this Agreement.

##### b. Monitoring

The NCDIT will carry out Subgrantee monitoring consistent with BEAD Program requirements. Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- i. false claims for materials and labor;
- ii. bribes related to the acquisition of materials and labor;
- iii. product substitution;

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- iv. mismarking or mislabeling on products and materials; and time and materials overcharging.

Should Subgrantee detect any fraud schemes or any other suspicious activity, Subgrantee must contact (a) the Office point of contact designated in this Agreement, and (b) the assigned NTIA Federal Program Officer and the DOC Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

- c. Mandatory Disclosures

Additionally, Subgrantee must make disclosures in accordance with 2 C.F.R. § 200.113, in a timely manner, in writing to the Office. Subgrantee is required to report credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729-3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity (if applicable). Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.339. (See also 2 C.F.R. Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313.) The Subgrantee may use the NCDIT Fraud Reporting Form available at <https://www.azcommerce.com/about-us/NCDIT-policies/>. Subgrantee acknowledges the responsibility to produce copies of materials used for such purposes upon request of the Federal Program Officer.

2. Protection of Whistleblowers

The DOC Financial Assistance General Terms and Conditions are incorporated into every NTIA grant award, including this Agreement. Section F.05 of the DOC GT&Cs states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a Grantee, Subgrantee, contractor, subcontractor or personal services contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a federal award, subgrant, or a contract under a federal award or subgrant, a gross waste of federal funds, an abuse of authority relating to a federal award or subgrant or contract under a federal award or subgrant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal award, subgrant, or contract under a federal award or subgrant.

Grantees, Subgrantees, and subcontractors under federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

A person that believes they have been the subject of retaliation for protected whistleblowing can contact the DOC Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855.

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### 3. Nonprocurement Debarment and Suspension

Non-federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal Financial Assistance regarding transactions with other persons, including subrecipients and subcontractors.

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## Exhibit S: Disputes Management

### 1. Informal Dispute Resolution

The Parties to this Agreement agree that time is of the essence in relation to performance of this Agreement and completion of the Project. Therefore, any and all disputes in relation to this Agreement will initially be referred to the designated Project manager and/or the Subgrantee representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution process set forth below, which is intended to be an expedited process.

### 2. Dispute Resolution Representative Process

2.1 The Parties under this Agreement agree that all claims and disputes in relation to the Project that are not resolved in the ordinary course of the Project (“Claim” or “Claims”) shall, as a prerequisite to any mediation, or litigation of the Claim(s), first be submitted for resolution between the designated Dispute Resolution Representative (“DRR”) for each Party as set forth herein (the “DRR Process”).

2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

- a. The DRR Process shall be initiated by the party asserting the Claim(s) serving written Notice on the other party’s designated DRR setting forth in detail the basis for the Claim(s), including
  - (i) the basis for entitlement and amount of its Claim(s), with specific reference(s) to the provisions in this Agreement and any related Project documents that apply, including the Project Schedule; (ii) identifying any other party or parties involved in the Claim(s), and how they are involved; (iii) the specific relief requested, the amount or time requested, and how such relief was determined, together with all supporting evidence related to a potential claim, including but not limited to, cost, pricing data, scheduling data, citations to the relevant contractual provisions or other relevant documents; and (iv) an outline of all efforts made to date to resolve any issues, including submitting all documentation related to the settlement efforts.
- b. The DRR Notice shall be delivered and e-mailed to the other party’s or parties’ designated DRR(s).

2.3 The responding party shall respond in writing (“DRR Response”) within 10 business days of receipt of the DRR Notice, setting forth those items in the DRR Notice that are not disputed, or disputed, and/or are which require further information. The DRR Response shall be delivered and e-mailed (with read receipt) to the other party or parties designated DRR.

2.4 The DRR for the respective parties to the Claim(s) shall then meet as soon as reasonably possible and in any event within 20 calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place (which can include via video teleconference if agreed to by all parties), to attempt to resolve the Claim based

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upon the DRR Notice and DRR Response.

- 2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.
- 2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to any specific pending Claim(s).
- 2.7 Unless otherwise designated in a written notice to the other parties, the Office's Project Manager and the Subgrantee designated Representative shall act as the respective DRRs.
- 2.8 The resolution of any Claim(s) shall be set forth in writing and shall be signed by the respective designated DRRs. If the resolution involves modification to this Agreement, the parties shall sign an appropriate written modification or other document pursuant to the terms of this Agreement.

### **3. Claim Submission Under NCDIT Uniform Terms and Conditions**

- 3.1 Unless extended by written agreement of the parties involved in a dispute, any Claim(s) not resolved through the DRR Process set forth above within five calendar days after the meeting required under Section 2.4, above, or after the DRR is terminated pursuant to Section 2.5, above, whichever is earlier, the Claim(s) shall be subject to the Claims Submission process outlined under Section 10 of the NCDIT Uniform Terms and Conditions, with the exception that any claim must be filed within 30 days of the date that it is eligible for submission to the process. Any claim filed more than 30 days after the claim is eligible to be submitted shall be either waived and forever discharged per the terms of this Agreement.

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