SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT (the "Agreement") is made and entered into as of the date of the last signature on this Agreement (the "Effective Date") between the Arizona Commerce Authority ("ACA"), through its State Broadband Office ("Office"), and [__] ("Subgrantee") (collectively, the "Parties") to complete the Project.

DEFINITIONS

"**ACA**" means the Arizona Commerce Authority, an agency of the State of Arizona.

"**Application**" means Subgrantee's approved and accepted Arizona BEAD Program application, attached hereto as Attachment 2 and hereby incorporated by reference into this Agreement.

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

"**Arizona BEAD Program**" means the State of Arizona's BEAD Program as administered by the Office.

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

"**BEAD Program**" means the Broadband Equity, Access, and Deployment Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law No. 117-58, 135 Stat. 429 (Nov. 15, 2021).

"**BEAD NOFO**" means the NTIA BEAD Program Notice of Funding Opportunity (May 13, 2022) (Funding Opportunity Number NTIA-BEAD-2022) available at https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf.

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

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

"**CAI**" means a Community Anchor Institution within the State of Arizona as identified by the Office.

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

"**DOC**" means the United States Department of Commerce.

"**DOC ST&Cs**" means the Department of Commerce Financial Assistance Standard Terms and Conditions (November 12, 2020, including the applicable obligations set forth in the Office of Management and Budget ("OMB") Uniform Guidance, 2 C.F.R. Part 200.

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

"End User" means a Broadband Serviceable Location (BSL) included within the scope of Subgrantee's Application.

"**Federal Program Officer" or "Federal Grants Officer"** means the National Institute of Standards and Technology ("NIST") grant officer identified on the Arizona's BEAD Program CD-450.

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

"**Grant Funds**" means the Arizona BEAD Program funding awarded for this Project as identified in Attachment 1 (the Total Amount of the Federal Award committed to Subgrantee by the Office).

"GT&Cs for the BEAD Program" means the General Terms and Conditions for the NTIA Broadband Equity, Access & Deployment Program (BEAD) Program Funds (Apr. 2024).

"**Initial Proposal**" means the Arizona BEAD Program Initial Proposal (Volumes I and II), as approved by NTIA on Aug. 5, 2024, and as subsequently amended or finalized, available at https://www.azcommerce.com/broadband/initiatives/bead.

"**LCSO**" means the Low-Cost Service Option as proposed in Subgrantee's Application.

"LEO Subgrant" means this Agreement as modified or supplemented by Attachments 4.b., 12, and elsewhere herein where a provision of this Agreement or the BEAD Program applies to a Low Earth Orbit (LEO) Subgrantee or a subgrantee providing LEO capacity or related LEO services, with all other terms, conditions, and provisions of this Agreement remaining in full force and effect.

"LEO Subgrantee" means the subgrantee under this Agreement, if applicable, that is providing capacity on a LEO satellite network to deliver Qualifying Broadband Service and related LEO services, for all or any part of its obligations in accordance with all other terms, conditions, and provisions of this Agreement and the BEAD Program, including LEO capacity or services obtained by or through a lower tier subgrant or subcontract.

"**Matching Funds**" means funds or in-kind contributions provided by Subgrantee or the ACA to meet or exceed the BEAD Program's non-federal match requirement.

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

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

"**Office**" is the State Broadband Office within the ACA.

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

"**Project**" means the planned and actual installation of broadband facilities and the provision of Qualifying Broadband Service as described in Subgrantee's Application, which is hereby incorporated herein by reference and attached as Attachment 2.

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

"**Project Property**" means Real property or Equipment, in each case as defined in 2 C.F.R. § 200.1, acquired or improved using Award Funds.

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

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

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

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

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

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

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

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

RECITALS

WHEREAS, the ACA is authorized to make Grant Funds available to qualified subgrantees under the Arizona BEAD Program, and governed in accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law No. 117-58, the BEAD NOFO, and BEAD RPN, including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator;

WHEREAS, the granting of Arizona BEAD Program funds through this Agreement from the Office to Subgrantee for the benefit of End Users has been approved by the ACA;

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

WHEREAS, ACA and Subgrantee agree that this award is being provided by the State of Arizona to Subgrantee for Subgrantee to carry out part of the Federal BEAD award received by Arizona. Specifically, Subgrantee will use Award Funds for the deployment of a broadband network and the provision of Qualifying Broadband Service to End Users to bridge the digital divide;

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

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

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

NOW, THEREFORE, in consideration of the mutual promises contained herein, and incorporating by this reference the above Definitions and Recitals, the Parties hereby agree as follows:

I. Federal Award Identification

Information identifying this Federal subaward is set forth in Attachment 1 to this Agreement.

II. General Compliance Requirements, Order of Precedence, and Terminology

Subgrantee must perform its obligations under this Agreement in a manner that complies, and enables the ACA to comply, with all requirements contained in the following:

1. 47 U.S.C. § 1702;
2. Specific Award Conditions applicable to Arizona’s BEAD award;
3. GT&Cs for the BEAD Program;
4. BEAD RPN;
5. BEAD NOFO, including additional NTIA Notices, Guidance, and FAQs;
6. DOC ST&Cs, including 2 C.F.R. Part 200;
7. Arizona BEAD Program Initial Proposal, as amended, and Final Proposal;

8. This Agreement and all Attachments which are hereby incorporated herein by reference, made part of the Agreement, and attached hereto (including Subgrantee's Application as accepted by ACA, dated _______, 2025, (Attachment 2);
9. ACA Uniform Terms and Conditions (May 11, 2018);
10. ACA Special Terms and Conditions - Insurance Requirements for Vendors (May 8, 2018); and
11. ACA's Uniform Instructions to Offerors for Procurement and Other Administrative Processes.

The foregoing are incorporated by reference as if fully set forth herein and are deemed to be Agreement obligations of the Subgrantee, which clarify and provide guidance as to, inter alia, the applicable regulatory provisions relating to internal controls, subgrantee monitoring and management, and audit requirements that apply to the ACA and thereby to Subgrantee and lower tier subgrantees or subcontractors receiving such funds through this Agreement. These requirements are legally binding and enforceable under this Agreement and the Subgrantee shall comply, and must require its lower tier subgrantees or subcontractors, to comply with all applicable federal, state, and local laws and regulations, and all applicable terms and conditions of this Subgrant Agreement.

Subgrantee is permitted to seek reimbursement for work performed by a lower tier subgrantee or subcontractor under this Agreement, subject to any terms, conditions, or restrictions of this Agreement. None of the Project work shall be subgranted or subcontracted by the Subgrantee other than as set forth in the Application without the prior written consent of the Office. No lower tier agreement that Subgrantee enters and that relates to performance of any obligations hereunder will, in any way, relieve the Subgrantee of any responsibility for acceptable performance of its duties or obligations with respect this Agreement, including any LEO capacity or services obtained as LEO Subgrantee by or through a lower tier LEO capacity or services subgrant or subcontract, a copy of which shall be provided to the Office. Current officers or employees of the State of Arizona may not act as lower tier subgrantees or subcontractors under this Agreement. In the event of any inconsistency or conflict between or among the terms of this Agreement and the authorities identified in the enumerated list above, controlling authority shall be determined based on the enumerated order of precedence above (1. - 11.).

In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner that emphasizes consistency and harmonization across all relevant authorities. Where harmonization is not reasonably possible, the Parties agree to prioritize following the language contained in these authorities in the enumerated order of precedence (1. – 11.), from highest to lowest priority, and in a manner that will maintain the integrity of the underlying Agreement. Notwithstanding the foregoing, no provision of the Subgrantee Application shall be read or interpreted in a matter that contradicts a BEAD Program requirement, or reduces Subgrantee obligations under the BEAD Program or federal or state law. NTIA may issue subsequent or further guidance on allowable uses of BEAD funds. Any such guidance shall be considered incorporated herein and made part of this Agreement as if set forth in full without further notice.

III. Nature of Award

Subgrantee shall deploy Qualifying Broadband Service to End Users and CAIs as described in Subgrantee's Application or otherwise with the prior approval of ACA. This Project must provide Qualifying Broadband Service to all broadband serviceable locations and CAIs identified in the Application and at the speeds and latency standards articulated therein, including but not limited to technical qualifications, certifications, and documentation.

Subgrantee shall perform a standard installation of Qualifying Broadband Service, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted by an End User.

The Subgrantee shall, without additional expense to ACA, be responsible for obtaining any necessary rights-of-way, licenses and permits, and for complying with any federal, state, and municipal laws, codes, and regulations applicable to the performance of the Project work, including occupational safety and health requirements. The Subgrantee shall also be responsible for all damages to persons or property that occur as a result of the Subgrantee's fault or negligence. The Subgrantee shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Project.

It is understood and agreed by the Parties that, because the Arizona BEAD Program is new, and because the funding of the program is dependent on federal regulations and state policies, certain requirements, including but not limited to various reporting obligations or performance metrics, may change over time. Subgrantee shall remain obligated to comply with the current and future obligations of the Arizona BEAD Program through the Closeout Date, except for those obligations that survive closeout and remain in force during the Federal Interest Period as described in Section X. below, or the extended Period of Performance for LEO Subgrant services as described in Attachment 12, below, which will continue.

IV. Period of Performance and Closeout

A. Period of Performance

The Period of Performance for this award is not later than four (4) years, during which period Subgrantee shall begin providing services to each End User that desires broadband service within the Project area not later than four (4) years after the Effective Date. Should Subgrantee propose a faster timeline than the four (4) year program deadline in Subgrantee's Application (Attachment 2), the Subgrantee shall be bound by that faster timeline commitment. If applicable, the extended Period of Performance concludes ten (10) years from the date upon which the LEO Subgrantee certifies that broadband is available to every location covered by the LEO capacity or services for the Project.

B. Extension of the Period of Performance

ACA may, in its sole discretion, and subject to NTIA review and prior approval, extend the Period of Performance by up to one (1) year if Subgrantee demonstrates to the Office that: (a) Subgrantee has a specific plan for use of the Grant Funds, with Project completion expected by a specific date not more than five (5) years after the Effective Date; (b) construction on the Project is underway; or (c) extenuating circumstances require an extension of time to allow the Project to be completed.

C. Closeout

Closeout will be conducted on the timelines and in the manner set forth in 2 C.F.R. § 200.344. The Office may request and Subgrantee shall provide supporting information as reasonably necessary to complete closeout consistent with the requirements of 2 C.F.R. § 200.344(b) and Attachment 10. Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 C.F.R. § 200.345, or (b) any of Subgrantee's obligations that survive closeout and remain in force during the Federal Interest Period as described in Section X. below, or the extended Period of Performance for a LEO Subgrant as described in Attachment 12, below.

V. Subgrantee's Responsibilities to Deploy Broadband Infrastructure and Provide Broadband Service

A. Scope of Work

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

B. Subgrantee Responsibilities

Subgrantee explicitly acknowledges the following obligations:

1. Standard of Work

Subgrantee shall ensure that all work associated with the Project is performed in a workmanlike fashion and in keeping with prevailing industry standards.

2. Subgrantee Responsibilities of Work

Notwithstanding any other provision of this Agreement, the Parties agree that Subgrantee is solely responsible for:

- Ensuring that Subgrantee meets all deadlines in approved plans and specifications;

- Monitoring the progress of the Project and all grant funded activities; however, the Office shall have the right to advise Subgrantee of any specific areas of concern and may impose specific award conditions or other corrective action as a result of monitoring findings, including but not limited to information from Subgrantee or subcontractors related to budgets, expenses, receipts, and financial reports;

- Inspecting the Project and all grant funded activities; however, the Office shall have a right at any time, (i) during regular business hours and on at least forty-eight (48) hours' notice and (ii) with representatives of Subgrantee present, to inspect work-in-progress, or test and analyze all work purchased or constructed in whole or in part using funds provided by the Office, including inspections by a professional engineer, to determine whether in the Office's opinion the work is being performed in accordance with the provision of this Agreement and in an equitable and nondiscriminatory manner;

- Reporting progress as set forth in this Agreement;

- Providing for required construction licensing, permits and adequate construction inspection so as to comply with all local, state, and federal laws;

- Promptly paying costs incurred for the Project, including but not limited to all grant funded activities, and, except as set forth in Attachments 9 and 9.a, ensuring that all parts of the Project remain encumbrance free and in good standing from a financial perspective;

- Monitoring and ensuring compliance of the Subgrantee's and lower tier subgrantee or subcontractor compliance with federal, state, and local requirements;

- Monitoring the Subgrantee's compliance with its approved LCSO plan; and,

- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.

3. Build America, Buy America

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

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

4. Environmental and Historic Preservation (EHP) Review

Subgrantee must comply with the requirements of all applicable federal, state, and local environmental statutes, laws, and standards, including as set forth in Attachment 5 to this Agreement.

5. Other Federal Construction Requirements

Subgrantee shall perform its obligations under this Agreement in accordance with the federal construction requirements set forth in Attachment 6.

6. Other State and Local Requirements

Subgrantee shall perform its obligations under this Agreement in accordance with the following State of Arizona requirements:

a. *No Israel Boycott*. Subgrantee certifies that it is not currently engaged in and agrees for the duration of this Agreement not to engage in a boycott of Israel as defined in A.R.S. § 35-393.

b. *No Uyghur Forced Labor*. In accordance with A.R.S. § 35-394, Subgrantee certifies and agrees that Subgrantee does not currently and shall not for the duration of this Agreement use (1) the forced labor of ethnic Uyghurs in the People's Republic of China, (2) any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China, and/or (3) any suppliers, subgrantees or sub-subgrantees that use the forced labor or any services or goods produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Subgrantee becomes aware during the term of this Agreement that Subgrantee is not in compliance with this Section, then Subgrantee shall notify the Office within five (5) business days after becoming aware of such noncompliance. If Subgrantee does not provide the Office with written certification that Subgrantee has remedied such noncompliance within one hundred eighty (180) calendar days after notifying the Office of such noncompliance, this Agreement shall be subject to termination, except that if the Agreement termination date occurs before the end of such one hundred eighty (180) day remedy period, this Agreement shall terminate on such Agreement termination date.

c. *Compliance with Immigration Laws and Regulations*. Pursuant to the provisions of A.R.S. § 41-4401, the Subgrantee warrants to the Office that the Subgrantee and all its subgrantees (at any tier) are in compliance with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. § 23-214(A). Subgrantee acknowledges that a breach of this warranty by the Subgrantee or any of its subgrantees is a material breach of this Agreement subject to penalties up to and including termination of this Agreement or any subagreement. The Office retains the legal right to inspect the papers of any employee of the Subgrantee or any lower tier subgrantees or subcontractors who work on this Projects or under this Agreement to ensure compliance with this warranty. The Office may conduct random verification of the employment records of the Subgrantee and any of its subgrantees to ensure compliance with this warranty. The Office will not consider the Subgrantee or any of its subgrantees in material breach of the foregoing warranty if Subgrantee and its lower tier subgrantees timely establish that they have complied with the employment verification provisions prescribed by 8 U.S.C. § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by A.R.S. § 23-214(A). The provisions of this Section must be included in any agreement the Subgrantee enters into with any and all of its lower tier subgrantees who provide services under this Agreement or any sub-agreement or contract. As used in this Section "services" are defined as furnishing labor, time, or effort in the State of Arizona by a contractors or subcontractor. Services include construction or maintenance of any structure, building, or transportation facility or improvement to real property.

d. *Cancellation*. Pursuant to the provisions of A.R.S. § 38-511, the ACA may cancel any agreement or subagreement, without penalty or obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the agreement on behalf of the ACA is, at any time while the agreement or any extension thereof is in effect, an employee of any other party to the agreement in any capacity or a consultant to any other party to the agreement with respect the subject matter of this Agreement.

e. *Financial obligations*. All financial obligations of Subgrantee under this Agreement (including without limitation letters of credit, bonds, and insurance) shall be provided by institutions licensed and/or authorized to provide such under Arizona law and shall be collectable by the ACA in Maricopa County, Arizona.

f. *Licensing*. Subgrantee will only utilize properly Arizona-licensed and certified professionals performing under this Agreement (including without limitation lower tier subgrantees, subgrantee design professionals) as required under Arizona law.

g. *Other Arizona Laws*. Subgrantee shall perform all of its obligations in conformance with applicable Arizona state, county and municipal laws codes, rules and regulations.

C. Notice of Completion and Final Inspection *[If applicable, based on subgrantee selection.]*

When (a) all construction has been completed, Subgrantee's architect/engineer has conducted its own final inspection, and any deficiencies have been corrected and approved in writing by the ACA, and (b) all Project Completion Criteria have been met, Subgrantee shall submit written certification ("Subgrantee Completion Certification") to the Office that the Project was placed into service, as defined in 47 U.S.C. § 1702(h)(4)(C) for last-mile broadband deployment projects, by the end of the Period of Performance and request that the Office certify completion of the Project and initiate closeout per Section IV.C., above.

Upon receipt of the Subgrantee's Completion Certification, the Office shall request Subgrantee to produce any data the Office requires to confirm the completion of the Project. After receipt of the requested information, the Office may, in its sole discretion, schedule a final inspection to be attended by representatives of the Office, Subgrantee's architect/engineer, and Subgrantee and any lower tier subgrantee(s) or subcontractor(s). The Office will provide NTIA reasonable advance notice of a final inspection so that a representative of NTIA may participate.

D. Acceptance or Rejection of Project.

Subgrantee's failure to meet any of the Project Completion Criteria or failure to meet any material obligation under this agreement shall be cause for rejection of the Project by the Office. A Project shall be considered accepted unless the Office notifies Subgrantee in writing (a) the Project is rejected, (b) specifies the items that, if modified or added, will cause the Project to be accepted, and (c) sets a timeline for resubmission of the notice of completion under this Section V.D. (which shall give Subgrantee at least ten (10) business days to resubmit a notice of completion). Subgrantee shall promptly remedy any defect which prevents the work performed on the Project from satisfying the Project Completion Criteria or meeting any material obligation under this Agreement.

E. Resubmitting Project.

A rejected Project shall be resubmitted within the time period specified in writing by the Office as set forth in Section V.D. above. Subgrantee shall provide an updated Subgrantee Completion Certification to the Office when Subgrantee resubmits the Project for acceptance. The Office shall review the resubmitted Project after receipt of the updated Subgrantee Completion Certification. A resubmitted Project shall be considered accepted unless either: (1) the Office notifies Subgrantee in writing that the resubmitted Project is rejected and specifies the items that, if modified or added, will cause the resubmitted Project to be accepted; or (2) the ACA Office notifies the Subgrantee in writing that the review will take a longer period of time, and specifies that time. The Parties shall repeat this process until the resubmitted Project is accepted, or the Office determines that Subgrantee has triggered the non-performance section of this Agreement.

F. Certification of Completion

The Office will provide to Subgrantee written certification of Project completion ("Certificate of Completion") after final acceptance of the Project.

VI. <u>Disbursement of Grant Funds</u>

A. Maximum Amount

Disbursements to Subgrantee are limited to the unpaid, obligated balance of the Grant Funds, and will not cover the agreed-upon match percentage, which is the Subgrantee's responsibility. The ACA shall have no obligation to pay Subgrantee any amount under this Agreement that exceeds the Grant Funds available to and received by the ACA. Subgrantee acknowledges and agrees that the ACA is only obligated to pay to Subgrantee in the amount of Grant Funds actually received by the ACA and approved for payment for the Project work and that the sole source of funding for payments to Subgrantee under this Agreement is payment to the ACA of the Grant Funds allocated to the Project. Payment to the ACA of the Grant Funds allocated to the Project is a condition precedent to the ACA's obligation to pay Subgrantee. Unless other sources of funding are disclosed herein, Subgrantee represents that, as of the Effective Date, it has no knowledge of any other federal, state, or local funding commitments for the Project or service area, and that it has not applied for – or, if applied for, will immediately withdraw – funding from any other federal, state, or local government body for the Project or service area.

B. Condition Precedent to Disbursement

The ACA shall not disburse any Grant Funds to Subgrantee until an officer of Subgrantee has made the attestations regarding cybersecurity and supply chain risk management specified in Attachment 7.

C. Schedule of Values

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

D. Project Schedule

Subgrantee shall develop and submit with Subgrantee's Application, or such other time as the Office shall require, a proposed Project Schedule, with benchmarks, historical and other cost or pricing data, milestones, and deployment deadlines, consistent with Attachment 4, for the purposes of managing the construction, installation, overall deployment, and any related reporting. Subgrantee and the Office shall work collaboratively to finalize the proposed Project Schedule within twenty (20) business days after the Effective Date of this Agreement, in such form and detail including categories of cost as required by the Office. Once approved in writing by the Office, the Project Schedule may not be changed without the prior written approval of the Office.

E. Disbursement Milestones

Grant Funds shall be disbursed in the amounts and based upon the Office's determination that Subgrantee has achieved the milestones set forth in Attachment 4 and met the other conditions of this Agreement.

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

F. Disbursement Requests

Subgrantee must submit with each request for disbursement:

1. Certification that all elements of the relevant milestone have been met as set forth in Attachment 4.a., and 4.b., as applicable; and

2. A report showing the amount of Matching Funds expended in connection with the provision of qualifying broadband to the locations addressed by the request for disbursement; and

3. A report demonstrating Project costs by category consistent with the approved Project Schedule and budget specified in the Application, in a format provided by or otherwise approved in writing by the ACA.

4. Subgrantee shall submit certified disbursement requests within forty-five (45) calendar days of reaching each milestone stated in Attachment 4. The Subgrantee also may be required to submit additional evidence of costs, subscriptions, and BSLs, as well as itemized receipts or invoices for payment, releases, satisfactions, or other signed statements or forms as the Office may require, before or after a disbursement request to validate the actual costs incurred and work performed under this Agreement. The Office will provide the

Subgrantee with a Disbursement Request Form, which shall constitute the manner whereby requests for payments are made to the Office by the Subgrantee.

G. Disbursement Procedures

Grant Funds shall be disbursed to the Subgrantee via ACH transfer or check, provided that Subgrantee has submitted to ACA a completed vendor substitute W-9 form and, in the case of ACH transfer, an ACH authorization form.

The acceptance of a disbursement request by the Office shall not constitute acceptance of any work performed or deliverables provided under this Agreement. Subgrantee agrees that, while reimbursement by the ACA will occur as milestones are achieved and reimbursement for work is properly requested pursuant and subject to the other terms of this Agreement, ultimate acceptance by the Office of all work will need to be verified pursuant to the process detailed in Section V. of this Agreement. All payments will also be consistent with all local, state and federal laws. Subject to Section VIII.A., eligible expenditures may not be incurred prior to the Effective Date or subsequent to a grant termination date. Payments are further subject to the availability of funds.

H. Record Retention and Auditing

All disbursement requests are subject to audit for five (5) years from date of the Office's approval of Subgrantee's Project Completion Report.

VII. Matching Funds

Subgrantee shall provide Matching Funds in the amount of [____], as described in the approved Project plan and budget specified in the Application. Payments made under this Agreement shall be proportional to the amount of match committed by the Subgrantee, and this match percentage will apply to each payment. Each match submission shall include a legally binding attestation.

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

Subgrantee shall have secured the full amount of Matching Funds prior to the Effective Date. Subgrantee shall provide evidence, reasonably satisfactory to the Office, that the full amount of Matching Funds is available to Subgrantee for use in connection with the Project. Subgrantee shall provide a listing of the source of such funds, and where the Subgrantee is not the source of the funds, it shall provide a letter from the source of the funds confirming the availability of the funds and setting forth any special conditions or restrictions on their use. Funds from other federal programs (including funds from the FCC's Universal Service Fund programs) may not be used as Matching Funds.

Matching Funds may be provided in the form of either cash or in-kind contributions, so long as such contributions are made consistent with the requirements set forth in 2 C.F.R. Part 200. The Office may at any time verify Matching Funds, including but not limited to comparing facility in-kind matches with current mortgage statements or rental rates, or time keeping for services spent on BEAD Program work. All matching funds must meet the requirements for reasonable allowable costs under this Agreement.

If Subgrantee fails to spend or fails to document the expenditure of Award Funds on approved Project expenses, within the specified timeframe, Subgrantee agrees to return to ACA any such funds. Those funds, regardless of source, shall be returned to ACA, upon request, within thirty (30) calendar days.

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

VIII. Permissible Costs; Use of Award Funds

A. Permissible Uses of Funds

The ACA will reimburse the Subgrantee's allowable actual costs, as further detailed in this Agreement, not exceeding the Grant Funds. Allowable costs are determined in accordance with the cost principles identified in 2 C.F.R. Part 200, subject to any further NOFO, UGPN or other BEAD Program requirements (*e.g.*, profits, fees, or other incremental charges above actual cost, including bonuses, are not allowable). The ACA will reimburse Subgrantee for the Federal share of properly documented allowable costs after review and approval as noted above. However, any costs incurred by Subgrantee prior to the Effective Date shall not be reimbursed absent specific written allowance from the ACA of pre-award costs as provided for below. The Subgrantee's costs for work performed after the Period of Performance, or after any performance period end date for a respective milestone, shall not be reimbursable. The ACA will only reimburse allowable costs described in this Agreement if those costs are actually incurred in performance of the work, and (a.) permitted to be reimbursed under the terms of this Agreement; (b.) reasonable and necessary to accomplish the work and for the goods and services provided; and (c.) equal to the actual net cost to Subgrantee (*i.e.,* the price paid minus any items of value received by Subgrantee that reduce the cost actually incurred).

As authorized by NTIA, and pursuant to exceptions of 2 C.F.R. §§ 200.333 and 200.201(b) approved by OMB, the Office has elected to make this award as a fixed amount subaward and additionally, as allowed by NTIA, to require the Subgrantee to submit evidence of costs. Cost overruns shall be borne by the Subgrantee. The Subgrantee must report its expenses and use of Matching Funds on a monthly basis using Generally Accepted Accounting Principles or other standard accounting practices and monitor the relative proportion of costs across key spending areas.

Award Funds shall be used solely for allowable reimbursable costs under the BEAD NOFO and related NTIA guidance. The use of Award Funds will adhere to the terms of this Agreement and the authorities identified in Section II. of this Agreement. Certain pre-award costs (incurred on or after September 4, 2025, and prior to the Effective Date) ("pre-award costs"), may be reimbursed based on the Office's determinations that such costs were incurred directly pursuant to the negotiation and in anticipation of this

Agreement and Subgrantee subsequently has met the milestones (Attachment 4) and other conditions set forth herein. Subgrantee shall not separately submit pre-award costs and must first obtain ACA's determination that such costs were necessary for efficient and timely performance of the Project prior to ACA disbursing Grant Funds for a specific milestone. Pre-award costs will be allowable only to the extent that they would have been allowed if incurred after the Effective Date of this award and are subject to the written approval of NTIA. The ACA reserves the right to perform additional reviews on all disbursement milestones listed in Attachment 4, and Subgrantee may be required to provide additional documentation to substantiate the eligibility of any pre-award costs, including whether such costs are eligible for reimbursement under the pre-implementation activities set forth in Section V. of Attachment 5 to this Agreement, or as otherwise determined by the ACA.

The Parties understand and agree that the ACA may not reimburse Subgrantee for costs that the Federal Program Officer determines are not eligible for reimbursement pursuant to Arizona's BEAD Program award. The Parties agree to work in good faith to ensure that awards determined by the Office to be reimbursable under this Agreement are found reimbursable by the Federal Program Officer.

Subgrantee acknowledges that for a cost to be reimbursable under this agreement, it must "be reasonable, necessary, allocable, and allowable for the proposed Project or other eligible activity and conform to generally accepted accounting principles." (BEAD NOFO at 81, § V.H.1) and is subject to 2 C.F.R. Part 200. Subgrantee further acknowledges that while the federal cost principles do not govern fixed amount subawards, the Office will look to those principles as a guide when reviewing disbursement requests.

If the Office determines that the actual costs of the Project are less than the Grant Funds made available to Subgrantee through cost savings or otherwise, after consultation with the Subgrantee and an opportunity to respond, the Office may reduce the amount of funding accordingly and Subgrantee shall refund to the Office any unexpended funds.

Subgrantee shall be responsible for all Project costs that exceed the amount of the Award Funds. In the event the available Award Funds are insufficient to satisfy all Project costs, Subgrantee shall nevertheless be responsible for fulfilling all of its obligations under this Agreement.

Subgrantee is responsible for reimbursing the ACA for any Grant Funds that are determined by the Office to be ineligible, misused, misappropriated, or inadequately documented under this Agreement. If the Office determines that any provision of this Agreement has been breached by Subgrantee, in addition to any other remedies available under this Agreement, the ACA may require and be entitled to reimbursement of any or all such Grant Funds. Any reimbursement required by the Office, with or without termination of this Agreement, shall be due within thirty (30) calendar days after giving written notice to the Subgrantee. The ACA also reserves the right to recover such

Grant Funds by any other legal means, including litigation and drawing the funds in any letter of credit, performance or payment bond. The Subgrantee must indemnify, defend and hold harmless the ACA for all suits, actions, claims and the reasonable attorneys' fees and legal expenses incurred in recovering such funds, irrespective of whether the funds are recovered.

B. Prohibited Uses of Award Funds

In addition to any other use of Award Funds prohibited or made ineligible by state or federal law, regulation, or policy, the following are prohibited as uses of Award Funds (whether by Subgrantee or Subgrantee's lower tier subgrantees or subcontractors), and are not reimbursable as an allowable cost under this Agreement:

1. Prohibition Against Payment of Bonus or Commissions

Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.

2. Political Activity

Any partisan political activity or to further the election or defeat of any candidate for public office or influence the approval or defeat of any ballot issue.

3. Prohibited Equipment and Services

Purchase or support of (a) any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)), and (b) fiber optic cable and optical transmission equipment manufactured in the People's Republic of China.

4. Incremental Profits and Fees

A profit, fee, or other incremental charge above Subgrantee's actual cost. The Parties expressly acknowledge that this prohibition does not extend to program income, which Subgrantee may retain without restriction, including retaining program income for profit.

5. Collective Bargaining

Direct or indirect support of or opposition to collective bargaining.

IX. <u>Service Obligations</u>

A. Broadband Service Obligations

Subgrantee agrees in connection with the provision of any Broadband Service over the Project network to provide access to Broadband Service to each customer served by the Project that desires broadband service on terms and conditions that are reasonable, non-discriminatory, and meeting BEAD Program commitments to consumer and taxpayer protections. Subgrantee shall offer the proposed minimum download and minimum upload speeds set forth in the Application, and in no event less than 100 Mbps download and 20 Mbps upload with latency of less than or equal to 100 milliseconds, measured as specified in the BEAD NOFO and BEAD RPN.

B. Other Obligations

1. Middle Mile Interconnection [If applicable, based on subgrantee selection.]

To the extent Subgrantee is receiving Award Funds to deploy Middle Mile Infrastructure, Subgrantee shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. Subgrantee shall allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of Subgrantee's Middle Mile Infrastructure to a requesting party's facilities for the exchange of traffic. In addition, Subgrantee shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Subgrantee shall negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection.

2. Public Notice and Awareness Campaign

Subgrantee shall submit written acknowledgement to ACA within ten (10) calendar days after the Effective Date recognizing the NTIA Obligations for Subgrantees Deploying Network Projects. Subgrantee shall provide public notice and carry out public awareness campaigns in its service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers.

3. Federal Labor and Employment Law Compliance

By signing this Agreement, Subgrantee certifies to ACA that the Subgrantee has a demonstrated record of past compliance and will maintain compliance with all applicable Federal labor and employment laws.

4. Cybersecurity and Supply Chain Risk Management

Subgrantee shall, to the extent it relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), obtain from that third party network provider the attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Attachment 7.

5. Other Federal Obligations

Subgrantee shall fulfill the other federal obligations set forth in Attachment 8. Further, the DOC ST&Cs are incorporated into every NTIA grant award, including this Agreement. Subgrantee thus shall comply, without limitation, with the provisions regarding Section F. (CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARD AND PROCUREMENT ACTIONS) and Section G. (NATIONAL POLICY REQUIREMENTS) thereof, unless otherwise specified in an authority with priority as specified in Section II. above.

X. Subgrantee Obligations during the Federal Interest Period for non-LEO Broadband Infrastructure Subgrants and Extended Period of Performance for LEO Capacity Subgrants

Subgrantee explicitly acknowledges that the obligations described in this Section X. survive beyond the Period of Performance and the closeout of this award and remain in effect during the entirety of the Federal Interest Period (or extended Period of Performance for LEO Capacity Subgrants, if applicable), as enforceable post-closeout obligations. The full “duration of this Agreement” shall thus encompass both the Period of Performance and the Federal Interest Period (or extended Period of Performance for LEO Capacity Subgrants).

A. Property Standards

For the purposes of this Agreement, the useful life of Project Property shall coincide with the Federal Interest Period. Title to Project Property vests in Subgrantee upon acquisition, subject to the exception and clarifications set forth in Attachment 9, which themselves remain in effect for the duration of the Federal Interest Period.

B. Service Availability

Subgrantee shall be capable of performing a standard installation of Qualifying Broadband Service to an End User, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted. Where outside-plant construction is required to reach a specific BSL, Subgrantee will provide an installation schedule consistent with the approved Project Schedule; the 10-business-day standard applies once plant is in place for a standard installation.

C. Eligible Subscribers

The term “Eligible Subscriber” means any household seeking to subscribe to broadband internet access service that is eligible for the FCC’s Lifeline Program. 47 C.F.R. part 54, Subpart E et seq. (Universal Service Support for Low-Income Consumers).

D. Low-Cost Service Option

Subgrantee must offer a LCSO to Eligible Subscribers as set forth in the Subgrantee's Application.

E. Conduit Access Points. *[If applicable, based on subgrantee selection.]*

Any work that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals. Where necessary, conduit access points may be placed at reasonable, engineering-feasible intervals considering terrain, ROW constraints, and safety, as shown in approved plans.

F. Reporting

Subgrantee shall file reports with the Office, NIST, and/or NTIA as specified in Attachment 10.

G. Wholesale Obligation on Default

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

H. Letter of Credit, Performance and Payment Bond, and Certificate of Deposit Requirements *[If applicable, based on subgrantee selection.]*

Prior to entering into this Agreement, upon request by the Office, the Subgrantee shall have obtained an irrevocable standby letter of credit, a performance and/or payment bond(s), or certificate of deposit using the model(s) provided by the Office, equal to or exceeding 25% of the total award amount, or as otherwise required by the Office consistent with BEAD Program requirements. The Subgrantee must retain the letter of credit or bond(s) until the final milestone in the disbursement is achieved and confirmed complete by the Office. Any letter of credit shall include a legal opinion, satisfactory to the Office, addressing bankruptcy considerations. The Office will, in its sole discretion, and subject to NTIA review and prior approval, consider requests by the Subgrantee to have a letter of credit, performance and/or payment bond, or certificate of deposit obligation reduced with completion of deployment milestones.

XI. Reporting

Subgrantee will adhere to the conditions and regulations for reporting, as outlined in this Agreement, and ACA's BEAD Reporting Guidelines and Compliance and Monitoring Guidelines.

Subgrantee shall file reports with the Office, NIST, and/or NTIA as specified in Attachment 10. Subgrantee acknowledges that the reporting requirements set forth in this Agreement (including Attachment 10) may be updated from time to time, and Subgrantee shall comply with any other reasonable reporting requirements determined by the Office to meet the reporting requirements established by the Assistant Secretary and certify that the information in the report is accurate. Subgrantee further acknowledges that the Office must make all Subgrantee reports available to NTIA upon request.

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

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

XII. Recordkeeping and Audits

The Office and Subgrantee shall support BEAD Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the DOC and external program evaluators.

A. Recordkeeping

Subgrantee agrees to keep financial records, including budgets, expenses, receipts, financial reports, supporting documents, statistical records, and all other records pertinent to Award Funds, the Project, and this Agreement and make them available to the ACA upon request and for not less than a period of five (5) years after the Closeout Date. This should include all Subgrantee network designs, diagrams, Project costs, build-out timelines and milestones for Project implementation, and capital investment schedules submitted as a part of the application process. Subgrantee further agrees to keep and maintain the same records for facilities the Subgrantee constructs using non-BEAD funding (or non-BEAD match funding) that are related to the time or place of performance of the Project work.

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

B. Audits

Subgrantees must maintain adequate financial systems and financial records to accurately account for awarded funds. The ACA, NTIA, the DOC Office of Inspector General, or another authorized federal agency may conduct an audit of an award at any time.

1. Non-Federal Entities

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

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

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

2. Other Entities, including For-Profit Entities

If Subgrantee is not subject to the provisions of Subpart F of 2 C.F.R. Part 200, it must submit to the Federal Program Officer either:

(i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or

(ii) a Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

The requirements of this Section shall apply to Subgrantee and Subgrantee's lower tier subgrantees and subcontractors. Subgrantee shall require and cause any lower tier subgrantees or subcontractors used in connection with this Agreement to be subject to such terms and provisions.

Audits are to be performed annually. Within the earlier of thirty (30) calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Federal Program Officer. In accordance with 2 C.F.R. § 200.425, Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Federal Program Officer.

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

C. Protected and Proprietary Information

Notwithstanding any other provision of this Agreement, Subgrantee and the ACA agree that all records related to the Arizona BEAD Program are public records as provided by the Arizona Public Records Law, A.R.S. § 39-121 et seq., subject to exceptions to production related thereto including without limitation trade secret and proprietary information; provided, however, that the Subgrantee provide an adequate restrictive legend on each page and for all information that it deems protected and proprietary.

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

XIII. <u>Representations and Warranties</u>

Subgrantee represents and warrants:

i. it is authorized to do business in the State of Arizona and properly licensed in compliance with all applicable local, state and federal laws to perform all work included within its Application;

ii. it is registered and will maintain registration through the Federal Interest Period with the System for Award Management (SAM), and confirms that it has provided its correct Unique Entity Identifier (UEI);

iii. the making and performance of this Agreement and each and every other document required to be delivered hereunder are within Subgrantee's powers, have been duly authorized by all necessary corporate action, have received all necessary approvals, valid and proper authorizations and endorsements of certifications, and do not contravene any law, regulation or decree or any contractual restriction;

iv. this Agreement and each and every other document required to be delivered hereunder, when duly executed and delivered, will be the legal and binding obligations of Subgrantee enforceable in accordance with their respective terms;

v. to the best of Subgrantee's knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the financial condition or operation of Subgrantee;

vi. the Project developed hereunder shall be free from defects in design and implementation, and shall continue to meet the specifications agreed to in this Agreement until the Closeout Date; Until the Closeout Date, Subgrantee shall, without additional charge to the ACA, correct any such defects and make such additions, modifications, or adjustments to the Project as may be necessary to keep the Project operating as specified in its Application;

vii. the specific operating performance characteristics of the services developed and/or installed hereunder as stated in its Application and any approved material changes to the Project, if applicable; and

viii. to the best of its knowledge and belief, except to the extent already disclosed to the Office, there are no facts or circumstances that could give rise to a personal or organizational conflict of interest and further that the Subgrantee and agents or representatives have no interest and will not acquire any direct or indirect interest that would conflict in any manner or degree with the Project work; The Subgrantee agrees that, if after signing this Agreement, the Subgrantee discovers or is made aware of a conflict of interest or potential conflict of interest, the Subgrantee will immediately and fully disclose such interest in writing to the Office; The Office reserves the right to make a final determination regarding the existence of conflicts of interest, and the Subgrantee agrees to abide by Office's decision.

XIV. Non-Performance, Termination, and Other Remedies

Non-performance, termination, and other remedies for non-performance will be handled consistent with the authorities set forth in Section II. of this Agreement, to include without limitation 2 C.F.R. § 200.339 and A.R.S. § 38-511. When a determination or decision regarding non-performance is to be made, the Office will make such determination or decision by exercising good faith and reasonable discretion.

A. Non-Performance

Non-performance occurs when, after notice and cure period provided by the Office, the Subgrantee fails to comply with any requirements under the U.S. Constitution, applicable federal statutes (to include 47 U.S.C. § 1702) and regulations, Specific Award Conditions applicable to Arizona's BEAD Program award, GT&Cs for the BEAD Program, BEAD NOFO, BEAD RPN, DOC ST&Cs, Arizona BEAD Program Initial Proposal, ACA Uniform Terms and Conditions (May 11, 2018), ACA Special Terms and Conditions - Insurance Requirements for Vendors (May 8, 2018), this Agreement, and Subgrantee's Application as accepted by the Office.

Specific examples of non-performance include, but are not limited to:

1. Failure to comply with the low-cost broadband service option requirement pursuant to IIJA § 60102(h)(4)(B) in the Subgrantee's Application;

2. Failure to meet other applicable Federal or Arizona statutory obligations;

3. Wasteful, fraudulent, or abusive expenditure of Award Funds;

4. Failure to provide Broadband Service at the minimum connection speed and cost at the rate as set forth in the Application;

5. Failure to provide financial and performance information and data as required by Section XI. of this Agreement;

6. Material deviation from the approved Project without prior authorization from the Office, such as materially altering Project scope, location, or technology; or

7. Non-performance resulting in failure to deliver Project outcomes.

Notwithstanding any provision of this Agreement to the contrary, the Office, in its sole discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State of Arizona, or if the Subgrantee is suspended, proposed for debarment, debarred, or declared ineligible for a contract or grant award by a federal or state agency.

B. Non-Performance Administrative Sanctions, Damages, Penalties

1. General Authority

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

2. Additional Conditions

Administrative sanctions or damages for non-performance by Subgrantee may include the imposition of additional conditions, as described in 2 C.F.R. § 200.208.

3. Remedies when Additional Conditions are Insufficient

If the Office or NTIA determines that non-performance cannot be remedied by imposing additional conditions, the ACA or NTIA may take one or more of the following actions, as appropriate in the circumstances:

(a) Temporarily withhold cash payments pending correction of the deficiency by Subgrantee or more severe enforcement action by the ACA or NTIA;

(b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance;

(c) Wholly or partly suspend or terminate this Agreement;

(d) In the case where the funded network fails to meet the required speed or latency network standards the Subgrantee will be required to improve the network until the minimum performance standards are met or up to the entire award will be forfeited pursuant to Section XIV.B.4.;

(e) Recommend the initiation of suspension or debarment proceedings by the DOC as authorized under 2 C.F.R. part 180 and implementing regulations;

(f) Withhold further Arizona BEAD Program awards;

(g) Submit a claim on any applicable bonds and/or collect from any letters of credit or certificates of deposit; and

(h) Take other legal or equitable remedies that may be available, that may be available at law or equity.

4. Clawback

If the Office or NTIA determine that Subgrantee has failed to comply with any material requirement under applicable law or this Agreement, including but not limited to Section V., or any milestone in Attachment 4, and Subgrantee cannot or will not remedy such failure, the Office may require full or partial withholding, forfeiture, or recoupment for cause, at the sole discretion of the Office. Without limiting its clawback rights, where the Subgrantee has failed to reach a BSL, or cannot or will not provide Qualifying Broadband Service, the Office reserves the right to claw back funds allocable for such service to the BSL(s). The amount of the clawback will be determined by the Office based on the estimated costs attributable for service to such BSL(s), or cost-per-BSL. If the Subgrantee fails to timely return the Grant Funds sought by the Office, the Office will initiate collection efforts which include, but are not limited to, withdrawing funds from the letter of credit, performance and payment bond(s), which amount(s) shall accrue interest if not paid within thirty (30) calendar days of the request for repayment by the Office.

If Subgrantee fails to provide the minimum connection speed and cost as described in the Application, Subgrantee shall forfeit any Grant Funds, up to the entire amount received through the Arizona BEAD Program. The Office will use its discretion to determine the amount forfeited. Without limiting any other rights under this Agreement to sanctions, damages, or penalties, if Subgrantee is required to forfeit Grant Funds under this provision, Subgrantee is liable for up to the amounts disbursed up to the entire amount received through the BEAD Program, plus interest. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid. The number of subscribers that subscribe to Broadband Service offered by Subgrantee in the Project area shall not be a measure of performance under this Agreement for the purposes of this provision.

The Parties acknowledge that NTIA may pursue clawback of funds directly from the ACA if the ACA fails to ensure Subgrantee accountability as required by applicable law. To the extent NTIA successfully pursues clawback from the ACA on these grounds, Subgrantee shall reimburse the ACA in an amount equal to the clawback, including being obligated to indemnify, defend, and hold harmless ACA for any costs, expenses, collection fees, attorneys' fees or other damages as a result of Subgrantees' failure to comply with the terms of this Agreement. The extent of this duty to indemnify, defend and hold ACA harmless for all costs associated with a material default of this nature by the Subgrantee shall be upheld to the fullest extent allowed by Arizona and federal law. Subgrantee agrees, acknowledges and understands that any default under this provision shall require payment of such costs and expenses, and shall be due and payable upon written demand by ACA. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid.

5. Reversion

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

6. Make Whole and Cost to Complete

Notwithstanding any other provision of this Agreement, to the extent Subgrantee fails to complete the Project, Subgrantee may be required to reimburse the ACA the actual cost to finish the Project. The actual cost to finish the Project shall be determined by the Office in its sole discretion. If the Office determines that Subgrantee has made a good faith effort to complete the Project, the Office, in its sole discretion, will not require Subgrantee to reimburse the ACA an amount greater than the remaining Arizona BEAD Program cost per End User as set forth in the Application.

Subgrantee shall be obligated to indemnify, defend, and hold harmless ACA for any costs, expenses, collection fees, attorneys' fees or other damages as a result of Subgrantees' failure to comply with the terms of its grant award. The extent of this duty to indemnify, defend and hold ACA harmless for all such costs shall be upheld to the extent allowed by Arizona and federal law. Subgrantee agrees, acknowledges and understands that any default under this provision shall require payment of these costs and expenses, and shall be due and payable upon written demand by ACA. Interest shall accrue on any amount that becomes due pursuant to this provision at a rate of 1.5% per month or fraction thereof from the date requested until paid.

7. Indemnification

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

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

C. Termination for Convenience

The ACA may terminate this Agreement, in whole or in part, at any time it determines that such termination is in the best interest of the ACA or the State of Arizona. This Agreement will terminate on the date specified in the termination notice. Within sixty (60) business days after such termination for convenience, unless prescribed otherwise by the Office, the Subgrantee may submit a termination settlement proposal to the ACA for reasonable and documented allowable costs for which the Subgrantee has not been previously reimbursed. The cost principles and cost reimbursement procedures under 2 C.F.R. Part 200 shall apply to any such termination for convenience.

XV. Other Provisions

A. Assignment or Transfer

Subgrantee's rights and obligations under this Agreement may not be assigned or transferred without the prior, written consent of the ACA. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subgrantee's rights and obligations approved by the ACA shall be subject to the provisions of this Agreement. For purposes of this Agreement, an assignment or transfer includes, but is not limited to, a merger, consolidation, reorganization, or similar transactions, or the sale, lease, licensing or other disposition of all or substantially all of the assets or business of the Subgrantee. Any direct or indirect change of control of the Subgrantee or any subcontracting arrangement that relates to this Agreement shall be deemed an assignment or transfer. Notwithstanding anything to the contrary routine financing shall not constitute a change of control unless and until a transactions results in any person or group acquiring the right to control the management and policies of the Subgrantee or parent company.

The Parties acknowledge that if the ACA, in its sole discretion, conditionally approves a proposed assignment or transfer, it will exercise reasonable efforts to obtain any required prior written approval from NTIA, and that such approval may require a novation consistent with federal requirements. Additionally, if licensing or other terms require third-party approval (*e.g.*, FCC, or state agencies), any assignment or transfer shall be conditioned on securing these approvals. The Subgrantee shall be responsible for obtaining all necessary third-party approvals and shall bear all costs and expenses associated therewith.

The Subgrantee must provide no less than thirty (30) calendar days advance notice to the Office of any proposed assignment or transfer, or transaction anticipated to result in a direct or indirect change of control of the Subgrantee. The Office may request reasonably supporting information for granting conditional consent and obtaining advance NTIA approval. Any agreement to assign, transfer, or subcontract any portion of the Project work must mandate compliance with all covenants, obligations, and agreements by the Subgrantee hereunder, and the Subgrantee shall continue to be bound by such covenants, obligations, and agreements.

The Subgrantee shall not create, incur, or suffer, any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest in the Project real estate, equipment, or other property funded by this Agreement, other than ACA-approved encumbrances or encumbrances and as expressly approved by NTIA in accordance with Attachment 9 of this Agreement.

B. Amendments and Modifications

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

C. Conflicts of Interest

No officer or employee of Subgrantee or Office will have any personal pecuniary gain or interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project that is the subject matter of this Agreement. The Subgrantee will promptly notify the Office should it become aware of any violation or attempt at circumventing the requirements of this Section.

D. Governing Law

This Agreement shall be governed under the laws of the State of Arizona. Any dispute arising between the Parties shall only be brought pursuant to Attachment 11, “Disputes.” Nothing in this Agreement is intended to waive, nor shall it act as a waiver of, the sovereign immunity of the State of Arizona. To the extent there is no applicable state law, the substantive law of federal procurement and non-procurement actions shall apply.

E. Force Majeure

Neither the ACA nor Subgrantee shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out unforeseeable causes beyond the Parties’ reasonable control. Such causes may include Acts of God or of a public enemy, fires, floods, epidemics, pandemics, and quarantine restrictions. The Parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under this Agreement. Typical weather patterns, except severe weather events or emergencies declared by the Federal Government, the State of Arizona, or a county or local authority, are foreseeable and shall not constitute cause pursuant to this paragraph. The Office shall determine whether a delay or failure results from an Act of God or force majeure based on its review of all facts and circumstances.

F. Notice

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

Any notice from the Subgrantee requesting a modification or amendment of this Agreement must be provided in writing and delivered to the ACA by certified mail, registered mail, or by courier service providing proof of delivery, which are deemed received upon actual delivery as evidenced by a signed receipt or delivery confirmation. Notice by email alone shall not constitute effective notice of the Subgrantee's requested modification or amendment. The notice must include a detailed description of the relevant provisions(s) of this Agreement, events, date(s) of occurrence(s), issue(s), and documentation supporting a requested modification or amendment. A copy of the notice must be contemporaneously submitted to the designated broadband e-mail address shown immediately below. Failure to comply with these notice and delivery requirements may result in a waiver or rejection of a modification or amendment, unless expressly waived in writing by the ACA.

If to the ACA/Office, then to:

Arizona Commerce Authority
Attention: State Broadband Director
100 N. 7th Ave., Suite 400
Phoenix, AZ 85007
Phone: [Phone]
E-mail: [Designated BEAD Broadband E-mail]

With a copy
to:

Arizona Commerce
Authority Attention:
General Counsel
100 N. 7th Ave., Suite 400
Phoenix, AZ 85007
Phone: [Phone]
E-mail: [Designated BEAD Broadband E-mail]

If to Subgrantee, then to:

[Name]
Attention:
[Address 1]
[Address 2]
Phone: [Phone]
E-mail: [E-mail]

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

G. Severability

If any provision under this Agreement or its application to any person or circumstances is held invalid by any court of competent jurisdiction, such invalidity shall not affect any other provision of this Agreement which can be given effect without the invalid provision.

H. Successors and Assigns

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

I. Waivers

No conditions or provisions of this Agreement may be waived unless approved by the ACA and Subgrantee, in writing.

J. Terms and Conditions

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

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

ARIZONA COMMERCE AUTHORITY	**[SUBGRANTEE]**
By: ______________________	By: ______________________
State Broadband Director Arizona Commerce Authority	[Signatory] [Title] [Subgrantee]
Date:__________________	Date:__________________

Attachment 1 – Project Description

Item	Requirement	Data
1	Subrecipient/Subgrantee name[1]	[]
2	Subrecipient's/Subgrantee's unique entity identifier	[]
3	Federal Award Identification Number (FAIN);	[INSERT NUMBER]
4	Federal Award Date[2]	[INSERT DATE]
5	Subaward Period of Performance Start and End Date	[]
6	Subaward Budget Period Start and End Date	[]
7	Amount of Federal Grant Funds Obligated by this action by the pass-through entity to the Subrecipient/Subgrantee	[]
8	Total Amount of Federal Grant Funds Obligated to the Subrecipient/ Subgrantee by the pass-through entity including the current financial Obligation	[]
9	Total Amount of the Federal Award committed to the Subrecipient/ Subgrantee by the pass-through Entity	[]
10	Federal Award Project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	BEAD for Arizona
11	Name of federal awarding agency	U.S. Department of Commerce
	Name of pass-through entity	Arizona Commerce Authority
	Contact information for awarding official of the Pass-through entity	State Broadband Director Arizona Commerce Authority 100 N. 7th Ave., Suite 400 Phoenix, AZ 85007
12	Assistance Listings number and Title[3]	11.035 - Broadband Equity, Access, and Deployment Program
13	Identification of whether the award is R&D	Award is not R&D
14	Indirect cost rate for the Federal Award (including if the de minimis rate is charged) per 2 C.F.R. § 200.414.	[]

[1] Must match the name associated with its unique entity identifier.
[2] The date when the Federal Award to Arizona was signed by the authorized official of the federal awarding agency (*see* 2 C.F.R. § 200.201).
[3] If other federal awards are implicated, Arizona Commerce Authority must identify the dollar amount made available under each federal award and the Assistance Listings Number at time of disbursement.

Attachment 2 - Approved Application

Attachment 3 - Project Completion Criteria

1. A "Project Completion Report" signed by an officer of Subgrantee must include:

a. An attestation by an officer of Subgrantee that the Project as described in the Application has been completed in all material respects, to include, but not limited to:

(1) Qualifying Broadband Service

(a) Subgrantee has deployed a network capable of providing Qualifying Broadband Service to all End Users at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN; or

(b) LEO Subgrantee has initiated broadband service capable of providing Qualifying Broadband Service to all End Users in the Project area at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN;

(2) Installation/Initiation

(a) Subgrantee is capable of performing a standard installation of Qualifying Broadband Service at all End Users, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted; or

(b) LEO Subgrantee is capable of initiating Qualifying Broadband Service to all End Users in the Project area, at a standard charge, at the speed and latency standards specified in the Application within ten (10) business days of a request to any covered BSLs in the Project area, with no charges or delays attributable to the extension of the service.

(3) Subgrantee is capable of providing Qualifying Broadband Service to all CAIs included in the Project area at the speed and latency standards specified in the Application, the BEAD NOFO, and BEAD RPN; and

(4) Subgrantee has provided all Matching Funds identified in Subgrantee's Application, this Agreement, or otherwise.

b. A technical report sufficient to demonstrate, in the Office's sole discretion, that the Project is capable of delivering broadband internet access service to all End Users and CAIs at the speed and latency standards specified in the Application, the BEAD NOFO, and the BEAD RPN.

2. To the extent it relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), attestations regarding cybersecurity and supply chain risk management practices substantially in the form set forth in Attachment 7.

Attachment 4.a. - Subgrantee Disbursement Milestones

Milestone	**Disbursement** (percent of Grant Funds)	**Maximum Cumulative Disbursement** (percent of Grant Funds)
Administrative Set-Up, including Office approval of: • Project plan and budget, Project Schedule, and Schedule of Values as described herein; • Permitting plans detailing all anticipated permits required to complete the Project, including their anticipated submission and approval and completion dates; and • Proof of BABA-compliant equipment agreements, where applicable.	5%	5%
Office approval of certification from Subgrantee architect/engineer that Project site is mobilized.	15%	20%
Provider certification and Office approval of evidence, as required herein, that Subgrantee has reached:		
10% of Project BSLs	20%	40%
35% of Project BSLs	15%	55%
60% of Project BSLs	15%	70%
85% of Project BSLs	15%	85%
100% of Project BSLs and the Office's approval of Subgrantee's Project Completion Report, which includes an approved Certificate of Completion.	15%	100%

For the purposes of this Agreement, and consistent with the Federal Communications Commission's Broadband Data Collection, and based upon the approved detailed Project budget, Subgrantee may certify that it has "reached" a location when Subgrantee is capable of performing a standard installation of Qualifying Broadband Service, at a standard installation charge, at such location, within ten (10) business days after the date on which a service request is submitted. *See* 47 U.S.C. §§ 642(b)(2)(A)(i)(I)-(II); 47 C.F.R. § 1.7001(a)(19). Subgrantee may not require subscribers to make modification to their own or surrounding property or charge fees for the same in connection with the installation of broadband services funded by the BEAD Program. Payment (but not Matching Funds) is subject to 15% retainage as calculated in the "Maximum Cumulative Disbursement (percent of Grant Funds)" in the Milestone table set forth above in this Attachment 4.a.

The ACA will perform a technical and/or compliance review on at least one of the five milestones disbursement pertaining to Project BSLs. The ACA reserves the right to perform additional reviews on all disbursement milestone points listed in this Attachment 4.a. and withhold payments for a specific disbursement milestone until a review is completed. Noncompliance with monitoring requests may result in a delay, pause, and/or recoupment in funding to the BEAD Subgrantee.

Attachment 4.b. - LEO Subgrantee Disbursement Milestones

[See Attachment 12.]

Milestone	Disbursement (percent of Grant Funds)	Maximum Cumulative Disbursement (percent of Grant Funds)
Phase 1: Pre-Construction & Service Availability (First 50%)		
1. Administrative Set-Up, including Office approval of: Project plan and budget, Project Schedule, permitting plans, and proof of BABA-compliant equipment agreements, where applicable.	5%	5%
2. Certification of Service Availability throughout the entire Project area.	20%	25%
3. Certification of 25% subscription rate of all locations in the Project area.	10%	35%
4. Certification of 50% subscription rate of all locations in the Project area.	15%	50%
Phase 2: Post-Availability Performance Period (Final 50%)		
5. Year 1 Post-Availability: Installment Payment	12.50%	62.50%
6. Year 2 Post-Availability: Installment Payment	12.50%	75%
7. Year 3 Post-Availability: Installment Payment	12.50%	87.50%
8. Year 4 Post-Availability: Final Installment Payment and Project Closeout	12.50%	100%

For the purposes of this Agreement, and consistent with the Federal Communications Commission's Broadband Data Collection, and based upon the approved Schedule of Values, LEO Subgrantee may certify that a location is "serviceable" when Subgrantee is capable of performing a standard installation of Qualifying Broadband Service, at a standard installation charge, within ten (10) business days after the date on which a service request is submitted, with no charges or delays attributable to the extension of the network of the provider. *See* 47 U.S.C. §§ 642(b)(2)(A)(i)(I)-(II); 47 C.F.R. § 1.7001(a)(19).

The ACA will perform technical and/or compliance reviews for LEO services and Project BSLs. The ACA reserves the right to perform additional reviews to support any disbursement listed in this Attachment 4.b. and withhold payments until a review is completed; provided, however, that payments shall not be withheld for more than sixty (60) days after Subgrantee submits a disbursement request and the required associated documents, unless the ACA provides specific notice of a technical or compliance-related concern that Subgrantee is required to correct. Noncompliance with monitoring requests may result in a delay, pause, and or recoupment in funding to the BEAD Subgrantee for a period not to exceed the delay occasioned by noncompliance with monitoring requests.

Attachment 5 - Environmental and Historic Preservation Review

I. General Environmental and Historic Preservation Review Requirements

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

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

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

II. NEPA Compliance

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

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

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

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

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

Subgrantee shall, as directed by the Office:

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

III. NHPA Compliance

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

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

IV. Further Environmental and Historic Preservation Review Guidance

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

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

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

V. Uses of Award Funds Prior to Implementation

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

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

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

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

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

VI. Archaeological Resources

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

Attachment 6 – Other Federal Construction Obligations

1. Energy Efficiency

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

2. Signage and Public Acknowledgements

Subgrantee is required to post signage and to include public acknowledgements in published and other collateral materials (*e.g.* press releases, marketing materials, webpages, plaques) satisfactory to the Office, NTIA and NIST that identifies grant funded activities and indicates that those activities are "funded by the Infrastructure Investment and Jobs Act." Subgrantee is required to use the Official Investing in America emblem in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide found here: https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America- Brand-Guide.pdf. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. Subgrantee should use best efforts to use recycled or recovered materials when procuring signs.

Attachment 7 – Cybersecurity and Supply Chain Risk Management Attestation

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

1. Subgrantee has a cybersecurity risk management plan (“CRM Plan”) in place that is:

    __ 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;

2. The CRM Plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;

3. The CRM Plan will be reevaluated and updated on a periodic basis and as events warrant;

4. If Subgrantee makes any substantive changes to the CRM Plan, a new version will be submitted to the Office within thirty (30) calendar days. Subgrantee acknowledges that the Office must provide Subgrantee’s CRM Plan to NTIA upon NTIA’s request.

Signatory further attests:

1. Subgrantee has a supply chain risk management plan (“SCRM Plan”) in place that is either:

    __ 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;

2. 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;

3. The SCRM Plan will be reevaluated and updated on a periodic basis and as events warrant;

4. If Subgrantee makes any substantive changes to the SCRM Plan, a new version will be submitted to the Office within thirty (30) calendar days. Subgrantee acknowledges that the Office must provide Subgrantee’s SCRM Plan to NTIA upon NTIA’s request.

Subgrantee

By: ______________________________

[Signatory], [Title], Subgrantee

Date: ______________________________

Attachment 8 – Other Federal Obligations

1. Prevention of Waste, Fraud and Abuse

a. Training

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

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

b. Monitoring

Subgrantee shall be subject to monitoring consistent with BEAD Program requirements as described in ACA's BEAD Monitoring and Compliance Guidelines. This may include, but is not limited to, monitoring activities such as risk assessments, desktop reviews, and field visits. Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;
- product substitution; and
- mismarking or mislabeling on products and materials; and time and materials overcharging.

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

c. Mandatory Disclosures

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

2. Protection of Whistleblowers

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

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

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

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

3. Nonprocurement Debarment and Suspension

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

Attachment 9 - Property Standards

1. Subgrantee is not required to comply with the Procurement Standards set forth in 2 C.F.R. §§ 200.318-320 and 200.324-326. All other Procurement Standards, *i.e.*, 2 C.F.R. §§ 200.317, 200.321-200.323, and 200.327, remain as requirements.

2. Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 C.F.R. § 200.313(d), pursuant to an exception from OMB.

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

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

a. If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subgrantee may treat the equipment to be replaced as "trade-in" even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC ST&Cs § A.01) to the DOC to ensure adequate tracking of the federal percentage of participation in the cost of the grant funded activities. Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.

b. Subgrantee may sell, lease, or transfer Project Property only after (i) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (ii) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving Project Property in subsequent guidance.

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

4. Subgrantees must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Program Officer, to indicate that Project Property has been acquired or improved with a federal award and that use and disposition conditions apply to the property. Specific requirements are set forth in Attachment 9.a to this Agreement.

5. Subgrantee may encumber Project Property only after provision of notice to NTIA and to the Federal Program Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to receive, on a *pari-passu* basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of contribution to the Project costs. For example, if the DOC had contributed 50% of the Project costs, the DOC would receive, on a *pari-passu* basis, 50% of

the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

6. Pursuant to exceptions approved by OMB as described in the UGPN, the property standards set forth in 2 C.F.R. § 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.

7. Subgrantee must comply with 2 C.F.R. § 200.316. Pursuant to this Section and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, for the duration of the Federal Interest Period, Subgrantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.

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

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

Attachment 9.a – Specific Requirements to Document the Federal Interest in Project Property

I. Covenant of Purpose, Use and Ownership

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

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

II. UCC-1 Filing and Attorney’s Certification

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

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

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

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

> *NIST Award Number: 22-20-B061*
>
> *Pursuant to 28 U.S.C § 1746, I hereby certify as follows:*
>
> *I am legal counsel at ________________________.*
>
> *I am licensed to practice law in the State of having been a license holder of said state and in good standing since _____________.*
>
> *Attached hereto is a certified copy of UCC-1 form(s) reflecting that this document was filed in the ________on _________, 202x, bearing the following filing information [insert filing data, e.g., instrument number, etc.) and consists of recorded pages as certified by the Secretary of State of _______________________.*
>
> *I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above. I certify under the penalty of perjury that the foregoing is true and correct.*
>
> *Executed on this ___day of ______. (Attorney name and title)*
>
> *(Address and phone number)*

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

Attachment 10 – Reporting

Monthly Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Office a "Monthly Progress Report" for the Project on a monthly basis for the period ending the last calendar day of each month, due no later than twenty (20) calendar days following the end of each reporting period. The report shall include, at a minimum:

1. Miles of Project network constructed (if applicable);

2. End Users that obtained access to broadband service during the reporting period;

3. Award Funds expended, reported in a manner consistent with the requirements of Section VI.F. of this Agreement; and

4. All instances of known damage to existing underground utilities that occur during the construction or installation of broadband infrastructure funded by the Arizona BEAD Program (if applicable), in a manner and form specified by the Office.

At the time the Federal Interest Period (or extended Period of Performance for LEO Capacity Subgrants, if applicable) commences, the Subgrantee may submit a request in writing to the Office for approval to consolidate the Monthly and Semiannual Reporting Requirements for each year thereafter into the Annual Reporting Requirements hereunder, including the Project data and management of equipment and property.

Semiannual Reporting Requirements

Subgrantee shall, for the duration of this Agreement, submit to the Office a "Semiannual Progress Report" for the Project on a semi-annual basis for the periods beginning on January 1 and ending June 30 and beginning on July 1 and ending on December 31 (or any portion thereof) no later than ten (10) business days following the end of each reporting period. The Semiannual Progress Report content is subject to revision at ACA's discretion and updates provided by NTIA. Based on the BEAD NOFO and BEAD RPN, the information currently required includes, at a minimum:

1. A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. § 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed or initiated as LEO broadband service and the status of each project;

2. New Project locations served within the relevant reporting period and, for each such service and whether service taken (if applicable);

3. Include an aggregate percentage of customers taking service at new locations served within each Project area;

4. Whether each address or location identified in item 2 is residential, commercial, or a community anchor institution;

5. A description of the types of facilities that have been constructed and installed, or initiated as broadband service;

6. A description of the peak and off-peak actual speeds of the broadband service being offered;

7. A description of the maximum speed of the broadband service being offered;

8. A description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;

9. List all middle mile interconnection agreements made to Subgrantee during the reporting period, and their current status (if applicable);

10. The number and amount of contracts and subcontracts awarded by Subgrantee;

11. Any other data that would be required to comply with the data and mapping collection standards of the Federal Communications Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects, including (i) fiber-optic technology; (ii) Cable Modem/Hybrid fiber-coaxial (HFC) technology; (iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum, entirely unlicensed spectrum, a hybrid of licensed and unlicensed spectrum; or (v) Low Earth Orbit (LEO) satellite services.

12. A SF-425, Federal Financial Report that meets the requirements described in the DOC ST&Cs, Section A.01 for Financial Reports;

13. A SF-429, Real Property Status Report Federal Financial Report that meets the requirements described in the DOC ST&Cs, Section A.01 for Real Property Status Reports;

14. A SF-428, Tangible Personal Property Status Report that meets the requirements described in the DOC ST&Cs, Section A.01 for Tangible Personal Property Status Reports; and

15. Certification by an officer of Subgrantee that:

a. That Subgrantee has informed its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712 in the predominant native language of the workforce, and required its subcontractors and subgrantees to do the same.

b. The information in the Semiannual Progress Report is accurate.

c. Subgrantee complies with the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3702 and 3704, as supplemented by 29 C.F.R. part 5.

d. Subgrantee complies with Federal Fair Labor Standards Act, as amended (29 U.S.C. §§ 201-219), as supplemented by 29 C.F.R. part 516), including provisions thereof related to collective bargaining.

<u>Annual Reporting Requirements</u>

Subgrantee shall, for the duration of this Agreement, submit to the Office an "Annual Progress Report" for the Project on an annual basis for the period ending December 31 of each year (or any portion thereof) no later than forty-five (45) calendar days following the end of each reporting period. The Annual Progress Report content is subject to revision at ACA's discretion and updates provided by NTIA. Based on the BEAD NOFO and BEAD RPN, the information currently required includes, at a minimum:

1. A summary of the items contained in the Subgrant Agreement.

2. The number of residential and commercial locations that have access to Qualifying Broadband Service as a result of the Project.

3. The percentage of End Users in the Project area who have access to Qualifying Broadband Service and the percentage of End Users with access who actually subscribe to the Qualifying Broadband Service.

4. The average number of subscriptions for residential and commercial Qualifying Broadband Service in the Project area.

5. Any right-of-way fees, permit fees, or franchise fees paid to a local government, state government, railroad, private entity, or person in connection with the Project during the term of this Agreement.

6. Any delays encountered when obtaining a right-of-way permission.

7. Evidence consistent with the Federal Communications Commission attestation that the Subgrantee is making available the proposed speed, or a faster speed, as set forth in the Application.

8. Unless Subgrantee meets one of the exceptions set forth in 2 C.F.R. § 170.110, Subgrantee shall provide executive compensation information to the Office in accordance with 2 C.F.R. Part 170 and pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). *See* DOC ST&C G.05.0.

Reporting Requirements on Expiration of the Period of Performance

Subgrantee shall submit a final Form SF-425 and a final Performance (Technical) Report to the Office within sixty (60) business days after the expiration of the Period of Performance.

As Requested/Ad Hoc Reporting

The Subgrantee shall respond to and provide information as requested in writing by the Office, including but not limited to: (i) within ten (10) business days of receiving ACA's subgrantee reporting template, the information to support ACA's Initial Report to NTIA, and (ii) within the timelines set by the ACA, any other information, reports, updates, or data to support ACA reporting obligations.

Attachment 11 – Disputes

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

2.0 Dispute Resolution Representative Process

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

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

(a) The DRR Process shall be initiated by the party asserting the Claim(s) serving written Notice on the other party's designated DRR setting forth in detail the basis for the Claim(s), including

(i) the basis for entitlement and amount of its Claim(s), with specific reference(s) to the provisions in this Agreement and any related Project documents that apply, including the Project Schedule; (ii) identifying any other party or parties involved in the Claim(s), and how they are involved; (iii) the specific relief requested, the amount or time requested, and how such relief was determined, together with all supporting evidence related to a potential claim, including but not limited to, cost, pricing data, scheduling data, citations to the relevant contractual provisions or other relevant documents; and (iv) an outline of all efforts made to date to resolve any issues, including submitting all documentation related to the settlement efforts.

(b) The DRR Notice shall be delivered and e-mailed to the other party's or parties' designated DRR(s).

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

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

2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to any specific pending Claim(s).

2.7 Unless otherwise designated in a written notice to the other parties, the Office's Project manager and the Subgrantee designated Representative shall act as the respective DRRs.

2.8 The resolution of any Claim(s) shall be set forth in writing and shall be signed by the respective designated DRRs. If the resolution involves modification to this Agreement, the parties shall sign an appropriate written modification or other document pursuant to the terms of this Agreement.

3.0 Claim Submission Under ACA Uniform Terms and Conditions

3.1 Unless extended by written agreement of the parties involved in a dispute, any Claim(s) not resolved through the DRR Process set forth above within five (5) calendar days after the meeting required under Section 2.4, above, or after the DRR is terminated pursuant to Section 2.5, above, whichever is earlier, the Claim(s) shall be subject to the Claims Submission process outlined under Section 10 of the ACA Uniform Terms and Conditions, with the exception that any claim must be filed within thirty (30) days of the date that it is eligible for submission to the process. Any claim filed more than thirty (30) days after the claim is eligible to be submitted shall be either waived and forever discharged per the terms of this Agreement.

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Attachment 12 – LEO Satellite Capacity
[If applicable, based on subgrantee selection.]

A. LEO Satellite Capacity for the BEAD Program

1. In the BEAD RPN, the NTIA has stated that all broadband technologies that meet the performance requirements of the IIJA, BEAD NOFO, and BEAD RPN are eligible to participate in the BEAD Program.

2. To meet the BEAD Program needs, the LEO Subgrantee is required to reserve sufficient capacity to deliver broadband service that meets the BEAD performance and technical requirements for each BSL in a Project area.

3. Certain portions of the BEAD NOFO and BEAD RPN address unique issues related to services provided by a LEO Subgrantee. The Parties have defined a common set of requirements and objectives as the basis of the technical and performance terms of the LEO Subgrantee's providing capacity to provide high-speed, Qualifying Broadband Service for the ACA's BEAD Program. These conditions apply even if only a portion of the BEAD funds under this Agreement goes to reimburse a Subgrantee for the reservation of capacity on a LEO network to deliver last-mile broadband service.

4. The LEO Subgrantee shall be bound by all provisions of the accompanying Agreement, and where appropriate, any alternate or supplemental provisions therein as stated to apply to a LEO Subgrant and LEO Subgrantee shall apply, with all other terms, conditions, and provisions of this Agreement remaining in full force and effect.

5. The LEO Subgrantee providing access to a LEO satellite network to deliver Qualifying Broadband Service by any means, agreement, subagreement, subcontract, or otherwise, remains responsible for meeting all terms, conditions, and provisions of this Agreement applicable to a "LEO Subgrant" and "LEO Subgrantee," including but not limited to Attachment 4.b., Attachment 10, and this Attachment 12.

B. Required Conditions for LEO Capacity and Services

1. The LEO Subgrantee must begin providing broadband service to each customer that desires broadband service not later than four (4) years from the date of the Subgrant Agreement.

2. The LEO Subgrantee shall be deemed to have begun to provide service when it certifies to the Office that the LEO Subgrantee can initiate broadband service within ten (10) business days of a request to any covered BSL in the Project area, with no charges or delays attributable to extension of the service.

3. The LEO Subgrantee must demonstrate to the Office that it has ensured, either through provider installation or third-party installation, that subscribers that do not wish to self-install will have fully functioning service within ten (10) business days.

4. Pursuant the BEAD Program provisions, and the nature of LEO services that do not provide a defined network dedicated to fixed locations in which the Federal Government can take an interest to ensure performance, the Subgrantee shall provide LEO capacity and related services for an extended Period of Performance that concludes ten (10) years from the date upon which the LEO Subgrantee certifies to the Office that Qualifying Broadband Service is available to every location covered by the Project.

a. The LEO Subgrantee must continue to offer access to broadband service as set forth in the Application to each BSL served by the Project throughout the extended Period of Performance. If a customer receiving service at a BSL moves, the LEO Subgrantee must continue to offer service to the BSL under the terms of the Subgrant if subsequent occupants request service.

b. Although NTIA does not take a Federal interest in equipment or property acquired or improved by the LEO Subgrantee with this Subgrant, the consumer and taxpayer protections set forth in the BEAD NOFO apply to the LEO Subgrantee for the duration of the ten (10) year Federal Interest Period.

5. Pursuant to 47 U.S.C. § 1702(h)(4)(H), if Subgrantee, at any time during the Federal Interest Period, is no longer able to provide broadband service to the end user locations on a retail basis, the Office may take remedial action to ensure continuity of service. In consultation with NTIA, the Office may require Subgrantee to sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public sector entities.

C. <u>LEO Subgrantee Disbursements</u>

Disbursements to the LEO Subgrantee shall be made on a reimbursement basis in accordance with terms of this Agreement and Attachment 4.b, which establishes the agreed upon disbursement milestones.

D. <u>Letter of Credit/Bonding Requirements</u>

1. Pursuant to Section X.H. of the Agreement, prior to entering into this Agreement, upon request by the Office, the LEO Subgrantee shall have obtained an irrevocable standby letter of credit, performance and/or payment bond(s), or certificate of deposit using the model(s) provided by the Office, equal to or exceeding 25% of the total award amount. The LEO Subgrantee must retain the letter of credit, bond(s), or certificate or deposit, until the final milestone, disbursement, or installment in Attachment 4.b. is achieved, whichever is later, and confirmed complete by the Office. The Office will, in its sole discretion, and subject to NTIA review and prior approval, consider requests by the Subgrantee to have a letter of credit,

performance and/or payment bond, or certificate of deposit obligation reduced with completion of deployment milestones.

a. The LEO Subgrantee may reduce its Letter of Credit by 50% at the point it certifies to Office that Qualifying Broadband Service is available to each location in the Project area.

b. The Letter of Credit can be reduced by an additional 25% of the original amount after the subscription rate reaches at least 25% of all locations in the Project area and may be closed out once the subscription rate reaches 50%.

c. Regardless of the subscription rate, the Letter of Credit may be terminated four (4) years after the LEO Subgrantee certifies that it can initiate broadband service within ten (10) business days of a request to any covered BSL in the Project area.

2. In addition to the above requirements, the LEO Subgrantee shall submit audited financial statements to the Office demonstrating its financial capacity to undertake the commitments of a subgrantee in all areas in which the Subgrantee provider seeks to serve. The Office will provide the audited financial statements to NTIA to verify the financial capability of the LEO Subgrantee, and the LEO Subgrantee may obtain and provide a financial certification letter from NTIA demonstrating its financial capacity to undertake the commitments of a subgrantee.

E. <u>Consumer Premises Equipment</u>

1. In light of the advantages conferred on the LEO Subgrantee by the unique structure BEAD LEO broadband service and the higher costs of Consumer Premises Equipment ("CPE") essential for delivery of broadband service via LEO satellite, the LEO Subgrantee must provide all necessary CPE at no cost as part of the standard installation for each new subscriber (*i.e.*, for each new resident or group of residents) at the BEAD-funded location throughout the Period of Performance and extended Period of Performance.

2. If the same subscriber requests additional CPE after installation, the LEO Subgrantee may charge customary rates unless the request is made due to equipment malfunction or damage caused by a weather event.

3. If the Subgrantee plans to send CPE to the subscriber to self-install or use a third-party installer, Subgrantee must ensure, at a minimum, that the subscriber receives the CPE within ten (10) days.

4. The Subgrantee may charge standard installation fees to subscribers on the BEAD-Funded Network but may not require subscribers to make modifications to their own or surrounding property or charge fees for the same in connection with installation of broadband services funded by BEAD funds.

F. Additional Terms

1. The Parties will definitize any additional terms as are necessary and consistent with this Agreement and to give effect to the terms set forth in this Agreement and Attachment 12.

2. Prior to entering this Agreement, the Subgrantee shall provide in the Application the additional commercial terms or services, including any lower tier subgrant, subcontract, or other agreement to the provide the required LEO capacity and related services, including any related LEO services. No such additional terms or agreement(s) shall be read or interpreted in a matter that contradicts BEAD Program requirement, or reduces Subgrantee obligations under the BEAD Program, including the BEAD NOFO, the BEAD RPN (including Appendix B: Low Earth Orbit Capacity Subgrants), this Agreement, or federal or state law.