

**South Carolina 2025 Infrastructure Investment and Jobs Act (IIJA) Broadband, Equity,  
Access, and Deployment (BEAD) Grant Program**

*Grant Agreement*

**I. INTRODUCTION OF PARTIES AND GRANT TERMS**

This South Carolina 2025 Infrastructure Investment and Jobs Act (“IIJA”) Broadband, Equity, Access, and Deployment (“BEAD”) Grant Program Agreement (“Agreement”) is by and between the State of South Carolina (the “State”), acting by and through the South Carolina Office of Regulatory Staff (“ORS”) and the South Carolina Broadband Office (“SCBBO”), an office within the ORS (the State, ORS, and SCBBO are collectively referred to herein as “ORS”), and «Legal\_EntityOrganization\_Name», a «Entity\_Type\_\_eg\_Corporation\_nonprof» organized under the laws of the state of <Mailing Address State> (“Subgrantee”) (individually, a “Party” and collectively, the “Parties”). This Agreement is effective as of the date of the last signature below (“Effective Date”).

- A. WHEREAS, on November 15, 2021, the IIJA, Pub. L. No. 117-58, 135 Stat. 429, was signed into law for the purpose of providing funding for infrastructure projects;
- B. WHEREAS, the IIJA established the BEAD program to fund broadband planning, deployment, mapping, equity, and adoption activities;
- C. WHEREAS, the BEAD program provides resources for state, local, and Tribal governments to deploy broadband service to unserved and underserved locations, deploy gigabit connections to community anchor institutions (“CAIs”), and pursue eligible access, adoption, and equity-related uses;
- D. WHEREAS, pursuant to 2025 Act No. 69 (South Carolina Appropriations Bill for Fiscal Year 2025-2026), Part 1.B Proviso Section 73.8, the South Carolina General Assembly authorized the SCBBO within ORS to serve as the central broadband planning body for the State and to coordinate with federal, state, regional, local, and private entities for the continued development of access to broadband in the State;

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- E. WHEREAS, ORS administered the Subgrantee selection process outlined in the Initial Proposal Volume 2 (“IPV2”) that was approved by the NTIA on September 19, 2024;
- F. WHEREAS, on [Month XX, 2025], South Carolina issued the Subgrantee a Notice of Intent to Award BEAD funding contingent upon ORS receiving an approval of their submitted Final Proposal; and, on [Month XX, 2025] the U.S. Department of Commerce National Telecommunications and Information Administration (“NTIA”) announced the approval of South Carolina’s Final Proposal;
- G. WHEREAS, in reliance upon the representations and certifications contained in Grantee’s South Carolina 2025 BEAD Broadband Grant Program Application (the “Application”) and subject to the execution of this Agreement and an evaluation to prevent duplication of facilities, ORS has approved an award for the disbursement of funds (as further defined in this Agreement as the “Grant”) to Subgrantee pursuant to the terms and conditions of this Agreement and for the deployment and delivery of broadband infrastructure project as more particularly described in Exhibit A, which may include multiple broadband infrastructure projects if so authorized by ORS and described in Exhibit A (“Project” or “Project Area”), and which Grant funds are to be used by Subgrantee in conformity with the requirements and provisions of this Agreement;
- H. WHEREAS, Subgrantee acknowledges and agrees that no funds disbursed under this Agreement may be used to duplicate costs, services, connections, facilities, or equipment that have been authorized through another local, state, or federal grant program. Furthermore, consistent with 47 U.S.C. § 1702(e)(4)(A)(i)(III), grant funds awarded to the Subgrantee under this program shall be used to supplement, and not supplant, the amounts of Federal or non-Federal funds that the Subgrantee would otherwise make available for the purposes for which the grant funds may be used;
- I. WHEREAS, Subgrantee represents and affirms that:
- 1) Subgrantee has examined and is fully familiar with all the provisions of this Agreement;
  - 2) Subgrantee shall utilize the Grant funds for the purposes of completing the Project

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and providing or making available broadband service to all Broadband Serviceable Locations (BSLs) within the Project Area;

- 3) Subgrantee has satisfied itself as to the nature and location of the Project, the general and local conditions to be encountered in the performance of the Project, and all other matters that can in any way affect the work, schedule, or the cost thereof;
- 4) As of the execution of this Agreement, Subgrantee is registered with the State and State Fiscal Accountability Authority (“SFAA”) as a vendor and has received a South Carolina vendor number from SFAA;
- 5) As of the execution of this Agreement, Subgrantee has an active SAM.gov registration, a Unique Entity ID (“UEI”) number and has no exclusion record on SAM.gov; and
- 6) Subgrantee is required to maintain its SAM.gov information and must ensure all identification numbers provided are active throughout the entire grant period of performance, and with no exclusionary records;

J. WHEREAS, the parties agree that the Project, as defined below, has a scope with measurable goals and objectives and that adequate cost, historical, or unit pricing data is available to establish that this fixed amount subaward is based on a reasonable estimate of actual cost;

K. WHEREAS, all expenditures, reimbursements, and grants awarded by the ORS must be in compliance with all current and future rules, regulations, policies, methods and guidance issued by the NTIA for the allocation and oversight of NTIA BEAD funding; and

L. WHEREAS, the Parties’ desire to enter into this Agreement for the purpose of setting forth the terms and condition upon which Subgrantee shall perform the Project.

NOW, THEREFORE, in consideration of the foregoing, the promises and mutual

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covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

## **II. PROJECT DESCRIPTION**

- A. The Project is described in Exhibit A, attached hereto and incorporated herein by reference. The Grant funds authorized and approved by this Agreement will be disbursed by ORS as outlined in Exhibit D, subject to whether the Subgrantee has satisfied all other terms and conditions of this Agreement. This Grant will be a fixed amount subaward as that term as defined in 2 CFR § 200.201, 2 C.F.R. § 200.333, Uniform Guidance Policy Notice issued by NTIA on December 26, 2023, and General Terms and Conditions for the NTIA BEAD Program Funds<sup>1</sup>. The Parties agree that the major purpose of this “fixed amount subaward” is a broadband infrastructure project. Subgrantee shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, software, services, engineering, testing, and/or any other act or thing required to perform and complete the Project in a full and diligent manner. The Project must provide broadband service to an unserved location, underserved location, or eligible CAI.

An “unserved location” is defined in 47 U.S.C. § 1702(a)(1) as a broadband-serviceable location, as determined in accordance with the broadband DATA maps, that has no access to broadband service or lacks access to reliable broadband service with a speed of not less than 25 megabits per second (“Mbps”) for downloads and 3 Mbps for uploads, and a latency sufficient to support real-time, interactive applications.

The term “underserved location” is defined by 47 U.S.C. § 1702(a)(1) as a location that is not an unserved location; and as determined in accordance with the broadband DATA maps, lacks access to reliable broadband service with a speed of not less than 100 Mbps for downloads and 20 Mbps for uploads, and a latency sufficient to support real-time, interactive applications.

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<sup>1</sup> See NTIA’s Uniform Guidance Policy Notice available at <https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Policy-Notice-Uniform-Guidance-Exceptions-Adjustments-Clarifications>; General Terms and Conditions for the NTIA BEAD Program Funds available at [https://broadbandusa.ntia.gov/sites/default/files/2024-05/BEAD\\_IPFR\\_GTC\\_04\\_2024.pdf](https://broadbandusa.ntia.gov/sites/default/files/2024-05/BEAD_IPFR_GTC_04_2024.pdf).

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The term “community anchor institution” (“CAI”) is defined by 47 U.S.C. § 1702(a)(2)(E) as an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

The following documents are incorporated into and made part of this Agreement by reference:

1. Project Description (Exhibit A);

- Grantee Information
- Program Requirements Table
- Project Area Summary
- Project Area Information (by Project Area)
- Project Timeline (Project Area)
- Capital Investment Schedule (Project Area)
- Project Location Map (network design in PDF) (Project Area)
- List of BSLs (Project Area)
- Network diagram (Project Area)
- Engineering Attestation (Project Area)

2. Eligible Grant Purposes (Exhibit B);

3. Notice to Proceed Example (Exhibit C);

4. Disbursements and Reporting (Exhibit D)

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- Application for Disbursement (Exhibit D);
  - Affidavit of Completion and Eligible Expenses (Exhibit D,);
  - Build America, Buy America and Domestic Preferences in Procurement (Exhibit D);
  - Project Close Out and Attestation (Exhibit D)
5. BEAD Additional Requirements (Exhibit E)
  6. BEAD Timeline (Exhibit F)
  7. 2024 List of South Carolina 811 Contractors and Locators (Exhibit G);
  8. Data Dictionary for submission of GIS Shapefiles (Exhibit H);
  9. Lower Tier Participation Certificate (Exhibit I)
  10. Expense Reporting Template Cover Page (Exhibit J)
    - Expense Summary Template Shortened for Grant Agreement (Exhibit J)
  11. Required Programmatic Data (Exhibit K)
  12. Build America, Buy America (Exhibit L)

### **III. TERMS AND CONDITIONS**

Subgrantee shall comply with all applicable requirements contained in the IIJA, 47 U.S.C. § 1702; the BEAD Notice of Funding Opportunity (NOFO), as amended by the BEAD Restructuring Policy Notice published June 6, 2025; the U.S. Department of Commerce Financial Assistance Standard Terms and Conditions issued November 12, 2020; the General Terms and Conditions for the NTIA BEAD Program Funds; Federal, State, and local laws and regulations; guidance; guidelines; policy notices; and waiver notices and shall require any individual, organization, or other entity with whom it contracts to also comply with the same, whether or not cited or referenced in this Agreement. Without limiting the foregoing, the responsibilities of Grantee include, but are

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not limited to, the following:

- A. Financial Capabilities: Subgrantee certifies it is financially qualified to meet the obligations associated with a Project, that it will have available funds for all Project costs that exceed the amount of the grant, and that it will comply with all Program requirements, including any service milestones. Subgrantee affirms that it has the financial stability and resources to complete this BEAD Project Subgrantee is being awarded. Subgrantee also affirms that it has the financial stability and resources to complete any grant projects in-progress, and which it began, as of the award date of this Project throughout Subgrantee's service footprint within the United States. Subgrantee also affirms that, for any future projects to which Subgrantee applies during this Project's period of performance, it has the financial stability and resources to complete this Project and future grant awards Subgrantee may apply for throughout the nation.

This Agreement is conditioned upon subgrantee submitting to ORS prior to entering into this Agreement one of the following in a form that complies with NTIA requirements and is acceptable to ORS:

- 1) An irrevocable standby letter of credit in the form established by ORS valued at no less than 10% of the subaward amount from a bank or credit union that meets the eligibility requirements set by NTIA for the BEAD program; or
- 2) A performance bond acceptable in all respects to ORS in a value of no less than 100% of the subaward amount issued by a company holding a certificate of authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570.

In the event that the Subgrantee provides a letter of credit that is greater than 10% of the subaward, ORS may elect to permit Subgrantee to reduce the amount of the letter of credit upon achievement of specific deployment milestones described in Exhibit A. A letter of credit must be accompanied by an opinion letter in a form that is acceptable to ORS 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. § 101

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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 Subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code. Notwithstanding anything in this Agreement to the contrary, ORS shall not be required to provide advance notice to Subgrantee of any intention to draw on the letter of credit.

Pursuant to 2 C.F.R. § 200.326, for construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold (currently \$250,000), ORS may submit its bonding policy and requirements to the NIST Grants Officer for a determination of whether the Federal interest is adequately protected. If such a determination has not been made, the minimum bonding requirements of 2 C.F.R. § 200.326 (Bonding requirements) shall apply. Separately, ORS may elect to place additional bonding requirements on its Subgrantees consistent with the programmatic letter of credit waiver issued by the NTIA here: <https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver>.

- B. Managerial Capabilities: Subgrantee affirms it has the managerial readiness, experience, and capability to manage a broadband services network with respect to the proposed project and will continue to do so throughout the Federal Interest Period. Subgrantee further affirms that all information it provided to ORS regarding its Managerial Capabilities as part of its Application and elsewhere remains complete and accurate and demonstrates Subgrantee’s managerial capability with respect to the Project.
- C. Technical Capabilities: Subgrantee certifies it is technically qualified to complete and operate the Project and that it is capable of carrying out the funded activities in a competent manner, including that it will use an appropriately skilled and credentialed workforce. Subgrantee further certifies that the network design, diagram, project costs, build-out timeline and milestones for project implementation, all certified by a professional engineer, stating that the proposed network can deliver broadband service that meets the requisite performance requirements to all locations served by the Project, and a capital investment schedule evidencing complete build-out and the initiation of service within four years of the date on which the entity receives the subgrant are complete, accurate, and demonstrate Subgrantee’s

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technical capability with respect to the Project.

D. Compliance with BEAD and Other Laws: Subgrantee affirms and certifies that the Project will be funded in part by the IJA BEAD grant program and confirms that this project is an eligible use of these funds, as defined by the BEAD NOFO, General Terms and Conditions for the NTIA BEAD Program Funds, the BEAD Restructuring Policy Notice, program guidelines and related guidance from the NTIA.

- 1) Subgrantee affirms and agrees to be aware of and comply with all current and future local, state or federal laws, codes, regulations, executive orders, and guidelines, guidance, and policy notices from NTIA or ORS that regulate or govern the Project, including, but not limited to, acquiring all necessary permits, certifications, licenses, approvals, agreements and otherwise satisfy all requirements necessary to operate the Project (See Appendix I).
- 2) Subgrantee affirms it will set up, identify, coordinate, and provide safe access for, and obtain all inspections for Subgrantee's work related to the Project, as required by any authorized agency or applicable code.

E. Operational Capability: Subgrantee certifies that it possesses the operational capability to complete and operate the Project. Subgrantee further affirms that all information it provided to ORS regarding its Operational Capabilities as part of its Application and elsewhere remains complete and accurate and demonstrates Subgrantee's operational capability with respect to the Project.

F. Ownership: Subgrantee certifies that it has provided accurate ownership information consistent with the requirements in 47 C.F.R. § 1.2112.

G. Other Public Funding: Subgrantee affirms it has disclosed to ORS, for itself and for its affiliates, any application Subgrantee or its affiliates have submitted or plan to submit, and every broadband deployment project that Subgrantee or its affiliates are undertaking or have committed to undertake at the time of Subgrantee's Application using public funds, including but not limited to funds provided 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

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Consolidated Appropriations Act, 2021 (Public Law 116-260; 134 Stat. 1182); or the American Rescue Plan of 2021 (Public Law 117-2; 135 Stat. 4), any federal Universal Service Fund high-cost program (e.g., RDOF, CAF), or any Eligible Entity or local universal service or broadband deployment funding program.. Subgrantee acknowledges its responsibility to notify ORS of any awards made after the execution of this Agreement within five days of notification of award.

- H. Labor Standards: Subgrantee certifies it complies with Federal labor and employment laws.
- I. Environmental and Other Generally Applicable Requirements: Subgrantee affirms and agrees that the Project must (1) comply with requirements of all applicable Federal, state, and local environmental laws, regulations, and standards; and (2) be technically sound to meet or exceed engineering and construction industry standards.

Subgrantee further affirms and agrees Subgrantee (1) will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in Section 13.E of the General Terms and Conditions for the NTIA BEAD Program Funds; (2) will timely prepare any required National Environmental Policy Act (“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 (3) will provide a milestone schedule identifying specific deadlines and describing how Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

- 1) NEPA: Subgrantee affirms that it understands the Project and the funds provided pursuant to this Agreement may be subject to the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.* (“NEPA”). The Parties acknowledge that NTIA will issue further implementation guidance regarding ORS’s and Subgrantee’s responsibilities. Subgrantee shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of activities

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prescribed in the NTIA's environmental guidance. Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—e.g., best management practices or other measures necessary to reduce environmental impacts. Subgrantee shall provide any related information requested by ORS or by NTIA (directly or through the ORS) to ensure both initial and ongoing compliance with all requirements.

2) Environmental and Historic Preservation (“EHP”) Pre-Implementation and Funding Conditions: The Subgrantee must not initiate any grant funded implementation activities—except for the limited permissible activities identified below. Subgrantees that undertake unauthorized project activities in contravention of this Section proceed at their own risk and may face de-obligation of funding.

- a) Pre-construction planning and engineering, including collecting information necessary to complete environmental reviews;
- b) Applications for environmental permits;
- c) Studies including, but not limited to, EAs, wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- d) Pre-award application costs;
- e) Activities supporting consultations required under the National Historic Preservation Act (“NHPA”), the Endangered Species Act, and the Clean Water Act; and/or

3) The completion of any review required under NEPA, and issuance by NTIA and the Grantee, as required, of a Categorical Exclusion (“CatEx”) 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, includes, but is not limited to the following protocols;

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- a) Subgrantee must timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. § 4336a(g); and
- b) Subgrantee will adhere to the project schedule(s) further described in Exhibit A including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews and the submission of EAs or Environmental Impact Statements (“EISs”).
- c) Subgrantee affirms it shall complete all 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.
- d) Subgrantee affirms it shall complete all 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.
- e) Subgrantee affirms it shall demonstrate compliance with all other applicable federal, state, and local environmental laws and regulations
- f) Any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NTIA and will be reevaluated for compliance with applicable requirements.

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

J. Build America, Buy America Act (“BABA”): Consistent with Section 70901 through 70953 of the IIJA, Subgrantee shall comply with BABA, including applicable legal authorities, such as the IIJA, Executive Order 14005, 2 CFR Part 184, 2 C.F.R. § 200.322, OMB Memo M-24-02, and any applicable waivers issued by the U.S. Department of Commerce, including the NTIA’s Limited General Applicability Nonavailability Waiver. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the U.S. Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

1) Domestic Preferences in Procurement. Subgrantee shall, to the extent practicable and consistent with applicable law under the BEAD award, provide a preference

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for the procurement or use of goods, products, or materials produced in the United States as described in 2 C.F.R. § 200.322. See Exhibit D.

- 2) Equipment and Cybersecurity. Subgrantee affirms and agrees that it is prohibited from using Grant funds (including non-Federal cost share) to purchase or support any communications equipment or service covered by either the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608) or 2 CFR § 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment). Furthermore, the IIJA expressly prohibits subgrantees from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People’s Republic of China unless a waiver of this requirement is received from the Assistant Secretary Commerce for Communications and Information or the individual who holds any successor position (“Assistant Secretary”).
- K. Cybersecurity & Supply Chain Risk Management: Pursuant to 47 U.S.C. § 1702(g)(1)(B), Subgrantee, in carrying out activities using Grant funds, shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology (“NIST”) and the Federal Communications Commission (“FCC”).
- 1) Subgrantee attests that:
    - a. Subgrantee has a cybersecurity risk management plan (“CRM Plan”) in place that is either operational, if Subgrantee is providing service prior to the award of the Grant; or ready to be operationalized upon providing service, if Subgrantee is not yet providing service prior to the Grant award;
    - b. The CRM Plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;

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- c. The CRM Plan will be reevaluated and updated on a periodic basis and as events warrant; and
- d. If Subgrantee makes any substantive changes to the CRM Plan, a new version will be submitted to ORS within 30 days. Subgrantee acknowledges that ORS must provide Subgrantee's CRM Plan to NTIA upon NTIA's request.

2) Subgrantee attests that:

- a. Subgrantee has a supply chain risk management plan ("SCRM Plan") in place that is either operational, if Subgrantee is already providing service at the time of the Grant; or ready to be operationalized, if Subgrantee is not yet providing service at the time of Grant award;
- b. The SCRM Plan is 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;
- c. The SCRM Plan will be reevaluated and updated on a periodic basis and as events warrant; and
- d. If Subgrantee makes any substantive changes to the SCRM Plan, a new version will be submitted to ORS within 30 days. Subgrantee acknowledges that ORS must provide Subgrantee's SCRM Plan to NTIA upon NTIA's request.

To the extent Subgrantee relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), Subgrantee must obtain the above attestations regarding the CRM Plan and SCRM Plan from its network provider with respect to both cybersecurity and supply chain risk management practices.

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L. Low-Cost Service Option.

- 1) Low-Cost Service Option (“LCSO”): Subgrantee agrees to offer the LCSO described in its Application to eligible subscribers. The LCSO must meet the requirements outlined by the NTIA, including consistently and reliably providing download speeds of at least 100 Mbps and upload speeds of at least 20 Mbps with latency performance of no more than 100 milliseconds. Subgrantees that already offer a low-cost plan that meets the service requirements may satisfy the LCSO requirement by offering their existing low-cost plan to eligible subscribers. Subgrantee must offer the LCSO throughout the Federal Interest Period (defined subsequently herein). If a subgrantee seeks the flexibility to change the cost of the LCSO over time, it must have stated the methodology it would use to set the LCSO in the future (e.g., tied to inflation or changes in the FCC's urban rate benchmark, etc.) in its application. Subgrantee agrees to report speed, pricing data, data allowance, and methodology information to ORS as such information is required by the NTIA.
- 2) Program Participation: Per the BEAD Restructuring Policy Notice, Subgrantee affirms its understanding that eligible subscribers for its LCSO are based on the eligibility criteria for the FCC’s Lifeline Program. Eligible subscriber means any household seeking to subscribe to broadband internet access service that is eligible for the FCC’s Lifeline Program. Subgrantee is responsible for verifying LCSO eligibility and may ask potential subscribers to provide the same documentation necessary to confirm eligibility as is required under the FCC’s Lifeline Program. In the event there are changes to the eligible subscriber definition, ORS will work with the NTIA and Subgrantee to meet the LCSO requirement.

M. False Statements: Subgrantee understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

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- N. Access to and Quality of Service: Subgrantee affirms it will install broadband infrastructure and deliver service on terms and conditions that are reasonable and nondiscriminatory to each customer served by the Project described in Exhibit A that desires broadband service. Subgrantee further stipulates it will use the Grant funds awarded in a reasonable and nondiscriminatory manner. In addition, Subgrantee shall adhere to quality-of-service standards, as established by the Assistant Secretary.. See Exhibit A for the list of BSLs included in the Project. See 47 U.S.C. § 1702(g)(1)(A); 47 U.S.C. § 1702(g)(2)(C)(ii).
- O. Speed, Reliability, and Duration: If the Project is a Priority Broadband Project, Subgrantee must ensure the Project reliably provides broadband service at speeds of no less than 100 Mbps for downloads and 20 Mbps for uploads, has a latency less than or equal to 100 milliseconds, and can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services. For a non-Priority Broadband Project, Subgrantee must ensure the Project reliably provides broadband service at speeds of no less than 100 Mbps for downloads and 20 Mbps for uploads and has a latency less than or equal to 100 milliseconds. Funded Network connections to Eligible CAIs in both Priority and non-Priority Broadband Projects shall provide gigabit-level broadband service.
- P. Standards and Best Practices: Subgrantee shall ensure broadband infrastructure is completed and operable in accordance with industry construction standards and engineering best practices. Subgrantees shall consult with [www.iso.org](http://www.iso.org) for best practices within the required disciplines and domains performing work to build BEAD infrastructure (e.g. engineering, construction, management services).
- Q. Accountability: Subgrantee shall be accountable for the supply, handling, construction and installation of all necessary broadband infrastructure, materials, supplies and equipment for the Project. Subgrantee shall be responsible for the operation and maintenance of the system.
- R. Requirements During Construction: During construction, the Subgrantee is responsible for:
- 1) Ensuring that it meets all deadlines in approved plans and specifications;
  - 2) Monitoring the progress of grant funded activities;

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- 3) Reporting progress;
  - 4) Providing for required construction permits and adequate construction inspection;
  - 5) Promptly paying costs incurred for grant funded activities and retaining proof of payment;
  - 6) Monitoring contractors' compliance with Federal, State, and local requirements; and
  - 7) Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.
- S. Management of Contractors and Subcontractors: Subgrantee shall monitor its contractors' and subcontractors' compliance with all current and future federal, state, and local requirements. The Subgrantee is responsible for ensuring that all contractors, including those necessary for design and constructions of facilities, are implemented in compliance with the Terms and Conditions set forth in this Agreement. ORS and the State have no responsibility or liability for payment to any contractors or subcontractors utilized by Subgrantee.
- T. Lower Tier Participation: To the extent identified in the Application and relied upon by Subgrantee in seeking the Grant, Subgrantee affirms that any partnerships with other ISPs, cooperatives, or governmental entities, have been identified in the Application and are made a part of and required by this Agreement (see Exhibit A for specific contractual obligations). Subgrantee shall submit a Lower Tier Participation Certificate (see Exhibit I) for each entity in the joint venture.
- U. Deployment Obligation: Subgrantee affirms that if Subgrantee is subject to deployment obligations elsewhere in South Carolina, Subgrantee will not default or otherwise fail to fulfill such deployment obligation. Subgrantee understands that in the event a breach of this commitment occurs, ORS reserves all rights, including but not limited to the right to pursue all appropriate recourse under this BEAD Agreement, any other applicable agreements, in law, at equity or otherwise, and to the extent applicable, any costs and attorneys' fees

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expended or incurred by ORS in pursuing legal remedies.

V. Lobbying Restrictions: Subgrantee must comply with 2 C.F.R. § 200.450 (Lobbying), 31 U.S.C. § 1352, U.S. Office of Management and Budget (“OMB”) guidance and notices on lobbying restrictions, and 15 C.F.R Part 28.

W. Prevention of Waste, Fraud and Abuse: Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- 1) False claims for materials and labor;
- 2) Bribes related to the acquisition of materials and labor;
- 3) Product substitution;
- 4) Mismatching or mislabeling on products and materials; and
- 5) Time and materials overcharging.

Should Subgrantee detect any fraud schemes or any other suspicious activity, the Subgrantee must contact the ORS. Additionally, in accordance with 2 C.F.R. § 200.113, Subgrantee must disclose, in a timely manner, in writing to the ORS all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R. § 200.339. (See also 2 C.F.R. Part 180, 31 U.S.C. § 3321, and 41 U.S.C. § 2313).

For the purpose of reporting waste, fraud or abuse in the BEAD Program, Subgrantee shall widely publicize the toll-free number (1-855-723-7283) and website for the South Carolina Office of Inspector General (<https://oig.sc.gov/file-complaint>).

X. Protection for Whistleblowers: This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information). Generally, this law provides that an employee or contractor (including subcontractors and personal services contractors) of a Grantee, Subgrantee, contractor, subcontractor, or personal services contractor may not be discharged,

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demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subgrant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subgrant, or contract under a Federal award or subgrant.

Grantees, subgrantees, and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

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

- Y. Conduit Access Points: Pursuant to 47 U.S.C. § 1702(h)(4)(D) and the BEAD Restructuring Policy Notice, any Funded Network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals.
- Z. Energy Efficiency: Subgrantee shall apply, where feasible, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction of the Project.
- AA. Inspection and Testing of the Materials: Subgrantee, as applicable, shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. Subgrantee shall ensure that documentation of same is cataloged and retained.

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BB. Interconnection Requirements: Consistent with 47 U.S.C. § 1702(h)(4)(E), Subgrantee may use Grant funds to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or eligible CAI.

CC. Resilience and Reliability: Subgrantee shall incorporate best practices, as defined by the Assistant Secretary, for ensuring reliability and resilience of broadband infrastructure by establishing risk management plans that account for technology infrastructure reliability and resilience, including from natural disasters (e.g., wildfires, flooding, tornadoes, hurricanes, etc.), as applicable, as well as cybersecurity best practices.

#### **IV. FEDERAL INTEREST PERIOD**

A. Federal Interest Period: Per the BEAD NOFO, Uniform Guidance Policy Notice dated December 26, 2023, General Terms and Conditions for the NTIA BEAD Program Funds, and 2 C.F.R. § 200.316 and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, real property and equipment acquired or improved as part of this Award (“Project Property”) must be held in trust for the beneficiaries of the BEAD Program for the duration of the Federal Interest Period (defined below). During the Federal Interest Period, the federal government retains an undivided, equitable reversionary interest in the property (“Federal interest”). The Federal Interest Period in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project continues for ten years after the year in which that subgrant has been closed out in accordance with 2 C.F.R. § 200.344. For example, for all subgrants closed out in 2027, regardless of the month, the Federal interest will last until December 31, 2037. The definition of “equipment” in 2 C.F.R. § 200.1 applies and is incorporated herein by reference.<sup>2</sup> Subgrantees should refer to Exhibit B for information regarding Eligible and Ineligible expenses.

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<sup>2</sup> 2 C.F.R. § 200.1 currently defines “equipment” as tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$10,000.

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B. Continued Maintenance: Subgrantee affirms that, once the Project is operational, it will maintain the network, and will make repairs, as needed, in a timely manner during the Federal Interest Period.

C. Property Standards: Pursuant to the Uniform Guidance Policy Notice dated December 26, 2023, and General Terms and Conditions for the NTIA BEAD Program Funds, the following requirements apply. Title to Project Property vests in the Subgrantee upon acquisition, subject to the following exception and clarifications that apply for the duration of the Federal Interest Period:

1) Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 C.F.R. § 200.313(d), pursuant to an exception from U.S. Office of Management and Budget (OMB). If Subgrantee does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 C.F.R. § 200.313(d).

2) Subgrantee must comply with the use and equipment disposition requirements of 2 C.F.R. §§ 200.313(c)(4) and 313(e).

a. If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), it may treat the equipment to be replaced as “trade-in” even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee must record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports to the U.S. Department of Commerce to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. Subgrantee is also responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.

b. Subgrantee may sell, lease, or transfer equipment only after (a) securing the agreement of the successor or transferee to comply with these requirements and the

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acknowledgement of the successor or transferee of the Federal interest in the subject equipment, and (b) obtaining consent to the sale or transfer from NTIA. Subgrantee agrees to comply with all current and future guidance issued by NTIA concerning the review and approval process for transactions involving BEAD-funded equipment, as well as real property.

c. Subgrantee must notify ORS and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee's ability to perform in accordance with its subgrant.

3) Pursuant to exceptions approved by OMB, the property standards set forth in 2 C.F.R. §§ 200.314 and 200.315 for supplies and intangible property, respectively, shall not apply.

4) Subgrantee must comply with the insurance requirements of 2 C.F.R. § 200.310.

5) Subgrantee must comply with 2 C.F.R. § 200.312 to the extent any Federally owned real property or equipment is used by Subgrantee.

D. Encumbrances: Subgrantee may encumber real property and equipment acquired or improved under this subgrant only after provision of notice to ORS, NTIA and to the NIST Grants Officer, and subject to a requirement that the U.S. Department of Commerce receives either a first priority security interest (preferred) or a shared first priority security interest in the real property and equipment such that, if the real property and equipment were foreclosed upon and liquidated, the U.S. Department of Commerce would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the U.S. Department of Commerce's percentage of contribution to the project costs. For example, if the U.S. Department of Commerce had contributed 50% of the project costs, the U.S. Department of Commerce would receive, on a pari-passu basis, 50% of the current fair market value of the property when liquidated.

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E. Recordation of the Federal Interest in BEAD-funded Property: Subgrantee shall cooperate with the requirements to submit for review and approval transactions involving BEAD-funded real property and equipment.

- 1) Useful Life and Compliance with 2 C.F.R. §§ 200.311, 200.313. For the purposes of this award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period. During the useful life of the BEAD-funded property, Subgrantee 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 C.F.R. § 200.311 or § 200.313, as applicable.
- 2) To document the Federal interest in BEAD-funded real property, Subgrantee must prepare and properly record a “Covenant of Purpose, Use and Ownership” (“Covenant”). The Covenant differs from a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest to NTIA. Rather, pursuant to the Covenant, the Subgrantee acknowledges that it holds title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and agrees, among other commitments, that it will repay the Federal interest if it disposes of or alienates an interest in the BEAD-funded property, or uses it in a manner inconsistent with the public purposes of the BEAD award, during the useful life of the BEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the BEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the BEAD-funded property during the Federal Interest Period. NTIA will provide a suggested sample form to use for the Covenant to record notice of the Federal interest in real property.
- 3) UCC-1 Filing & Attorney’s Certification. Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, Subgrantee shall

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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 this Grant, 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 45-20-B156) 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 10 years after the end of the year in which the award is closed out in accordance with 2 C.F.R. § 200.344.*

In addition, within 15 calendar days following the required UCC filing(s), the Subgrantee shall provide the ORS and NIST Grants Officer 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: XX-XX-XXXX*

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

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

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

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\_\_\_\_\_.  
*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 [type of equipment, e.g., robotic equipment], the Subgrantee is hereby authorized and directed by ORS 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 award condition. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the ORS and NIST Grants Officer within 15 calendar days following each such filing. The UCC filing(s), and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to NTIA and the NIST Grants Officer.

- F. Eminent Domain: In accordance with Executive Order 13406, "*Protecting the Property Rights of the American People*" (June 28, 2006), Subgrantee agrees:

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- 1) Not to use any power of eminent domain (including the commencement of eminent domain proceedings) for use in connection with the grant for the purpose of advancing the economic interest of private parties;
- 2) Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the grant for the purpose of advancing the economic interests of private parties; and
- 3) Any use of eminent domain to acquire land, easements, or interests in land, whether by Subgrantee or any other entity that has the power of eminent domain, in connection with the grant requires prior written consent of NTIA. Any use of eminent domain without prior consent of NTIA constitutes an unauthorized activity and/or use of funds under the award, and subjects involved parties to appropriate enforcement action by the NIST Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

G. Program Income: Subgrantee may retain program income without restriction, including retaining program income for profit. This exception does not alter the provision that a profit, fee, or other incremental charge above the actual cost incurred by Subgrantee is not an allowable cost (See Exhibit B).

## V. **GRANT AWARD/PAYMENT TERMS**

A. Grant Amount: In consideration of the various obligations to be undertaken by Subgrantee pursuant to this Agreement, ORS awards Subgrantee with Program funds in an amount equal to the lesser of 1) «SCBBO\_Request\_Words» («South Carolina ARPA Broadband Grant Prog»), or 2) «SCBBO\_Percent\_Words» percent («Percentage\_Funds\_Requested\_from\_SC\_Broad»%) of the Eligible Expenses related to the Project as described in Exhibit A referenced in this Agreement (the “Grant”), for a total project cost of «Total\_Project\_Costs\_Words» («Total\_Project\_Cost\_Amount»). The terms “Eligible Expenses” and “Ineligible Expenses” shall have the meaning set forth in Exhibit B to this Agreement.

- 1) Subgrantee agrees to only request and shall only use Grant funds for reimbursement

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of Eligible Expenses (see Exhibit B), in connection with the Project described in Exhibit A.

- 2) Subgrantee agrees to document and follow through on strategies to bolster Community-based Broadband Adoption and Use with an emphasis on enabling last mile connections to all homes and businesses served upon the completion of the project.
- 3) Subgrantee acknowledges the FCC BSL fabric data is updated on a six-month cycle, which may impact the BSLs that are represented in the Project. Upon completion of the Project, BSL's must also be reported by the Subgrantee as serviceable during the next available filing period to the FCC.
- 4) Grant funds authorized by ORS under this Agreement shall not be used for or to reimburse any Ineligible Expenses, including but not limited to operating expenses not directly related to the construction of the Project; leases of any kind other than those listed in Exhibit C; franchise costs of any kind; the provision of customer devices (handsets, laptops, tablets, etc.); bandwidth or spectrum expenses; salaries or overhead not directly related to the construction, project management or grant management of the Project; expenses related to the purchase or construction of towers or buildings or purchase of land except for reasonable expenses related to obtaining easements or rights-of-way; for building renovations, tower upgrades, or expenses related to the acquisition of facilities or companies. Ineligible Expenses also include funds used for the purchase of equipment that is depreciable and has a useful life after project completion, unless it is part of the facilities used to deliver the broadband service (e.g., fiber, conduit, electronics, etc.). See Exhibit B for additional information on Ineligible Expenses.

B. Authorized Use of Grant Funds:

- 1) Grant funds may only be used for purposes authorized and allowed by this Agreement, for payment to Subgrantee for Eligible Expenses, or for such other purposes described under "Eligible Grant Purposes" in Exhibit B. "Eligible

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Expenses” shall have the meaning set forth in Exhibit B and are those expenses incurred by a Subgrantee as a direct result of the duties and obligations imposed upon the Subgrantee by the terms of this Agreement to complete a Project.

“Ineligible Expenses” for which Subgrantee shall receive no reimbursement shall have the meaning set forth in Exhibit B and include expenses incurred by the Subgrantee not in furtherance of its duties and obligations under this Agreement to complete a Project, including, but not limited to, any expenses incurred to deploy broadband infrastructure in any location outside of the Project Area.

- 2) Subgrantee’s ability to receive the Grant funds shall be governed by the provisions of this Agreement. With the exception of disclosed allowable pre-award costs and associated expenses in an amount not to exceed \$100,000, any Project costs incurred prior to receipt of a Notice to Proceed are Ineligible Expenses.
- C. Matching Funds: Subgrantee shall be responsible for and shall fund no less than the percentage match listed in Exhibit A for the Project Area.
- D. Adherence to timeline: Subgrantee shall complete the Project, no later than the Project Completion Date outlined in Exhibit A, in accordance with all other milestone dates outlined in Exhibit A.
- E. Disbursement of the Grant: Grant disbursements shall be pursuant to the project milestone and payment schedule set forth in Exhibit D.
- 1) In order to receive disbursement of Grant funds, Subgrantee must complete and submit the following to the satisfaction of ORS:
    - a. An Application for Disbursement (Exhibit D);
    - b. Affidavit of Completion, Eligible Expenses (Exhibit D);
    - c. Build America, Buy America Certification (Exhibit D);
    - d. Narrative of Outcomes and Accomplishments (Exhibit D);

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- e. Final Construction Reports, demonstrating compliance with all grant agreement terms;
- f. A summary of expenses and summary statistics (forthcoming); and
- g. Detailed invoice(s) provided certified, on company letterhead, signed by the President, Chief Executive Officer, Chief Financial Officer, or other appropriate corporate officer.

By submitting an Application for Disbursement, Affidavit of Completion, and other documentation referenced above, Subgrantee certifies and affirms that the necessary work has been completed, that the Eligible Expenses related to the Project are authorized and allowable for determining the amount of Grant funds to be disbursed pursuant to this Agreement, and that Subgrantee is entitled to the disbursement of Grant funds pursuant to this Agreement.

- 2) An Application for Disbursement shall identify the total number of BSLs listed in Exhibit A which have access, the total number of BSLs that have service available, and the corresponding percent of BSLs served. Subgrantee must provide a calculation of the total linear feet of all fiber and/or cable used in the construction of the Project (excluding drops to businesses or homes). Statistics provided should closely align with GIS Shapefile as-built deliverables. In addition, Subgrantee shall provide a summary of all expenses that were incurred throughout the Project and that are authorized and allowable for reimbursement pursuant to this Agreement (see Exhibit B), in the format required by ORS. See Exhibit XX.
- 3) ORS will not authorize disbursement of funds until, in its sole discretion, sufficient documentation is received to evidence milestone completion for a particular phase of the project.
- 4) ORS will not authorize late fees to Subgrantee and Subgrantee shall not be entitled to any late fees on amounts due to Subgrantee under the terms of this Agreement.
- 5) Subgrantee shall pay its subcontractor(s), if any. ORS and the State have no liability

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for payment to any subcontractors utilized by Subgrantee.

- 6) ORS will not reimburse Subgrantee for retainage that has not actually been paid to a subcontractor. Any retainage must be released to the subcontractor before it can be considered an Eligible Expense.
- 7) ORS has the right to withhold or deny the disbursement of Grant funds if ORS determines, in its sole discretion, that Subgrantee failed to perform or complete the Project or meet the requirements for a Milestone payment. ORS shall have the right at any time to request that Subgrantee provide additional supporting documentation with any request for payment. ORS will authorize the disbursement of any withheld or denied funds upon Subgrantee remedying an issue that resulted in the withholding or denial of Grant funds to ORS's satisfaction and in ORS's sole discretion.
- 8) If ORS determines, in its sole discretion, that Subgrantee failed to perform or complete the Project, ORS retains the right to pursue any legal remedy, including, but not limited to, the recoupment or clawback of the Grant, and to the extent applicable, any costs and attorneys' fees expended or incurred by ORS in pursuing such legal remedies.
- 9) Throughout the duration of the Project, ORS, in its sole and absolute discretion, has the right to review the status of the Project. Subgrantee acknowledges and agrees that ORS has final discretion as to the determination of the Project completion and its compliance with this Agreement, and that ORS also has the sole right and option, to disburse a portion of the Grant amount, which portion shall be determined by ORS if the Project fails to fully satisfy the terms of this Agreement. Costs may be reimbursed at the BSL level. ORS will review the incurred costs to complete the BSLs of which service is now provided, and may disburse funds based on the expense reports submitted, subject to the agreed upon match. In the event that the subgrantee does not complete 100 percent of the work, the ORS reserves the right to draw upon the letter of credit or performance bond without providing advance notice of the intention to do so. Notwithstanding this Section, however, ORS retains

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the right, and Subgrantee hereby agrees, that ORS may deny and withhold any disbursement of Grant funds in the event the Project is not fully completed by the Project Completion Date. Failure to complete the Project as outlined in Exhibit A may result in forfeiture of Grant funding and the obligation to reimburse to ORS any Grant funds previously disbursed to the Subgrantee.

- 10) The disbursement of the Grant funds shall be the only and the complete payment to Subgrantee for all expenses, of whatever nature, incurred by Subgrantee and claimed as Eligible Expenses under this Agreement. However, under this Agreement, the State has no liabilities to Subgrantee other than the disbursement of Grant funds pursuant to this Agreement and subject to completion of a qualifying project as described herein.
- 11) Disbursement of the Grant funds will be made by ORS either by check or an automatic clearing house (“ACH”) transaction, depending on Subgrantee’s vendor registration.
- 12) Subgrantee must submit FCC Broadband Data Collection (“BDC”) filing following the completion of the Project to both the FCC and the ORS. The filing must show Subgrantee reports all BSLs in the project area are now served. Subgrantees must provide copies of BDC timestamped submission confirmations (“PDF”) from the FCC to the ORS for review and approval.

## **VI. REPORTING**

- A. Reporting Compliance: At the time of the execution of this Grant Agreement, it is understood by the Parties that reporting requirements established by NTIA or other federal entities related to the BEAD program may not be fully known or established. Subgrantee acknowledges they will comply with all existing and future reporting requirements, guidelines, and associated guidance established by the NTIA and the ORS for IJIA BEAD reporting and compliance as referenced in Exhibit D. Subgrantee agrees to cooperate with ORS to fully meet any required reporting associated with the BEAD program. The cadence of reporting shall be determined in consultation with NTIA. Reporting intervals will be no

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less than semi-annual. The cadence will be confirmed upon issuance of a notice to proceed by the ORS. Subgrantees must also attend monthly progress meetings. The ORS reserves the right to request more frequent reporting. Subgrantee acknowledges that any such information required to be reported pursuant to this section may be publicly disclosed. ORS may, at its own discretion, request additional documentation from Subgrantee.

1) Subgrantee agrees to prepare and submit, if and as requested, a written construction and financial activity report summarizing work performed, including work performed on weekends and holidays, and said report shall be submitted to ORS as specified. At a minimum, the report shall include:

- a) Construction activities and locations;
- b) Geotagged photographs of active construction;
- c) Geotagged photographs of broadband speed tests;
- d) Construction crew sizes of general and subcontractors;
- e) Start or completion of activities;
- f) Progress on construction activities (including units or portions of work completed);
- g) Tests or inspections performed;
- h) Deliveries of material or equipment;
- i) Delays or potential delays;
- j) Visitors to the site;
- k) Construction equipment used; and
- l) Personal injuries or damage to property.

2) Subgrantee is required to participate in regularly scheduled Project progress meetings.

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Subgrantee shall designate a responsible contact who shall maintain comprehensive knowledge of the Project, is capable of articulating the status of the project, and is able to respond to inquiries regarding the Project.

- 3) No later than the dates set forth in the BEAD Timeline (Exhibit F), Subgrantee shall upload completed financial and construction project reports, in a format approved by ORS, to ORS's ShareFile site or other ORS designated location. Subgrantee shall also upload a final report demonstrating the completion of the Project to ORS's ShareFile site or other designated location.
- 4) The Subgrantee agrees to promptly take any remedial action required by the ORS as a result of any errors, omissions, or deficits identified through the reporting and monitoring process.

## **VII. PROJECT COMPLETION AND CLOSEOUT**

A. Project Completion: Subgrantee shall complete the project in accordance with this Agreement and all associated Exhibits. Subgrantee shall complete the Project no later than the Project Completion Date defined in Exhibit A. A final report is due 30 days after Project Completion. Subgrantee shall complete the Project within the term of this Agreement and shall meet all established schedules, deliverables, and deadline requirements. NTIA requires Subgrantee to perform speed and latency tests from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for an FCC-designated IXP. In addition, 95 percent of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time. Upon Project completion, Subgrantee shall provide retail broadband service in the Project Area. Subgrantee shall verify BSLs within the Project Area and shall verify BSL addresses are searchable through its online service signup search portal (as applicable) prior to Project closeout. Subgrantees must report availability for the Project Area through the FCC bi-annual data submission process, including any missing or improperly attributed BSLs as part of its update to the FCC in the bi-annual data submission process.

B. The acceptance by Subgrantee of the final payment made under this Agreement shall operate

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as and be a release of the State and ORS from all claims and liabilities for compensation to Subgrantee for anything done, furnished, or relating to this Agreement.

- C. Inspection: ORS, the State, and the federal government, and their agents and employees shall be allowed to inspect the Project during construction upon request and at regular intervals and upon Project completion. ORS will schedule a final inspection for the Project when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. The final inspection shall be attended by ORS, the Subgrantee, and the Subgrantee's engineer. ORS will provide NTIA reasonable advance notice so that a representative of NTIA may participate in the inspection.
- D. Changes: ORS has sole discretion and must approve in writing any proposed changes to the Project or any other term of this Agreement, including modifications to the scope of work or modifications involving carrying out Project activities in a geographic area other than the approved Project Area as described in Exhibit A through an executed amendment of this Agreement. Subgrantee shall notify ORS and resubmit GIS Shapefiles, should the proposed Project Area, fiber/cable lines, or homes, businesses and CAIs to be served change throughout the lifecycle of the Project.
- E. Adherence to Timeline: Time shall be of the essence as to all dates and times of performance contained in this Agreement. Subgrantee shall comply with all applicable deadlines set forth in Exhibit A.
- F. Deliverables: In addition to a fully functional Broadband network built in accordance with this Agreement, engineering best practices and associated industry standards within the Project Area, Subgrantee is responsible for providing as-built or record set data in GIS shapefile format, depicting the final layout of Broadband lines, homes, businesses, and CAIs. The horizontal accuracy of the GIS data must be within reasonable parameters and will be used to verify quantities of materials purchased to build out the Project Area. Over the course of the Project and prior to Project Completion, Subgrantee must provide geotagged photographs of active construction that occurred within the Project Area; including but not limited to photographs of OLTs and other surface features (pedestals, entry and exit of underground conduit, etc). In addition, Subgrantee must provide geotagged photographs of

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Broadband Internet speed test data demonstrating speeds meet or exceed minimum upload and download requirements outlined in this Agreement, which will be used for quality assurance by ORS prior to payment and for purposes of meeting any future federal audits and associated reporting. Subgrantee's submission to ORS of geotagged photographs, speed tests, and/or line work of Broadband infrastructure located outside of the geographic bounds of the Project Area shall create a rebuttable presumption that Subgrantee's costs associated therewith constitute Ineligible Expenses, as defined herein. As a result, for expenses submitted for reimbursement, ORS, in its sole discretion, may disallow costs to only include locations inside the Project Area. Among other reporting requirements, a post-construction list of BSL addresses along with speed and latency tests for consumers that subscribe to service, as well as a completed project closeout checklist is required prior to payment.

## **VIII. STATE REQUIREMENTS**

Subgrantee shall comply with and shall require any individual, organization, or other entity with whom it subcontracts, subgrants, or subleases for the purpose of providing any service, financial aid, equipment, property, or structure to comply with all applicable laws and regulations, whether or not cited or referenced in this Agreement.

- A. Compliance by Subgrantee with Laws & Regulations: In connection with this Grant, Subgrantee agrees to comply with all statutes, laws, regulations, and orders of federal, state, county, municipal, or other local authorities that impose any obligations or duty upon Subgrantee, including, but not limited to, all applicable labor laws, workers compensation requirements, and requirements to acquire any and all necessary permits. If it is later determined that Subgrantee did not comply with all statutes, laws, regulations, and orders of federal, state, county, municipal, or other local authorities, ORS retains the right to pursue any legal remedy, including, but not limited to, the recoupment or clawback of the Grant, and to the extent applicable, any costs and attorneys' fees expended or incurred by ORS in pursuing such legal remedies.
- B. Drug-Free Workplace Act: Subgrantee shall comply with applicable requirements in the State of South Carolina Drug Free Workplace pursuant to Title 44, Chapter 107 of the South Carolina Code of Laws, as amended.

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- C. Title 8, Chapter 14 of the SC Code of Laws: Subgrantee certifies that it will comply with the applicable requirements of Title 8, Chapter 14 of the South Carolina Code of Laws and agrees to provide to the ORS upon request any documentation required to establish either: (a) that Title 8, Chapter 14 is inapplicable to it and its contractors, subcontractors or sub-subcontractors; or (b) that it and its contractors, subcontractors or sub-subcontractors are in compliance with Title 8, Chapter 14. Pursuant to Section 8-14-60, “A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.” Subgrantee agrees to include in any contracts with its contractors and subcontractors language requiring its contractors and subcontractors to (a) comply with the applicable requirements of Title 8, Chapter 14, and (b) include in their contracts with the sub-subcontractors language requiring the sub-subcontractors to comply with the applicable requirements of Title 8, Chapter 14.
- D. Dig Once Approach: Subgrantee affirms that it will consult with all relevant South Carolina state agencies, including but not limited to the South Carolina Department of Transportation (“SCDOT”), electric utilities, as well as local water and sewer utilities as to any possible efficiencies that can be achieved with a “Dig Once” approach.
- E. South Carolina Underground Facility Damage Prevention Act: Subgrantee shall comply with and shall require its employees, contractors, and subcontractors to comply with the applicable requirements in the South Carolina Underground Facility Damage Prevention Act pursuant to Title 58, Chapter 36 of the South Carolina Code of Laws, as amended (“Underground Facility Damage Prevention Act”). If Subgrantee, its employees, contractors, or subcontractors engage in grossly negligent, willful, or intentional misconduct that results in a violation of the Underground Facility Damage Prevention Act or noncompliance with the Underground Facility Damage Prevention Act, Subgrantee’s Project may be subject to being defunded up to 25%, and a complaint may be filed with the Attorney General, which may result in a fine pursuant to S.C. Code Ann. § 58-36-120. A list of contractors that will support this aspect of the Subgrantees project must be provided to the ORS. (See Exhibit G).
- F. Reducing Disruptions: Subgrantee affirms that it will consult with local businesses, to

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include but not be limited to agricultural businesses, within the Project Area to minimize disruption and potential impact of their daily operations.

- G. Marketing and Public Awareness Campaign: Subgrantee shall not market Broadband infrastructure constructed under this grant at speeds less than the minimum standard as defined by the FCC through the Federal Interest Period.
- H. Subgrantee acknowledges and understands that expenses related to drops either to homes or businesses located outside of the Project Area to which Subgrantee is building main line fiber/cable to reach BSLs in the Project Area (Exhibit A), as identified in this Agreement will be deemed Ineligible Expenses as defined herein. Subgrantee is allowed to connect those locations upon Project Completion, though any such interconnection work shall fall outside the terms of this Agreement.

## **IX. MISCELLANEOUS**

- A. Notices: All notices permitted or required under this Agreement shall be given at the following address, or at such other address as the Parties may provide in writing for this purpose:

### **SOUTH CAROLINA OFFICE OF REGULATORY STAFF:**

1901 Main Street, Suite 1500

Columbia, SC 29201

Contacts for ORS/Grant Officer: Jim Stritzinger and David Herpel

Email: BEAD@ORS.SC.GOV

ORS Telephone Numbers: (803) 737-8025 and (803) 737-9825

### **SUBGRANTEE:**

Legal Entity Name: «Legal\_EntityOrganization\_Name»

Address: «Mailing\_Address\_City\_State\_Zip»

Initial: \_\_\_\_\_

Contact for Grantee: «Primary Contact Name », «Title»

Email: «Email»

Telephone Number: «Phone Number»

Any notice by a Party hereto to the other Party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, by United States Postal Service, addressed to the Parties at the addresses above, or by electronic delivery to the email addresses specified above.

- B. Records and Accounts: Subgrantee shall keep detailed accounts of all eligible expenses incurred regarding all permits and construction-related documentation developed in connection with the Agreement, including, but not limited to records supporting the provision of any services required under this Agreement or the Grant. Such accounts shall be supported by receipts, invoices, bills, check copies, quarterly reports, environmental determinations, and other similar documents and tax or accounting records through the Federal Interest Period or longer where required by the U.S. Department of Commerce or 2 CFR §§ 200.334 through 200.338. Wherever practicable, such records should be collected, transmitted, and stored in open and machine-readable formats.

At any time during Subgrantee's normal business hours, and as often as ORS, the State, or any of its authorized representatives, shall require, Subgrantee must agree to provide or make available to ORS, the State, or any of its authorized representatives, all records pertaining to matters covered by this Agreement. Subgrantee shall permit ORS, the State or any of its authorized representatives to audit, examine, and reproduce such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, data, and other information relating to all matters covered by this Agreement (electronic or otherwise). Confidential information may be designated as such and is entitled to confidential treatment as permitted by applicable laws. As used in this Section, "Subgrantee" includes all persons and entities affiliated with, controlled by, or under common ownership with, the entity identified as the Subgrantee in Section I of this Agreement.

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NTIA is required by transparency laws to disclose the names of BEAD Recipients and the amounts of BEAD grants, and NTIA may disclose other information provided by ORS to the public. NTIA will post this information on its website and report this information on the [usaspending.gov](https://www.usaspending.gov) website.

Subgrantee is required to maintain and make available to the State of South Carolina and/or the NTIA, upon request, all documents and financial records sufficient to establish compliance with NTIA. Records to support compliance with NTIA may include, but are not limited to, copies of the following:

- 1) General ledger and subsidiary ledgers used to account for (a) the receipt of NTIA payments and (b) the disbursements from such payments to meet eligible expenses;
- 2) Payroll, time records, human resource records to support costs incurred for eligible payroll expenses;
- 3) Receipts of purchases made for Eligible Expenses;
- 4) Contracts and subcontracts entered into using NTIA payments and all documents related to such contracts;
- 5) Grant agreements and grant subaward agreements entered into using NTIA payments and all documents related to such awards; and
- 6) Project plans, documents, and data, including but not limited to the Project's engineering, planning, or design activities.

Upon completion of construction, Subgrantee agrees to provide the service locations or addresses capable of receiving broadband service.

C. Additional Audit Requirements: 2 C.F.R. Part 200, Subpart F, adopted by the U.S. Department of Commerce through 2 C.F.R. § 1327.101, requires any non-Federal entity that expends Federal awards of \$750,000 or more in its fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Subpart. Additionally,

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entities that are not subject to Subpart F of 2 CFR Part 200 (e.g., commercial entities) that expend \$750,000 or more in grant funds during their fiscal year must submit to the NIST Grants Officer either: (i) a financial related audit of each U.S. 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 C.F.R. § 200.507. Subgrantee must provide ORS a copy of any of the aforementioned audits within 30 calendar days after receipt of the audit report.

NTIA, the U.S. Department of Commerce Office of Inspector General, or another authorized Federal agency may conduct an audit of an award at any time.

- D. Personnel: The ORS Grant Officer shall be the representative of ORS. ORS, in its sole and absolute discretion, may identify a new ORS Grant Officer and in such event, shall notify Subgrantee of the new ORS Grant Officer. In the event of any dispute hereunder, the interpretation of this Agreement by the ORS Grant Officer, and his/her decision on any dispute, shall be final. To the extent that Subgrantee is required to provide services under this Agreement, Subgrantee shall, at its own expense, provide all personnel necessary to perform the Project. Subgrantee warrants that all personnel engaged under the Agreement to complete the Project shall be qualified to perform such Project and shall be properly licensed and authorized to perform such Project under all applicable laws. Subgrantee shall comply with all State and federal personnel and labor laws applicable to its employees.
- E. Contingent Nature of Agreement: Notwithstanding anything in this Agreement to the contrary, all obligations of ORS hereunder, including, without limitation, the disbursement of Grant funds pursuant to this Agreement, are contingent upon the availability of funds to ORS from the U.S. Department of the Commerce BEAD Program, and in no event shall ORS be liable for any payments or disbursements hereunder in excess of such available or appropriated BEAD funds actually received by ORS. In the event of a reduction or termination of BEAD Program funds from the U.S. Department of Commerce or other authorized federal agency, ORS shall have the right to authorize the withholding of payment and shall have the right to terminate this Agreement immediately upon giving Subgrantee written notice of such termination.

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Furthermore, notwithstanding anything in this Agreement to the contrary, in the event the U.S. Department of Commerce or other authorized federal agency denies reimbursement of ORS for funds paid to Subgrantee under this Agreement, ORS shall have the right to terminate this Agreement and any such payment that was not reimbursed shall be returned to ORS by Subgrantee.

- F. Assignment and Subcontracting: This Agreement, in whole or in part, may not be transferred or assigned by Subgrantee to another company, organization, or person without the express prior written approval of the ORS, which consent may be withheld in ORS's sole and absolute discretion. Subcontracts entered into by Subgrantee, if any, shall contain a provision making them subject to all provisions of this Agreement. Subgrantee will be held solely responsible for the work of all persons engaged by Subgrantee on the Project, and all such work shall be subject to the provisions of the Agreement.
- G. Subgrantee's Relationship to ORS: Neither Party to this Agreement is an employee, agent, partner, or joint venturer of the other Party. Subgrantee shall furnish services pursuant to the terms of this Agreement in its own manner and method. In no respect shall Subgrantee be considered an agent or employee of the State, ORS, or the federal government, and Subgrantee shall maintain complete control over all of its officers, directors, trustees, employees, agents, members, subcontractors, and operations. No provisions of this Agreement shall be intended to create a partnership or joint venture between or among Subgrantee, ORS, or the State and neither Party shall have the power to bind or obligate the other Party, except as expressly set forth in this Agreement. Neither the Subgrantee nor any of its officers, directors, trustees, employees, agents, members, subcontractors shall have authority to bind the State, ORS, or the federal government nor shall the Subgrantee or any of its officers, directors, trustees, employees, agents, members, or any of its subcontractors be entitled to any of the benefits, workers' compensation, or emoluments provided by the State to its employees.

## **X. EVENT OF DEFAULT; REMEDIES**

- A. Default: Any of the following acts or omissions of Subgrantee shall constitute an event of default hereunder (hereinafter referred to as "Events of Default"):

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- 1) Breach by Subgrantee of any term, condition, covenant, agreement, affirmation, or certification contained in this Agreement;
- 2) The use of Grant funds for any purpose other than as provided in this Agreement or to reimburse any expenses other than Eligible Expenses related to the Project;
- 3) The failure to complete the Project by the Project Completion Date or as set forth in the Agreement, or otherwise unsatisfactory performance or completion of the Project, as determined by ORS in its sole discretion;
- 4) Subgrantee's bankruptcy, insolvency, or the dissolution or liquidation of Subgrantee's business organization or assets;
- 5) Failure to submit any report or submission of an incomplete report required hereunder;
- 6) Failure to submit expenses by due dates and in the format as determined and requested by ORS;
- 7) Failure to maintain, or permit access to, the records required hereunder;
- 8) Failure to perform any of the other covenants and conditions of this Agreement, including but not limited to, failure to complete the Project by the Project Completion Date;
- 9) A change in Subgrantee's staffing capacity that adversely affects Subgrantee's ability to complete the Project by the Project Completion Date, in the sole discretion of ORS; and
- 10) Except as provided in Section XIII, where ORS determines that meaningful progress is not occurring, ORS shall provide notice and if Subgrantee does not cure as set forth in subsection B, ORS may terminate this agreement.

ORS shall give Subgrantee written notice of an Event of Default, and Subgrantee shall have thirty (30) calendar days from the date of such notice to cure the default. Upon the

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occurrence of an Event of Default that continues beyond the thirty (30) day cure period, ORS shall have the right to terminate this Agreement immediately by written notice to Subgrantee. Whether Subgrantee has sufficiently cured the breach shall be determined in the sole discretion of ORS.

Two successive Events of Default by Subgrantee may result in termination of this Agreement immediately by written notice to Subgrantee.

B. Remedies: Upon the occurrence of any Event of Default and the default continues beyond any cure period, or in the event of termination by ORS, ORS may in its sole discretion, take any one, or more, or all, of the following actions:

- 1) Give Subgrantee a written notice specifying the Event of Default;
- 2) Withhold any or all payments or disbursements to be made under this Agreement;
- 3) Order that the portion of the Grant Amount which would otherwise accrue to Subgrantee during the period from the date of such notice until such time as ORS determines that Subgrantee has cured the Event of Default shall never be paid to Subgrantee;
- 4) Recoup or claw back from Subgrantee and including by withholding any other payment of funds that may become due to Grantee and any payments under this Agreement that have been used in a manner contrary to the terms of this Agreement;
- 5) Treat the Agreement as breached and pursue any remedies at law or in equity, or both;
- 6) Withhold disbursement of Grant funds, in which event Subgrantee shall have no right, title, or interest in or to any of the undisbursed Grant funds;
- 7) Demand repayment of all or a portion of the Grant funds disbursed to Subgrantee, plus all costs and reasonable attorneys' fees incurred by ORS in recovery proceedings;

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- 8) Demand that Subgrantee complete the Projects as required by this Agreement at the cost of the Subgrantee *if* the deadlines for commitment or construction of BEAD federal funding have expired and Subgrantee made commitments upon which ORS relied;
- 9) Should, as a result of Subgrantee's failure to cure an Event of Default<sup>3</sup>, ORS be denied federal funds, then Subgrantee agrees to complete the Project as required by this Agreement at the sole expense of Subgrantee and with no cost to ORS;
- 10) Should ORS determine Subgrantee at any time during the Federal Interest Period is no longer able to meet its obligations under this Agreement, appropriate remedial action may be taken to ensure continuity of service; and
- 11) In addition to exercising any or all of the rights and remedies contained in this Agreement, ORS at any time may proceed to protect and enforce all rights available to ORS in equity, at law, including by appropriate legal or equitable proceedings, all of which shall survive the termination of this Agreement.

## **XI. IMMEDIATE TERMINATION**

Notwithstanding anything in this Agreement to the contrary, ORS may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 1) Subgrantee, directly or indirectly, furnished any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or materially incorrect or incomplete;
- 2) Subgrantee's officers, directors, trustees, employees, agents, subsidiaries, affiliates, contractors, or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, bad faith or been delisted/excluded from Federal

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<sup>3</sup> As defined in this Agreement, an Event of Default includes, but is not limited to, failure of Grantee to complete the Project by the Project Completion Date and/or comply with all applicable deadlines set forth in Exhibit A.

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funding;

- 3) Subgrantee terminates or suspends its business;
- 4) Subgrantee's authorization to engage in business either in South Carolina or where organized is suspended, terminated, revoked, or forfeited;
- 5) An Event of Default under this Agreement involving Subgrantee's bankruptcy, insolvency, or the dissolution or liquidation of Subgrantee's business organization or assets; or
- 6) Subgrantee initiating litigation or legal proceedings against ORS or the State or being involved as an adverse party in any litigation or legal proceedings against ORS or the State. This provision shall apply if Subgrantee, its officers, directors, employees, agents, subsidiaries, affiliates, contractors, or subcontractors are an adverse party in any manner, including as a plaintiff, defendant, third-party plaintiff, or third-party defendant.

Subgrantee shall notify ORS in writing if any of the foregoing events occur that would authorize the ORS to immediately terminate this Agreement. The right to terminate this Agreement pursuant to this Section or otherwise shall be in addition to and not exclusive of other remedies available to the ORS or the State, and the ORS or the State shall be entitled to exercise any other rights and pursue any other remedies available under this Agreement, in law, at equity, or otherwise.

## **XII. INDEMNIFICATION**

Without limitation, and to the fullest extent permitted by law, Subgrantee shall defend, indemnify and hold harmless ORS, the State, and their officers, directors, agents, and employees, or the federal government (individually and collectively "Indemnatee"), from and against any and all losses suffered by Indemnatee and any and all claims, liabilities or penalties asserted against Indemnatee by or on behalf of any person or entity, on account of, based on, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of Subgrantee or contractor, subcontractor, other agent of Subgrantee, their officers, directors, trustees, employees, workmen, servants, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable regardless of whether or not caused in part by the Indemnatee, and whether or not such claims are made by a third party or an Indemnatee. Indemnatee shall notify Subgrantee in

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writing within a reasonable period of time after Indemnatee first receives written notice of any claim. Indemnatee shall allow Subgrantee to defend such claim so long as the defense is diligently and capably prosecuted. Subgrantee may not, without Indemnatee's prior written consent, settle, compromise, or consent to the entry of any judgment in any such commenced or threatened action unless such settlement, compromise or consent (i) includes an unconditional release of Indemnatee from all liability related to such commenced or threatened action, (ii) is solely monetary in nature and does not include a statement as to, or an admission of fault, culpability or failure to act by or on behalf of, an Indemnatee or otherwise adversely affect an Indemnatee, and (iii) all settlement payments are made by Subgrantee. Indemnatee's consent is necessary for any settlement that requires Indemnatee to part with any right or make any payment or subjects Indemnatee to any injunction. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of ORS or the State, which immunity is hereby reserved to ORS and the State. This provision shall survive the termination of this Agreement.

### **XIII. FORCE MAJEURE**

Neither Subgrantee nor ORS shall be liable for any failure or delay in performing an obligation under this Agreement so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances caused by or resulting from any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic or pandemic (including but not limited to the novel coronavirus COVID-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. In the event of any such excused delay, the time for performance of such obligations shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable. Nothing in this Section or elsewhere in the Agreement shall be construed as allowing Subgrantee to complete the Project later than four years after the Effective Date of this Agreement,

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unless permission is granted by the NTIA and Assistant Secretary.

#### **XIV. WAIVER OF BREACH**

No failure by ORS to enforce any provisions of this Agreement shall be deemed a waiver of any rights under this Agreement. Any waiver shall be effective only if executed in writing by ORS, and no such written waiver shall be deemed a waiver of any provisions of this Agreement other than that specified in said writing. No such written waiver shall be deemed a waiver of the right of ORS to enforce each and all of the provisions hereof upon any further or other default on the part of Subgrantee.

#### **XV. CONSTRUCTION OF AGREEMENT AND TERMS AND CHOICE OF VENUE**

This Agreement, any dispute, claim, or controversy relating to this Agreement, and all the rights and obligations of the Parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules. All disputes, claims, or controversies relating to this Agreement shall be resolved exclusively in a court located in Richland County, South Carolina. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and assignees.

#### **XVI. CONFLICT OF INTEREST**

The Parties shall require their officers, directors, trustees, members, representatives, directors, employees, contractors, and subcontractors to comply with all applicable laws, regulations, guidance, guidelines, and policy notices regarding conflicts of interest, including but not limited to any set forth in the South Carolina State Ethics Act, S.C. Code Ann. §§ 8-13-100 *et seq.*, 2 C.F.R. § 200.112, 2 C.F.R. § 200.318, U.S. Department of Commerce Financial Assistance Standard Terms and Conditions issued November 12, 2020, and BEAD NOFO.

In accordance with 2 C.F.R. § 200.112 (Conflict of interest), Subgrantee must disclose in writing any potential conflict of interest to the ORS. In addition, Subgrantee must establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the U.S. Department of

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Commerce's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with U.S. Department of Commerce financial assistance awards.

A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services or advice to the recipient, a participant in the project or to the State or Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the U.S. Department of Commerce Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a Subgrantee, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), Subgrantee must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

## **XVII. CONFIDENTIAL INFORMATION**

As a state agency, ORS is subject to the requirements of the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.* (FOIA). In the event that information submitted to ORS contains information or data Subgrantee deems to be confidential commercial

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information or that otherwise should not be publicly disclosed, such information should be clearly identified, bracketed, and marked as Privileged, Confidential, or Proprietary Information. The ORS will protect information designated as confidential or proprietary from public disclosure consistent with applicable law, except as required by applicable law, such information is in the public domain, or Subgrantee agrees in writing that such information may be made public. In the event of any disclosure required by law, ORS shall provide reasonable notice to Subgrantee of the required disclosure, except as otherwise required by law, or the NTIA. Grantee shall promptly notify ORS should Grantee or its Representatives be served with a summons, complaint, subpoena, notice of deposition, request for documents, interrogatory, request for admissions, other discovery request, or court order from any third party regarding this Agreement and the services performed under this Agreement.

Notwithstanding anything in this Agreement to the contrary, it is understood and agreed by the Parties that ORS reserves the right to publicize the approval, status, and completion of the Project, the execution of this Agreement, the total Grant funds expended by the State, the number of households and businesses that benefit from the Project, the location of the Project, general project statistics, and other such related information meant to support the purpose of the Project and advance broadband deployment in the State. In addition, the names and business addresses of Subgrantee and the names, business addresses and amount of any award actually made to Subgrantee will be public information, subject to disclosure and may be posted on the ORS website. Furthermore, data may be used in a secure manner as a planning resource to mitigate against cybersecurity threats, risks, and potential attacks to critical infrastructure, and to support the safety and continuity of state operations before, during, and after a state or federally declared emergency, disaster, incident, or event.

Pursuant to the BEAD NOFO, the IIJA contains robust reporting requirements for Eligible Entities and subgrantees, and requires NTIA, the FCC, and other agencies to coordinate to make information regarding federal broadband funding, and other aspects of the BEAD Program readily available to and understandable by the public. Recipients of U.S. Department of Commerce and NTIA grants also should be cognizant of the access to records requirements set forth at 2 C.F.R. § 200.337.

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Notwithstanding anything in this Agreement to the contrary, all information provided to the ORS, regardless of whether it is marked Privileged, Confidential, or Proprietary, is subject to being shared with NTIA, the U.S. Department of Commerce, or other authorized federal agency. Please see BEAD NOFO Section IX.B. for more information. In addition, the ORS is subject to periodic audits and similar-type examinations by various federal and state agencies and may be required to allow access to information as part of such audits or similar-type examinations, regardless of whether it is marked Privileged, Confidential, or Proprietary. See, for example, 2 C.F.R. § 200.337 and S.C. Code Ann. § 11-7-35. In the event of such audits or similar-type examinations, the ORS will make the agents, entities, or agencies performing the audit or examination aware of the confidential nature of the information.

#### **XVIII. PROTECTED AND PROPRIETARY INFORMATION**

Subgrantee is expected to 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 U.S. Department of Commerce and external program evaluators. In accordance with 2 C.F.R § 200.303(e), Subgrantee is reminded that it 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 U.S. Department of Commerce financial assistance award. See also NOFO IX. B.

#### **XIX. AUTHORIZATION**

Each Party warrants that it has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement.

#### **XX. THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties and shall not inure to the benefit of any other person or entity, it being the intention of the Parties that no third person shall be deemed a third-party beneficiary of this Agreement.

#### **XXI. AMENDMENT**

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This Agreement may be amended, waived, or discharged only by an instrument in writing signed by the Parties hereto. In addition, the ORS reserves the right to amend the terms of this award if required by federal law, state law, NTIA guidance, or regulation without the consent of the Grantee. The ORS may, upon reasonable notice to Subgrantee, unilaterally amend this Agreement for the sole purpose of making ministerial or administrative changes or correcting scrivener's errors.

## **XXII. COOPERATION**

Subgrantee shall cooperate in the performance of work related to the Project with ORS, the State, and their officers, agents, and employees.

## **XXIII. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements and understandings relating hereto. Captions and headings in this Agreement are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the Parties.

## **XXIV. SURVIVAL OF OBLIGATIONS**

The Parties' rights and obligations which, by their nature, would continue beyond the termination, cancellation, rejection, or expiration of this Agreement shall survive such termination, cancellation, rejection, or expiration.

## **XXV. COUNTERPARTS AND ELECTRONIC SIGNATURES**

Facsimile signatures and electronic mail signatures shall be as effective as original signatures to bind any Party. This document may be signed in counterparts, with the various signature pages combined with the body of the document constituting an original and provable copy of this Agreement.

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## **XXVI. EXHIBITS**

The provisions in Exhibits “A” through “L” are incorporated herein as though set out in full.

[SIGNATURE PAGE FOLLOWS]

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**Subgrantee Signature:**

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

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

State Vendor Number: \_\_\_\_\_ UEI Number: \_\_\_\_\_

**South Carolina Office of Regulatory Staff Signature:**

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

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

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