

Exhibit E - NOFA #009

Department of Management, Division of Information Technology of the State of Iowa Grant Agreement  
Contracts Declaration and Execution (“CD&E”)

<p><b>Title of Contract:</b> NOFA #009 Grant Agreement (“Agreement”)</p>	<p><b>Grant Agreement Number:</b> [Grant Agmt #]</p>
<p><b>Name of State Agency:</b> Department of Management, Division of Information Technology (“Agency”) <b>Address:</b> 200 E. Grand Avenue, Des Moines, IA 50309 (the “Notice Address”)</p>	
<p><b>Business Name of Grantee:</b> [Business name of Grantee] (“Grantee”) a [type of entity] organized under the laws of the state of [Name of State].  <b>Business Address:</b> [Grantee Principal Place of Business/Headquarters] Mailing Address (if different, delete if inapplicable):          Address of Grantee’s Agent (if different, delete if inapplicable) (Section 10.14)          Address to send legal notices pursuant to Section 10.15 if different from above (the “Notice Address”)</p> <p><b>Designation under 2 C.F.R. § 200.331:</b> For purposes of this Agreement, Grantee is deemed a “subrecipient” receiving a fixed amount subaward. <i>See generally</i> 2 C.F.R. part 200. Grantee may also be referred to as a “subgrantee” in the text of this Agreement.</p> <p><b>Grantee UEI:</b> _____          NOTE: Grantee must obtain a Unique Entity Identifier (“UEI”) from <a href="http://www.sam.gov">www.sam.gov</a> and provide it to the Agency at the time of Agreement execution. Subrecipients are not required to complete full SAM registration to obtain a UEI. 2 C.F.R. § 25.300.</p>	
<p><b>1. Overview/Purpose.</b> This Agreement establishes the terms and conditions pursuant to which Grantee must complete the Project(s) as more fully described in its Application in consideration for funds made available pursuant to and in accordance with the Broadband Grants Program—Empower Rural Iowa, Broadband Equity, Access, and Deployment Funds (“BEAD”) Notice of Funding Availability (“NOFA”) #009.</p>	
<p><b>2. Term.</b> The term of this Agreement (the “Term”) shall begin on the date of last signature below (the “Effective Date”) and continue until the Agency has reimbursed Grantee for all Allowable Expenditures following Project completion in accordance with the terms and conditions of this Agreement, unless otherwise terminated in accordance with the terms and conditions of this Agreement.</p>	
<p><b>3. Scope.</b> The scope of this Agreement is the installation of the project (“Project”) identified in the Broadband Grants Core Application Excel Workbook (“Core Application”) that was submitted with the Application. The scope identified in the Core Application is hereby incorporated by reference into this Agreement.</p>	
<p><b>4. Awarded Funds.</b> The total Award made to Grantee for purposes of this Agreement is: \$ _____.</p>	
<p><b>5. Project Completion Date.</b> Grantee must fully finish its Project(s) by [Date of Completion].          NOTE: Under the BEAD NOFO, Grantee must complete the Project and begin providing services to each customer within the Project area no later than four years from the date of execution of this Grant Agreement. If Grantee does not finish the buildout of service by Project Completion Date, Grantee’s award may be reduced in accordance with the terms of this Agreement.</p>	

**6. Documents Incorporated/Order of Precedence.** This Agreement is composed of multiple parts which, when enumerated below, are each incorporated into and made part of this Agreement by this reference. In the event of any conflict or inconsistency between the specific provisions of an incorporated part, any such conflict or inconsistency shall be resolved in the following order:

1. First, by giving preference to any declarations and/or representations made on this CD&E;
2. Second, by giving preference to Attachment B - Federal Funding Required Provisions;
3. Third, by giving preference to Attachment A - General Terms and Conditions;
4. Fourth, by giving preference to the provisions of the Broadband Grants Program—Empower Rural Iowa, Broadband Equity, Access, and Deployment Funds (“BEAD”) Notice of Funding Availability #009, incorporated herein by reference;
5. Fifth, by giving preference to the provisions of Grantee’s application **[NOFA #009 Application #]** (the “**Application**”) in response to the Notice of Funding Availability #009. The Application is incorporated herein

by reference. For the sake of clarity, none of Grantee’s exceptions, objections, or proposed modifications respecting the NOFA or any terms associated therewith, including to a draft of this Agreement (collectively “**Grantee Exceptions**”), shall be incorporated into this Agreement unless expressly set forth herein.

**7. Acknowledgement of Subrecipient Status.** By executing this Agreement and accepting this BEAD-funded award authorized and made available through the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (“IIJA”) and this NOFA, Grantee acknowledges that it shall be deemed a “Subrecipient” as defined by Applicable Law and is receiving a fixed amount subaward.

**8. Signatures.**

**IN WITNESS WHEREOF**, in consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have caused their respective duly authorized representatives to execute this Agreement, which is effective as of the date of last signature below (“**Effective Date**”).

STATE OF IOWA, acting by and through the **[Business Name of Grantee]**  
Department of Management, Division of Information (“Grantee”) Technology  
 (“Agency”)

By: _____	By: _____
Name: _____	Name _____
	:
Title: _____	Title: _____
Date: _____	Date: _____

KIM REYNOLDS, GOVERNOR

CHRIS COURNOYER, LT GOVERNOR

As a condition of entering into this Agreement with the Agency, the Grantee certifies that: 1) it has the information required by Iowa Code Chapter 8F and referenced in Section 10.32, Certification Regarding Iowa Code Chapter 8F available for inspection by the Agency and the Iowa Legislative Services Agency; and 2) the Grantee is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the Grantee and the requirements of Iowa Code Chapter 8F.

**Per Iowa Code § 8F.3(2), certification shall be signed by: 1) an officer and director; OR 2) two directors; OR 3) the sole proprietor of the Grantee, whichever is applicable.**

<b>Grantee:</b>	<b>Grantee:</b>
Signature of Authorized Representative:	Signature of Authorized Representative:
Printed Name:	Printed Name:
Title:	Title:
Date:	Date:

**Attachment A - General Terms and Conditions**

1. **Overview.** This Attachment A sets forth the general terms and conditions for the deployment and delivery of the Project(s) as more fully described in the CD&E and Grantee's Application. The "Grantee" and the "Agency" for purposes of this Attachment A means the parties identified on the CD&E. Each party may also be referred to herein individually as a "**Party**" or collectively as the "**Parties.**" References in this Attachment A to the "Agreement" mean the Grant Agreement Number identified on the CD&E.
2. **Definitions.** Unless otherwise specifically defined herein, capitalized terms used but not defined herein shall have the meanings ascribed to them in the NOFA. In addition to any other terms defined herein, the following terms shall be ascribed the following meanings:
  - 2.1. "**Applicable Law(s)**" means any and all applicable federal, state, foreign, and local laws, rules, regulations, codes, ordinances, policies, orders, federal program guidance, or any other legal requirements or limitations, and specifically including all obligations as outlined in this Agreement, in place at execution of this Agreement, as well as any and all future amendments, changes, or additions to such laws as of the effective date of such change.
  - 2.2. "**Grantee Contractor(s)**" means any of Grantee's authorized subcontractors, affiliates, subsidiaries, subgrantees, subrecipients, or any other third party acting on behalf of or at the direction of Grantee, directly or indirectly, in performing or providing the Project(s) under this Agreement.
  - 2.3. "**Grantee Personnel**" means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Grantee or any Grantee Contractor performing or providing the Project(s) under this Agreement.
3. **Project Completion.**
  - 3.1. *Period of Performance.* The Period of Performance for all NOFA 9 grants that do not involve Low-Earth Orbit ("LEO") satellite delivery ends on the Project Completion Date, which is then followed by the Federal Interest Period of 10 years. (See Attachment B, Sections 10 and 31). Deployment subgrants, with the exception of LEO subawards, must have a Period of Performance end date no later than March 2, 2032. The Period of Performance for LEO grants is set forth in Attachment B, Sections 10.6 and 31.3, and includes a four-year period from Agreement Effective Date for the LEO to certify availability, followed by a 10-year period consistent with Attachment B, Section 10.6 and 28.2. For LEOs, under no circumstances may the Period of Performance extend beyond September 2, 2040. Only costs associated with the project that are incurred, paid, and invoiced to the Agency consistent with NOFA 9 and federal guidance may be considered as Allowable Expenditures under this Grant Agreement. Grantee must fully finish its Project(s) by the Project Completion Date in accordance with and consistent with any deadlines established in the NOFA. Grantee's Project(s) must be deployed and implemented in a manner that complies with all applicable terms, conditions, requirements, and limitations set forth in this Agreement, the NOFA, and as proposed/represented in the Application. Except in the case of any reimbursement contemplated by the NOFA ("**Authorized Reimbursement(s)**"), prior to being reimbursed for any Allowable Expenditures, Grantee's Project(s) must be "complete" as that term is more fully defined and described herein.
  - 3.2. *Extensions of Period of Performance.* The four-year network deployment deadline as set forth in this Agreement may be extended by not more than one year if: (1) Grantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (2) the construction project is underway; or (3) extenuating circumstances require an extension of time to allow the project to be completed. Consistent with the goals of the BEAD program to facilitate service to unserved and underserved eligible service locations quickly, the Agency will closely scrutinize any requests for extensions of the Period of Performance.
  - 3.3. *Certification.* Subject to the confirmation and verification of the Agency, and in accordance with Section 3.4 (Proof of Project Completion), Grantee must certify to the Agency that the Project was completed as proposed/represented in the Application, including but not limited to a certification representing that:
    - 3.3.1. The final installation Facilitates Broadband service that reliably meets or exceeds Qualifying Broadband; and
    - 3.3.2. The Project fully complies with and satisfies all Applicable Laws, as well as the obligations of this Agreement and the NOFA.
  - 3.4. *Proof of Project Completion.*
    - 3.4.1. Obligation to Provide Proof. In order to certify project completion and receive final disbursement of funds, Grantee must provide the Agency with approved documentation, or proof, that is substantively accurate and complete as set forth in section 3.4.2 (Acceptable Substance of Proof) and in an acceptable data format as set forth in section 3.4.3 (Acceptable Format of Proof). Notwithstanding the foregoing, the Agency reserves the right to determine, in its sole discretion, the completeness and sufficiency of proof provided to the Agency by Grantee pursuant to this section. Grantee acknowledges that its failure to satisfy its obligation to provide

- proof as required in this section may delay or prohibit certification of project completion and disbursement of funds.
- 3.4.2. Acceptable Substance of Proof. In order to be considered substantively complete, proof of project completion submitted to the Agency must at a minimum demonstrate with specificity where Broadband installation has occurred consistent with Grantee's Application. Such proof must include:
- 3.4.2.1. Any and all information required to be provided to the federal government pursuant to federal guidance; and
  - 3.4.2.2. Information sufficient to enable the Agency to determine which specific Eligible Service Locations within the Project Area have access to Qualifying Broadband as a result of the Project; and
  - 3.4.2.3. As-built infrastructure drawings or schematics for which Grant funds have been utilized, regardless of whether such installation actually serves any Broadband Units within the Project Area at the time such proof is supplied to the Agency; and/or
  - 3.4.2.4. Tower locations and propagation map(s) or model(s); and/or
  - 3.4.2.5. Address or locations of service locations and must include the FCC Location ID.
- 3.4.3. Acceptable Format of Proof. Grantee shall provide proof of project completion to the Agency in any one of the following acceptable data formats, in no particular order:
- 3.4.3.1. Spreadsheet of Service Locations following the FCC Broadband Data Collection ("BDC") Availability reporting format that will be submitted to the FCC BDC during the next available reporting window after project completion, which should at a minimum provide the FCC Location ID, technology deployed, download speed, upload speed and latency that are serviceable by the new infrastructure or addresses that are served or can be served.
  - 3.4.3.2. Computer Aided Design or "CAD" digital file, which should at a minimum show the completed project area (as-built), including road or landmarks in order to identify project area, and infrastructure buildout design (fiber, OSP, and/or other infrastructure needed to serve customers); or,
  - 3.4.3.3. As-built project map in PDF format, which should at a minimum show clearly legible streets or other landmarks, show a project area that is clearly delineated, and locations that are now served or can be provided service within 10 business days; or,
  - 3.4.3.4. Upon the express prior approval of the Agency, any other format deemed acceptable by the Agency.
- 3.5. *Performance Testing.* The Agency may, in its sole discretion, conduct performance tests, or require Grantee to submit results of speed tests, for purposes of verifying compliance with the terms of this Agreement, the NOFA, and Applicable Laws, on one or multiple occasions after Broadband service is certified as complete pursuant to Section 3.3 (Certification) and at any point during the Federal Interest Period. (See Attachment B section 10). Such performance tests may include but are not limited to:
- 3.5.1. Speed tests anywhere between a Grantee's central Agency and the service location or to which the Project was represented as being able to Facilitate Broadband service;
  - 3.5.2. In the case of wireless installations, from any service location to which the Project was represented as being able to Facilitate Broadband service; and/or
  - 3.5.3. In the event Grantee does not have a customer served by the installation, a certification obtained by the Grantee and supplied to the Agency from an independent, third-party, properly licensed engineer pursuant to Iowa Code chapter 542B that the installation Facilitates Broadband service at or above Qualifying Broadband to the service locations identified in the Core Application. The costs of such certification shall be borne by the Grantee.
- 3.6. *Project Completion.* For purposes of this Agreement, a Project shall be considered "complete" as of the later of the date the Agency:
- 3.6.1. Accepts the certifications and proof of project completion provided by Grantee as required by this Section; and,
  - 3.6.2. Verifies that a Project certified as complete complies with the requirements of this Agreement, the NOFA, and Applicable Laws, including pursuant to and in accordance with the Performance Testing obligations of this Section, or
  - 3.6.3. Otherwise affirmatively elects to verify that the project is complete without exercising its rights to Performance Tests or conduct any other monitoring, review, or audit rights available to the Agency under this Agreement, and
  - 3.6.4. Confirms that the Grantee participates in the Affordable Connectivity Program, or any successor program, and is offering customers in their completed project area assistance with enrollment, and
  - 3.6.5. Confirms Grantee is providing access to Qualifying Broadband service to each customer served by the Project that desires broadband service on terms and conditions that are reasonable and nondiscriminatory.

**4. Payment Timing and Procedures.**

- 4.1. *Timing of Payments.* Payment shall be made in accordance with the payment schedule set forth in the NOFA. Availability of advanced reimbursement depends on the performance security provided by Grantee. *See* Attachment B section 3.
- 4.2. *Not-to-Exceed Total Payment.* Total funds available are capped at the value set forth on page 1 of this Agreement (4. Awarded Funds); however, that value may be reduced if the final Allowable Expenditures upon project completion are less than those set forth in the Budget Plan or if the Project is not otherwise completed as awarded.
- 4.3. *Allowable Expenditures.* Grantee shall only be entitled to payment for Allowable Expenditures as enumerated in the NOFA, and in accordance with BEAD requirements and any other guidance issued by NTIA. The Agency may order the return of any funds previously disbursed or deny a request for reimbursement for any expenditures that do not constitute Allowable Expenditures, and Grantee shall not otherwise be entitled to payment or reimbursement for any expenditures that do not constitute Allowable Expenditures.
- 4.4. *Proof of Allowable Expenditures.* Within 30 days of completing the Project, and, with the exception of Authorized Reimbursements, prior to the disbursement of any funds Grantee must submit a final summary of all Allowable Expenditures incurred in connection with the Project on forms supplied by the Agency and attest that such Allowable Expenditures are true, accurate, and in fact constitute Allowable Expenditures, actually incurred by Grantee. The Agency may request, in its sole discretion, and Grantee may be required to supply additional records to verify any Allowable Expenditures claimed by Grantee. Such records may include invoices, original itemized receipts, copies of checks, check registers, or bank statements indicating credit card invoices were paid. *See* Department of Administrative Services - State Accounting Enterprise, Procedure Number 204.200, available at [https://das.iowa.gov/sites/default/files/acct\\_sae/sae\\_manual/204/204-200.pdf](https://das.iowa.gov/sites/default/files/acct_sae/sae_manual/204/204-200.pdf) and corresponding procedures referenced therein. The Agency may order the return of any funds previously distributed or deny a request for reimbursement for any expenditures Grantee claims that do not constitute Allowable Expenditures, that are submitted more than 30 days after the Project is finished, or the Project Completion Date, whichever is earlier, or that are not supported by sufficient or appropriate documentation, and Grantee shall not otherwise be entitled to payment or reimbursement for any such expenditures, and shall be obligated to return any applicable funds to the Agency.
- 4.5. *Compensation, generally.* Notwithstanding anything in this Agreement to the contrary, in no event shall the Agency be obligated to pay Grantee any fees, costs, compensation or other amounts in excess of the amount expressly set forth herein in accordance with the terms of this Agreement, the NOFA, and Applicable Law, unless the Agency otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by the Agency. Prior to making any payment, the Agency shall review any request for payment and related supporting documentation for compliance with this Agreement, the NOFA, and Applicable Laws. The Agency will pay all approved amounts in arrears and in conformance with Iowa Code section 8A.514 and Iowa Admin. Code r. 11-41.1(2), and all other applicable laws, rules, regulations, policies and requirements. The Agency may pay in less than 60 days, as provided in Iowa Code section 8A.514. However, an election to pay in less than 60 days shall not act as an implied waiver of Iowa Code section 8A.514. Notwithstanding anything herein to the contrary, the Agency shall have the right to dispute any request for payment, invoice, or other supporting documentation and withhold payment of any disputed amount if the Agency believes the documentation is inaccurate, incomplete, insufficient, or incorrect in any way. The Agency's obligation to make payments under this Agreement is contingent upon the continued availability of funds to the Agency. No payment, including final payment, shall be construed as or constitute: (1) acceptance of any Project(s) as satisfying the terms, conditions, or requirements of this Agreement, the NOFA, or Applicable Laws; or (2) a waiver by the Agency of any rights or remedies it may have to enforce the terms of this Agreement, and Grantee shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. By making any payments under this Agreement, the Agency does not waive its ability to challenge any payment or reimbursement for either failing to comply with this Agreement, the NOFA, or any Applicable Laws. Grantee agrees that its acceptance of the last payment from the Agency under this Agreement shall operate as a release of any and all claims related to this Agreement that Grantee may have or be capable of asserting against the Agency or the State of Iowa. Any determination of whether to allow reimbursement of expenses before full completion of the Project shall be at the sole discretion of the Agency.
- 4.6. *Repayment Obligation.* In the event that any funds are deferred and/or disallowed as a result of any audits; were expended in violation of the laws applicable to the expenditure of such funds; or any payment was comprised of claimed expenditures that did not constitute Allowable Expenditures; were not otherwise reimbursable hereunder; were improperly or incorrectly allocated; were unreasonable; were not supported by sufficient and appropriate documentation; or were otherwise made in a manner inconsistent with or in violation of the terms, conditions, or requirements of this Agreement, the NOFA, or any

Applicable Laws, Grantee shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred and Grantee shall immediately return to the Agency funds subject to this Repayment Obligation. This remedy is in addition to and not to the exclusion of any other remedies available to the Agency under this Agreement, at law, in equity, or otherwise.

- 4.7. *Set-off Against Sums Owed by Grantee.* In the event Grantee owes the Agency or any other governmental entity of the State of Iowa any sum under this Agreement, or any other agreement, pursuant to a judgment, or pursuant to any law, rule, or order, the Agency or its designee may set off such sum against any sum invoiced or claim for payment made to the Agency or any other governmental entity to the State of Iowa issued or made by Grantee. In addition, any amounts due the Agency as damages may be deducted by the Agency from any money or sum payable by the Agency to Grantee pursuant to this Agreement or any other agreement between Grantee and the Agency.
- 4.8. *Erroneous Payments and Credits.* Grantee shall promptly pay or refund to the Agency the full amount of any overpayment, erroneous payment, or unallowable expense within 10 business days after either discovery by the Grantee or notification by the Agency of the overpayment, erroneous payment, or unallowable expense. In the event Grantee fails to timely pay or refund any amounts due the Agency under this Section (Erroneous Payments and Credits), the Agency will charge interest of one percent per month compounded on the outstanding balance each month after the date the payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Agency may, in its sole discretion, elect to have Grantee apply any amounts due to the Agency under this Section (Erroneous Payments and Credits)

against any amounts payable by the Agency under this Agreement or any other agreement between the Agency and Grantee.

- 4.9. *Reimbursable Expenses.* With the exception of Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, there shall be no other reimbursable expenses associated with this Agreement. Except for expenditures that constitute Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, Grantee shall be solely responsible for all costs, charges and expenses it incurs in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Grantee.

## 5. **Default and Termination.**

- 5.1. *Termination for Cause by the Agency.* The Agency may terminate this Agreement upon written notice of Grantee's breach of any material term of the Agreement if the breach is not cured within the time period specified in the Agency's notice of breach. In addition, the Agency may terminate this Agreement without advance notice if:

- 5.1.1. Grantee makes false statements in connection with the Agreement,
- 5.1.2. Grantee, its staff, or its subcontractors have engaged in criminal conduct including fraud, misappropriation, embezzlement, or malfeasance,
- 5.1.3. Grantee takes any steps, as determined in the Agency's discretion, towards dissolution or suspension of business,
- 5.1.4. Grantee's authority to do business here or elsewhere is threatened or lost,
- 5.1.5. Grantee has failed to comply with Applicable Laws when performing pursuant to the Agreement,
- 5.1.6. Grantee's ability to perform is materially impacted by third-party claims of intellectual property violations by Grantee, or
- 5.1.7. Grantee's actions may expose the Agency to material liability.

Grantee shall notify the Agency of any events that could give rise to the Agency's right to terminate for cause.

- 5.2. *Remedies for Breach of Contract.* In addition to and not to the exclusion of any remedies available at law, Grantee's breach of this Agreement may result in one or all of the following remedies:
- 5.2.1. Grantee will forfeit funds awarded pursuant to this Agreement, including denial for reimbursement for any expenditures related to the project;
- 5.2.2. Grantee will be ineligible for future grant awards offered by or through the State;
- 5.2.3. Grantee will be subject to other sanctions as provided by Applicable Laws;
- 5.2.4. Grantee may be subject to debarment or suspension under Iowa statutory or administrative law;
- 5.2.5. Limitation of the state payment obligation to the extent that Grantee fails to serve all Eligible Service Locations in the Project Area so that the Agency can contract with a third party to build out the service to the orphaned locations.

- 5.2.6. Reduction of the award to the extent that Grantee fails to complete its buildout by the Project Completion Date, as outlined in the CD&E section 5 but completes the buildout thereafter. For each location that Grantee completes buildout after the Project Completion Date, the Agency will reduce the award attributable to each late location based on a percentage decrease derived from a numerator of the number of days from execution of the Agreement until the Project Completion Date, and a denominator of the same number of days plus the number of days of delay. By way of example only, if a grantee agreed to an award of \$1,000 for a specific location and a buildout timeframe of one year but ran late by 180 days, the award for the location would be reduced as follows:  $\$1,000 * (365/(365 + 180)) =$  reduction of the award for this location down to \$669.72.
- 5.3. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Agency may terminate this Agreement, in whole or in part, without penalty or liability and without any advance notice if:
- 5.3.1. the Agency determines that it has not been appropriated sufficient funds or funds have been reduced, unallocated, or delayed such that the Agency cannot, in the Agency's sole discretion, meet its obligations,
- 5.3.2. the Agency's authority has been withdrawn or materially altered, or its duties, programs or responsibilities are modified or materially altered, or
- 5.3.3. there is a judicial decision that materially or adversely affects the Agency's ability to fulfill obligations under this Agreement.
- 5.4. *Limitation of Payment Obligations.* If the Agency terminates this Agreement for cause, the Agency retains the right to contest amounts that remain unpaid as of the date of termination. In all other termination contexts, the Agency will pay those amounts due for aspects of a Project the Agency has verified as complete in accordance with the terms and conditions of this Agreement and for which the Agency is obligated to pay up to the date of termination to the extent that funds to make these payments are legally available. Payment is contingent on submission and acceptance of invoices for sums due. Under no circumstances will the Agency be liable for sums not expressly owed under the terms of the Agreement.
- 5.5. *Grantee's duties upon termination.* Upon request of the Agency, Grantee shall, within any time periods or deadlines specified by the Agency:
- 5.5.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within 30 days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Agency may require;
- 5.5.2. Perform any and all remaining requirements, duties, or obligations as may be required by the federal government or State of Iowa;
- 5.5.3. Notwithstanding any provision in this Agreement to the contrary, refund to the Agency, within 15 days of the effective date of any termination of this Agreement for any reason, any prepaid or advance fees, funds, or other amounts paid by the Agency that:
- 5.5.3.1. Pertain to any yet to be completed aspect of any Project(s); or
- 5.5.3.2. Are required to be returned to the Agency under any of the circumstances specified in Section 4.6 (Repayment Obligation).
- 5.6. *Termination for Convenience.* The Agency may terminate this Agreement, in whole or in part, for convenience without the payment of any penalty or incurring any further obligation or liability to Grantee. Termination for convenience may be for any reason or no reason at all.
- 5.7. *Termination for Cause by Grantee.* Grantee may only terminate this Agreement upon written notice of the breach by the Agency of any material term, condition, or provision of this Agreement, if such breach is not cured within 60 days of the Agency's receipt of Grantee's written notice of breach.
- 5.8. *Survival.* Expiration or termination of this Agreement will not release Grantee from any duties, liabilities, or obligations set forth in this Agreement that remain to be performed or by their nature would be intended to be applicable following any such expiration or termination, or that the Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections and associated subsections:
- 5.8.1. Section 3.5 (Performance Testing);
- 5.8.2. Section 4 (Payment Timing and Procedures);
- 5.8.3. Section 5.2 (Remedies for Breach of Contract);
- 5.8.4. Section 5.4 (Limitation of Payment Obligation);
- 5.8.5. Section 6 (Indemnification);
- 5.8.6. Section 7 (Representations, Warranties, and Covenants);
- 5.8.7. Section 8 (Publicity);
- 5.8.8. Section 9 (Confidentiality);
- 5.8.9. Section 10 (General Provisions); and

5.8.10. Attachment B (Federal Funding–Required Provisions).

5.9. The Agency’s right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of any other remedies available to the Agency or the State of Iowa, and the Agency or the State of Iowa shall be entitled to exercise any other rights and pursue any other remedies available under this Agreement, in law, at equity, or otherwise.

**6. Indemnification.**

6.1. *Generally.* Grantee shall indemnify and hold harmless the Agency and the State of Iowa and their employees, officers, or representatives (“**Indemnitees**”) from and against any claims, legal actions, judgments, penalties, recoupments, or other costs, including costs of counsel, in any way arising out of Grantee’s performance or attempted performance under this Agreement. Grantee’s indemnification obligations survive termination of this Agreement.

**7. Representations, Warranties, and Covenants.**

7.1. Grantee represents and warrants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, and intended outcomes of any Project(s) to be delivered hereunder, and that any such Project(s) shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.

7.2. Grantee represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Project(s) required hereunder or will obtain all such rights, permits, permissions, licenses and authority in a timely manner so as not to delay any Project(s).

7.3. Grantee represents, warrants, and covenants that all Projects(s) be performed or provided under this Agreement shall be performed or provided in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of this Agreement and the highest standards of performance applicable to service providers in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Grantee of any aspects of any Project(s) performed in violation of this standard, Grantee shall re-perform the relevant aspects of the Project(s) at no additional cost to the Agency or impacted consumers, such that the Project(s) are rendered in the above-specified manner, or if the Grantee is unable to perform the Project(s) as warranted, Grantee shall reimburse the Agency any fees or compensation paid to Grantee for the unsatisfactory performance.

7.4. Grantee represents, warrants, and covenants that it is knowledgeable about, and shall comply with, all Applicable Laws in connection with its performance of this Agreement and with all terms, conditions, requirements, and assurances, made directly or implicitly, set forth or made by Grantee in or under this Agreement, the NOFA, the Application, and Applicable Laws.

7.5. Grantee represents, warrants, and covenants that the Project(s) will at all times meet, conform to and comply with: (1) this Agreement; (2) any and all representations or assurance made, directly or implicitly, in the Application; and (3) Applicable Laws.

7.6. Grantee represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State or any department, agency, or any other governmental entity, unit, or subdivision thereof, including but not limited to the payment of taxes and employee benefits. Grantee represents that its accounting system is adequate to comply with this Agreement.

7.7. Grantee represents, warrants, covenants, and promises that Grantee, Grantee Contractors, and Grantee Personnel have complied with and will continue to comply with, that the Project(s) as implemented will comply with, and that the use or expenditure of any funds paid hereunder will comply with any and all Applicable Laws, both generally and in connection with the performance of this Agreement, including the following:

7.7.1. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.

7.7.2. Those relating to labor laws, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.

7.7.3. Relevant provisions of the IJJA and related federal regulatory guidance.

Grantee shall take such steps as necessary to ensure Grantee Contractors and Grantee Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement to the contrary, Grantee, Grantee Contractors, and Grantee Personnel’s failure to fulfill any requirements set forth in this Section shall be regarded as a material breach of this Agreement and the Agency may cancel, terminate, or suspend, in whole or in part, this Agreement without penalty or legal liability. In addition, the Agency or its designee may declare Grantee ineligible for future State contracts in accordance with authorized procedures or Grantee may be subject to other sanctions as provided by law, rule, or order.

7.8. All representations, warranties, and covenants made by Grantee in this Agreement, whether or not this Agreement specifically denominates Grantee’s promise as a warranty or whether the warranty is created only by Grantee’s affirmation or promise, or is created by a description of the Project(s) or related

outcomes to be provided or that will result, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand those warranties. Grantee's warranties provided in this Section 7 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Agency, the State of Iowa, and any and all consumers intended to benefit from such warranties, this Agreement, or the Project(s) resulting herefrom.

8. **Publicity.** The Grantee shall, when issuing statements, press releases, or any marketing or promotional materials describing the Project(s), ensure such materials or communications clearly state: a) the percentage of the total cost of the Project(s) which was or will be financed with federal or state funds; and b) the dollar amount of federal or state funds for the Project(s). Any publication (written, visual, or sound) shall contain the following statements:

“This project was supported by federal funds made available through the Broadband Equity and Deployment program of the Infrastructure Investment and Jobs Act of 2021 and the State of Iowa, acting by and through the Department of Management, Division of Information Technology (DOMDoIT). Points of view expressed herein are those of the author or speaker and do not necessarily represent the official position or policies of the United States Government or State of Iowa or endorsement of the project.”

In addition, during the Term and at all times after the termination or expiration of this Agreement, Grantee, Grantee Contractors, and Grantee Personnel shall not make any media release or other public announcement related to the Project(s) without the Agency's prior written notification and opportunity for participation/involvement. Except as otherwise required herein, Grantee, Grantee Contractors, and Grantee Personnel shall acquire no right to use, and shall not use, without DOM-DoIT's or the State of Iowa's prior written consent, the terms or existence of this Agreement, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of the Agency or the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; or (b) to express or imply any endorsement of the Project(s).

9. **Confidentiality.**

- 9.1. “Confidential Information” means, subject to any applicable State and federal laws and regulations, including but not limited to Iowa Code Chapter 22, any confidential or proprietary information or trade secrets disclosed by either party (a “Disclosing Party”) to the other party (a “Receiving Party”) that, at the time of disclosure, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential. Regardless of whether or not the following information is designated as confidential, the term Confidential Information includes information that constitutes Personal Information (Iowa Code § 715C.1(11)), the Agency's security protocols and procedures, Agency system architecture, information that could compromise the security of the Agency's network or systems, and information about the Agency's

current or future competitive procurements, including the evaluation process prior to the formal announcement of results. Confidential Information does not include any information that: (1) was rightfully in the possession of the Receiving Party from a source other than the Disclosing Party prior to the time of disclosure of the information by the Disclosing Party to the Receiving Party; (2) was known to the Receiving Party prior to the disclosure of the information by the Disclosing Party; (3) was disclosed to the Receiving Party without restriction by an independent third party having a legal right to disclose the information; (4) is in the public domain or shall have become publicly available other than as a result of disclosure by the Receiving Party in violation of this Agreement or in breach of any other agreement with the Disclosing Party; (5) is independently developed by the Receiving Party without any reliance on Confidential Information disclosed by the Disclosing Party; or (6) is disclosed by the Receiving Party with the written consent of the Disclosing Party.

- 9.2. In the event the Agency receives a request for information marked confidential and the Agency is unable to definitively determine that the information is not subject to disclosure under Applicable Law, the Agency will give written notice to the Grantee 72 hours prior to the release of the information to allow the Grantee to seek injunctive relief pursuant to Iowa Code chapter 22. The Grantee's failure to request confidential treatment of material pursuant to this section and the relevant law will be deemed, by the Agency and State personnel, as a waiver of any right to confidentiality that the Grantee may have had.
- 9.3. The Grantee's employees, agents, and subcontractors may have access to Confidential Information maintained by the State to the extent necessary to carry out its responsibilities under the Agreement. The Grantee shall presume that all information received pursuant to the Agreement is confidential unless otherwise designated by the State. No Confidential Information collected, maintained, or used in the course of performance of the Agreement by Grantee shall be disseminated except as authorized by law

and with the written consent of the State, either during the period of the Agreement or thereafter. Any data supplied to or created by the Grantee shall be considered the property of the State. The Grantee must return any and all data collected, maintained, created or used in the course of the performance of the Agreement, in whatever form it is maintained, promptly at the request of the State. In the event that a subpoena or other legal process is served upon the Grantee for records containing Confidential Information, the Grantee shall promptly notify the State and cooperate with the State or the State in any lawful effort to protect the Confidential Information. The Grantee shall immediately report to the State any unauthorized disclosure of Confidential Information.

## 10. General Provisions.

### 10.1. *Monitoring, Review, and Status.*

**Monitoring and Review.** In addition to any other terms and conditions hereunder of or related to auditing, verifying, or ensuring Grantee's compliance with the terms, conditions, requirements, or limitations of this Agreement, the Agency will monitor and review Grantee's performance under this Agreement to ensure compliance with this Agreement, including Applicable Laws. Such review and monitoring shall include the Agency's assessment of any claims or invoices and any reports furnished by Grantee pursuant to this Agreement. The Agency reserves the right to monitor Grantee performance through site visits, reports, desk reviews, technical assistance, random sampling of compliance requirements, or other means deemed necessary by the Agency. The Grantee agrees that the Agency may conduct during regular business hours site visits to review contract compliance, assess management controls, and assess relevant services and activities. Grantee agrees to ensure the cooperation of Grantee Personnel in such efforts and to provide to the Agency all information requested by the Agency in the manner determined by the Agency; this includes allowing the Agency to inspect Grantee or Grantee Contractor's facilities and books and records in order to monitor and evaluate performance of this Agreement. Following each site visit or review of requested information, the Agency may submit a written report to the Grantee that identifies the Agency's findings. A corrective action plan with a timetable to address any deficiencies or problems noted in the report may be requested. The corrective action plan shall be submitted to the Agency for approval within the timelines outlined in the written report. The Grantee shall implement the plan after it is approved by the Agency. Failure to do so may result in suspension or termination of the Agreement, without penalty or liability to the Agency. Grantee shall not impose any charge or fee in connection with any review or monitoring conducted by the Agency hereunder. Pursuant to 2 CFR § 200.329, the Agency and the Grantee are responsible for the oversight of the Federal award. The Grantee must monitor their activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Grantee's monitoring must cover each program, function, or activity of this award. The Agency will comply with all monitoring and information requests from NTIA within the timeframe specified by NTIA. This includes provision of any documents or data in possession of the Agency or the Grantee related to the grant.

10.1.1. **Status Reports.** Grantee shall provide ongoing status reports to the Agency at least quarterly and meet with the Agency about the status of the Project(s). Such meetings may include a conference call or an in person meeting or submission to the Agency of a report regarding: (a) an overview and status of the Project(s); (b) issues encountered and being resolved; (c) updates on the timing of Project completion including timely completion of milestones as listed in the Project plan, and (d) any other information that the Agency may reasonably request. Grantee must also comply with any reporting requirements found in 2 C.F.R. Part 200, as well as any additional reporting instructions provided by NTIA in connection with the award, including details on the content and

format as directed by NTIA under the ACCESS BROADBAND Act, 47 USC § 1307, and Infrastructure Act § 60105.

10.1.2. The requirements of this Section shall apply to Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

10.1.3. Any and all of the rights granted to the Agency by this Section or otherwise referred to in this Section, or duties or obligations of Grantee under this Section or otherwise referred to in this Section, may be exercised or invoked by the Agency or any other entity designated by the Agency, including contractors hired by the Agency for such purpose or the United States government.

10.2. **Record Retention/Access to Records.** Grantee shall maintain accurate, current, and complete books, documents and records that sufficiently and properly document Grantee's performance under this Agreement, and identify the source and application of funds received or used under this Agreement. Such records must document all fees and other amounts charged under this Agreement, and all expenditures and third-party reimbursements. Grantee shall maintain a sufficient recordkeeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its business and the Project(s). Grantee shall maintain and make available all books, documents and records for a period of at least five years following the later of the date of final payment, termination, or expiration of this Agreement, or the

completion of any required audit, or for a longer period if required by Applicable Law. If any litigation, claim, negotiation, audit or other action involving Grantee's books, documents and records has commenced or is likely to commence before the expiration of the required retention period, Grantee must retain the records beyond the required retention period until completion of the action and resolution of all issues which arise from it. Grantee shall permit the Agency, the Auditor of the State of Iowa, or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of Grantee relating directly or indirectly to Grantee's performance under this Agreement, wherever located. At the request of the Agency, Grantee shall deliver and provide, at no charge, complete copies of such books, documents and records to the Agency or its designee in such formats and within such time period as may be specified by the Agency in its request. Grantee shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Based on the audit findings, the Agency reserves the right to address Grantee's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with Applicable Laws addressing proper use of government funds, Grantee shall comply with these additional records retention and access requirements:

- 10.2.1. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds, cash contributions made by Grantee and third party in-kind (property or service) contributions must be verifiable from Grantee's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- 10.2.2. Grantee shall maintain accounting records supported by source documentation that may include but are not limited to canceled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 10.2.3. Grantee, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.

The requirements of this Section shall apply to the Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

- 10.3. *Reimbursement of Audit Costs.* If the Auditor of the State of Iowa or a federal entity notifies the Agency of an issue or finding involving the Grantee's compliance with or violation of Applicable Laws or the terms, conditions, requirements, or limitations of this Agreement governing Grantee's use of funds distributed under this Agreement, Grantee shall bear the cost of the Auditor's review or other similar review and any subsequent assistance provided by the Auditor or federal entity to determine compliance or address or remediate noncompliance. Grantee shall reimburse the Agency for any costs the Agency pays to the Auditor or federal entity for such review or audit.
- 10.4. *Independent Contractor Status.* Grantee shall at all times be deemed an independent contractor. Grantee, its employees, agents, and any subcontractors performing under this Agreement are not employees or agents of the State of Iowa or any state agency simply by virtue of work performed pursuant to this Agreement. Grantee shall be responsible for all its withholding taxes, social security, unemployment, worker's compensation and other taxes and shall hold the Agency harmless for any claims for same. If Grantee is a non-profit organization or affiliated with a government organization, the Grantee shall file all required state and federal reports to maintain such status.
- 10.5. *Not a Joint Venture.* Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 10.6. *Obligations of Joint Entities.* If Grantee is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- 10.7. *Assignment and Delegation.* This Agreement may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Agency may assign, transfer, or convey this Agreement, in whole or in part, to any governmental entity that succeeds its duties hereunder or otherwise assumes responsibility for functions or duties currently assumed by the Agency.

- Grantee agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Grantee or any affiliate thereof without the prior written consent of the Agency. Grantee further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Grantee under this Agreement.
- 10.8. *Use of Third Parties.* Subject to Applicable Laws, Grantee may enter into contracts or subcontracts for the provision or delivery of services related to the Project(s), but Grantee will remain responsible for all Deliverables provided under this Agreement. All restrictions, obligations, and responsibilities of the Grantee under this Agreement shall also apply to the subcontractors and the Grantee shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Agreement for good cause.
- 10.9. *Procurement.* Grantee shall develop and adhere to procurement procedures that comply with all Applicable Laws. Grantee shall have and maintain written policies and adhere to procurement procedures that ensure fair, open, and objective competition and that comply with all Applicable Laws. Fair, open, and objective competition, free of fraud, favoritism, or abuse, or the appearance thereof, resulting from arms-length transactions, is required unless specific advanced approval is obtained from the Agency to use a noncompetitive approach in contracting for any good or service. All contracts for goods or services, or subcontracts entered into by Grantee in the performance of this Agreement, shall be the result of a competitive process and arm's length transactions and shall not be the result of family, business, or other personal ties or interests that are or could be perceived to be a conflict of interest or the result thereof.
- 10.10. *Third Party Beneficiaries.* There are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the Agency, the State of Iowa, the federal government, and Grantee.
- 10.11. *Time is of the Essence.* Time is of the essence with respect to Grantee's performance of its obligations under this Agreement.
- 10.12. *Legally Available Funds.* All payments under this Agreement are subject to the Agency's receipt of sufficient funds. Any termination, reduction or delay of available funds to the Agency may, at the Agency's sole discretion, result in the termination, reduction, or delay of the distribution of funds to Grantee under this Agreement.
- 10.13. *Cumulative Rights.* The various rights, powers, options, elections, and remedies of the Agency and the State provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities available at law, in equity, or otherwise, and shall in no way affect or impair the right of the Agency or the State of Iowa to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Agency or the State of Iowa of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 10.14. *Choice of Law, Forum, and Dispute Resolution.* This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. The exclusive jurisdiction for any and all litigation related to this Agreement shall be the state or federal courts sitting in Polk County, Iowa. Any litigation between the parties related to this Agreement shall be brought and maintained in the courts sitting in Polk County, Iowa. Grantee waives any objection to such jurisdiction based on forum non conveniens or otherwise. Grantee irrevocably consents to service of process by certified or registered mail addressed to Grantee's Agent identified in the CD&E.
- 10.15. *Notices.* Any legal notices required by the Agreement shall be given in writing by registered or certified mail with proof of receipt, or overnight delivery, which shall be addressed to each party's Notice Address. From time to time, the parties may change the name and address of a party designated in the Notice Address. Such changes shall be in writing to the other party. Notices shall be deemed to have been provided at the time it is actually received in the case of hand delivery; within one day in the case of overnight delivery; or within five days after it is deposited in the U.S. Mail.
- 10.16. *Integration.* This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included or incorporated into this Agreement. Grantee acknowledges that it has thoroughly read this Agreement and all related terms and conditions, including any attached or incorporated schedules, exhibits, and other like documents, and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Agency or the State of Iowa on the basis of draftsmanship or preparation thereof.
- 10.17. *Amendments.* This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Agency and Grantee. Both Parties must execute all amendments to this Agreement in writing. This Agreement may not be amended by informal means, such as exchange of correspondence, or through language included on transactional documents.

- 10.18. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 10.19. *Headings and Captions.* The section headings or captions used in this Agreement are for identification purposes only and are non-substantive.
- 10.20. *Multiple Counterparts and Electronic Signatures.* This Agreement, any amendments hereto, or any related instruments, attachments, exhibits, or addenda executed separately in connection with this Agreement may be executed in several counterparts, all of which when taken together shall constitute one contract binding on all Parties. Each copy of such document(s) so executed shall constitute an original. The parties consent to the use of electronic signatures for execution of this Agreement, and any such electronic signatures shall be deemed original signatures.
- 10.21. *Material Breaches.* References in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 10.22. *Taxes.* Grantee shall be responsible for paying any taxes (including sales taxes, excise taxes, use taxes, income taxes or property taxes) incurred by Grantee in the performance of this Agreement.
- 10.23. *Certification Regarding Sales and Use Tax.* By executing this Agreement, Grantee certifies it is either (1) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (2) not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in Iowa Code § 423.1(47) and (48).
- 10.24. *Tobacco Free Environment.* Grantee agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. Grantee agrees that it shall comply with Iowa’s Smokefree Air Act, contained at Iowa Code chapter 142D.
- 10.25. *Exclusivity.* This Agreement is not exclusive, and the Agency or the State of Iowa may enter into other Agreements with third parties for the provision of similar services.
- 10.26. *Sovereign Immunity.* Notwithstanding anything in this Agreement to the contrary, neither the Agency nor the State of Iowa waives any immunity defenses (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise) or any other defenses available to either by entering into this Agreement, and specifically retains and reserves all immunity defenses.
- 10.27. *Attorney’s Fees and Expenses.* If Grantee defaults or is found to be in breach of its obligations under this Agreement by a court or tribunal of competent jurisdiction or if the Grantee fails to successfully defend against any legal action arising out of or relating to this Agreement, the Grantee shall be liable for and shall promptly reimburse the Agency for all reasonable attorney’s fees, court costs, and any other related expenses incurred by the Agency in enforcing its rights or remedies under this Agreement.
- 10.28. *Conflicts of Interest.* Grantee represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement between Grantee, Grantee Contractors, or Grantee Personnel and the Agency or the State of Iowa that is or may constitute a conflict of interest or the appearance of impropriety.
- To the extent applicable, the provisions of Iowa Code Chapter 68B shall apply to this Agreement, and Grantee, Grantee Contractors, and Grantee Personnel shall not engage in any conduct or permit any third party from engaging in any conduct that would violate that chapter.
- 10.29. *Brokering Certification.* Grantee certifies that no person representing the Agency, nor any external entity or person, has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingency.
- 10.30. *Report Misuses of Funds.* Grantee must promptly refer to the Agency any credible evidence that a principal, employee, agent, contractor, subgrantee or subrecipient, subcontractor, or other person has either: 1) submitted a false claim for grant funds as that term is used under any false claims act or other similar law, whether state or federal; or 2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds. This condition also applies to any Grantee Contractor for the Project(s) hereunder.
- 10.31. *Restrictions and certifications regarding non-disclosure agreements and related matters.* Grantee may not require any Grantee Contractor or Grantee Personnel to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to the Agency or an investigative or law enforcement representative of a federal or state department or agency authorized to receive such information. Grantee represents that it neither requires nor has required internal confidentiality agreements or statements from Grantee Contractors or Grantee Personnel that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) such Grantee Contractors or Grantee Personnel from reporting waste, fraud, or abuse as described above.
- 10.32. *Certification Regarding Iowa Code Chapter 8F.* If Grantee is or becomes subject to Iowa Code chapter 8F during the entire term of this Agreement, including any extensions or renewals thereof, Grantee shall comply with the following:

- 10.32.1. Grantee shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.
- 10.32.2. Grantee will provide the information described in this section to the Agency or the Legislative Services Agency upon request. Grantee shall not impose a charge for making information available for inspection or providing information to the Agency or the Legislative Services Agency.
- 10.32.3. Pursuant to Iowa Code § 8F.4, Grantee shall file an annual report with the Agency and the Legislative Services Agency within 10 months following the end of Grantee's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
- 10.32.3.1. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Agreement. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.
- 10.32.3.2. Financial information relating to all service contracts with the Agency during the preceding year, including the costs by category to provide the contracted services.
- 10.32.3.3. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of Grantee covering the preceding year.
- 10.32.3.4. Corrective action taken or planned by Grantee in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.
- 10.32.3.5. Any changes in the information submitted in accordance with Iowa Code § 8F.
- 10.32.3.6. A certification signed by an Agency and director, two directors, or the sole proprietor of Grantee, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code chapter 8F.
- 10.32.4. This Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications.
- 10.33. *Authorization.* Grantee represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- 10.34. *Force Majeure.* Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. "Force majeure" does not include: financial difficulties of Grantee or Grantee Contractors; claims or court orders that restrict Grantee's or Grantee Contractor's ability to perform or deliver the services contemplated by this Agreement; strikes; labor unrest; Covid-19, pandemics, epidemics or any other outbreak or event causing illness or disease or resulting in a state of emergency or disaster declared by either the State of Iowa or the United States of America; any impacts to any Grantee Contractor's, Grantee Personnel, or Grantee's supply chain caused in whole or in part by any pandemic, epidemic or outbreak, illness or disease. If delay results from a Grantee Contractor's conduct, negligence or failure to perform, Grantee shall not be excused from compliance with the duties and obligations of Grantee hereunder unless the Grantee Contractor is prevented from timely performance by a "force majeure" as defined in this Agreement. If a "force majeure" delays or prevents Grantee's performance, Grantee shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The Party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events.
- 10.35. *Contingent Awards.* If at the time an Award is made the Agency's determination of whether any geographic area forming the basis of a proposed Project(s), in whole or in part, or any Project(s) itself, in whole or in part, is eligible to receive funding under the Program is currently subject to challenge, or the Agency's administration of the Award process resulting in the Award forming the basis of this Agreement

is subject to challenge, including any subsequent judicial review or appeal from any administrative challenge process, the Agency may proceed to enter into this Agreement the Grantee. Notwithstanding the foregoing or anything in this Agreement to the contrary, the aspect(s) of the Agency's Award(s) that is subject to such challenge at the time of the execution of this Agreement shall be valid and enforceable only to the extent the Agency's original determination or Award, as applicable, is ultimately upheld at the end of the entire

appeals and contested case process once final, including judicial review and any subsequent appeal therefrom. If a geographic area or a Project(s) itself is ultimately determined to not be eligible, in whole or in part, or a portion of an Award is later deemed invalid, in whole or in part: the Grantee shall not be entitled to any grant funds or reimbursement to the extent of any such non eligibility or invalidity; the Agency may require the Grantee to amend the Agreement to reflect such result; and the Grantee will be required to reimburse the Agency for any corresponding funds previously distributed by the Agency.

**Attachment B – Federal Funding - Required Provisions**

## Overview and Scope

1. **Overview.** This Attachment B sets forth the additional federal funding requirements applicable to a grant of funds under Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (“IIJA”). The “Grantee” and the “Agency” for purposes of this Attachment B means the parties identified on the CD&E, each party may also be referred to herein individually as a “Party” or collectively as the “Parties.” References in this Attachment B to the “Agreement” mean the Grant Agreement Number identified on the CD&E. Capitalized terms not defined herein shall have the meanings provided in the NOFA or Applicable Law.
2. **IIJA Requirements.** IIJA requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of Grantee. The BEAD Guidance and related Frequently Asked Questions clarify and provide guidance as to the applicable C.F.R. provisions relating to internal controls, subrecipient monitoring and management, and audit requirements that apply to the Agency and thereby sub awardees or contractors receiving such funds through this NOFA. These requirements are therefore considered legally binding and enforceable under this NOFA. The Agency reserves the right to pursue any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds, or recoupment as may be necessary to ensure compliance with IIJA requirements. Grantee’s obligations in regard to IIJA requirements include but are not necessarily limited to:
  - 2.1. The IIJA;
  - 2.2. All relevant requirements contained in 47 U.S.C. § 1702;
  - 2.3. The BEAD NOFO;
  - 2.4. The Department of Commerce General Terms and Conditions (dated September 22, 2025) (available at: <https://www.commerce.gov/oam/policy/financial-assistance-policy>);
  - 2.5. The General Terms and Conditions for the NTIA BEAD Program Funds;
  - 2.6. The Specific Award Conditions applicable to each individual award;
  - 2.7. All BEAD guidance, including any updates or changes thereto (“BEAD Guidance”), available at: <https://broadbandusa.ntia.gov/funding-programs/broadband-equity-access-and-deployment-beadprogram>
  - 2.8. Applicable provisions of Federal Uniform Guidance (2 C.F.R. part 200) applicable to subrecipients receiving a fixed amount subaward;
  - 2.9. The BEAD Restructuring Policy Notice (June 2025); and
  - 2.10. Any other specific grant award requirements set forth in any grant agreement or other similar document between the State of Iowa and federal government governing the use of IIJA funds or applicable to Projects receiving IIJA funds. This includes but is not limited to all terms of the U.S. Department of Commerce State Grant Agreement and all amendments thereto (inclusively the “SGA”) that by law flow down to Grantee. The SGA and any amendments thereto, including future amendments, are available at this hyperlink: <https://dom.iowa.gov/broadband/broadbandgrants/notice-funding-availability-009>. The SGA is incorporated herein by this reference. Future amendments to the SGA are also incorporated by reference following 30 days’ notice to Grantee. 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 impossible, Grantee should prioritize following the language contained in these authorities in the following order (from highest to lowest priority): 47 U.S.C. § 1702; the award’s Specific Award Conditions; the General Terms and Conditions for the NTIA BEAD Program Funds; the BEAD Restructuring Policy Notice (June 2025); the BEAD NOFO; the Department of Commerce General Terms and Conditions (dated September 22, 2025).
3. **Letters of Credit/Performance Bonds.**
  - 3.1. **Standard Letter of Credit Obligation.** Prior to entering into this Agreement, Grantee shall obtain an irrevocable standby letter of credit, which shall be acceptable in all respects to the Agency and in a value of no less than 25 percent of the Grant amount. The Agency may adopt rules under which Grantee may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a lesser amount than originally required by the Agency upon verification that the Grantee has met optional or required service milestones. In no event, however, shall the letter of credit have a value of less than 25 percent of the subaward amount. When submitting its letter of credit, Grantee shall also provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. section 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code.
  - 3.2. **Exceptions to the Standard Letter of Credit Obligations.** The Agency has decided to utilize the BEAD Letter of Credit Waiver guidance issued by NTIA and to also offer applicants additional options to meet the financial requirements of the BEAD program.

- 3.2.1. **Grantee Option to Use Credit Unions.** The requirements of 47 C.F.R. § 54.804(c)(2) related to bank eligibility is waived where the Grantee otherwise meets the letter of credit requirement using any United States credit union that is insured by the National Credit Union Administration, and has a credit union safety rating issued by Weiss of B- or better.
- 3.2.2. **Grantee Option to Use Performance Bonds.** Grantee may meet the bonding obligations under this Grant agreement by:
- 3.2.2.1. First, submitting a letter during the application process from a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570 committing to issue a performance bond to the prospective subgrantee. The letter shall at a minimum provide the dollar amount of the performance bond.
- 3.2.2.2. Second, no later than 60 days after entering into this Agreement, Grantee must obtain and submit a performance bond, acceptable in all respects to the Agency and consistent with the obligations of BEAD and in a value of no less than 100 percent of the Grant amount. If Grantee chooses the performance bond option, Grantee need not submit a legal counsel opinion letter concerning bankruptcy proceedings treatment of a letter of credit. In the event such a performance bond is not timely submitted, the Agency may immediately terminate this Agreement.
- 3.2.3. **Reduction of Letter of Credit/Performance Bonds Upon Completion of Milestones.** If Grantee elects to provide a letter of credit consistent with BEAD obligations of 25% of the Grant amount, Grantee may elect to provide a new letter of credit in a reduced amount upon achievement of specific deployment milestones that are publicly specified by the Agency and applicable to all subgrantees that are subject to the letter of credit requirement. If Grantee chooses to utilize a performance bond in lieu of a letter of credit, the Agency will also have the option to reduce the amount of the performance bond by a commensurate amount as Grantee meets the same service milestones.
- 3.2.4. **Subgrantee Option for Alternative Initial LOC or Performance Bond Percentage.** Grantee may opt to receive funding on a reimbursable basis consistent with Section IV.C.1.b of the NOFO, thereby agreeing to receive reimbursement at least every six months. Exercising this reimbursement option will allow Grantee to lower the letter of credit or performance bond amount to 10% of the Grant amount until Grantee has demonstrated to the satisfaction of the Agency that it has completed the buildout of 100 percent of locations to be served by the Project or until the period of performance of the Grant has ended, whichever occurs first.
- 3.2.5. **LOC Option for Low Earth Orbit Satellite Providers.** If Grantee is providing Low Earth Orbit (“LEO”) satellite service through this Agreement, the Agency will apply the reductions in LOC obligations to the extent allowed by federal program guidance. *See Broadband Equity, Access, and Deployment (BEAD) Program: BEAD Restructuring Policy Notice, Appendix B, p. 20 (available at: <https://www.ntia.gov/sites/default/files/2025-06/bead-restructuring-policy-notice.pdf>).*
4. **Matching Funds Obligations and Restrictions.** Funds awarded through this Grant Agreement are contingent on Grantee fully complying with the terms of this Grant Agreement and documenting the expenditure of matching funds consistent with all program requirements. Under the BEAD program, Grantee must document the expenditure of a minimum of 25% of qualifying matching funds related to the Project, although that percentage may be higher based on Grantee’s Application and other terms of the award. Except as expressly provided for in the Infrastructure Act, funds from other Federal programs (including funds from the Commission’s Universal Service Fund programs) may not be used as matching funds. IJA expressly provides that matching funds for the BEAD Program may come from a federal regional commission or authority and from funds that were provided to the State of Iowa or Grantee for the purpose of deploying broadband service under the Families First Coronavirus Response Act (Public Law 116-127; 134 Stat. 178); the CARES Act (Public Law 116-136; 134 Stat. 281), the Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan Act of 2021 (Public Law 117-2; 135 Stat. 4), to the extent permitted by those laws.
5. **Cybersecurity Risk Management Plan.** Grantee shall comply with the cybersecurity risk management requirements of the BEAD program and shall at all times:

- 5.1. Have a cybersecurity risk management plan in place that is either:
    - 5.1.1. operational, if Grantee is providing service prior to the award of the grant; or
    - 5.1.2. ready to be operationalized upon providing service, if Grantee is not yet providing service.
  - 5.2. The cybersecurity risk management plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 2.0) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented; and
  - 5.3. Grantee will reevaluate and update the cybersecurity risk management plan on a periodic basis and as events warrant.
- 6. Supply Chain Risk Management Plan.** Grantee shall comply with the supply chain risk management requirements of the BEAD program and shall at all times:
- 6.1. Have a SCRM plan in place that is either:
    - 6.1.1. operational, if Grantee is already providing service at the time of the execution of this Agreement; or
    - 6.1.2. ready to be operationalized, if Grantee is not yet providing service;
  - 6.2. The SCRM plan must be based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
  - 6.3. Grantee must reevaluate and update the SCRM plan on a periodic basis and as events warrant.
- 7. Reporting of Fraud, Waste and Abuse.** Grantee shall publicize telephone numbers and email addresses for the purposes of reporting fraud, waste, and abuse related to this Agreement. In the absence of additional contact information being provided by the Agency, Grantee shall widely publicize the telephone numbers and email addresses for the Agency of Inspector General of the U.S. Department of Commerce, available at <https://www.oig.doc.gov/Pages/Hotline.aspx>. Grantee shall produce copies of materials used for such purposes upon request by the Agency or representatives of the federal government.
- 8. Whistleblower Protection.** Grantee and its employees working under this Agreement will be subject to the whistleblower rights and remedies established under 41 U.S.C. § 4712. An employee of Grantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information that the employee reasonably believes is evidence of: gross mismanagement of a federal contract or award; a gross waste of federal funds; an abuse of authority (i.e., an arbitrary and capricious exercise of authority that is inconsistent with the mission of NTIA or the U.S. Department of Commerce or the successful performance of a contract or grant awarded by NTIA or the Department) relating to a federal contract or award; a substantial and specific danger to public health or safety; or a violation of a law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The Grantee shall inform its employees and contractors, in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described here and at <https://www.oig.doc.gov/Pages/Whistleblower-ProtectionProgram.aspx>.
- 9. Enforcement Actions.** The federal government or the State of Iowa will take enforcement action against Grantee as necessary and appropriate:
- 9.1. A Grantee that fails to comply with any requirement under Section 60102 of the Infrastructure Act, this Agreement, or the BEAD NOFO shall be required to return up to the entire amount of the Grant Agreement to the Agency, at the discretion of the Agency or the Assistant Secretary of the U.S. Department of Commerce.
  - 9.2. If a Grantee fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, the Assistant Secretary of the U.S. Department of Commerce may take corrective action, including recoupment of funds from the Grantee.
  - 9.3. NTIA and the State of Iowa may also enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of grant funds. Such penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel.
- To the extent that the Assistant Secretary or the Inspector General of the Commerce Department determines that the State of Iowa or Grantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, 2 C.F.R. Part 200, the terms and conditions of the award to the State of Iowa, or other applicable law, the Assistant Secretary shall, if appropriate, recover the amount of funds that were so expended.
- 10. Ownership & Federal Interest Period.**
- 10.1. Excepting Low Earth Orbit grantees, the federal government's interest in BEAD broadband infrastructure built pursuant to this Agreement will last for 10 years after the year in which this Grant

- has been closed out in compliance with this Agreement and in accordance with 2 CFR 200.344 (the “Federal Interest Period”).
- 10.2. Grantee shall document and make any necessary filings to protect the federal government's interest as required by Applicable Law, including but not limited to obligations found in the SGA. Title to real property or equipment acquired or improved under this Agreement (i.e., the broadband infrastructure installed pursuant to this Agreement) (“Project Property”) vests in Grantee, subject to the condition that, for the duration of the Federal Interest Period, Grantee and any successors or transferees:
- 10.2.1. Must use the Project Property for the authorized purposes of the project in the same manner
- as Grantee use comparable real property and equipment within its networks in the ordinary course of their business, subject to the rights to disposition provided below;
- 10.2.2. Must continue to provide internet service to the service areas and at the standard initially agreed upon by the Agency and Grantee;
  - 10.2.3. Must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services;
  - 10.2.4. Must comply with the requirements of 2 C.F.R. § 200.310 (Insurance), which may be satisfied by adequate self-insurance;
  - 10.2.5. Must comply with the use and management requirements for equipment in 2 C.F.R. §§ 200.313(c)(4) and 200.313(d), which may be satisfied by applying Grantee’s commercial practices for meeting such requirements in the normal course of business (e.g., commercial inventory controls, loss prevention procedures, etc.), provided that such inventory controls indicate the applicable federal interest;
  - 10.2.6. Must maintain records of real property that include an indication of the applicable federal interest;
  - 10.2.7. May dispose of Project Property when no longer needed to operate the network, such as in order to upgrade equipment and improve facilities, provided that at least the same level of service provided by the network is maintained and there is no material interruption to service and that such upgraded property is subject to the same requirements as provided in federal guidance as other Project Property;
  - 10.2.8. May otherwise sell Project Property only after provision of notice to the federal government that identifies the successor or transferee and after securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the federal property interest; and
  - 10.2.9. Must notify the Agency and NTIA upon the filing of a petition under the Bankruptcy Code, whether voluntary or involuntary, with respect to the ISP or its affiliates.
- 10.3. Pursuant to 2 CFR § 200.316 and in recognition that this broadband program is being executed for the benefit of the public being served by the broadband infrastructure, for the duration of the Federal Interest Period, the Grantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.
- 10.4. Grantee may encumber Project Property if NTIA receives a shared first lien position in the Project Property such that, if the Project Property were foreclosed upon and liquidated, NTIA would receive the portion of the fair market value of the property that is equal to NTIA’s percentage contribution to the project costs. For example, in the case in which NTIA had contributed 50% of the project costs, NTIA would receive 50% of the fair market value of the Project Property when liquidated. NTIA will post standard forms of liens, covenants, and intercreditor agreements to implement this arrangement, and Grantee shall comply with all such guidance once published. Beyond recognition of this federal Project Property interest, Grantee is not required to record liens or other notices of record.
- 10.5. Grantee shall comply with 2 C.F.R. § 200.312 to the extent any federal-owned real property or equipment is used by the Grantee. If Grantee is not in compliance with the requirements of all guidance issued by NTIA in relation to property subject to the Federal Interest Period, Grantee must request disposition instructions from NTIA pursuant to 2 C.F.R. § 200.311(c) or 200.313(e), as applicable. Subject to the exceptions set forth here, the property standards set forth in 2 C.F.R. § 200.311 and 200.313 - .315 shall not apply.
- 10.6. If Grantee is providing LEO satellite services through this Agreement, this Agreement does not subject the LEO equipment or property acquired or improved with a LEO capacity subgrant to the Federal Interest Period. However, the Agreement is subject to a Grantee period of performance of 10 years from the date that the Grantee certifies to the Agency that broadband is available to every

location covered by the Project. Grantee must continue to offer access to broadband service to each Project location throughout the period of performance. In addition, throughout the period of performance, Grantee must provide to each new subscriber at each BEAD-funded location all consumer premises equipment essential for delivery of broadband service via LEO satellite at no cost as part of the standard installation. Grantee must provide replacement equipment for equipment malfunction or damaged caused by a weather event at no cost, but Grantee may charge customary rates for consumer premises equipment for additional equipment.

11. **Necessary and Allowable Expenditures.** Grantee represents and warrants that the funds from this grant shall only be used for Allowable Expenditures as defined in the NOFA.
12. **Internal Controls and Monitoring.** The Agency remains responsible for ensuring compliance with the Agreement and IJA requirements through the implementation of audit and monitoring controls pursuant to 2 C.F.R. 200.501(h). These requirements are addressed in the Project certification, monitoring, review, status, and recoupment provisions in Sections 3 (Project Completion), 4 (Payment Timing and Procedures), 10.1 (Monitoring, Review, and Status), and 10.2 (Records Retention/Access to Records). The requirements of this Section shall apply to Grantee and Grantee contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.
13. **Federal Compliance Reporting.** Grantee shall submit to the Agency a regular reporting, at least semiannually, for the duration of the Agreement to track the effectiveness of the use of funds provided. Each report shall describe each type of project and/or other eligible activities carried out using the BEAD subgrant and the duration of the Agreement. The Agency may add additional reporting requirements or increase the frequency of reporting with the approval of NTIA and will make all subgrantee reports available to NTIA upon request. The report must, at minimum:
  - 13.1. Include 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 and the status of each project;
  - 13.2. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
  - 13.3. Identify whether each address or location is residential, commercial, or a community anchor institution;
  - 13.4. Describe the types of facilities that have been constructed and installed;
  - 13.5. Describe the peak and off-peak actual speeds of the broadband service being offered;
  - 13.6. Describe the maximum advertised speed of the broadband service being offered;
  - 13.7. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
  - 13.8. Include 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;
  - 13.9. Include an SF-425, Federal Financial Report and meet the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Financial Reports; and
  - 13.10. *Reserved.*
  - 13.11. Comply with any other reasonable reporting requirements determined by the Agency to meet the reporting requirements established by the federal government, and certify that the information in the report is accurate. Grantee must maintain sufficient records to substantiate all information above upon request.
14. **Audits of Federally-Funded Contracts: Audit of Non-Federal Entity.** Non-federal entities that expend \$1,000,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of 30 calendar days after the Grantee's receipt of the auditor's report(s), or nine months after the end of the audit period. The Grantee shall submit to the Agency one copy of the separate letter to management addressing material findings, if provided by the auditor, promptly following receipt by Grantee. The Grantee shall also submit one copy of the final audit report to the Agency within 30 days after the Grantee's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Grantee as well as any subcontractors of Grantee. When internal control over some or all of the compliance requirements for a major program are likely to be ineffective in preventing or detecting noncompliance, the planning and performing of testing are not required for those compliance requirements. However, the auditor must report a significant deficiency or material weakness in accordance with 2 C.F.R. § 200.516 Audit findings, assess the related control risk at the maximum, and consider whether additional compliance tests are required because of ineffective internal control. The Grantee shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency. Under the applicable provisions of the Uniform Guidance applicable to the BEAD program (2 C.F.R. part 200), all non-federal entity subrecipients are subject to the audit requirements in subpart F, including ISPs. Non-federal entity subrecipients are

required to submit single audits or program-specific audits to the Federal Audit Clearinghouse (FAC), the government-wide repository for audits of financial assistance programs. For-profit subrecipients are not subject to Subpart F but are subject to the terms and conditions in the award between a federal awarding agency and the State of Iowa, and, pursuant to 2 CFR 200.501(h), Grantees must comply with the audit requirements and provide a copy of any audit to the Agency. Grantees that are not subject to Subpart F of 2 CFR Part 200 (e.g., commercial entities) that expend \$1,000,000 or more in grant funds during their fiscal year must submit to the Grantees either: (i) a financial related audit of each Department of Commerce grant or subgrant in accordance with Generally Accepted Government Auditing Standards; or (ii) a program-specific audit for each grant or subgrant in accordance with the requirements contained in 2 CFR § 200.507. Grantee may batch their audit submission to the Grantee when allowable and/or required by the Grantee. The Department of Commerce Office of Inspector General or another authorized Federal agency may request audit documents or conduct an audit of an award at any time.

15. **Restriction on Leveraging Funding.** No portion of the funds received under the Agreement may be used for the purpose of obtaining additional federal funds under any other law of the United States, except if authorized under that law.
16. **Federal Award Management System.** Unique entity identifier and System for Award Management (SAM)—Required. Grantees must normally (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. Proof of SAM registration and corresponding account information must be provided by Grantee before any payments will be made under the Agreement.
17. **Recovery of Funds.** If a State or federal audit takes exception to the Project(s) provided under the Agreement for which federal funds have been paid or reimbursed, or if federal funds are deferred and/or disallowed as a result of any audits (or expended in violation of the laws applicable to the expenditure of such funds, including IJJA Requirements), Grantee will be liable to the Agency and the State or Iowa (or any other applicable governmental entity) for the full amount of any such payment, reimbursement, or any claim disallowed (or the amount of funds expended in violation of applicable laws or requirements) and for all related penalties incurred. If the Agency or any federal governmental entity concludes that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable under the Agreement, Grantee will be liable to the Agency and the State of Iowa (or any other applicable governmental entity) for such cost. Grantee shall pay to the Agency or State of Iowa (or any other applicable governmental entity) all amounts for which the Grantee is liable under this section within ten (10) business days of receiving a written demand or written notice. The Agency may withhold any payment under the Agreement if Grantee fails to timely make any payment required by this Section. The requirements of this Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with the Agreement to agree to and be subject to and bound by such terms and provisions.
18. **Network Outages.** Grantee's completed Project network shall not exceed outages, on average, higher than 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence.
19. **Organizational Structure and Key Personnel.** If during the Agreement, including the Federal Interest Period, Grantee has any significant changes in its organizational structure or key personnel identified in the Grant Application, Grantee must notify the Agency of such changes within 15 days.
20. **Low-Cost Broadband Service Options.** During the Federal Interest Period, Grantee must continue to offer the low-cost broadband service option(s) identified in its Grant Application. Any changes to the low-cost broadband service options must be noticed to the Agency 30 days before any change in such service options.
21. **Affordability Programs.** During the Federal Interest Period, Grantee must continue to offer eligible subscribers access to the any FCC or NTIA federal affordability programs, as mandated under the BEAD NOFO and Applicable Law. In accordance with federal BEAD program guidance, an eligible subscriber means a person meeting the eligibility requirements of the FCC Lifeline Program.
22. **Access to Services.** During the Federal Interest Period, Grantee shall provide access to broadband service provided through the finished Project network to each customer served by the Project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.
23. **Required Certifications.** Each of the following required certifications set forth below is a material representation of fact upon which reliance is placed by the Agency prior to distributing federal funds. In addition to any criminal penalties authorized by Iowa Code section 720.2 that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, a Grantee that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect shall be obligated to repay the Agency the entire amount of any grant funds previously distributed by the Agency to Grantee under the Agreement. By signing the Agreement, Grantee's authorized representative who must be expressly authorized to make the below certifications on behalf of Grantee, under penalty of perjury as authorized by Iowa Code section 622.1 and pursuant to the laws of the State of Iowa, certifies and attests to Grantee's compliance with the following. The following certifications shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following

certifications. Grantee may be required to provide any information identified or required in connection with the below certifications as a precondition to receiving funds under the Agreement:

- 23.1. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** In accordance with 2 CFR 200.216 and 2 CFR Pt. 200, App. II, Section K, Grantee is prohibited from obligating or expending loan or grant funds to: (1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is:
  - 23.1.1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  - 23.1.2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - 23.1.3. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - 23.1.4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- 23.2. **Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, and consistent with 2 CFR 200.317 and 2 C.F.R. Pt. 200, App. II, Sec. L. the Grantee should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 23.3. **Procurement of recovered materials.** To the extent applicable, and in accordance with 2 CFR Pt. 200, App. II, Section J, the Grantee must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at <https://www.ecfr.gov/current/title-40/part-247> that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 23.4. **Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701-3708).** In accordance with 2 CFR Pt. 200, App. II, Sec. E., to the extent that Grantee’s contract is in excess of \$100,000 and involves the employment of mechanics or laborers, to the extent mandated under federal law Grantee must act in compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). To the extent applicable, Grantee must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. 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 requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- 23.5. **Clean Air Act 42 U.S.C. §§ 7401-7671q.) and the Federal Water Pollution Control Act 33 U.S.C. §§ 1251-1387), as amended.** In accordance with 2 CFR Pt. 200, App. II, Section G, and to the extent mandated under federal law, Grantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, (42 U.S.C. §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). Grantee agrees to comply with these Applicable Laws, violations of which must be reported to the State and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
- 23.6. **Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).** *Reserved.*
- 23.7. **Rights to Inventions Made Under a Contract or Agreement.** To the extent applicable and in accordance with 2 C.F.R. Pt. 200 App. II, Section F, the Grantee must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- 23.8. **Suspension and Debarment.** This certification is required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. part 19 regarding Debarment, Suspension, and Other Responsibility. In accordance with 2 C.F.R. Pt. 200, App. II, Section H, Grantee certifies that it is not listed on the government-wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 23.9. **Lobbying.** This certification is required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. § 1352. These regulations require certification by Grantee (and its subcontractors) that they have not engaged in prohibited lobbying activities and/or have filed any required disclosures in accordance with these Applicable Laws. 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 may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. In accordance with 2 C.F.R. Pt. 200, App. II, Section I, Grantee certifies the following:
- 23.9.1. No federal funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of the Customer, 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, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- 23.9.2. If any funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the Customer, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, Grantee must complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying” in accordance with its instructions.
- 23.10. **Assurance of Compliance Nondiscrimination in Federally Assisted Programs & Equal Opportunity.** This certification requires Grantee to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment, in compliance with 2 CFR Pt. 200, Appendix II, Section C. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” To the extent required by these Applicable Laws, Grantee certifies during the performance of this Agreement that:
- 23.10.1. Grantee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during

- employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- 23.10.2. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 23.10.3. Grantee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Grantee's legal duty to furnish information.
- 23.10.4. Grantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Grantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 23.10.5. Grantee will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- 23.10.6. Grantee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 23.10.7. In the event of Grantee's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Grantee may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- 23.10.8. Grantee will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (viii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Grantee. Grantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Grantee becomes involved in, or is threatened with, litigation with a subcontractor or Grantee as a result of such direction by the administering agency, Grantee may request the United States to enter into such litigation to protect the interests of the United States.

- 23.10.9. Grantee further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if Grantee so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- 23.10.10. Grantee agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Grantee and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- 23.10.11. Grantee further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Grantee agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
- 23.11. **Non-Discrimination in Employment Practices.** Grantee hereby certifies that it does not discriminate in its employment practices with regard to race, color, religion, age (except as provided by law), sex, marital status, political affiliation, national origin, or handicap. Grantee agrees to abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable, and acknowledges that failure to do so may result in cancellation of any award and/or recoupment of funds already disbursed:
  - 23.11.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the Department of Commerce's implementing regulations, published at 15 C.F.R. Part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
  - 23.11.2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
  - 23.11.3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; 23.11.4 Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
  - 23.11.5 The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
  - 23.11.6 Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., which provides that it is an unlawful employment practice for an employer to discharge any

individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and

23.11.7 Any other applicable non-discrimination law(s). Application requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

23.12. **Drug Free Workplace.** This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.). These regulations require certification by Grantee (and its subcontractors) that they will maintain a drug-free workplace. In accordance with these laws, and to the extent mandated under federal law, Grantee certifies that it does currently and will continue to provide a drug-free workplace, including by minimally:

23.12.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

23.12.2. Establishing an ongoing drug-free awareness program to inform employees about:

- The dangers of drug abuse in the workplace;
- Grantee's policy of maintaining a drug-free workplace;
- Any available drug counseling, rehabilitation, and employee assistance programs; and
- The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

23.12.3. Making it a requirement that each employee to be engaged in the performance of the contract be given a copy of the statement required by Section 23.12.1.

23.12.4. Notifying the employee in the statement required by Section 23.12.1, as a condition of their continued employment, that the employee will:

- Abide by the terms of the statement; and
- Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

23.12.5. Notifying the Customer in writing, within ten (10) calendar days after receiving notice under Section 23.12.4)) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

23.12.6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under Section 23.12.5), with respect to any employee who is so convicted:

- Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

23.12.7. Making a good faith effort to continue to maintain a drug-free workplace consistent with Sections 23.12.1 through 23.12.6 during the Term.

23.13. **Immigration and Naturalization Service.** Grantee certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Grantee Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.

23.14. **Federal Funding Accountability and Transparency Compliance.** To the extent required under federal law, Grantee shall comply with the following certification. This certification is required by the Federal Funding Accountability and Transparency Act (“FFATA”). FFATA requires recipients of individual federal grants equal to or greater than \$30,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$30,000 or more. In accordance with 2 C.F.R. part 170 (Reporting Subaward and Executive Compensation Information), the Agency must report the following information for any grant award subject to the FFATA reporting requirements:

- 23.14.1. Name of entity;
- 23.14.2. Amount of award;
- 23.14.3. Funding agency;
- 23.14.4. NAICS code for contracts / CFDA program number for grants;
- 23.14.5. Program source;
- 23.14.6. Award title descriptive of the purpose of the funding action;
- 23.14.7. Location of the entity;
- 23.14.8. Principal place of performance;
- 23.14.9. Unique identifier of the entity;
- 23.14.10. Total compensation and names of the top five executives if:
  - 23.14.10.1. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25M annually; and
  - 23.14.10.2. Compensation information is not already available through reporting to the SEC.
- 23.14.11. Grantees must submit FFATA required data by the end of the month, plus 30 days, in which the award or any subsequent award amendment is made.
- 23.14.12. Grantee certifies the following:
  - 23.14.12.1. Grantee agrees to comply with the provisions of FFATA;
  - 23.14.12.2. Grantee agrees to provide needed information as outlined above to the Agency within the timelines identified above, or upon request by the Agency, as is necessary to facilitate the Agency’s compliance with FFATA.

24. **Environmental and Historic Preservation (EHP) Review.** The Grantee must comply with the requirements of all applicable Federal, State, and local environmental laws, regulations, and standards.

24.1. **EHP Pre-Implementation and Funding Conditions** Grantee shall not initiate any grant funded implementation activities and will not receive any BEAD funds before the following:

- 24.1.1. The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), and issuance by NTIA and the State, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- 24.1.2. The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, et seq.) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office (SHPO), and Federally recognized Native American Tribes;
- 24.1.3. 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
- 24.1.4. Demonstration of compliance with all other applicable Federal, State, and local environmental laws and regulations.

24.2. **Compliance with NEPA.**

- 24.2.1. The Grantee 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;
- 24.2.2. The Grantee 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. 4336a(g); and

- 24.2.3. The Grantee must provide a milestone schedule identifying specific deadlines and describing how the Grantee 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).
- 24.3. **Section 106 NHPA Compliance:** To ensure the timely completion of historic preservation review for all BEAD-funded activities, the Grantee must adhere to, the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers (THPOs).
- 25. **Agency Permitting Obligations Under the Infrastructure, Investment, and Jobs Act (IIJA).** To ensure that Grantee’s BEAD projects are carried out in a timely and effective manner, the Agency will take the following actions to streamline permitting processes:
  - 25.1. Consistent with any relevant legal requirements and authorities, the Agency will establish procedures to ensure that broadband-related permit applications are promptly accepted, and requests are approved or denied within 90 days, including by:
    - 25.1.1. Assisting state and local authorities in establishing a single, dedicated point of contact, which has knowledge of the application and review processes, for broadband-related permits.
    - 25.1.2. Providing technical assistance to permitting agencies to ensure sufficient capacity (e.g., Master Agreement and Consultant Reimbursement Agreement templates, surge support for permit processing, etc.)
    - 25.1.3. Providing deference to the construction techniques chosen by Grantee (without seeking to influence those decisions), absent any identified safety concerns.
    - 25.1.4. Maximizing streamlined processing through permitting by rule; batch processing of substantially similar permit requests; and waiving or expediting duplicative or burdensome broadband permitting requirements where possible.
    - 25.1.5. Following FCC rules regarding timelines, rates, terms, and conditions for access to municipally owned poles and conduit for broadband projects—including provisions in the FCC’s rules providing for “one-touch make-ready” and “self-help”—and requiring Grantees that own poles (including cooperatives) to comply with FCC rules across their footprint.
  - 25.2. The Agency will seek to minimize state and local permitting-related costs for broadband deployments and ensure (1) permitting fees are a reasonable approximation of the state or local government’s costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly situated competitors in similar situations.
  - 25.3. The Agency will establish Permitting Roundtables and/or working groups of relevant federal, state, local, and tribal authorities and representatives of impacted industries—including utility pole owners, railroads, communications providers, and other grantees—that will:
    - 25.3.1. Meet regularly to identify and facilitate resolution of any delays or disputes related to deploying BEAD-funded facilities.
    - 25.3.2. Collect complaints (and supporting information) from Grantees that are not timely resolved through this process and escalate such complaints through the appropriate Permitting Roundtable or working group.
  - 25.4. The Agency will track, publicly post, and submit to NTIA, as part of its Semi-Annual Report, information on Grantee compliance with the NEPA milestone schedules and data regarding unresolved complaints from Grantees, including: (1) issues escalated through the Permitting Roundtable or working group; (2) delays in broadband-related projects that Grantees attribute to a state or local prohibition on using its preferred construction techniques; and (3) delays in broadband related projects that Grantees attribute to state and/or local authorities failing to follow FCC rules regarding pole attachment timelines, rates, terms, and conditions for access to municipally owned poles and conduit for broadband projects.
- 26. **Change in Funded Project Participant.** Any change to Grantee’s Project requires prior written approval by NTIA and the NIST Grants Officer. Any changes both last-mile broadband deployment projects and other eligible activities of Grantee must be made in compliance with the selection requirements in the Infrastructure Act, Section IV.B.7 of the BEAD NOFO, and the process described in the Initial Proposal.
- 27. **Restriction on Human Subjects Research Work and Expenses Incurred.** Deployment projects and activities funded as administrative expenses cannot include Human Subjects Research. No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the NIST Grants Officer. Further, no work involving human subjects may be undertaken under this award, until the appropriate documentation is approved in writing by the NIST Grants Officer.

28. **Low Earth Orbit Capacity Subgrant(s).** To the extent this Agreement provides funding for a LEO Capacity Subgrant, the following provisions apply:
- 28.1. **Allowable Costs.** For LEO Capacity Subgrants, Allowable Expenditures as defined in the NOFA include but are not limited to the following: Allowable uses of funding in connection with a LEO Capacity Subgrant are limited to reimbursements for the costs of:
    - 28.1.1. The reservation of capacity on a LEO satellite network for each location that meets the BEAD Program's performance and technical requirements;
    - 28.1.2. Necessary consumer premise equipment provided at no cost to the subscriber for up to 3 CPE provided per-BSL for new subscribers during the period of performance; and
    - 28.1.3. Initial, non-recurring services (e.g., installation service) and equipment (e.g., consumer premise equipment) to ensure that initial non-recurring fees charged to the subscriber at a location covered by the LEO Capacity Subgrant are comparable to those initial nonrecurring fees charged to subscribers at locations in the state or territory served by terrestrial broadband technologies subsidized by the BEAD program.
  - 28.2. **Certification of Availability.** Pursuant to 47 U.S.C. § 1702(h)(4)(C), the Grantee shall begin providing broadband service to each customer covered by the Agreement that desires broadband service not later than four years after the date of the Agreement. For purposes of LEO subgrants and in relation to Agreement section 3.3 ("Certification"), Grantee shall certify that it can initiate broadband service that meets the BEAD Program's technical requirements to any location covered by the Agreement, with no charges or delays attributable to extension of the service, within 10 business days of a request by a subscriber at such location.
  - 28.3. **Reasonableness of Costs.** The Agency shall ensure the reasonableness of the Grantee costs identified in Section 28.1.
- 29 **Protected and Proprietary Information.** Grantee shall support 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. In accordance with 2 CFR 200.303(e), Grantees must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award. See also NOFO IX.B.
- 30 **Recordation of the Federal Interest in BEAD-Funded Property.**
- 30.1 **Useful Life and Compliance with 2 CFR 200.311, 200.313.** For the purposes of this Agreement, the useful life of the real property or equipment acquired or improved using BEAD funds (inclusive of both Federal funds and non-Federal matching funds) shall coincide with the Federal Interest Period as defined in Section 31 below. During the useful life of the BEAD-funded property, the Grantee must adhere to the requirements contained in the terms and conditions of the award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance. Such guidance is incorporated into the Agreement upon issuance, and Grantee shall comply with the guidance at all times.
  - 30.2 **Documentation of Federal Interest.** To document the Federal interest in BEAD-funded real property, the Grantee 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. Rather, pursuant to the Covenant, the Grantee 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. Grantee must ensure the recordation document complies with any sample form made available by NTIA to use for the Covenant to record notice of the Federal interest in real property.
  - 30.3 **UCC-1 Filing & Attorney's Certification.** Pursuant to 2 CFR § 200.316, after acquiring all or any portion of the equipment under this award, the Grantee or 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 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 (Award Number) 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 [insert number] years after the end of the year in which the award is closed out in accordance with 2 CFR 200.344.*

In addition, within 5 calendar days following the required UCC filing(s), the Grantee shall provide the Agency with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with NTIA BEAD funding 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: \_\_\_\_\_

*Pursuant to 28 USC 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 equipment purchased pursuant to this Agreement, the Grantee is hereby authorized and directed to timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific Section. Copies of all filed UCC continuation statements, together with an Attorney’s Certification, must be submitted to the to the Agency within 5 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 NTIA and the National Institute of Standards and Technology (NIST) Grants Officer.

**31 Federal Interest Period**

- 31.1 **BEAD-Funded Broadband Infrastructure Projects.** The Federal interest in all real property or equipment acquired or improved as part of this Agreement will continue for ten years after the year in which this Agreement has been closed out in accordance with 2 CFR 200.344. This Federal interest shall apply regardless of whether the asset is acquired or improved with Federal funds or non-Federal matching funds. For example, for all state grants closed out in 2027, regardless of the month, the Federal interest will last until December 31, 2037. The Federal interest described herein applies to BEAD state grants for which the major purpose of the subgrant is a broadband infrastructure project(s). Grantee’s award and this Agreement are for a broadband infrastructure project.
- 31.2 The NIST Grants Officer, in consultation with the federal Program Office, shall determine the Federal Interest Period for real property or equipment that will be acquired or improved using BEAD funds (inclusive of both Federal funds and non-Federal matching funds) and not captured in provision (a) of this Section. NTIA will issue further implementation guidance regarding the Federal Interest Period for these BEAD assets, which shall be applicable to this Agreement upon issuance.
- 31.3 Per the BEAD Restructuring Policy Notice, NTIA will not take a Federal interest in equipment or property acquired or improved with a LEO Capacity Subgrant. Additionally, the consumer and taxpayer

protections set forth in the NOFO apply to the recipients of such state subgrants for the duration of the LEO Capacity Subgrant ten-year Federal interest period.

- 32 Ensuring Timely and Effective Deployment of BEAD Projects** The Agency, and any agency, instrumentality, or subdivision thereof, agrees not to enforce any law, regulation, executive order, contracting requirement, or other enforceable obligation that directly or indirectly regulates in any way the rates, terms, and conditions of broadband internet service, whether on a retail, wholesale, or network basis, or imposes net neutrality rules, open access, or other utility style rules on broadband internet service, against the Grantee or its affiliates anywhere it provides service within the Agency’s jurisdiction, while that Grantee has any grant agreement that is still within its period of performance, extended period of performance, or federal interest period. For purposes of this provision, a “net neutrality rule” is any law, order, contracting requirement, or other enforceable obligation by the Agency that prohibits internet service providers from, among other things, blocking content, throttling speeds, imposing data caps, or engaging in paid prioritization, or that imposes a general conduct or similar standard upon internet service providers.
- 33 Protecting the BEAD Program from Defaults.** Grantee shall submit the following certification, the final version of which once executed is hereby incorporated herein by reference:

1. *Grantee and any of its affiliates will not require or accept any additional Federal funds to support a BEAD project during the BEAD Grantee’s agreement’s period of performance, extended period of performance, or federal interest period; and*
2. *Grantee and any of its affiliates will not require or accept any additional Federal broadband service subsidies for the project(s) and/or Broadband Serviceable Location(s) (BSL(s)) to be served by the state grant during Grantee’s BEAD agreement period of performance, extended period of performance, or federal interest period, other than any such subsidies that were committed prior to the Grantee’s BEAD agreement. (This includes, but is not limited to, new operating expenses for any BEAD project(s) or BSL(s)).*

*I certify that the foregoing is true and correct.*

*Executed on this \_\_\_\_ day of \_\_\_\_\_.*

\_\_\_\_\_  
*[Name and title of official authorized to execute BEAD subgrant agreement] [Address and phone number]*

Grantees shall submit such signed certification before the Agency releases any BEAD funds to the Grantee. The Agency will collect such certifications from each grantee and will submit each grantee’s signed certification to NTIA within thirty (30) days of receipt. The Agency will submit these certifications (either individually or in batches) to their Federal Program Officers via email. These signed certifications may be publicly published.