

**DRAFT TEMPLATE 08-22-25**

This DRAFT Nevada BEAD Subgrant Agreement template is for planning purposes and information for eligible BEAD applicants. The Office of Science, Innovation & Technology reserves the right to modify or update this document as necessary to implement Federal, State, or Local requirements, or for any other reason to administer the BEAD Program.

**COVER PAGE**

**NEVADA GOVERNOR'S OFFICE OF SCIENCE, INNOVATION & TECHNOLOGY (OSIT)**  
**HIGH SPEED NV – PHASE III**  
**TELECOMMUNICATION CONSTRUCTION AND SERVICES SUBGRANT AGREEMENT**  
**BROADBAND, EQUITY, ACCESS AND DEPLOYMENT (BEAD) FUNDED AWARD**

<b>STATE AGENCY</b> Governor's Office of Science, Innovation & Technology		<b>Agreement Number</b> 2025-[Provider Initials]-BEAD-004
<b>SUBGRANTEE / PROVIDER:</b>  <b>PROJECT NAME:</b> HSNV, Phase III [BEAD]  <b>UEI:</b>		<b>Agreement Performance Beginning Date</b> Effective Date
		<b>Initial Agreement Expiration Date:</b>  <b>BEAD:</b> Four (4) years from <i>Effective Date</i> of Contract
		<b>Matching Funds:</b>
<b>BEAD Grant Funds Amount</b> <u>\$00,000,000.00</u>  State Fiscal Year 2025 State Fiscal Year 2026 State Fiscal Year 2027 State Fiscal Year 2028  <b>Total Federal Funds for All State Fiscal Years</b> <u>\$</u>		<b>Fund Expenditure End Date</b> <b>BEAD:</b> Four years from Effective Date of Contract <b>MATCH FUND:</b>  <b>Agreement Authority</b> Authority to enter into this grant Agreement exists in the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, <i>et seq.</i> , and the Department of Commerce, National Telecommunications and Information Administration (NTIA) regulations implementing Section 60102 and all related policies and guidance. This grant Agreement is issued as a Fixed Amount Subaward per 2 C.F.R. § 200.201.
<b>TOTAL Matching Funds Amount</b>  [Source]: <u>\$xx,xxx</u>	<u>\$xx,xxx.00</u>	<b>SUBAWARD PERIOD OF PERFORMANCE:</b> <b>Start Date:</b> _____ <b>End Date:</b> _____  <b>TOTAL RPAs TO BE SERVED:</b> _____
<b>TOTAL Agreement Funds Amount</b>	<u>\$x,xxx,xxx.00</u>	
<b>Agreement Purpose:</b> To facilitate timely completion by Grantee of the broadband infrastructure Project described in this Agreement and attached Exhibits, while complying with all requirements found in the laws, regulations, and official guidance implementing the broadband awards made from the Broadband Equity, Access, and Deployment (BEAD) program. This grant Agreement is issued as a Fixed Amount Subaward per 2 C.F.R. § 200.201 subject to additional State rules, regulations, and requirements.		
<b>Exhibits and Order of Precedence</b> The following Exhibits and Attachments are included with this Agreement: 1. Exhibit A – Defined Services – Scope of Work 2. Exhibit B – Special Instructions		

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3. Exhibit C – Technical Specifications
4. Exhibit D – Notice to Proceed [Example]
5. Exhibit E – Environmental Compliance
6. Exhibit F – Construction Timeline
7. Exhibit G – Budget and Disbursements for Milestones
8. Exhibit H – Reporting Requirements
9. Exhibit I – Final Fiber Construction Report
10. Exhibit J – Locations and Pricing Tables
11. Exhibit K – Federal Grant Provisions [PENDING]
12. Exhibit L – Federal Property Interest Standards
13. Exhibit M - Provider/Subgrantee's Redacted Response to RFA
14. Exhibit N – Certifications under BEAD Program
15. Exhibit O – Letter of Credit, Sample Letter of Credit, Form of Draft [PENDING]
16. Exhibit P – Waiver of Letter of Credit
17. Exhibit Q – BEAD NOFO Requirements for Subgrantee
18. Exhibit R – Certificate of Substantial Completion
19. Attachment AA – Notice of Federal Interest in Project Property (UCC-1) [Example]
20. Attachment BB – Insurance Schedule and Bonding
21. Attachment CC – Project Completion Criteria
22. Attachment DD – Assurances re: Compliance with 2 CFR 200.216
23. Attachment EE – Certificate of Plans by Professional Engineer
24. Attachment FF – Certificate of Need [Example]
25. Attachment GG – Certificate of Affordability [Example]
26. Attachment HH –

In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of Priority:

1. Infrastructure Investment and Jobs Act (IIJA) Public Law, 135 Stat 429; BEAD Federal Grant Provisions and subsequent DOC/NTIA Guidance Documents.
2. Broadband Equity, Access, and Deployment Program: BEAD Restructuring Policy Notice, and any supplemental Guidance Policy Notices.
3. 2 CFR 200 - Uniform Guidance and Uniform Policy Guidance Notice (UPGN).
4. Nevada Revised Statutes
5. Provisions of this Agreement (High Speed NV – Construction & Service Agreement)
6. Exhibits and Attachments to HSNV Construction & Service Agreement
7. Executory provisions and commitments in Provider's Response to RFA.
8. Nevada Grant Manual for Subgrantees for BEAD Funded Projects; Nevada Department of Transportation Construction and Right-of-Way Manuals

### Principal Representatives

*For the State:*

Brian L. Mitchell, Director  
Governor's Office of Science, Innovation & Technology  
695 W. Nye Lane, Ste 104  
Carson City, NV 89703

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*For Provider/Subgrantee:*

Email:

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**FEDERAL AWARD(S) APPLICABLE TO THIS GRANT AWARD**

<b>Federal Awarding Agency</b>	U.S. Department of Commerce National Telecommunications and Information Administration (NTIA)
<b>Grant Program</b>	Broadband Equity, Access, and Deployment Program
<b>Assistance Listing Number</b>	11.035
<b>Federal Award Number</b>	NTIA-BEAD-2022; #32-20-B090
<b>Federal Award Date</b>	
<b>Federal Award End Date *</b>	Four years from Effective Date of Agreement
<b>Federal Statutory Authority</b>	<b>BEAD Program:</b> Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act or Act) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, <i>et seq.</i> and all subsequent policy notices and guidance documents.
<b>Total Amount of BEAD Federal Award</b>	\$416,666,229.74

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**HIGH SPEED NV – PHASE III**  
**TELECOMMUNICATION CONSTRUCTION & SERVICES SUBGRANT AGREEMENT**  
**BROADBAND EQUITY, ACCESS AND DEPLOYMENT [“BEAD”] PROJECT FUND**

This Agreement ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2025 by and between **[PROVIDER NAME AS REGISTERED W/ SEC OF STATE]**, a domestic [foreign] corporation licensed to do business in the State of Nevada ("Provider"), and the State of Nevada, as represented by the Governor's Office of Science, Innovation and Technology ("OSIT"). Provider and OSIT are hereinafter collectively referred to as "the Parties."

**RECITALS**

**WHEREAS**, OSIT desires to enable and Provider desires to provide certain telecommunication infrastructure, equipment and broadband services that deliver affordable, reliable and scalable, high-speed Internet connectivity to all eligible unserved and underserved locations and eligible Community Anchor Institutions throughout Nevada via OSIT's Federal Grant Award from the U.S. Department of Commerce ("DOC"), National Telecommunications and Information Administration ("NTIA"), Broadband, Equity, Access and Deployment ("BEAD") Grant, Federal Award ID #32-20-B090, including any additional regulations promulgated by or guidance the Assistant Secretary may provide

**WHEREAS**, OSIT desires Provider to, and Provider represents it can, deliver broadband services, which may include the construction, deployment, installation, or operation of certain broadband systems, including fiber-based assets, fiber equipment, wireless towers, radio, satellite and/or approved alternative technology capable of providing broadband based telecommunication services, in a manner more specifically set forth OSIT's Request for Application (RFA) and the Provider's Response to the RFA.

**WHEREAS**, this Agreement seeks to expand Provider's network to provide high-speed Internet service that is compliant with the requirements in the NTIA BEAD Notice of Funding Opportunity ("NOFO") and BEAD Restructuring Policy Notice, to certain identified unserved and underserved locations and Community Anchor Institutions (CAIs) within defined Regional Project Areas (RPAs) through the construction, installation and/or provisioning of broadband infrastructure, assets and equipment, including fiber, tower, radio, and/or satellite technology, and related services capable of delivering broadband service at certain minimum speeds, that is affordable, accessible and scalable to fulfill important state and public needs.

**WHEREAS**, the construction of such infrastructure and delivery of high-speed Internet services in the RPAs is in the best interest of Nevadans and the State,

**WHEREAS**, this subgrant award is acknowledged not to be for Research and Development,

**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 CFR § 200.201 and that Provider is a "subrecipient" as that term is defined in 2 CFR §200.201 and as evaluated under 2 CFR §200.331 and,

**WHEREAS**, this award is a "fixed amount subaward" as defined in 2 CFR § 200.201 where the major purpose of the subaward is deployment of a broadband infrastructure project, using federal grant funds which will

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be administered by the OSIT pursuant to the BEAD NOFO, BEAD Restructuring Policy Notice, NTIA, [Uniform Guidance Policy Notice](#) and subsequent NTIA guidance.<sup>1</sup>

**NOW, THEREFORE**, in consideration of the mutual covenants, conditions, agreements, and undertakings contained herein, , the Parties agree as follows:

### ARTICLE I - DEFINITIONS

**1. Definitions:** The following terms in this Agreement shall have the meanings ascribed to them in this Article, or, as defined in 2 CFR 200.1, or if defined elsewhere in the text, as stated where defined.

**1.1 "Award Amount"** means the total funds allocated to the subgrantee to complete the terms and conditions under this Agreement.

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

**1.3 "BEAD" or "BEAD Program"** means the Broadband, Equity, Access and Deployment authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021), as funded by OSIT's DOC/NTIA Federal Award #32-20-B090, and as amended by the [BEAD Restructuring Policy Notice, June 2025](#).

**1.4 "BEAD NOFO"** means the BEAD Program Notice of Funding Opportunity issued by NTIA on May 13, 2022 (Funding Opportunity Number NTIA-BEAD-2022).<sup>2</sup>

**1.5 "BEAD Restructuring Policy Notice" or "RPN"** means the BEAD Restructuring Policy Notice issued by NTIA on June 6, 2025 for Eligible Entities to ensure American Taxpayers obtain the greatest value for their broadband investment or "Benefit of the Bargain" under the BEAD Program available at <https://www.ntia.gov/other-publication/2025/bead-restructuring-policy-notice> .

**1.6 "Breach of Agreement"** means the failure of a Party to perform any of its material obligations in accordance with this Agreement, or a material nonperformance of undertakings or obligations which are an essential precursor to the successful or timely completion of the Project, failure to notify State of impending bankruptcy or dissolution, and the institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceedings, shall also constitute a Breach of Agreement. If Subrecipient is debarred or suspended under federal or state regulation at any time during the Term of this Agreement, such debarment or suspension shall constitute material breach of this Agreement.

**1.7 "Broadband Assets" or "Broadband Facilities"** means existing or newly constructed fiber optic cable, conduit, conduit innerducts, rights (contractual or otherwise), indefeasible rights of use, towers,

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<sup>1</sup> See *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)*, codified at 2 CFR Part 200, and the application of related provisions of the *Uniform Guidance* to the BEAD Program. See also [Uniform Guidance Policy Notice Primer](#), NTIA Internet for All (Oct. 2024) and the [Uniform Grant Guidance, Revised 10/2024](#).

<sup>2</sup> See the *Broadband Equity, Access and Deployment Notice of Funding Opportunity*.

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satellite, radio equipment, switches, splitters, cabinets and pedestals, network software, or other such real or personal property used in connection with the construction, ownership, operation of a system for delivery or transmission of Broadband Services. This term excludes satellites, or ancillary electronic or ground systems or satellite facilities supporting satellite service operations.

**1.8 “Broadband Service”** has the meaning given the term “broadband internet access service” in Section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation, meaning it is a mass-market retail service by wire, electronics or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service.

**1.9 “BSL” or “Broadband Serviceable Location”** means a location designated on the Federal Communications Commission’s Broadband Availability Maps and on the OSIT BEAD Regional Project Area (RPA) map as business or residential location in the United States where fixed broadband internet access service is, or can be installed.

**1.10 “CAI” or “Community Anchor Institution”** means schools, libraries, and healthcare provider facilities, higher education, community support organizations or entities that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals and aged individuals, and other facilities as defined by the NTIA.

**1.11 “Certificate of Substantial Completion”** means a written finding or determination by the OSIT Director of Operations, or designee, that all work and deliverables are substantially complete such that the network infrastructure can be used as intended, but minor work may still remain incomplete.

**1.12 “Closeout”** means the process by which the Federal agency and OSIT determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in [§ 200.344](#) of the Uniform Guidance to close the award.

**1.13 “Closeout Date”** means the date when OSIT determines Provider has satisfied all state and federal reporting requirements related to the Project and completes close out of this award pursuant to 2 CFR 200.344.

**1.14 “Contractor”** means a person or entity duly licensed in the State of Nevada, by the Nevada State Contractor’s Board, who undertakes or submits a bid to construct, alter, repair, improve or wreck any building, road, or other structure and includes subcontractors and specialty contractors in connection with this Agreement.

**1.15 “Conduit”** means a tube or encasement especially constructed for the purpose of placing and enclosing fiber optic cable.

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

**1.17 “DOC ST&Cs”** means the Department of Commerce Financial Assistance Standard Terms and Conditions (Nov. 12, 2020)<sup>3</sup>

**1.18 “Community Anchor Institutions”** (CAI) a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization or community support organization that is a government-owned facility, provides public internet access and currently offers digital skills training.

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<sup>3</sup> For more information, see [https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%202012%20November%202020%20PDF\\_0.pdf](https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%202012%20November%202020%20PDF_0.pdf)



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**1.19 “Compliance”** means the fulfillment of all statutes, laws, regulations and orders of federal, state, county, or municipal authorities which impose any obligations or duty upon the Subgrantee, including the acquisition of any and all necessary permits.

**1.20 “Effective Date”** means the date on which this Agreement is approved and signed by all designees and State representatives as shown on the Signature Page for this Agreement.

**1.21 “Eligible Expenses”** means costs or expenses incurred by Provider that are directly related to the deployment or upgrade of broadband network facilities to provide Qualifying Broadband Service to last-mile BSLs or CAIs in a designated Regional Project Area. See BEAD NOFO (at p. 39) pertaining to specific eligible expenses. All Eligible Expenses are subject to the terms, conditions and restrictions set forth in 2 CFR 200.<sup>4</sup>

**1.22 “Eligible Subscriber”**, for purposes of qualifying for the Low-Cost Broadband Service Option, means any household seeking to subscribe to broadband internet access service that is eligible for the FCC’s Lifeline Program.<sup>5</sup>

**1.23 “End User”** means a Broadband Serviceable Location (BSL) that is eligible for BEAD funding and is included within the scope of Subgrantee’s Application, whether or not such location subscribes to Provider’s Broadband Service. .

**1.24 “Federal Award” or “Federal Grant Award”** means the award of Federal financial assistance or a cost-reimbursement agreement, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subgrantee or an individual that is a beneficiary of a Federal program.

**1.25 ““Federal Interest” or “Federal Interest Period”** means:

**1.25.1** When **BEAD Program funding** is received by the Subgrantee and used to pay for a Broadband Project infrastructure, the Project infrastructure will be held in trust for the beneficiaries of the BEAD Program.<sup>6</sup> ***The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for 10 years*** after the year in which the subgrant for a Project has been closed out in accordance with 2 CFR 200.344. For example, for all subgrants closed out in 2027, regardless of the month, the **Federal Interest Period will last until December 31, 2037.**

**1.25.2** In the case of Low Earth Orbit (LEO’s), a ten-year period of performance). See also 47 U.S.C. §1702(h)(4)(B)).

**1.25.3** Federal interest means, for purposes of [§ 200.330](#) or when used in connection with the acquisition or improvement of real property, equipment, or supplies under a Federal award, the dollar amount that is the product of the: (1) The percentage of Federal participation in the total cost of the real property, equipment, or supplies; and (2) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs. <sup>7</sup>

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<sup>4</sup> See BEAD Notice of Funding Opportunity, p. 39, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

<sup>5</sup> Lifeline eligibility criteria are defined in 47 CFR §54.409.

<sup>6</sup> Such property will be subject to the property standard provided by 2 CFR 200.310-316.

<sup>7</sup> 2 CFR 200.1 (definitions).

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**1.26 “Fiber Equipment”** means equipment used to pass light and Internet Protocol traffic (and therefore broadband traffic) through a fiber optic cable.

**1.27 “Finding of No Significant Impact (FONSI)”** means a certification received by the Provider after State and Federal agency(es) conduct an environmental review and determine there is no environmental impact related to the construction or deployment of fiber, wireless infrastructure or alternative technologies along the proposed routes between the Broadband Serviceable Locations. This certification, where required, is a condition precedent to commencement of any ground disturbance or construction activities.

**1.28 “Fixed Amount Subaward”** means a type of grant under which the Federal Awarding Agency or pass-through entity provides a specific level of support. Accountability is based primarily on performance and results. (For additional information on Fixed Amount Subawards, see 2 C.F.R. § 200.333 and the U.S. Department of Commerce’s “BEAD Policy Notice of Part 200 Exceptions” available at:

[https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD\\_Policy\\_Note\\_of\\_Part\\_200\\_Exceptions\\_Related\\_Issues.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Note_of_Part_200_Exceptions_Related_Issues.pdf) .

**1.29 “Funded Network”** means any broadband internet service belonging to or operated by the Subgrantee/ Provider which is funded in any way and to any extent with BEAD funds.

**1.30 “Facility”** or means a building; structure; or networks of buildings, structures, pipes, controls, and equipment, or portion thereof, that provide or serve residential or commercial locations, transportation, utilities, public education, community, or public safety services or needs, including but not limited to government office buildings, public schools, courthouses, federal/county/state service locations, libraries, prisons, and maintenance yards.

**1.31 “Federal Award”** means the grant funds and matching funds (*i.e.* all of the funds associated with this Agreement).

**1.32 “Federal Grant Officer”** the individual official designated by the National Telecommunications Information Agency (NTIA) and the National Institute of Standards and Technology (NIST) as the reviewer all Requests for Payment from the subgrantee and ensuring Requests for Payment conform to the grant award requirements.

**1.33 “Generally Accepted Accounting Principles (GAAP)”** has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB).

**1.34 “IIJA”** means the Infrastructure Investment and Jobs Act, passed November 15, 2021.

**1.35 “Indirect Cost”** means those costs incurred for a common or joint purpose benefitting more than one cost objective and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. It may be necessary to establish multiple pools of indirect costs to facilitate equitable distribution of indirect expenses to the cost objectives served. Indirect cost pools must be distributed to benefited cost objectives on a basis that will produce an equitable result in consideration of relative benefits derived. For Institutions of Higher Education (IHE), the term facilities and administrative (F&A) cost are often used to refer to indirect costs.

**1.36 “In-Kind Match”** means cash or non-cash contributions, with and ascertainable value, and may include, without limitation, donations of property, goods, or services which benefit the Project and may count toward satisfying the non-federal matching requirement of the Project’s total budgeted costs. In-

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kind contributions towards the Match must be allowable and allocable project expenses consistent with 2 C.F.R. Part 200 and may come from a third party.<sup>8</sup>

**1.37 “Initial Proposal” or “IPV2”** means the Nevada Initial Proposal, Volume II and as may subsequently be amended, unless specifically reference is made to the Nevada BEAD Final Proposal, adopted by the National Telecommunication and Information Administration.

**1.38 “Latency”** means the amount of time used by data to reach its destination and return back as between the Z location and the geographically nearest of the FCC’s Internet Exchange Point Servers. For purposes of BEAD, Reliable Broadband Service to either a location that is not a CAI, or is a CAI, requires latency less than or equal to 100 milliseconds. Ninety-five percent (95%) of latency measurements during testing windows must fall at or below 100 milliseconds round-trip time.

**1.39 “Matching Funds” or “Match”**<sup>9</sup> means that portion of a project’s cost not paid by federal BEAD funds, either in the form of cash, or non-cash donations of property, goods or services that benefit a federally assisted project and satisfy the definition of Subpart E of C.F.R. 200.306.<sup>10</sup>

**1.40 “Milestone”** an occurrence or achievement defined in Exhibit G that constitutes an event that triggers the ability of the subgrantee to submit a Request for Payment to OSIT for expenses related to the achievement of the milestone(s).

**1.41 “New Construction”** means newly constructed or installation of broadband infrastructure systems and integrated components, including fiber optic technology, cable modem/hybrid fiber-coaxial technology, LEO satellite services, and terrestrial fixed wireless technology utilizing entirely licensed spectrum, entirely unlicensed spectrum, or a hybrid thereof, as part of a network system capable of delivering “Reliable Broadband Service”.

**1.42 “NEPA”** means the National Environmental Preservation Act.

**1.43 “NHPA”** means the National Historic Preservation Act. *See also* “SHPO” in Section 1.60 below.

**1.44 “NIST”** means the National Institute of Standards and Technology, the entity within the United States Department of Commerce that administers the BEAD Program grant.

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

**1.46 “Notice to Proceed”** A written notice given by OSIT to Provider fixing the date on which the Contract times will commence for purposes of pre-construction activities and/or construction activities. Any pre-construction work, the commencement of construction and initiation of service, will require a “Notice to Proceed”.

**1.47 “OSIT”** means the Nevada Governor's Office of Science, Innovation and Technology.

**1.48 “Outside Plant Materials”** means all materials, equipment, hardware and supporting infrastructure necessary for construction/deployment of broadband facilities and assets for deployment of the Funded Network.

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<sup>8</sup> See Section III.B.4 of the BEAD NOFO. *See also* the [Cost Sharing and Matching Guidelines](https://broadbandusa.ntia.doc.gov/sites/default/files/2022-06/BEAD-FAQs.pdf), in the BEAD FAQs:

<https://broadbandusa.ntia.doc.gov/sites/default/files/2022-06/BEAD-FAQs.pdf>

<sup>9</sup> [https://broadbandusa.ntia.doc.gov/sites/default/files/2024-05/BEAD\\_Match\\_Primer.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2024-05/BEAD_Match_Primer.pdf)

<sup>10</sup> <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200/subpart-D/section-200.306>

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**1.49 “Payment”** means remuneration made by OSIT to the Subgrantee upon review of invoices as required, and verification of achievement of milestone(s).

**1.50 “Performance Period” or “Period of Performance”** means the timeframe the Project must be completed. The period of performance for BEAD funded project is four (4) years, beginning on the Effective Date. Extensions of the Performance Period must be in conformity with the BEAD NOFO and BEAD PRN.

**1.51 “Priority Broadband”** means a project that provides broadband service at speeds of no less than 100 Mbps for downloads and 20 Mbps for uploads, has a latency less than or equal to 100 milliseconds (ms), 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.

**1.52 “Property Standards”** means those definitions and standards for real property, equipment and/or supplies set forth in 2 CFR 200, §§ 200.311, 200.313, and 200.314, or as specifically identified in Federal statutes, regulations, or the terms and conditions of the Federal award.

**1.53 “Provider”** may be used interchangeably with Applicant, Subgrantee and Subrecipient of the BEAD Program funding.

**1.54 “Project”** means an undertaking by a subgrantee to construct and deploy broadband infrastructure for the provisioning of Qualifying Broadband Service to the BSLs in the Regional Project Areas, as described more fully in Subgrantee’s Application which is incorporated herein by reference and attached as Attachment M.<sup>11</sup>

**1.55 “Project Completion”** means satisfaction of all Project Completion Criteria and receipt of a Certificate of Completion.

**1.56 “Project Property”** means the broadband infrastructure constructed and/or installed and/or upgraded pursuant to Provider's contract with OSIT.

**1.57 “PRRFA”** means the *Provider’s Response to the Request for Application*, submitted to OSIT as part of the High-Speed NV Phase III Initiative as part of the BEAD Program which is incorporated herein by reference.

**1.58 “Qualifying Broadband Service”** means:

**1.58.1** To a residential broadband location means Reliable Broadband Service to a location with (i) a speed of not less than 100 Mbps for upload and 20 Mbps download (symmetrical service) and (ii) 95% of round-trip latency measurements during testing windows to fall at or below 100 milliseconds.

**1.58.2** To a Community Anchor Institution (CAI) location means Reliable Broadband Service to a location with (i) a speed of not less than 1 Gbps for downloads and uploads alike (symmetrical) and (ii) 95% of round-trip latency measurements during testing windows that fall at or below 100 milliseconds (“ms”).

**1.59 “Reliable Broadband” and “Reliable Broadband Service” (RBS)** is broadband service that is accessible to a location via fiber-optic technology, cable modem/hybrid fiber coaxial technology, digital subscriber line, terrestrial fixed wireless technology utilizing licensed or unlicensed spectrum or other

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<sup>11</sup> See Section I.C.(t) in the BEAD NOFO.

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advanced technologies, which delivers broadband service to an accessible location with a high degree of certainty, both at present and for the foreseeable future.

**1.60 “Request for Payment” or “Payment Request”** means a written request for remuneration submitted by Provider/subgrantee upon completion of a Milestone.

**1.61 “ROW”** means the right-of-way granted by the Nevada Department of Transportation (NDOT), City, County, landowners, tribal or federal agency to allow occupancy to utilize, locate, operate, construct, reconstruct, and/or maintain fiber assets or fiber equipment along property not owned by Provider.

**1.62 “Regional Project Areas” “RPA,” “Project” or “Project Area”** means an undertaking by a subgrantee to construct and deploy infrastructure for the provision of broadband service. A “Project” may constitute a single unserved or underserved broadband-serviceable location (“BSL”), or a grouping of BSLs in which not less than 80 percent of BSLs served by the project are unserved locations or underserved locations.<sup>12</sup>

**1.63 “Service Activation”** means the initiation by a Provider of fixed broadband internet access service ng delivered to an End User at a residential BSL and activated within 10 business days of a subscriber’s order, unless the End User requests a later date, or the delay is due to causes beyond provider’s reasonable control or other force majeure occurrence.

**1.64 “SHPO”** means the Nevada State Historic Preservation Office, a Nevada State Agency created by the National Historic Preservation Act (NHPA) of 1966, as amended.

**1.65 “Specifications”** for purposes of New Construction means the specifications set forth in Exhibit C, “Technical Specifications”.

**1.66 “State”** means the State of Nevada and any State agency identified herein (specifically the Governor’s Office of Science, Innovation and Technology), its officers, employees and immune contractors as defined in NRS 41.0307.

**1.67 “State Materials”** means any data, state records, state software, research, studies, photographs, documents, drawings, models, materials, or information provided by the State to Provider in the course of this Contract.

**1.68 “Subcontractor”** means any third person or entity, duly licensed in the state of Nevada, hired by, or performing work pursuant to, a request of the Provider or Provider’s Contractor, specifically to perform any part related to the Project or Work arising from this Agreement.

**1.69 “Subgrantee” “Provider” and “Subrecipient”** are synonymous and mean the party to an agreement with OSIT who is the subrecipient of BEAD funding for the construction and deployment of infrastructure for the provisioning of broadband services and is synonymous with “the Provider” herein.

**1.70 “Substantial Completion”** means the date for which the Project can fulfill the primary operations that it was designed to perform, delivering services to end users. Service operations and management systems infrastructure must be operational.

**1.71 “Underserved”** means a Broadband Serviceable Location (BSL) that has been identified on the FCC Broadband DATA Map as lacking access to Reliable Broadband Service access at a speed above 25 Mbps

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<sup>12</sup> See [NTIA Policy Notice on BEAD Uniform Guidance](#), p. 3

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download speed and 3 Mbps upload speed, but less than 100 Mbps download and not less than 20 Mbps for uploads and round-trip latency less than or equal to 100 milliseconds (ms).<sup>13</sup>

**1.72 “Unserved”** means a Broadband Serviceable Location (“BSL”) that the FCC Broadband DATA Map shows as having (a) no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with a speed of not less than 25 Mbps for downloads; and a speed of not less than 3 Mbps for uploads, and round-trip latency less than or equal to 100 milliseconds.

**1.73 “UGPN”** is the Uniform Guidance Policy Notice published by NTIA titled “[\*Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.\*](#)”<sup>14</sup>

**1.74 “Uniform Guidance”** means the Office of Management and Budget [Uniform Administrative Requirements](#)<sup>15</sup>, Cost Principles, and Audit Requirements for Federal Awards, and any amendments thereto. Also known as 2 CFR 200. For purpose of this Award, the version of the Uniform Guidance published in September 2024 contains the applicable standards.

## ARTICLE II – CONSTRUCTION; SCOPE OF PROJECT

**2.1 Commencement:** This Agreement will commence on the Effective Date:

**2.1.1** Within 30 days of the Effective Date, the Provider will submit to OSIT its Project Plan pursuant to Article 2.12.1.

**2.1.2** Within 30 days of the Effective Date, the Parties will hold a Project “kick-off” to formally review the Provider’s Project Plan, Project deliverables, obligations and answer questions. OSIT may schedule a second, subsequent “Kick-off meeting” to review specific financial, grant-related and reporting obligations.

**2.2 Pre-Award Activities:** Upon written approval from OSIT, Provider be reimbursed for certain pre-award costs, incurred before the start of the subgrant that are directly related to the negotiation and in anticipation of the subgrant award. Provider may engage in limited preliminary procurement of equipment, or to enter into leases to allow Provider to ensure lead times for materials will align with anticipated construction. Other permissible pre-award costs may include:

**2.2.1** Environmental and permitting work needed to complete environmental reviews.

**2.2.2** Engineering and Planning for pole attachments, land review, review of Rights-of-Way

**2.2.3** Final engineering and network design.

**2.2.4** Administrative costs.

**2.2.5** Pre-award application costs for permitting; negotiating and securing rights of way and pole attachment agreements

**2.2.6** Activities supporting consultations required under NHPA, the Endangered Species Act and the Clean Water, Nevada Stormwater Pollution Program (SWPP), and/or US Fish and Wildlife.

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<sup>13</sup> See BEAD [Notice of Funding Opportunity](#) at p. 17

<sup>14</sup> See [https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD\\_Policy\\_Note\\_of\\_Uniform\\_Guidance\\_Part\\_200\\_Exceptions\\_Related\\_Issues.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Note_of_Uniform_Guidance_Part_200_Exceptions_Related_Issues.pdf)

<sup>15</sup> See <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>, and as Amended October 1, 2024.



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- 2.2.7** Limited, preliminary procurement, including the purchase or lease of equipment, equipment, and materials necessary for the efficient and timely performance of the Project, or procurements made in accordance with 2 CFR 200.457; the purchase of applicable conditional insurance, bonding and/or use of funds to secure land or building leases (including right-of-way easements).

*Any pre-subgrant costs are incurred at the risk of the Provider/Subgrantee.*

**2.3 NEPA Obligations - Compliance with Timeline for BEAD Permitting:** Provider is responsible for:

- 2.3.1** Conducting initial site-specific environmental analysis of the network design and route to determine whether NEPA will be required.
- 2.3.2** If NEPA applies, and federal lands and permitting is required, Provider will prepare the necessary NEPA documentation. This includes preparing drafts of required NEPA/Environmental documents for delivery to OSIT (the lead agency) and any additional information necessary to facilitate OSIT'S use of NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT), as required by the BEAD Restructuring Policy Notice. Accordingly, Provider will be required to comply with meeting the following timelines:
- 2.3.2.1** Within \_\_\_\_ days of the Effective Date of this Agreement, Provider will identify its environmental consultants.
- 2.3.2.2** Within \_\_\_\_ days of the Effective Date of this Agreement, Provider will determine its NEPA Projects, complete initial screenings and identify permit requirements.
- 2.3.2.3** Within \_\_\_\_ days of the Effective Date of this Agreement, Provider will complete environmental (e.g. Section 106, Section 7) reviews.
- 2.3.2.4** Within \_\_\_\_ days of the effective date, submit environmental documents to OSIT or Tribal Representative(s) and actively pursue required permit obligations and/or approvals.
- 2.4** Provider will hire qualified environmental and historic preservation consultants to assist with these analyses and document preparation.
- 2.5** Provider will establish detailed milestone schedules for completing all environmental reviews, consultations and permit applications and provide same to OSIT.
- 2.6** Provider will be responsible for compiling and submitting all project-related environmental documentation to OSIT for review, including detailed project description, mapping and documentation of all site-specific analyses.

**2.7 Permitting and Implementation of Construction Activities:** The Provider will not implement any construction or ground disturbance activities (site preparation, demolition, construction, fixed installation, or any other implementation activities) **and funds will not be disbursed** until necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities above (Section 2.2).

- 2.7.1** Provider will promptly provide OSIT with all available environmental information about the Project and any information which the State may request in connection with the conduct and preparation of the environmental review, including any reports of investigation or study which in the State's opinion are required by law to fulfill its environmental requirements.
- 2.7.2** Advise OSIT of any proposed change in the scope of the Project or any change in environmental conditions, including substantial changes in the nature, magnitude, extent or location of the

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Project; the addition of new activities not anticipated in the original scope of the Project; the selection of an alternative not in the original Application or environmental review; or new circumstances or environmental conditions which may affect the Project or have bearing on its impact, such as concealed or unexpected conditions discovered during the implementation of the Project or activity.

**2.8 Notice to Proceed with Construction:** At such time as permitting has been approved, Provider will seek approval from OSIT to commence construction activities and request a Notice to Proceed from OSIT.

**2.8.1** All construction activity will conform to engineered design requirements and shall be under the review of a licensed professional engineer.

Work may proceed in other areas of the RPA where all applicable approvals have been secured, provided that such work does not interfere with, or bypass pending compliance obligations, or other legal obligations, imposed by other permitting entities in other portions of the RPA. NTIA may, at times, require OSIT to provide Project information upon their request to ensure both initial and ongoing compliance with all permitting and environmental processes(s).

**2.9 Environmental Considerations:** Grant funded activities with significant impacts on environmental or historic resources may face de-obligation of funding if impacts cannot be avoided, minimized or mitigated. Provider shall notify OSIT within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, the Tribal Historic Preservation Office (THPO) or other consulting party or the US Forestry (USF) or US Fish & Wildlife Service (USFWS); or notices of non-compliance 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 extend of environmental or historic preservation impacts must be brought to the attention of NTIA and will be re-evaluated for compliance with applicable requirements.

**2.10 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 OSIT and NTIA.

**2.11 Term of Project:** The Parties' respective performance under this Agreement will commence on the Effective Date (2.0 above) and shall continue until expenditure of the applicable federal grant funds not later than four years after the date on which the subgrantee receives the subgrant. All Project costs must be incurred during the term of the Project.

**2.11.1 Extensions:** Extensions may only be granted at the sole discretion of the Assistant Secretary when extenuating circumstances demonstrate that additional time will support the overall goals of the BEAD Program.



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**2.11.2 Closeout:** Closeout will be conducted on the timelines and in the manner set forth in 2 CFR 200.344 and in this Agreement and **Article IV**. Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 CFR 200.345, or (b) any of Provider's obligations that survive closeout and remain in force during the Federal Interest Period.

**2.12 Scope of Work:** All work on the Project will materially conform to the plans set forth in the Application submitted by Subgrantee, unless OSIT approves a material change to the Project, in which case the work shall conform to the Application plans and the material change, as applicable. Any material changes to the Project must be approved in advance by OSIT or its designee. Provider specifically acknowledges the following obligations and responsibilities:

**2.12.1** Provider meets all deadlines in approved plans and specifications;

**2.12.2** Monitoring the progress of grant funded activities;

**2.12.3** Reporting progress;

**2.12.4** Providing for required construction permits and adequate construction inspection;

**2.12.5** Promptly paying costs incurred for grant funded activities;

**2.12.6** Monitoring contractors' compliance with Federal, State and Local requirements.

**2.12.7** Comply with all labor and safety requirements during construction imposed by the State, OSIT or OSHA regulations. Compliance includes adhering to OSIT's daily, weekly and monthly construction reporting requirements (Exhibit H). Provider will ensure its contractors comply with and follow the *OSIT Safety Plan and Manuel*. **Failure to follow safety and labor requirements will result in the imposition of a fines or penalties as set forth in Article IX.**

**2.13 Implementation of Methods for Reporting Waste, Fraud or Abuse:** OSIT will establish, maintain and publicize telephone hotline numbers and email address pr or other suitable mechanism for receiving and investigating reports of waste, fraud and abuse related to the Program. Receipt of reports or complaints will be investigated and submitted to the NTIA and the Federal Program Officer for further investigation.

**2.14 Scope of Services:** This Project must provide Qualifying Broadband Service to all broadband serviceable locations (BSLs) and CAIs identified in the PRRFA. This Project includes completion of the following tasks and deliverables related to:

**2.14.1 Creation of a Project Plan:** The Project Plan will include:

**2.14.1.1** Project Timeline, including major milestones to be achieved during the Project and performance Milestones, including timeframe for completion of each phase or milestone.

**2.14.1.2** Milestones that capture significant moments in the project timeline, include completion percentages based on the overall Project, and that are designed to demonstrate reasonable and timely progress on the Project to OSIT. Deliverables associated with Milestones shall be supported by concrete documentation that is measurable and auditable (e.g. reports, recordings, forms or other media) and that is retained for the Record Retention Period.

**2.14.1.3** The Project Plan will require Provider to satisfy all Project completion requirements no later than four (4) years from the Effective Date of this Agreement.

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**2.14.2 Network Design:** The development of a network design, milestones for project implementation, a capital investment schedule, which is certified by a Professional Engineer<sup>16</sup> attesting that the proposed network can deliver Qualified Broadband Service that meets the requisite performance requirements to all locations (BSL and CAIs) served by the Project.

**2.14.3 Completion of Permitting/NEPA Reviews:** Completion of all necessary environmental and historical permitting requirements, in cooperation with OSIT as the lead Agency for compliance with NEPA, including completing required Environmental Categorical Exclusion and Environmental Assessment documents, and obtaining an Environmental Finding of No Significant impact (FONSI) or a Record of Decision approving an Environmental Impact Statement (“EIS”) for the Project, when and where required.

**2.14.4 Securing Required Materials:** Successfully procuring all Outside Plant Materials necessary to construct the Project.

**2.14.5 Construction Requirements:** Provider shall be responsible for (1) Ensuring that Provider meets all Application deadlines; (2) Monitoring the Progress of all grant funded activities; (3) Reporting on the progress of grant funded activities; (4) Providing for required construction permits and adequate construction inspection; (5) Ensuring all work is performed in a workman like fashion and in keeping with prevailing industry standards; (6) Promptly paying costs incurred for grant funded activities; and (7) Monitoring contractors’ compliance with federal, state and local requirements, including labor and work safety requirements.

**2.14.6 Creation of Conduit Access Points:** To the extent Provider/Subgrantee receives Award Funds to expand broadband infrastructure, and pursuant to 47 USC §1702(h)(4)(C), for any funded network deployment project involving laying fiber-optic cables or conduit, or conduit innerduct underground or along a roadway, Provider must include interspersed conduit access points at regular and short intervals where technically feasible, which intervals must be reviewed and approved by OSIT at the engineering phase of the contract to meet the BEAD requirement for conduit access points. Provider shall allow such interconnection at any technically feasible point on the network (without exceeding current or reasonable anticipated capacity limitations) during the Federal Interest Period.

**2.14.7 Mapping & Ongoing Reporting:** Timely complying with all state and Federal reporting obligations, mapping and service requirements.

**2.14.8 Restoration & Remediation:** Restoration, remediation and clean-up of all work sites performed to the satisfaction of the State and any permitting agencies. Provider will be responsible for any restoration complaints that were not properly addressed and/or arising within one year after Final Acceptance.

Neither the State nor OSIT shall have any liability to compensate Provider for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

Any unintentionally omitted executory provisions contained in the PRRFA, with respect to scope of work and constructions deliverables, are hereby incorporated by this reference.

## **2.15 Performance Bond / Letter of Credit:**

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<sup>16</sup> See BEAD NOFO at p. 74, and BEAD FAQ, July, 2025. Certification by a Professional Engineer requirement has been modified, in that the capital investment schedule requirement has been waived. The PE is still required to certify the remaining elements of the PE Certification Requirement, and the PE may be licensed in any of the 56 Eligible Entities.

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**2.15.1** Provider must furnish to OSIT either a Performance Bond for the benefit of the State, or a Letter of Credit (“LOC”), which meets the requirements of this Article prior to the Effective Date of this Agreement. The expense of the Performance Bond or LOC shall be borne by Provider. Where Provider elects to utilize a Performance Bond, Provider will use the Performance Bond form provided in Exhibit \_\_\_, which must be executed by a corporate Surety authorized to do business in the State of Nevada. Such bond shall be for 100% of the federally funded Award and the State of Nevada, Governor’s Office of Science, Innovation & Technology shall be named as the primary beneficiary (Obligee).

**2.15.2** If Provider elects to furnish a Letter of Credit, Provider shall furnish a Letter of Credit in accordance with the Federal Grant Provisions and Exhibit O, in the amount of at least twenty-five percent (25%) of the full amount of the Agreement Funds, unless another sum or percentage is agreed to in writing by OSIT and meets the requirements in the BEAD RPN, and subsequent NTIA Guidance.

**2.15.3** If at any time, a Surety that issued a Performance Bond required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Nevada, another Surety will be required, which Provider shall furnish to OSIT within ten (10) days after receipt of notice from the State or after Provider otherwise becomes aware of such conditions.

**2.16 Construction Milestones:** Construction Project Milestones set forth in Exhibit G must align with the phases of design, engineering, permitting, construction, remediation, restoration and delivery of services. Provider will complete each of the Milestone phases in a timely fashion on a mutually agreed upon schedule incorporated into the Award Agreement. Prior to issuance of any Milestone Payments, Provider will allow OSIT to review, inspect and/or verify the completed work or deliverables within each Milestone, and ensure that required documentation and technical specifications have been met. OSIT will schedule such review or inspections after receiving all necessary information to verify completion of the Milestone and upon approval from OSIT, will issue to Provider a Notice of Completion of a milestone to commence the payment process (Article III below).

**2.17 Project Reporting:** Provider will be responsible for providing the following reports:

**2.17.1 Daily Construction Report:** Upon commencement construction activities, when workers have been deployed “in the field”, Provider will apprise OSIT of the location and number of construction workers in the field in a manner prescribed by OSIT.

**2.17.2 Weekly Reports:** At such time and manner as agreed upon between the Parties, Provider will deliver a weekly report to OSIT in the format specified by OSIT in Exhibit H.

**2.17.3 Upon Commencement of Permitting Process:** Provider will provide monthly reports on the status of all federal, state, local and/or permits or Tribal authorizations required for the Project(s) to the assigned OSIT Project Manager, or designee, utilizing OSIT’s Permit and Construction Tracking Form.

**2.17.4 Semi-Annual Reports and Certifications:** Provider will comply with the semi-annual reporting requirements established by the NTIA for the duration of the Project (see Article 3.9)<sup>17</sup>.

**2.17.5 Annual Reports:** Provider will provide all information and certifications, as required by the NTIA. Information required will include Project data, performance, progress, mapping, technical updates, executive compensation and other Project progress information set forth in the Grant Award.

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<sup>17</sup> BEAD NOFO VII.E, and IV.C.2.c.ii

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**2.17.6 As Requested/Ad Hoc Reports:** Provider will respond to any written request by OSIT or the FPO for additional reports, information and/or updates requested within the timeline set forth by the FPO/OSIT and will provide the information requested.

**2.17.7 Safety and Violations Reporting:** Provider shall disclose, in a timely manner, in writing to both OSIT and the NTIA, any and all worker violations, jobsite safety violations, environmental violations, and any other violations of federal or State law involving fraud, lobbying, bribery, or gratuity violations or any other violation which could potentially affecting the Federal Award. The State or the NTIA may impose any penalties for noncompliance allowed under 2 C.F.R. Part 180 and 31 U.S.C. § 3321, which may include, without limitation, suspension or debarment.

**2.18 Construction Testing, Inspection and Acceptance of Work in an RPA:** At such times during the construction period, and upon meeting specific construction milestones, OSIT shall review, and verify compliance and/or completion of the activities and progress within each Milestone subject to the reservations hereinbelow for final payment. If deliverables and technical specifications have been inspected and/or tested, and approved, and Provider has submitted all required supporting documents for that Milestone, OSIT will proceed with processing payment in accordance with Article III below.

**2.19 Final Inspections:** The OSIT will schedule a final inspection for work completed in each RPA and other construction activities when all construction has been completed, tested, specifications as to functionality, performance and compliance with the Federal Grant has been verified, and deficiencies corrected. NTIA will be given advance notice of each final inspection so that a representative of NTIA may elect to participate. See Article IV.

**2.20 Maintaining Required Permits & Licensing:** Provider shall procure and maintain for operational life of the broadband infrastructure any federal, state, county, Tribal or city license, authorization, waiver, permit, qualification or certification required by statute, ordinance, law, or regulation required to be held by Provider to occupy, maintain, operate and/or provide the goods or services required by this Contract. Provider shall provide proof of its compliance upon request of OSIT. Provider will be responsible for paying all taxes, assessments, fees, premiums, permits, appraisals and licenses as may be required by law, statute or regulation.

**2.21 Compliance with Grant Requirements, Legal Obligations, Terminology:** Provider must perform its obligations under this Agreement in a manner that complies with, and enables OSIT to comply with, all applicable requirements contained in its BEAD Award, including compliance with the following specific grant requirements:

**2.21.1** 47 U.S.C. § 1702;

**2.21.2** The BEAD NOFO, the BEAD Restructuring Policy Notice and all subsequent guidance from NTIA;

**2.21.3** The DOC ST&Cs,

**2.21.4** The General Terms and Conditions (“SAC”) for the BEAD Program,

**2.21.5** The BEAD Specific Award Conditions incorporated into Nevada’s BEAD award, and,

**2.21.6** Nevada’s approved Initial Proposal and Final Proposal and relevant NTIA guidance.

In the event of any conflict between the terms of this Agreement and the authorities identified above, the authorities identified in the preceding sentence shall control. Where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, the language contained in these authorities in the following order, from highest to lowest priority): 47 U.S.C. § 1702; the award’s Specific Award Conditions; the General Terms and Conditions for the BEAD Program; the BEAD NOFO

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(as modified by the BEAD Restructuring Policy Notice); the DOC ST&Cs, the BEAD SAC's, Nevada's BEAD Initial and Final Proposal, the Nevada Revised Statutes.

### ARTICLE III – GRANT AWARD, MANAGEMENT AND PAYMENTS

**3.0 Nature of Award:** Provider shall use the federal award to deploy a network that will deliver Qualifying Broadband Service to End Users and CAIs in accordance with the deliverables in this Agreement and as described in the PRRFA.

**3.1 Award Amount:** The Award Amount for the project is in an amount Not to Exceed \$\_\_\_\_\_. This amount represents a fixed amount, and the maximum amount the State shall be obligated to pay under this Agreement, regardless of any additional costs incurred by the Provider during the execution of the Project. This Award Amount covers all labor, materials, equipment, management, subcontractor costs, permits, taxes, licenses, bonding, insurance, cost recovery fees, overhead expenses and any other direct or indirect costs necessary to complete the Project. There is no opportunity for the Provider to request additional funds to complete this Project. Provider shall be responsible for all Project Costs that exceed the Award Funds. In the event the Award Funds are insufficient to satisfy all Project Costs, Provider shall nevertheless be responsible for fulfilling its obligations under this Agreement.

**3.2 Fixed Price Contract:** This Agreement represents a “fixed amount subaward” as defined in 2 CFR 200.201 for the broadband infrastructure project set forth in/ this Agreement. Payments will be based on Provider meeting specific requirements of the federal award, and OSIT's acceptance of the work, more specifically identified in the attached Exhibit G (Milestones), and will be administered by OSIT in accordance with the Uniform Guidance Policy Notice (UGPN).

Provider hereby acknowledges that this this Agreement represents a fixed amount subaward and will comply with meeting the agreed upon specific milestones, intended to sufficiently measure the Provider's progress against the Project goals. OSIT will not advance payments or reimburse any amount in before the agreed upon milestone is met and verified.

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[Provider's Initials – Acknowledgement]

**3.3 UPGN Special Conditions of Fixed Price Contracts:** The major purpose of the subaward is deployment of a broadband infrastructure project, using federal grant funds which will be administered by the OSIT pursuant to the BEAD NOFO, BEAD Restructuring Policy Notice, and the Uniform Guidance Policy Notice, which provides specific exceptions and clarifications tailored by the NTIA for the BEAD program.

**3.3.1 Intangible Property:** Pursuant to an exception approved by the Office of Management and Budget, the property standards set forth in 2 CFR 200.314-315 for intangible property shall not apply to fixed amount subgrants. See *Grant Compliance Manual for the Nevada Governor's Office of Science, Innovation & Technology (OSIT) for Contractors & Subgrantees (BEAD Grant)* for additional information, rules and restrictions governing fixed price contracts.

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**3.3.2 Exemption from Procurement Standards:** Subrecipients receiving fixed amount subawards are excepted from complying with the procurement standards contained in 2 CFR 200.318-320 and 200.324-326. 28.

**3.3.3 Cost Principles:** Subrecipient of fixed amount subaward are not required to comply with the cost principles under the Uniform Guidance.<sup>18</sup>

**3.3.4 Report of Expenses:** Provider will periodically, as required by the UPGN and 2 CFR 200, report their expenses using Generally Accepted Accounting Principles (GAAP), or other standard accounting practices across key spending areas.

**3.3.5 Acceptance of Milestone Payments:** Provider will accept partial payments of agreed amounts upon meeting milestones set forth in this Agreement.

**3.3.6 Profits & Fees:** Provider will not claim profit and fees above actual cost incurred as allowable costs. (BEAD NOFO, V.H.2.b, and 2 CFR 200.400(g)).

**3.3.7 Compliance with Matching Fund Requirements:** Provider will comply with the federal grant provisions or obligation imposed by, or accompanying, the agreed upon match contributions.

**3.3.8 Completion of Project – Certification:** Provider will certify in writing to OSIT at the end of the federal award that the broadband infrastructure project funded under the fixed amount subaward was completed, placed into service as defined in 47 USC 1702(h)(4)(C) for last mile broadband deployment projects by the end of OSIT's period of performance.

**3.3.9 Management, Use and Disposition of Equipment:** Provider will follow existing commercial practices for managing equipment in the normal course of business and use inventory controls indicating the applicable Federal interest and loss prevention procedures (in lieu of the requirements in 2 CFR 200, subpart D, 2 CFR 200.313, and will comply with the use and equipment disposition requirements set forth therein.. ***Provider is responsible for maintaining records and documenting all contributions or use of its own equipment and materials into the BEAD Funded Network for the Useful Life of the Network (Federal Interest Period).***

**3.4 Matching Funds:** Pursuant to the BEAD NOFO, Providers are required to secure matching funds of not less than twenty-five percent (25%) of the deployment projects costs as a condition precedent to receiving BEAD funding, except where a match waiver has been granted by NTIA.

**3.5 Matching Funds/Source:** Any Match shall be reported to OSIT at each project Milestone and/or unit built and verified through documentation and Provider's statements. Allowable Matching Funds will be in accordance with the BEAD NOFO and PRN, and consist of the following sums:

**3.5.1 [Describe contribution/source]** \$ 00000000000

**3.5.2 Match Waiver:** [ ] YES

**3.5.3 Waiver Applies to:** [LIST RPA ID #s]

**3.5.4 Waiver Does Not Apply to:** [LIST RPA ID #s]

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<sup>18</sup> For additional explanatory information on this, please see 2 CFR 200.401(a)(3), and the NTIA Supplemental Guidance Notice re: Exceptions to 2 CFR 200 at [https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD\\_Policy\\_Notice\\_of\\_Uniform\\_Guidance\\_Part\\_200\\_Exceptions\\_Related\\_Issues.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Notice_of_Uniform_Guidance_Part_200_Exceptions_Related_Issues.pdf)



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### **3.6 Provider Conditions & Restrictions on Matching Funds:**

**3.6.1 For all Match:** Provider will (1) maintain records identifying the source, amount, time and delivery of each match service, (2) retain records of Match Contributions throughout the life of the Grant and Grant Closeout, (3) Ensure match submission is accompanied by a legally binding attestation and (4) Where applicable, ensure match submission(s) is/are accompanied by Letters of Commitment and ensure the Letters of Commitment match against stated commitments.

**3.6.2 For Cash Match:** Providers will provide OSIT with verification of existence and availability of matching funds (in the form of bank or financial statements, showing available and expended funding, or receipts from disbursements of monies) in an amount equal to or in excess of the proposed match for all RPAs for which the Provider is the designated subgrantee.

**3.6.3 In-Kind Match:** May include volunteer services, reduced rates from consultants and other individuals or facility in-kind match. Such match must be verified through use of federal tools (such as the Bureau of Labor Statistics) to determine wage rate information, or comparison of a reduced rate against a standard labor rate.

### **3.7 Documentation of Matching Funds:** Provider shall, regardless of award type:

**3.7.1** Maintain records identifying the source, amount, time and delivery of each match service,

**3.7.2** Retain records of the match contributions for the duration of the grant and grant Closeout.

**3.7.3** Ensure any match submission is accompanied by a legally binding attestation and,

**3.7.4** When applicable, ensure match submission(s) is/are accompanied by Letters of Commitment and that the Letters of Commitment match against stated commitments.

**3.8 Semi-Annual Reporting:** Pursuant to 47 U.S.C. § 1702(j)(2)(A), Provider/Subgrantee shall submit to OSIT a report, at least semiannually, for the duration of the subgrant, to track the effectiveness of the use of funds provided. Provider will certify that the information in the report is accurate. Each report shall describe each type of broadband infrastructure project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. The semi-annual report must contain, at minimum, the following information:

**3.8.1 Executive Summary** of work performed during quarter, including meeting of milestones/deliverables, problems encountered, expenditures, assessment of risks, potential risks or challenges facing the Project and upcoming activities planned for next reporting period.

#### **3.8.2 Work Accomplished:**

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

**3.8.2.2** List of new locations served within each RPA at the relevant reporting intervals, and service taken (if applicable);

**3.8.2.3** Identify whether each address or location is residential, commercial, or a community anchor institution;

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- 3.8.2.4** Description of the types of facilities that have been constructed and installed;
- 3.8.2.5** Description of the peak and off-peak actual speeds of the broadband service being offered;
- 3.8.2.6** Description of the maximum advertised speed of the broadband service being offered;
- 3.8.2.7** Description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
- 3.8.2.8** List all interconnection agreements that were requested, and their current status;

**3.8.3** Data Collection: Provide any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of Title 47 CFR, or any successor regulation, for broadband infrastructure projects; (See BEAD NOFO, VII.E.2.10 – Data and Mapping Standards).

**3.8.4** Required Certifications: Provider will execute a certification that they are, and will remain, in compliance with all federal, state and local labor and employment laws for the duration of the Project.

**3.9** Changes in Future Obligations: It is understood and agreed by the Parties that, because the High-Speed NV Phase III is subject to both State and Federal laws and regulations, certain requirements, such as reporting obligations, may change over time. Provider/Subgrantee shall remain obligated to comply with the current and future obligations of High-Speed NV Phase III (“HSNV-P3”) program, through the Closeout Date, except for those obligations that survive Closeout and remain in force during the Federal Interest Period.

**3.10** Costs: The Provider shall be solely responsible for managing and controlling all costs associated with the project within the agreed upon Award Amount. The Provider shall exercise due diligence, employ efficient construction practices, not bill for unallowable costs or non bona fide goods or services, and will make every effort to complete the project within the budget. Requests for payment upon completing each agreed upon milestone must align with the UPGN and/or 2 CFR 200.

**3.10.1 Allowable Costs**: Costs must “be reasonable, necessary, allocable, and allowable” for the proposed project or other eligible activity and conform to generally accepted accounting principles.” Provider acknowledges that while federal cost principles set forth in the Uniform Guidance do not govern this Fixed Amount Award and Agreement, OSIT will rely on these principles when reviewing cost showings. All expenditures must comply with federal UPGN and 2 CFR 200, as well as the Nevada BEAD Manual.

**3.10.2 Permissible Costs; Use of Award Funds**: Award Funds may be used for allowable costs incurred pre-award (at Provider’s own risk), during the period of performance, during the grant closeout process, operating and allowable maintenance costs in connection with providing broadband services to End Users, or as provided under the BEAD NOFO and 2 CFR Part 200. The BEAD Federal Grant Officer reserves the right to review and disallow any costs not in compliance with 2 CFR Part 200, including Subpart E.

**3.10.3 Procurement Practices in Uniform Guidance**: Provider is not required to comply with the procurement practices of the Uniform Guidance. Provider shall use its own documented procurement procedures based on applicable state, local or Tribal law and applicable regulations, provided that the procurements conform to Federal Law.

**3.11** Prohibited Uses of Award Funds: The following are prohibited as uses of Award Funds (whether by Provider, or Provider’s contractors, subcontractors, or subrecipients), including:

**3.11.1 Prohibition Against Payment of Bonus or Commissions**: Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement.



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**3.11.2 Prohibition Against Use for 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.

**3.11.3 Prohibition Against Purchasing Certain 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 without a Waiver from NTIA. (See Build America, Buy American requirements, BEAD NOFO, V.H.2.a).

**3.11.4 Incremental Profits and Fees:** A profit, fee, or other incremental charge above actual cost incurred by provider is not an allowed cost. (NOFO V.H.2.b.). The Parties expressly acknowledge that this prohibition does not extend to program income,<sup>19</sup> which Provider may retain without restriction, including retaining program income for profit.

**3.11.5 Collective Bargaining:** Use of any grant funds, whether directly or indirectly, to support or for opposition to collective bargaining (per BEAD NOFO, Section V.H.2.c). Violation of this restriction may subject the Provider to specific penalties, including those outlined in Article IX (and specifically 9.9).

**3.12 Disbursement of Grant Funds:** The maximum amount of disbursement to Provider is limited to the unpaid, obligated balance of the Grant Funds. Disbursement of Grant Funds will be in accordance with the terms and conditions of the *Grant Compliance Manual for the Nevada Governor's Office of Science, Innovation & Technology (OSIT) for Contractors & Subgrantees (BEAD Grant)*.

**3.12.1 Upon Completion of Milestones:** Grant Funds for milestones shall be disbursed in the amounts or percentage established as set forth in Exhibit G, and upon OSIT's verification that Provider has achieved the Milestones. Milestones may be modified, in writing, between the Parties. Claims for achieving a milestone of a deliverable will be based, and dependent on, Provider submitting sufficient evidence and documentation to support a finding of full compliance with the milestone deliverable(s). Achievement of any milestone must be substantiated by supporting documentation or testing, and verified by the OSIT Director of Operations and sign-off and acceptance by the Director of OSIT. Any invoice for a specific reimbursement/payment must contain sufficient detail for OSIT to understand the work Provider claims to have completed and any materials or supplies utilized in the completion of that work for which payment is sought. OSIT will use best efforts to process approved payment requests through the required state channels for remuneration.

**3.12.2 Progress Evaluation:** At least one year prior to the presumed issuance of the Certificate of Substantial Completion, OSIT and the Provider will review and evaluate whether Provider is on track to achieve Substantial Compliance with its Project deliverables within the Project timeline. If Provider is either not in compliance with deliverables or reporting obligations, Provider will provide a written statement to that effect to enable Parties to remedy or mitigate issues affecting construction performance or delivery of services. Parties will use good faith and best efforts to mitigate and remediate issues that may threaten the timely completion of the Project. Failure to actively engage in mitigating issues affecting construction performance or timely completion of the project may result in OSIT deeming such inaction as non-performance or non-compliance.

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<sup>19</sup> "Program Income" means gross income earned by the recipient or subrecipient that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in [§ 200.307\(c\)](#). Program income includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of items fabricated under a Federal award, license fees, and royalties on patents and copyrights, and other items specifically set forth in §200.307. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. See [§ 200.407](#).

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**3.12.3 Substantial Completion of Project:** The Project must reach Substantial Completion, meaning Project can fulfill the primary operations it was designed to perform, and the network and its management systems must be fully operational no later than four years after the date Provider receives the award. However, the final milestone payment shall not be paid until OSIT's Director of Operations:

**3.12.3.1** Has inspected and verified completion of construction and operation of the network system.

**3.12.3.2** Verified services can be delivered in accordance with the BEAD Program requirements.

**3.12.3.3** Verified that all Project Completion Criteria has been met in accordance with Article IV below.

**3.12.4 Testing Results and Reporting:** Upon completion, Provider will complete required technical testing as required by the OSIT Director of Operations, and provide any technical test reports to enable OSIT to determine, in its sole and reasonable discretion, whether Provider has met the BEAD service deliverables, the Project has been completed and Qualifying Broadband Service is available to BSLs in the RPA locations.

**3.13 Payment Disputes:** If Provider disputes any calculation, determination or amount of any payment, Provider shall notify OSIT in writing of its dispute within thirty (30) days following Provider's receipt of the payment or notification of the determination or calculation of the payment by the OSIT. OSIT will conduct a review the information presented by Provider. The calculation, determination or payment amount that results from OSIT's review shall not be subject to additional dispute under this subsection. No disputed payment shall be called due until after OSIT has concluded its review.

## ARTICLE IV – DELIVERY OF SERVICES

**4.0 Obligations of Provider:** Provider shall provide Qualifying Broadband Service to the BSL locations identified in Exhibit J, pursuant to the terms of the Scope of Work, Technical Specifications, and Delivery standards herein, and in the PRRFA. All work on the Project will materially conform to the plans, prices, speeds, and network operations set forth in the PRRFA, unless OSIT approves a change to the Project. Any material changes to the Project must be approved in advance by OSIT or its designee and Provider.

**4.1 Service Obligations:** In connection with the provision of any Broadband Service over the Project Network, Provider:

- A. Shall provide shall offer Qualifying Broadband Service over the Project Network to each customer served by the Project, advertised minimum download and minimum upload speeds as set forth in Exhibits A through C, or per the commitment in the PRRFA.
- B. Provider shall offer at least one low-cost broadband service option, which must be made available to Eligible Subscribers for the Federal Interest Period (10-year period of performance for LEO Providers).<sup>20</sup> *Failure to comply with the low-cost broadband service option requirement may result in corrective action by the NTIA, including recoupment of funds from the Provider/subgrantee.*

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<sup>20</sup> "Useful life" of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period, or 10 years. See Definition of Federal Interest Period, Article I.

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- C. Shall offer and provide Service Activation for End Users, within 10 business days after the date on which a service request is submitted.

**4.2 Pricing:** Provider shall offer an affordable service plan at speeds and pricing as set forth in its PRRFA.

**4.3 Low-Cost Plan(s):** Provider shall offer a Low-Cost Broadband Service Option (“Low-Cost Plan”) to qualifying low-income customers through the Federal Interest Period of the Project to Eligible Subscribers. The Low Cost Plan must:

**4.3.1** Provider must detail the following information regarding the Low-Cost Plan:

**4.3.1.1** All recurring charges to the subscriber as well as any non-recurring costs or fees to the subscriber;

**4.3.1.2** The Plan’s basic service characteristics including speeds and latency, which must be at least 100/20 Mbps and <100ms latency);

**4.3.1.3** The Plans price and, as applicable, how the price will change over time;

**4.3.2** Provider is responsible for verifying whether a subscriber is an Eligible Subscriber

**4.3.3** Provider agrees that this obligation shall be for the duration of the Federal Interest Period, that the obligation “runs with the infrastructure,” and, to the greatest extent allowed by law, no assignment, merger, divestiture, bankruptcy, sale, transfer or conveyance of the infrastructure or any portion of Grantee’s business shall impact this obligation.

**4.4 Service Equipment:** Provider is solely responsible for ensuring its equipment which is necessary to distribute the Qualifying Broadband service throughout the RPAs has the minimum hardware and operating system requirements necessary to provide Qualifying Broadband Service.

**4.5 Network Outages:** Provider will have protocols in place, such as preventative maintenance measures, metrics for measuring outages, and Rapid Response Protocols to recover from service disruptions and notify customers about outages and expected restoration times. Provider must have protocols in place to ensure each Funded Network’s outages do not exceed, on average, 48 hours over any 365-day period, except in the case of natural disasters or other force majeure occurrence.<sup>21</sup> During a period of five (5) years following the date of Closeout of the Project by the State, Provider must provide written notification to OSIT of any network outage within an RPA affecting more than twenty-five percent (25%) of all service addresses in the RPA lasting longer than eight (8) hours. The notification must be made within fifteen (15) days of the outage beginning.

**4.6 Notice of Completion and Final Inspection:** When (a) all construction has been completed, (b) Provider’s architect/engineer has conducted its own final inspection and any deficiencies have been corrected, and (2) all Project Completion Criteria have been met, Provider shall submit written certification to OSIT 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 OSIT certify completion of the Project. OSIT will conduct its final inspection and review of the Project to initiate Closeout pursuant Article IV. Upon receipt of the written certification, OSIT will cooperate with Provider to schedule a final inspection to be attended by representatives of OSIT, Provider’s architect/engineer, and the Provider and/or contractor(s). OSIT will provide NTIA reasonable advance notice of the final inspection so that a representative of NTIA may participate.

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<sup>21</sup> Protocols may include a preventive maintenance schedule during off-peak hours, or an emergency response team to diagnose and fix network issues, or SMS or media notification methods to provide notice to customers.

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**4.7 Acceptance or Rejection of Project:** Provider's failure to materially meet any of the Project Completion Criteria or failure to meet any material obligation under this agreement by the funding deadline, or by the end of an agreed upon extension of time, shall be cause for rejection of the Project by OSIT. Where the Project is rejected, OSIT will notify Provider in writing **(a)** that the Project is rejected, **(b)** specify the rejected items or the basis for rejection, **(c)** identify items that, if modified or added, will cause the Project to be accepted, and **(d)** provide a timeline to resubmit for inspection and/or verification. Provider 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.

**4.8 Resubmission of Project:** A rejected Project shall be resubmitted within the time period specified in writing by OSIT. Provider may request a longer time period from OSIT by submitting such request in writing setting forth, in reasonable detail, why such additional time is needed and OSIT will use reasonable discretion in approving or denying such request. Provider shall provide an updated Certificate of Substantial Completion to OSIT when it submits the Project for acceptance. OSIT shall review the resubmitted Project and if it does not meet OSIT Project Completion Criteria, the Parties shall repeat this process until the resubmitted Project is accepted, or OSIT determines that Subgrantee has triggered the non-performance section of this Agreement.

**4.9 Completion of Project Performance:** When deficiencies have been corrected, and all construction of the Project has been completed, Provider shall submit written confirmation that the Project is complete. Upon verification, testing, inspection and approval by OSIT, and receipt of the Provider's attestations that

- (1)** The network can be placed into service, as defined in 47 USC 1702(h)(4)(C) for last-mile broadband deployment projects in accordance with the terms of this Agreement, and
- (2)** The Provider can deliver the Qualifying Broadband Service to Residential and CAI End Users in the RPA(s) at the speed and latency standards set forth herein, and
- (3)** To the extent Provider relies in whole or in part on network facilities owned or operated by a third party (e.g. purchases wholesale carriage on such facilities), provides certifications regarding cybersecurity and supply chain risk management practices, as set forth in Exhibit N – Certifications of Provider.

Upon acceptance of the Network and full compliance with this Agreement, Closeout will be conducted as set forth herein, and according to the timelines and in the manner set forth in 2 CFR §200.344. Closeout does not affect (a) any of the rights requirements and obligations set forth in 2 CFR 200.345, or (b) any of Provider's obligations that survive closeout and remain in force during the Federal Interest Period as described in Article II.

### **4.10 Closeout Obligations:**

**4.10.1 Final Reports & Filings:** Provider will timely comply with its Closeout obligations, including delivery of reports, filings, and related information to OSIT, as required by the BEAD grant within 90 days of Project Completion. Provider hereby acknowledges that failure to timely provide required document and reports will result in imposition of a penalty equal to .05% of the total project award.

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Provider's Initials

**4.10.2 SF-425:** Provider will submit a final Form SF-425 and a final Performance (Technical) Report, and a Tangible Personal Property Status Report (as specified in the DOC ST&Cs § A.01) to OSIT within ninety (90) calendar days after the expiration of the Period of Performance.

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**4.10.3** Provide Risk Management Plans that account for technology infrastructure reliability and resilience, including from natural disasters and cybersecurity best practices.

**4.10.4** Provide Cybersecurity Risk Management that is ready to be operationalized upon providing service.

**4.10.5** Provider a Supply Chain Risk Management (SCRM) that is ready to be operationalized upon providing service.

**4.10.6** Provider will prepare and properly record any documents required by NTIA to perfect the federal government's interest in the BEAD funded Project Property, including recordation of a Notice of Federal Interest or similar attestation (and any other documents the DOC may hereafter require). The UCC-1 Filing shall be filed with the Secretary of State in advance of any sale or lease of the Project Property and not later than closeout of the subgrant.

**4.10.7** In addition, within 15 calendar days following the required UCC filing(s), the Provider shall deliver to OSIT complete and certified copies of the filed Notice of Federal Interest (or similar form), UCC forms and attachments for the equipment acquired with BEAD funding, including all subgrants, along with a certification from (NV) legal counsel that the UCC filing was properly executed and fled in accordance with applicable state law.

**4.11 Failure to Comply with Timely Closeout; Penalty:** Failure to timely comply with Closeout requirements, including the filing of the UCC-1 and recordation of the federal interest in the federally funded network, will result in assessment of a penalty of .05% (one-half of one percent) of the total award amount. Provider will be granted a 10-day grace period before imposition of the penalty.

**4.12 Submission of Request for Final Milestone Payment; Retainage Conditions:** Provider shall submit to OSIT all outstanding deliverables (including documentation) as defined in this Agreement, and 4.7 above, and perform required closeout processes prior to submitting its request for final payment. The State may continue to withhold up to ten percent (10%), or the unpaid balance of the total fixed award, until Provider has completed all close out procedures and reporting requirements, and ensure that any recorded liens have been removed, settled or compromised, and all final documentation has been submitted and accepted by the State. The withheld percentage of the price of any such work, improvement, or construction shall be retained until the work or that portion of incomplete work has been completed satisfactorily and accepted by OSIT in writing.

**4.13 Participation in Public Awareness Campaign:** Subgrantee shall propose a public awareness campaign, both online and through other means for the areas served by the Project in order to increase adoption of broadband service by consumers. This public campaign must, at a minimum, inform the public about Provider's Low-Cost Plan for qualifying low-income households.

**4.14 Compliance with Federal Grant Provision:** Provider shall abide by all required Federal Grant Provisions set forth in the Uniform Guidance (subject to any supplemental guidance as may be issued by NTIA or DOC), this Agreement and Exhibits. Failure to abide by the performance and reporting obligations of the federal grant provisions, the Uniform Guidance and the terms and conditions in this Agreement may result in a revocation or withholding of federal grant funds. Provider agrees to work in good faith with the State to resolve any deficiencies identified by OSIT, or any federal agency or grant officer so as to minimize the risk of having federal funding revoked or withheld.

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### ARTICLE V - ADDITIONAL OBLIGATIONS

**5.0 Compliance with State Licensing:** Provider will hire only qualified contractors or subcontractors with the necessary qualifications and experience required to perform the services under this Agreement. Provider will hire only contractors who are duly licensed and bonded in the State of Nevada in the performance of any work requiring licensing either by the Nevada State Contractors Board or the Nevada Board of Professional Engineers and Land Surveyors. Provider, its contractor, subcontractors and any independent contractors, will maintain current their licenses in good standing, together with any required bonding and insurance, as required by the applicable governing Nevada Board or Agency.

**5.1 Liens:** Provider shall keep the New Construction, including Fiber Assets and Fiber Equipment, and any other legally recognized property, free and clear from any and all liens, claims and demands which may attach as the result of the acts or omissions of Provider, its employees, subcontractors, or agents for work performed, materials furnished, or operations conducted on the leased conduit at the request or direction of Provider. If a lien is filed, the Provider shall promptly cause such lien to be removed or released and shall indemnify, hold harmless and defend OSIT from any and all costs it incurs to remove such lien

**5.2 Federal Property Interest - Compliance with Project Property Requirements:** Provider may encumber Project Property only after providing notice to NTIA and OSIT and structuring the transaction so that the DOC receives either a first priority security interest or a shared first priority security interest in the Project Property.

**5.3 Provider Duty to Monitoring of Waste, Fraud and Abuse:** Provider has an affirmative duty and obligation to monitor its agents, servants, employees and subcontractors for evidence of waste, fraud schemes, including:

- 5.3.1** Inflated pricing for materials or services;
- 5.3.2** false claims for materials and labor;
- 5.3.3** bribes related to the acquisition of materials and labor;
- 5.3.4** product substitution;
- 5.3.5** mismarking or mislabeling on products and materials; and
- 5.3.6** time and materials overcharging.

**5.4 Compliance with Cybersecurity Risk Management:** Prior to the Effective Date of the Agreement, Grantee shall provide to OSIT a Cybersecurity Risk Management Plan (CRMP) that is either operational or ready to be operationalized upon providing service (*see also* required certifications in Article 6.1). The CRMP must reflect the latest version of the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) and the standards and controls set forth in Executive Order 14028 and specify the security and privacy controls being implemented. This Plan shall be updated on a periodic basis as events warrant, but not less than annually. If Provider makes any substantive changes to the Cybersecurity Plan, Provider shall submit a new version to OSIT within thirty (30) days. OSIT will provide the CRMP to NTIA upon NTIA's request.

**5.5 Duty to Monitor Work Environment and Labor Compliance:** Provider warrants the use of tobacco products, alcohol and illegal drugs will not be permitted in its work environments; that it will monitor the work standards and work safety environment to ensure compliance state and federal regulations and laws and it will promptly report any violations to OSIT. Provider will immediately report, to OSIT's Project Supervisor or Director of Operations, workplace incidents, accidents or safety violations involving Provider's employees, subcontractors, representatives or agents, their vehicles, personal property, or any workplace incident involving the public or public utilities.



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**5.6 Compliance with Supply Chain Risk Management (SCRM):** Prior to the Effective Date of the Agreement, Provider shall, shall provide to OSIT a SCRM Plan that is either operational, or ready to be operationalized upon providing service. The SCRM Plan shall be based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations, and shall specify the supply chain risk management controls being implemented. The SCRM Plan shall be reevaluated and updated on a periodic basis and as events warrant, but not less than annually. OSIT will provide the SCRM to NTIA upon NTIA's request.

**5.7 CRMP and SCRM – Third Parties:** To the extent Provider relies in whole or in part on network facilities owned or operated by a third party (e.g. purchases wholesale carriage on such facilities), Provider must obtain from any third-party network provider the attestations to having a CRMP and a SCRM Plan practices substantially in the same form as Provider's.

**5.8 Compliance with Build America, Buy America:** The Build America, Buy America Act (BABA) established domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the IIJA. Provider shall comply with BABA consistent with applicable legal authorities, such as the IIJA, Executive Order 14005, 2 CFR Part 184, OMB Memo M-24-02, and any applicable waivers issued by the NTIA. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

**5.9 Project Signage:** Provider will comply with signage requirements established by the NTIA. Provider must execute a license agreement with NTIA, OSIT or DOC, as applicable, prior to the use of such logos on signage. Provider must maintain documentation of their compliance (including photos). Provider will execute an acknowledgement it has complied with the signage requirements for each of their projects. Such documentation will be collected on a biannual basis by OSIT.<sup>22</sup>

**5.10 Compliance with Federal Interest Period Obligations/Recordation of Federal Interest (UCC-1):** Provider shall comply with the requirements pertaining to the use, management and disposition requirements pertaining to property set forth in 2 CFR 200.311 or 200.313, and BEAD GT&C #48 and #49, as applicable, and Attachment AA to this Agreement. Provider shall duly execute a UCC-1 form after acquiring all or any portion of the equipment under this award. The UCC-1 shall be filed with the Nevada Secretary of State in accordance with the State's Uniform Commercial Code and shall continue during the Federal Interest Period for BEAD-funded projects. OSIT may exercise its rights to request information regarding any BEAD-funded property during the Federal Interest Period to enable OSIT to monitor that property use does not violate any federal restrictions.

**5.11 Subcontractors:** The Provider, and its Contractor(s) is/are responsible for the supervision of each subcontractor's continuing compliance with the terms and conditions of this Agreement, including ensuring subcontractor has complied with requirements pursuant to Nevada law, including:

**5.11.1 Safety Program:** Provider will submit employee safety program documentation and safety program documentation for any of its subcontractors who will be involved in construction work, materials handling site inspection, engineering or permitting (see NRS 618, *et seq.*).

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<sup>22</sup> See "Investing in America - Grant Recipient Guidance, on Project Signage, (Investing In America, NTIA/DOC)", [https://broadbandusa.ntia.doc.gov/sites/default/files/2024-03/NTIA\\_CAA\\_Signage\\_Guidance.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2024-03/NTIA_CAA_Signage_Guidance.pdf) for a full description of signage requirements, and in the <https://www.whitehouse.gov/wpcontent/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>

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**5.11.2 Payment of Subcontractors:** All invoices, claims or charges by subcontractors or lien claimants for labor, materials, works of improvements and/or services provided in furtherance of this Agreement will be timely paid, settled or compromised prior to any payment authorization approved by OSIT, and that it shall indemnify, defend, and hold harmless OSIT from any such claims. Provider's failure to ensure payment of all invoices, claims, or charges by its subcontractors or lien claimants prior to receipt of final payment authorization by OSIT will be deemed a breach of this Agreement.

**5.11.3 Licensing:** Provider is responsible for verifying that all subcontractors and any independent contractors are duly licensed, as required by Nevada law, and are not facing any disciplinary or legal actions by the Nevada State Contractor's Board or the Nevada Board of Professional Engineers and Land Surveyors (NVBPELS) and are not on any state debarment list.

**5.12 Duty to Notify OSIT of Performance Issues or Delays:** Provider shall notify, in writing OSIT as soon as Provider should reasonably know, that the Project may not be completed in accordance with the requirements herein by the end of the agreed term. Provider's failure to complete the Project by the end of the agreed Term may affect Provider's ability to gain additional funding or contracts in the future in addition to all other remedies set forth in this Agreement.

**5.13 Media and Communications:** Provider, its agents, officers, and representatives, agrees it will not respond to requests or inquiries, from nor initiate contact with, any media outlets, public or elected officials, or distribute information related to the Project without first obtaining the written consent of OSIT. All media communications, outreach, press releases, press conferences, interviews, or similar engagement with media sources will be handled exclusively by OSIT's Communications Officer.

**5.14 Duty to Notify OSIT of Legal Actions, Claims or Administrative Proceedings:** Upon receipt of notice of such actions, claims or filings, Provider shall report any civil, criminal, or administrative proceedings to SAM.gov. and concurrently to OSIT. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR Part 180, 31 USC 3321, and 41 USC 2313.)

**5.14.1 Service of Pleading:** If Provider is served with a pleading or other document in connection with an action before a court or other administrative decision making body, including litigation with subcontractors, partners, or vendors, and such pleading or document relates to this Agreement or the Project, Provider shall, within ten (10) days after being served, notify OSIT in writing of such action and deliver copies of such pleading or document to OSIT.

**5.14.2 Material Project Incidents:** Grantee shall immediately report any material Project incidents, including but not limited to deaths, injuries, property or utility damage or loss, service outages, violations of or noncompliance with Federal or State laws or regulations, including the Occupation Health and Safety Act of 1970 and its associated regulations.

**5.15 Transparency:** Provider acknowledges that OSIT and/or NTIA are subject to the Federal Funding Accountability and Transparency Act and required to provide reports detailing the status and expenses of all grant awards which are public. Provider warrants all information contained in any reports submitted to NTIA or DOC will be truthful and accurate.

## ARTICLE VI – WARRANTIES

**6.0 Use of Project Property:** The Parties mutually warrant that the Project Property will be used for the authorized purposes set forth in Broadband Equity, Access and Deployment Program, authorized by the Infrastructure, Investment and Jobs Act of 2021, Division F, Title I, Section 60102, (Public Law 117, 135 Stat. 429)



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("BEAD") which purposes would be comparable to the real property and equipment use within Provider's networks in the ordinary course of their business, subject to the disposition provided herein.<sup>23</sup>

**6.1 Authorized to do Business in Nevada:** Provider warrants it is authorized to do business in the State of Nevada.

**6.2 Corporate Action is Authorized:** Provider warrants every document required to be delivered hereunder are within the Provider's powers, have been duly authorized by all necessary corporate action, and received all necessary approvals and do not contravene any law, regulation or decree or any other contractual restriction. This Agreement, when duly executed and delivered, will be enforceable in accordance with its terms.

**6.3 No Pending Litigation or Proceedings Against Provider:** Provider warrants to the best of Provider'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 operations of Provider. Provider further warrants it will promptly advise OSIT if there is an occurrence impacting the project (even if Provider believes it is not negatively impactful to Provider overall) including labor disputes, workplace safety incidents, or other disputes that would jeopardize the timeliness and cost-effectiveness of the Project.

**6.4 Compliance with all Nevada Licensing and Insurance Obligations:** Provider warrants it is in compliance with NRS Chapters 616A to 616D, and 624, pertaining to workers' compensation and insurance coverage. Provider's employees and agents will not be considered State employees. Any claims that may arise under the Nevada Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

**6.5 [Where Applicable] Tribal Resolution of Consent:** Provider warrants it will initiate Tribal Consultations or secure Tribal Resolutions of Consent and will timely notify OSIT if the authorized representative for tribal matters changes during the Grant Award period.

**6.6 Disclosure of Federal Violations:** Provider warrants it will disclose, in writing to the Department and U.S. DOC, Office of Inspector General, any credible evidence that a principal, employee, agent, or subcontractor has committed 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 USC §§3729-3733).

**6.7 Compliance with All Conditions Precedent; Certifications & Assurances:** Prior to the Effective Date of the Agreement, Provider warrants that (1) it has complied with, has provided and/or now reaffirms all previous Certifications submitted to OSIT in its PRRFA and as required by the BEAD NOFO, (2) there have been no changes and/or, Provider is in compliance with the requisite Certifications and Assurance<sup>24</sup>, including:

- 6.7.1** Certification of **Eligibility to Participate in BEAD Program** (filing of Commission Form 477 and the Broadband DATA Act, the FCC Commissions' rules and regulations);
- 6.7.2** Certification of Compliance with **Protection of Whistleblowers** and Required Notices to Employees';
- 6.7.3** Certification of Compliance with **Section 9 of Secured and Trusted Communications Networks Act** of 2019 (47 U.S.C. §1608);
- 6.7.4** Compliance re: **Engagement with Tribal Entities** or their Designated Authority, where applicable;

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<sup>23</sup> For more information pertaining to obligations required by the NTIA, and guidance please see <https://broadbandusa.ntia.doc.gov> and the [BEAD Notice of Funding Opportunity](#).

<sup>24</sup> Certifications and Assurances provided as part of the Provider's Application when submitted.

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- 6.7.5 Certification re: **No Debarment/Suspension/Ineligibility or Exclusion;**
- 6.7.6 Certification re: **No Previous Convictions or Civil Judgments;**
- 6.7.7 Certification re: **No Pending Criminal Investigations, Indictments or Civil Actions;**
- 6.7.8 Certification re: **No Termination for Cause or Default;** that Provider has not, within the preceding 3 years, had one or more public transaction (federal or state or local) terminated for cause or default;
- 6.7.9 Certification of Compliance re: Contractors and Subcontractors will **Comply with all Federal and State Labor and Employment Laws** during the period of performance;
- 6.7.10 Certification of Compliance with **Build America, Buy America** <sup>25</sup> establishing domestic content procurement preference requirements for the BEAD Program. <sup>26</sup>
- 6.7.11 Certification of Compliance of all applicable **NEPA and NHPA** requirements for this Project;
- 6.7.12 Certification of Operational **Cybersecurity Risk Management Plan;**
- 6.7.13 Certification of Operational **Supply Chain Risk Management Plan;**
- 6.7.14 Certification of Compliance re: **Low-Cost Broadband Service Option;**
- 6.7.15 Certification of Compliance re: **Participation in FCC Mapping and Data Collection;**
- 6.7.16 Certification of Compliance re: **Federal Interests, UCC-1 Filing and Attorney's Certificate;**
- 6.7.17 Provider Assurance re: Compliance with State Business and **Contractor Licensing Requirements** set forth In Article V and Article XI.

**6.8 General Warranty:** Provider warrants that all construction, installations and/or work products under this Contract shall be free from material defects, completed in a workmanlike manner, consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall function in material accordance with the applicable specifications.

**6.9 Participation in Mandatory DATA and Mapping Federal Programs:** Provider warrants it will participate in the Federal Communications Commission's ("FCC") broadband mapping effort and will submit regular mapping data updates as requested by the FCC, provide to OSIT the same mapping data they provide to the FCC, and that it will work with OSIT to develop mutually agreeable data-sharing protections as necessary.

**6.10 Delivery of Documentation Required by RFA:** Prior to the Effective Date of the Agreement, Provider warrants it has completed and/or delivered of all Certifications, Assurances and disclosures of financial information

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<sup>25</sup> See the NTIA [BABA Compliance and Self Certification information](#) for more information on compliance, templates and technical assistance.

<sup>26</sup> The [Build America Buy America Act](#), enacted as part of the Infrastructure Investment and Jobs Act, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. Waivers issued by the Department of Commerce or NTIA, to include the *NTIA Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*, effective February 22, 2024. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

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to OSIT, and warrants that Provider and its subcontractors will follow all federal and state laws, statutes, rules, regulations, requirements, orders, of any city, county, state, Tribal and federal entities.

**6.11 Lobbying:** Provider warrants, whether expressly prohibited by federal law, or otherwise, that no funding associated with this Agreement will be used for any purpose associated with or related to lobbying or influencing or attempting to lobby or influence for any purpose any of the following:

**6.11.1** Any federal, state, county, tribal entity, or local agency, legislature, commission, council, or board,

**6.11.2** Any officer or employee of any federal, state, county or local agency; legislature, commission, council or board,

**6.11.3** Any federal, state, county or local legislator, commission member, council member, board member, or other elected official.

**6.12 Debarment and Suspension:** Provider warrants that neither the Provider, nor its principles, partners, agents, subsidiaries, or contractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Provider agrees it will not enter into any contract with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts. Should any principal, agent or subsidiary of Provider become debarred or suspended, Provider will immediately notify OSIT of same.<sup>27</sup> Failure to comply with the provisions of disclosure of either state or federal debarment standing, may result in cancelation, termination, or suspension in whole or in part of this grant (contract, loan, insurance, guarantee).

**6.13 Collective Bargaining:** Provider will not use grant funds, whether directly or indirectly, to support or oppose collective bargaining.

**6.14 Conflicts of Interest:** Provider, including its officers, directors, partners or subsidiaries, will not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations or services of Provider under this Agreement. Such conflicts include both actual and apparent conflicts of interest, and Provider shall refrain from any practices or activities or relationships that appear to be in conflict with the full performance of Provider's obligations and duties under this Agreement.

**6.14.1 Disclosure of Conflict to the State:** If a conflict or the appearance of a conflict arises, or if Provider is uncertain whether a conflict or the appearance of a conflict has arisen, Provider shall submit to OSIT a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a Breach of Agreement.

**6.15 Independent Contractor Status:** Provider represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor, and warrants that the State of Nevada will not incur any employment liability by reason of this Agreement or the work to be performed under this Agreement. To the extent the State incurs any employment liability for the work under this Agreement, Provider will reimburse the State for that liability.

**6.9 Disclosures Regarding Current or Former State Employees:** For the purpose of State compliance with NRS 333.705, Provider represents and warrants that if Provider, or any employee or authorized agent of Provider

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<sup>27</sup> Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#), subpart C, and 2 CFR Part 3000 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235).

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who will be performing services under this Contract is a current employee of the State, or was employed by the State within the preceding 24 months, that Provider has disclosed, or will disclose as soon as possible to OSIT the identity of such person(s) and the services that each such person will perform, to enable OSIT to comply with disclosure as required by Nevada law.

**6.10 Compliance with Insurance Requirements:** Provider acknowledges and warrants it will comply with the requirements of the State of Nevada and 2 CFR 200.310 with respect to insurance and Article XIV (Insurance).

## ARTICLE VII – INSPECTION, MONITORING & AUDIT

**7.0 Books and Records:** Provider agrees that OSIT, NTIA, the DOC Office of Inspector General, or other federal agency may conduct an audit of an award at any time. Provider will keep and maintain under generally accepted accounting principles (GAAP) full, true and complete records, contracts, books, and documents as are necessary to fully disclose to the State or federal government, or their authorized representatives, upon audits or reviews, sufficient information to determine compliance with all State and federal regulations and statutes. Provider further agrees to provide any other subcontractor oversight to ensure work performed is in accordance with the BEAD Program NOFO.

**7.1 Inspection & Audit:** This Agreement will be subject to 2 CFR 200.501 and 2 CFR 200.332, and OSIT may monitor expenditure of any federal funds throughout the performance of the subaward. OSIT and any state or federal agency with authority to audit retains such jurisdiction over such financial records and expenditures until the Project has been fully closed out by both the State and NTIA/DOC. Provider agrees that it will maintain adequate financial systems and financial records, and the relevant books, records (written, electronic, computer related or otherwise), including, without limitation, relevant accounting procedures and practices of Provider or its Subcontractors, including financial statements and supporting documentation, and documentation related to the work product shall be subject, at any reasonable time, to inspection, examination, review, audit, by the State Auditor, relevant State or federal agency or its contracted examiners, the department of Administration, Budget Division, the Nevada State Attorney General's Office and/or its Fraud Control Units, the state Legislative Auditor, the relevant federal agency, General Accounting Office, the Office of the Inspector General, or any of their authorized representatives. State agents shall have access to documents, papers, or timely access to personnel pertinent to the award in accordance with 2 CFR Part 200.337 and State Audit requirements. All subcontracts shall reflect requirements of this Section. Provider shall perform all necessary efforts to assist OSIT in verifying that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Provider/Subgrantee's Application, beginning on the Effective Date.

**7.2 Return of Unused Award Funds:** If Provider fails to expend or fails to document the expenditures of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project by grant closeout, Provider/Subgrantee agrees to return to OSIT within ten (10) business days from request, any Grant Funds it failed to spend appropriately.

**7.3 Use, Security and Retention:** Provider shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. In accordance with 2 CFR 200.303(e), Provider will take necessary measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.<sup>28</sup> Provider shall provide the State with access, subject to Provider's security requirements, for purposes of inspecting and monitoring access and use of

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<sup>28</sup> See also BEAD NOFO at IX.B.

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State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Provider shall return State Records provided to Provider or destroy such State Records and certify to the State that it has done so, as directed by the State. If Provider is prevented by law or regulation from returning or destroying State Confidential Information, Provider warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

**7.4 Monitoring:** As a condition of this Grant Award, OSIT will monitor Provider and its subcontractors using procedures determined by the State or as required for grant compliance or by applicable federal law. The federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor any aspect of Provider's performance of its obligations under this Agreement using procedures determined by the DOC or OSIT. Provider shall allow the State to perform all pre-award, award and post-award monitoring required by the Uniform Guidance or applicable State grant guidance manual based on the State's risk analysis. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the Term of this Agreement. The State shall monitor Provider's performance in a manner that does not unduly interfere with Provider's performance of the Work.

**7.5 Final Audit Report:** Provider shall promptly submit to the State a copy of any final audit report of an audit performed on Provider Records that relates to or affects this Agreement or the Project. Additionally, if Provider is required to perform a single audit under 2 C.F.R. 200.501, et seq., then Provider shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government. The Closeout of a Federal Award does not affect the right of the federal awarding agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention period, as defined below.

**7.6 Period of Retention:** Provider shall make, keep, maintain, and allow inspection and monitoring of all books, records, reports, documents, notes and other written materials, financial statements, electronic media files, and communications (including e-mails) pertaining in any manner to the Work or the delivery of Services (including but not limited to the operation of programs) or goods hereunder relevant to this Agreement. The Provider/Subgrantee must permit OSIT (as the pass-through entity) and the federal grant funders (NTIA) and auditors to have access to the Provider/Subgrantee's records and financial statements in order to comply with reporting and close-out requirements. Provider shall maintain such Records for **a minimum of five (5) years**<sup>29</sup> ("Record Retention Period") following the date of submission to the State/OSIT of the final Quarterly Report or Annual Report, or after all BEAD funds have been expended or returned to the NTIA, or from the date of termination of the Agreement, whichever is later. Retention time shall be extended when an audit is scheduled or in progress for a period reasonably necessary to complete an audit and/or to complete any administrative and judicial litigation which may ensue.<sup>30</sup>

## ARTICLE VIII – PROPERTY & FEDERAL PROPERTY INTERESTS

**8.0 Reservation of Interest and Encumbrances:** In accordance with the *Uniform Guidance*, 2 C.F.R. 200.310-316, BEAD-funded networks will retain Federal Interest in all real property, equipment or intangible property acquired or improved as part of the subgrant for a broadband infrastructure project for ten (10) years from the time a project has been closed out in accordance with 2 CFR 200.344. Provider shall hold Project Property in trust for the benefit of the public being served who are the beneficiaries of the BEAD Program broadband infrastructure

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<sup>29</sup> 2 CFR Part 200.334

<sup>30</sup> See 2 C.F.R. §200.332-334.

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project. Accordingly, the federal government shall retain an undivided, equitable reversionary interest (Federal Interest) in the property. Provider shall not encumber such property without prior disclosure to and approval from NTIA and NIST. Provider shall not enter into any encumbrance that interferes with the construction, intended use, operation or maintenance of any grant-funded property during the Federal Interest Period. See Exhibit L and Attachment AA for the Property Standards and requirements for Project Property.

Provider explicitly acknowledges that the obligations described in this Section survive beyond the Period of Performance and the Project Closeout Date and remain in effect during the entirety of the Federal Interest Period.

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*Provider Initials*

**8.1 Vesting of Title:** For the duration of the Federal Interest Period, title to real property or broadband equipment or infrastructure ("Project Property") constructed, acquired, improved, or installed pursuant to the grant funding in this Agreement shall vest with Provider and any successors or transferees, subject to the clarifications and exceptions set forth in 8.2, Exhibit L (*Federal Property Standards*), Attachment AA, and any further guidance issue by NTIA or DOC.<sup>31</sup>

**8.2 Restrictions of Project Property:** Provider must use the Project Property for the authorized purposes of the Project, subject to the rights to disposition herein below:

**8.2.1** Provider must maintain records and record any liens or other appropriate notice(s) of record, in a form acceptable to the Grant's 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.

**8.2.2** Provider may sell, lease or transfer Project Property only after (a) securing the agreement of the successor or transferee to comply with the BEAD Program requirements and this Agreement and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, (b) ensuring no interruption to service and (c) obtaining consent to the sale or transfer from the NTIA.

**8.2.3** Provider may encumber Project Property only after provisions for notice has been provided to NTIA and the Grants 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 Department of Commerce would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of the contribution to the project costs.

**8.2.4** Provider will immediately notify OSIT and NTIA upon the filing of any Petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to the Provider, its subcontractors, or its affiliates that would impact the Provider's ability to perform in accordance with this Grant.

**8.3 Intellectual Property:** For any intellectual property created using federal funds, Provider acknowledges and warrants it will comply with the requirements of [37 CFR Part 401](#) and any implementing regulations issued by the awarding agency.

**8.4 Additional Broadband Assets:** Provider may modify its design plans to add, at its own expense, additional Broadband Assets, such as conduit or fiber equipment, supporting equipment, towers, broadband components,

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<sup>31</sup> See NTIA, Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program (Dec. 26, 2023), [https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD\\_Policy\\_Note\\_of\\_Uniform\\_Guidance\\_Part\\_200\\_Exceptions\\_Related\\_Issues.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Note_of_Uniform_Guidance_Part_200_Exceptions_Related_Issues.pdf).



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real or personal property or ancillary broadband assets to any New Project construction, provided such modification(s) do(es) not alter, affect, delay, or negatively impact Provider's ability to comply with the terms of this Agreement and deliverables set forth herein.

**8.5 Wholesale Obligations on Default:** In the event Provider, at any time during the Federal Interest Period, is no longer able to provide Broadband Service to the End Users at any time on a retail basis, remedial action will be taken to ensure continuity of service. Provider shall, after consultation with, and as approved by OSIT and NTIA, either (1) sell Project network capacity at a reasonable, wholesale rate to one or more other broadband service providers or public-sector entities, or (2) sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program. OSIT may require Provider to take remedial action so long as such action results in continued retail service to End Users in the RPA(s). See NOFO IV.C.2.c.v.

## ARTICLE IX – DEFAULT, BREACH & TERMINATION

**9.0 Termination Without Cause:** Regardless of any terms to the contrary, this Agreement may be terminated upon written notice by mutual consent of both parties. OSIT may unilaterally terminate this contract without cause by giving not less than thirty (30) days' notice in the manner specified in Article X, regarding *Notice*. If this contract is unilaterally terminated by OSIT, the Provider shall use its best efforts to minimize cost to the State and Provider will not be paid for any cost that Provider could have reasonably avoided.

**9.1 Termination for Non-Appropriation:** The continuation of this Agreement is subject to and contingent upon sufficient funds being appropriated, budgeted, and otherwise made available by the State Legislature and/or federal sources. The State may terminate this Contract, and Provider waives any and all claims(s) for damages, effective immediately upon receipt of written notice (or any date specified therein) if for any reason the contracting Agency's funding from State and/or federal sources is not appropriated or is withdrawn, limited, or impaired.

**9.2 Site Closure:** In the event a site, BSL, or CAI is closed, destroyed or is rendered uninhabitable, or the parties mutually agree the location is unserviceable (i.e. is later identified to be something other than a BSL, or is not capable of receiving service), Provider and OSIT may mutually agree, in writing, to remove said location from Provider's service obligations.

**9.3 Termination with Cause for Breach:** A breach may be declared with or without termination. Neither party shall be able to terminate the Agreement without first providing the other party the opportunity to cure the breach as outlined herein. A Notice of Breach and Termination shall specify the breach, the Party's failure to cure, and the date of termination of the Agreement, which shall not be sooner than the expiration of the time to cure or correct, if applicable, as allowed under the Cure of a Breach in Article 9.8. Remedies for non-performance will be handled consistent with the authorities set forth in this Article and 2 CFR 200.339. When a determination or decision regarding non-performance is to be made, OSIT shall make such determination or decision in good faith.

This Agreement may be terminated by OSIT upon written notice of breach to the other party on the following grounds:

**9.3.1** If Provider fails to provide, or fails to diligently pursue completion, or satisfactorily perform any of the conditions, work, deliverables, goods, or services called for by this Agreement within the time requirements specified in this Agreement or within any granted extension of those time requirements.

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**9.3.2** If any state, county, city, or federal entity requires any license, authorization, qualification, or certification of Provider (by statute, ordinance, law, or regulation) and Provider fails to comply with or secure, maintain or renew the necessary governmental entity requirements, licenses, etc.; or

**9.3.3** If Provider materially breaches material requirement(s) under applicable Federal statutes (to include 47 USC § 1702) and regulations, the DOC ST&Cs, the General Terms and Conditions for the BEAD Program, the Specific Award Conditions applicable to Nevada's BEAD award, Nevada's grant compliance requirements, and/or Nevada's BEAD Initial Proposal, and fails to timely cure that breach;

**9.3.4** If Provider becomes insolvent, subject to receivership, or becomes voluntarily or involuntarily subject to the jurisdiction of the Bankruptcy Court, or, files a voluntary case in state or federal court seeking any remedy under any applicable bankruptcy, insolvency or other similar law, or consents to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or makes any general assignment for the benefit of creditors or other entities.

**9.3.5** Provider's wasteful, fraudulent or abusive expenditure of Award Fundings;

**9.3.6** If it is found that the Provider has canceled its insurance or terminated its Performance Bond or Letter of Credit prior to completion of the Project.

**9.3.7** If it is found that any quid pro quo or gratuities in the form of money, services, entertainment, gifts, or otherwise were offered or given by Provider, or any agent or representative of Provider, to any officer or employee of OSIT or State of Nevada with a view toward securing a contract or securing favorable treatment with respect to awarding, extending, amending, making any determination with respect to the performing of such contract; or

**9.3.8** If it is found by the State that Provider has failed to disclose any material conflict of interest relative to the performance of this Agreement, or,

**9.3.9** If OSIT materially breaches a material duty under this Contract and such breach impairs Provider's ability to perform; or

**9.3.10** It is found by the state that Provider has failed to disclose any material conflict of interest relative to the performance of this Contract.

**9.3.11** If it is found there is a failure to comply with the federal grant obligations or termination provisions included in the federal Award.

**9.4 Alternative Remedies for Non-Performance; General Authority:** OSIT and NTIA, in their discretion, may enforce applicable rules and laws by pursuing alternative remedies for nonperformance, or failure to meet statutory obligations. Such additional remedies may include imposition of additional award conditions as described in 2 C.F.R. 200.208, suspension of funds, liquidated damages, debarment of organizations and/or personnel or other such penalties permitted by law for non-performance by Provider.

**9.5 Non-Performance:** Non-performance occurs when a subgrantee fails to comply with any material requirement under the U.S. Constitution, applicable Federal statutes (to include 47 USC § 1702) and regulations, the DOC ST&Cs, the General Terms and Conditions for the BEAD Program, the Specific Award Conditions and relevant NTIA guidance and includes, for example, the failure to comply with the low-cost broadband service option, the failure to cooperate with OSIT as the lead agency in the NEPA and ESAPTT process; or failure to provide Qualifying Broadband Service or the failure to meet Service Activation requirements to all BSLs in an RPA. OSIT may pursue its rights and remedies under 2 CFR 200, 2 CFR 200.339 including:

(a) Imposition of a Financial Penalty or Liquidated Damages



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(b) Temporarily withhold Payments

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

(d) Recommend the initiation of suspension or debarment proceedings by NTIA or DOC as authorized under 2 CFR part 180 and DOC regulations.

(e) Seek other available damages, including fines or other remedies as set forth in 9.6 and 9.8 below.

**9.6 Fines, Penalties & Liquidated Damages:** The Parties acknowledge that failure to follow repeated warnings, or Provider's non-compliance which jeopardize Final Project Completion, or Provider's repeated failure to take corrective action address unjustifiable or unreasonable delays that affect delivery of Project deliverables within the contract time, will result in damages to OSIT and the public that are difficult or impossible to ascertain with certainty. These damages include, but are not limited to, lost economic opportunities for the community, continued lack of access to essential services, and increased administrative costs. Accordingly, OSIT may elect to exercise its right to impose fines, penalties or liquidated damages, which damages are neither a penalty nor punitive, but rather a mechanism to ensure the public receives the benefit of the BEAD funds and deployment of the Funded Network. Accordingly, the following penalties may be imposed by OSIT, upon Provider's failure to:

**9.6.1 Follow and adhere to Labor and Safety Requirements:** After three written warnings from either the OSIT Director, or OSIT Director of Operations, Provider will be fined \$1,000.00 for violation of the items set forth in the written warning. All violations must be in written form, provide with sufficient specificity the basis of the violation, and evidence that warning was given and received to Provider or its agent/representative. If Provider fails to pay the fine within 30 days, OSIT will provide notice to Provider that the fine will be deducted from the next Milestone payment.

**9.6.2 Failure to Timely Provide Required Reporting Information:** After two written requests from either the OSIT Director, or OSIT Director of Operations, to provide required information Provider will be fined \$1,000.00 for each failure to provide information which OSIT is entitled to in accordance with this Agreement. Any citation for a violation must be in written form, provide with sufficient specificity the basis of the violation, including specific detail all information, reports, record or documents that Provider has failed to provide to OSIT, and evidence that warning was given and received to Provider or its agent/representative. If Provider fails to pay the fine within 30 days, OSIT will provide notice to Provider that the fine will be deducted from the next Milestone payment.

**9.6.3 Unreasonable/Unwarranted or Recurring Delays in Meeting Project Deliverables:** Failing to meet a Project Milestone or engaged in unreasonable and unwarranted delays with respect to specific deadlines identified, and in particular, the pre-permitting work, with OSIT as the Lead Agency for NEPA as required in Article IV, to the detriment of OSIT or Project deliverables. Where OSIT believes Provider's delays are unreasonable or unwarranted, OSIT will issue a written warning to Provider. Upon issuance of a third warning under this provision, OSIT will impose a penalty fee. The Parties will work in good faith to resolve any deficiencies identified by warning notices from OSIT or any federal agency so to minimize the risk of imposition of a fine, penalty or withholding of federal funding.

**9.6.4 Failure to Connect BSLs in the RPA:** OSIT may elect to exercise its right to seek liquidated damages, which damages are not a penalty, upon Provider's failure to deploy a network connection or deliver Service Activation to the agreed upon BSLs in the RPA. Failure to deploy service or deliver Service Activation shall be deemed a breach. If the breach is not or cannot be cured, Provider shall be liable for liquidated damages for each BSL that Provider has not connected or unable to provide Service Activation within the contract time. Failure to provide service shall not apply to force majeure events, or where BSL is determined by the Parties to be an objectively unserviceable location, or any other delay for which the

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Provider was granted an extension of Contract Time under the terms of this Agreement. Where the BSL has been determined to be a serviceable location, liquidated damages shall be calculated based on the CostQuest Associates ("CQA") cost model amount, a per-location reference cost estimate generated by CQA and used by the NTIA and calculated by multiplying the CQA per-location cost model by the number of incomplete service or connections to BSLs at the end of the contract time.

**9.7 Deduction from Final Payment:** OSIT may, at its option, deduct the amount of any fine or liquidated damages from any payments otherwise due the Provider. If the amount of liquidated damages exceeds the final payments due, the Provider shall pay the remaining balance to OSIT upon demand.

**9.8 No Waiver of Other Damage Claims or Available Remedies:** This liquidated damage clause is in addition to other remedies available arising from matters separate from unfinished or unconnected/unreserved BSLs and does not limit additional damages OSIT may seek, nor does it constitute a waiver or limitation of OSIT's right to terminate this Agreement for cause, and/or pursue any and all other remedies available at law or in equity, for any breach by the Provider.

**9.9 Forfeiture/ Reversion:** Subject to the exception set forth in Article 15 (Force Majeure), if Provider/Subgrantee materially breaches this Agreement, abandons the Project and/or termination for cause where the Provider fails to return the full forfeited amount required by this Article, the ownership and use of the broadband infrastructure funded by the High-Speed NV Initiative shall revert to the State of Nevada.

**9.10 "Claw Back"; Reservation of Right to Withhold or Recover Funds:** As a precondition to acceptance of federal funding under the BEAD Program, Provider agrees that the State shall have the authority, to the extent permitted by applicable law, to withhold funds, or require reimbursement or forfeiture of funding to the State of the amount of grant funding received, up to three (3) fiscal years preceding the year the application or disbursement of grant fund. Full or partial withholding, forfeiture or recoupment may be sought for cause where Provider has: **(1)** failed to take corrective action or timely cure any Notice of Breach after being duly notified by the State, **(2)** failed to comply with the BEAD Program's specifications set forth herein, **(3)** failed to deploy network infrastructure in accordance with the terms of this Agreement and withing the mandated deadlines, **(4) failed to reach a BSL identified in the RPA, which the Parties have not mutually agreed to remove from the list of serviceable locations**<sup>32</sup> **(5)** failed to use the funds for the agreed upon purpose, or **(5)** failed to obtain a Finding of No Significant Impact (FONSI), **(6)** used funds to support or oppose collective bargaining or **(7)** demonstrated misfeasance or malfeasance in the use of such funds including waste, fraud, or the offering of kickbacks or bribes.

**9.10.1 Notice of Intent to Withhold or Recover Funding:** Prior to exercising the right to withhold payment of funds or exercise its legal right to withhold payment, or recoup funding already paid to Provider, the State will provide written notice to Provider of its intent to exercise such right. Notice to Provider will set forth the basis for such declaration, and give Provider an opportunity to voluntarily comply, or cure as set forth above, if such cure is possible.

**9.10.2 Failure or Inability to Cure:** Where cure is not possible, or has failed, the State may choose to withhold funds and/or seek recoupment of federal funds. Any determination of occurrence(s) of events identified above, shall be made by OSIT in good faith, which determination shall be conclusive for purposes of this Agreement.

**9.10.3 NTIA Right to Pursue Claw Back:** The Parties acknowledge that NTIA may pursue claw back of funds directly from OSIT if OSIT fails to ensure Provider/Subgrantee accountability to the fullest extent of

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<sup>32</sup> Where Provider has failed to reach a BSL, or cannot or will not provide Service Activation, the NTIA and OSIT reserves the right to claw back funds allocated for such service to the BSL(s). The amount of the clawback will be determined by the estimated costs attributable for service to the BSL, or cost-per-BSL.

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the law. To the extent NTIA successfully pursues the remedy of a claw back from OSIT on these grounds, Provider/Subgrantee shall reimburse OSIT in an amount equal to the claw back.

**9.10.4** Any right to withhold federal funds or seek recoupment of federal funding will be in addition to, and not in lieu of, any other rights of recoupment that may be available to the State.

**9.11 Notice of Breach:** Unless the breach is not curable, or unless circumstances do not permit an opportunity to cure, termination upon declared breach may be exercised only after service of formal written notice as specified in Article X (Notice), and the subsequent failure of the breaching party to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has or will be been corrected in within fifteen (15) calendar days of receipt of that notice to provide evidence, satisfactory to the aggrieved party, showing that the declared breach has been corrected. Upon receipt of a Notice of Breach, the time to correct and the time for termination of the contract upon breach shall run concurrently, unless the notice expressly states otherwise.

**9.12 Time to Correct:** The failure by OSIT to make any payment, or the failure of either party hereto to observe or perform any covenants, conditions or provisions of this Agreement required to be made, observed or performed by such party, after thirty (30) days written notice of such default, shall constitute a default of this Agreement by such party; provided, however, that if the nature of the default (other than the payment of money) is such that more than thirty (30) days is reasonably required for its cure, then the defaulting party shall not be deemed to be in default if such party commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. The time for curing the default may be extended, by mutual agreement of the Parties, in writing, for a period of up to ninety (90) days from the date of receipt of the default notice. Upon the failure by the defaulting party to timely cure any default after notice from the non-defaulting party, the non-defaulting party may pursue all remedies available under Nevada law, and take any action it determines, in its discretion, to be necessary to correct the default, mitigate its damages and/or pursue any legal remedies it may have under applicable law or principles of equity relating to the breach including termination of the Agreement and recovery of damages.

**9.13 "Winding Up Affairs Upon Termination:** In the event of termination of this Agreement for any reason, the Parties agree that the provisions of this section survive termination, and:

**9.13.1** The Parties shall account for and properly present to each other all claims for fees and expenses and pay those which are undisputed and otherwise not subject to set off under this Agreement. Neither Party may withhold the performance of winding up provisions solely based on nonpayment of fees or expenses accrued up to the time of termination.

**9.13.2** Provider shall cooperate in the execute any documents and take any actions necessary to effectuate an assignment of this Agreement if so requested by OSIT.

**9.13.3** Provider shall preserve, protect, and promptly deliver into OSIT'S possession all proprietary information in accordance with Article XIV, *State Ownership of Proprietary Information*.

**9.13.4** Provider shall inform OSIT, with at least 30 days' notice, if it intends to sell or abandon the broadband facilities through the Federal Interest Period. OSIT shall work with Provider and/or NTIA to determine the process for OSIT to assume full ownership of the broadband assets/broadband facilities in the case of abandonment. Or in the case of sale or abandonment, where a Successor Owner to the Provider is named, Provider shall cooperate with Successor Owner to ensure an orderly transition, and that Successor Owner has been apprised of, and accepts all terms and conditions of this Agreement.

Notwithstanding the above, Provider shall not be relieved of any liability to OSIT for damages sustained by OSIT by virtue of any breach of this Agreement by the Provider, and OSIT may not withhold undisputed payments to Provider for purposes of set-off until such time as damages may be determined.

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**9.14 Cross-Termination:** Termination of this Contract shall include the termination of all Exhibits and Attachments to this contract including the Scope of Work.

### ARTICLE X – NOTICES AND REPRESENTATIVES

**10.0 Notices:** Except as otherwise provided for within this Agreement, all communications, including notices, required or permitted to be given under this Agreement shall be in writing directed to the parties at the addresses stated below. Notices may be given (i) by delivery in person; (ii) by first class mail, posted prepaid with proof of service, or (iii) duly given if delivered personally in hand, or electronic mail with simultaneous mailing of such notice by first class U.S. mail, or certified mail, return receipt requested, postage prepaid on the date posted and addressed to the other party. If specifically requested by the party to be notified, valid notice may be given by electronic mail to the address(es) such party, where it has specified such form as acceptable.

Notice shall be provided to the Parties at the following addresses and deemed delivered (i) on the date of actual delivery in person or (ii) within 3 business days by first class mail.:

<b>For the State:</b> Nevada Office of Science, Innovation & Technology Attn: Brian Mitchell, Director OSIT 680 W Nye Lane, Suite 104 Carson City, Nevada 89703  E-mail: <a href="mailto:blmitchell@gov.nv.gov">blmitchell@gov.nv.gov</a>	<b>For Provider:</b> NAME: Attn: Address: Address  E-mail:
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**10.1 Representatives:** Each individual identified above is a duly authorized representative of their respective principals, with authority to contractually bind their principal to this Agreement. Either Party may change its Principal Representative or principal representative contact information or may designate specific other individuals to receive certain types of notices in addition to, or in lieu of, a Principal Representative, by written notice submitted in accordance with this section, without requiring a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

### ARTICLE XI – GRANT MANAGEMENT FOR GOVERNMENT FUNDED PROJECTS

**11.0 Project Duration:** All BEAD funding must be spent, and all fiscal and programmatic reports must be submitted on or before four years from the date of execution of this Agreement.

**11.1 Compliance with Grant Requirements, Federal Laws, Regulations and Executive Orders:** Projects funded through this effort must comply with all applicable programmatic grant requirements contained in the BEAD NOFO, applicable Federal laws, regulations, related executive orders and NTIA or DOC guidance. Failure to do so may result in cancellation or termination of this Agreement and/or recoupment of funds already disbursed.

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Provider is responsible for knowledge of, and compliance with, these requirements which are extensive and include, without limitation:<sup>33</sup>

**11.1.1 Compliance with Federal Award Conditions:** Provider acknowledges and warrants it will comply with applicable federal labor laws, programmatic grant requirements in the BEAD NOFO, BEAD RPN and any subsequent guidance issued by the NTIA, including all certifications set forth in the PRRFA and this Agreement. contracts awarded by the non-Federal entity in excess of \$100,000 must comply with 40 U.S.C. 3702 and 3704 as supplemented by Department of Labor regulations (29 CFR Part 5).

**11.1.2 Compliance with Federal Labor Standards:** Where applicable, all contracts awarded by OSIT in excess of \$100,000 must comply with 40 U.S.C. 3702 and 3704 as supplemented by Department of Labor regulations (29 CFR Part 5).

**11.1.3 Compliance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), 2 C.F.R. Part 200,** except as otherwise provided by NTIA for the BEAD Program.

**11.1.4 Compliance with Representations & Warranties in PRRFA:** Provider acknowledges and warrants it will comply with all representations and obligations set forth in certifications provided to OSIT in its Response to Request for Application pertaining to applicable programmatic and reporting requirements.

**11.1.5 Compliance with Record Retention and Audit Access:** Provider shall retain all records, financial and programmatic, related to this Agreement for a period of not less than five (5) years from the date of submission of the final expenditure report, or longer if required by law. Records include, but are not limited to, documentation supporting all expenditures, matching contributions, performance testing, and compliance activities. The Subgrantee shall provide OSIT, the NTIA, the DOC, Office of Inspector General, the Comptroller General of the United States, and their authorized representatives with full and unrestricted access to such records for audit, examination, and compliance review purposes. An electronic copy of all such audits shall be forwarded to OSIT within thirty (30) days of report issuance for review.

**11.1.6 Equal Employment Opportunity Act,** including all applicable requirements and exemptions, to the extent the requirements remain consistent with applicable local, state and federal law;<sup>34</sup>

**11.1.7 American with Disabilities Act of 1990 (Public Law 101-136) 42 U.S.C. 12101-12213,** as amended and regulations adopted thereunder including 28 C.F.R. Part 35, inclusive, and any relevant program-specific regulations.

**11.1.8 Civil Rights Act of 1964 (Public Law 88-352),** subject to any amendments thereto, consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), the Grantee must abide by the non-discrimination requirements set forth in the legal authorities listed in the NOFO, to the extent applicable.

**11.1.9 The Rehabilitation Act of 1973 (P.L. 93-112),** as amended, and any relevant program-specific regulations, and shall not discriminate against any employee or offeror for employment because of race, national origin, creed, color, sex, religion, age, disability or handicap condition (including AIDS and AIDS-related conditions.)

**11.1.10 Occupational Safety and Health Administration ("OSHA"),** Code of Federal Regulations (CFR) Parts 1910 - General Industry, and 1926 - Construction Industry, et al.

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<sup>33</sup> Applicability of federal laws may be dependent on total federal funding awarded or other factors. See High Speed NV Request for Application for additional information and the [NTIA BEAD NOFO](#), incorporated herein by reference.

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### **11.1.11 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**<sup>35</sup>

**11.1.12 Whistleblower Protection Under the Recovery Act:** 41 USC 4712. Provider, 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 a gross waste of federal funds, an abuse of authority, danger to public health or safety or a violation of law, rule or regulation under a federal award or subgrant. Subgrantees must inform their employees in writing of the rights and remedies provided under 41 USC 4712 in the predominate native language of the workforce.

**11.1.13 Clean Air Act and Federal Water Pollution Control Act**<sup>36</sup> (where applicable) for contracts that exceed the Simplified Acquisition Threshold (currently \$250,000).

**11.1.14 Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. §1608P, Section 9),** prohibiting procurement of equipment, services or systems that uses covered telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation.<sup>37</sup> (Pub. Law 115-232. See 2 CFR 200.216)

**11.1.15 Build America, Buy America Act (Public Law 117-58, 135 Stat. 429, §§70901-52)**<sup>38</sup> establishing domestic content procurement preference requirements for the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act. *Unless Provider has obtained a Waiver*, Provider shall comply with BABA consistent with applicable legal authorities, including executive orders, federal memos and any amendments thereto.<sup>39</sup>

**11.1.16 National Defense Authorization Act (NDAA) of 2019, Section 889:** Prohibits the use of federal funds to procure, extend, or renew contracts for covered telecommunications equipment or services, including but not limited to those produced by Huawei, ZTE, Hytera, Hikvision, Dahua, or any subsidiary/affiliate thereof.

### **11.1.17 National Environmental Policy Act (NEPA) (42 U.S.C. §4321):**

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<sup>35</sup> Byrd Anti-Lobbying Amendment ([31 U.S.C. 1352](#))—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award must be disclosed.

<sup>36</sup> Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended. See Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

<sup>37</sup> See Pub. Law 115-232. See 2 CFR 200.

<sup>38</sup> See the NTIA [BABA Compliance and Self Certification information](#) for more information on compliance, templates and technical assistance.

<sup>39</sup> The [Build America Buy America Act](#), enacted as part of the Infrastructure Investment and Jobs Act, established a domestic content procurement preference for all Federal financial assistance obligated for infrastructure projects after May 14, 2022. The domestic content procurement preference requires that all iron, steel, manufactured products, and construction materials used in covered infrastructure projects are produced in the United States. Waivers issued by the Department of Commerce or NTIA, to include the *NTIA Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*, effective February 22, 2024. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.



## **DRAFT TEMPLATE 08-22-25**

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### **11.1.18 National Historic Preservation Act (NHPA) (54 U.S.C. § 300101 *et seq.*)**

#### **11.1.19**

**11.2 Compliance with State Statutes, Regulations, Tribal Laws and Local Ordinances:** Projects funded through this effort must comply with all applicable State, local, and Tribal laws, regulations and ordinances to the extent that such requirements do not conflict with Federal laws. Failure to do so may result in cancellation or termination of this Agreement and/or recoupment of funds already disbursed. Provider is responsible for knowledge of, and compliance with, these requirements, which are extensive and include, without limitation:

**11.2.1.1 Nevada Revised Statute § 624, *et seq.***, Provider and all subcontractors shall be properly licensed by the State of Nevada to perform the construction tasks they are assigned and shall remain in compliance with all governing licensing and bonding requirements implemented by the Nevada State Contractors' Board.

**11.2.1.2 Nevada Revised Statute § 625, *et seq.***, Provider will hire engineers duly licensed in the State of Nevada to perform such Project tasks and work which require licensing by the State Board of Professional Engineers and shall remain in compliance with all governing licensing and bonding requirements.

**11.2.1.3 Nevada Department of Transportation Manual for Guidelines for Permitting in ROW (for Telecommunication Facilities) and related guidelines.**

**11.2.1.4 Nevada Department of Environmental Protection** for compliance with state environmental statutes, permitting and regulations.

**11.2.1.5 Nevada State Historic Preservation (SHPO)** for consultation requirements (to determine National Historic Preservation Act Section 106 applicability) and other requirements. 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. Subgrantees must notify OSIT of inadvertent discoveries and potential impacts to these resources. If any potential archaeological resource or buried human remains are discovered during construction, Provider and any subcontractors must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify OSIT, NTIA and the interested SHPO, THPO and potentially affected Tribes. Such construction activities may then only continue with the written approval of OSIT and NTIA.

**11.3 Fiscal Responsibilities:** Provider, as a subrecipient of funds, is required to establish and maintain accounting systems and financial records in accordance with the *Uniform Guidelines* and 2 CFR 200 *et seq.* Provider is responsible for knowledge of, and compliance with the required accounting systems and responsibilities, and ensure that:

**11.3.1** Funds are not commingled with funds from other grant sources.

**11.3.2** Funds specifically budgeted and/or received for one project cannot be used to support another federally funded or government subsidized project.

**11.3.3** All awards are subject to audits during and within three (3) fiscal years after the grant award reporting period has concluded.

**11.3.4** The accounting system presents and classifies the historical cost of the grant as required for budgetary and auditing purposes.

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**11.4 No Duplication of Federal Funding:** No federal funds may be used to duplicate costs, services, connections, facilities, or equipment that have been authorized through another federal program.

**11.5 Reporting:** Provider shall file all required reports with the Office, NIST, and/or NTIA as required by the BEAD NOFO, and any supplemental guidance. Provider acknowledges that the reporting requirements set forth in this Agreement may be updated from time to time, and Provider shall comply with any other reporting requirements determined by OSIT as necessary 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. OSIT may exercise its right to collect any information from Provider or Provider's subcontractors related to grant administration activities *at any time* for reporting and monitoring purposes.

**11.6 Modifications/Amendments to Budget:** Any Request for Amendment or modification to the Budget must set forth in writing the item(s) requiring amendment, amount of the change sought, a substantive justification for the request, and submitted to OSIT for technical, programmatic, and budgetary review. OSIT will review the request, and accept, reject, or modify the request.

**11.7 Publicity:** Any publicity regarding this grant or contract must identify the OSIT as the sponsoring agency and must not be released without prior written approval from OSIT's authorized representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Provider individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. Provider shall not claim that the State or any State agency endorses its products or services.

## ARTICLE XII – CONFIDENTIALITY

**12.0 Confidentiality / Non-Disclosure:** Provider and OSIT shall keep confidential all information, in whatever form, produced, prepared, observed or received by each from the other to the extent that such information is confidential by law or otherwise required by this Contract. Each Party expressly undertakes to retain in confidence and not to disclose information and know-how, in whatever form transmitted, including, but not limited to, information concerning either Party's past, present and future business affairs, business plans, or operations of such party ("Disclosing Party") or another party whose information the Disclosing Party has in its possession under obligations of confidentiality, disclosed in any way to it (the "Receiving Party") that the Disclosing Party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"). The Receiving Party shall treat the Confidential Information with the same degree of care it treats its own confidential information and will make no use of such Confidential Information during the existence of this Agreement except as otherwise specified.

**12.1 No Duty to Maintain Confidentiality:** The Receiving Party shall have no obligation or duty to maintain the confidentiality of information that:

- 12.1.1** Was received rightfully from another party without restrictions on disclosure prior to its receipt from the Disclosing Party;
- 12.1.2** The Disclosing Party has disclosed to an unaffiliated third party without any obligation to maintain such information in confidence; or
- 12.1.3** Is independently developed by the Receiving Party without the use of the other Party's confidential information.

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**12.2 Public Announcements; Press Releases:** In accordance with the limitations and restrictions set forth in Article 5.5 above, Provider shall not issue any public announcement or press release relating to the execution of this Agreement without the prior approval of OSIT, which approval shall not be unreasonably withheld.

**12.3 Prohibition on Disclosure of Confidential Information:** Except as otherwise provided, the Receiving Party shall not disclose, disseminate, distribute, or use any of the Disclosing Party's Confidential Information to any third party without the Disclosing Party's prior written permission except as otherwise required to comply with the law, including Article 14.12, *Public Records* of this Agreement. In accordance with 2 C.F.R. 200.303, OSIT and Provider shall take necessary measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with this Agreement.

**12.4 Duration:** The provisions of this Article shall survive expiration or termination of this Agreement.

**12.5 Availability of Equitable Remedy(ies):** The Parties agree that a breach of the terms of this Article would result in irreparable injury to the Disclosing Party for which a remedy in damages would be inadequate. The parties agree that in the event of such breach or threatened breach, the Disclosing Party shall be entitled to an injunction to prevent the breach or threatened breach, in addition to remedies otherwise available for such specific performance or injunctive relief, that the Disclosing Party has an adequate remedy at law.

## ARTICLE XIII - INSURANCE SCHEDULE & COVERAGE

**13.0 Insurance Schedule:** Unless expressly waived in writing by the State, Provider must carry policies of insurance and pay all taxes and fees incident hereunto for the duration of the Agreement, at their own cost and expense, primary liability insurance against claims for injuries (including death) to persons or damages to property, including contractual liability, that may arise from or in connection with Provider's performance of the duties and obligations in this Agreement by Provider, its agents, employees, assigns, contractors or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission.

Provider shall not commence work before Provider has provided the required evidence of insurance to OIST via Certificate of Insurance. Policies shall meet the terms and conditions as specified in this Agreement along with, at a minimum, the additional limits and provisions in Attachment BB, incorporated hereto by attachment. If Provider maintains broader coverage and/or higher limits than the minimums shown herein, the State of Nevada shall be entitled to the broader coverage and/or higher limits maintained by Provider. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State.

Claims that may arise under NRS 616 *et al.*, on behalf of the employees or independent contractors or third party resulting from any act or omission on the part of these employees are in no way the State's obligation or responsibility. The State shall have no liability except as specifically provided in the Agreement.

**13.1 Professional Liability Insurance:** Provider shall provide OSIT with proof of professional liability insurance.

The professional liability insurance policy via Certificate of Insurance shall be in the same amount as the award value of the resulting contract under this RFP and shall entitle OSIT to call upon the surety to complete the contract in one of two ways: (1) the surety and OSIT can choose a new Applicant to complete the contract and the surety pays the costs; or (2) OSIT alone choose to terminate the contract by selecting another Applicant and the surety pays the costs.

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**13.2 Modifications to Coverage:** The State's approval of any changes to insurance coverage during the course of performance shall constitute an ongoing condition subsequent to this Agreement. The state may only make a change in insurance requirements once per term and with 60 days advanced notice to Provider. Any failure of the State to timely approve shall not constitute a waiver of the condition.

**13.3 Insurance Coverage:** Provider shall, at Provider's sole expense maintain and keep in force for the duration of the Agreement insurance conforming to the limits as specified in *Attachment BB*, incorporated herein by reference. Unless specifically stated herein or otherwise agreed to by the State, the required insurance shall be in effect prior to the commencement of work by Provider and shall continue in force as appropriate until,

**13.3.1** Final acceptance by the State of the completion of this contract; or,

**13.3.2** Such time as the insurance is no longer required by the Stat under the terms of this contract, whichever occurs later.

Any insurance or self-insurance available to the State shall be in excess of, and non-contributing with, any insurance required from Provider. Provider's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the State, Provider shall provide the State with renewal or replacement evidence of insurance before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Contract, an insurer or surety shall fail to comply with the requirements of this Contract, as soon as Provider has knowledge of any such failure, Provider shall immediately notify OSIT and immediately replace such insurance or bond with an insurer meeting the requirements.

### **13.4 General Requirements:**

**13.4.1 Additional Insureds:** By endorsement to the general liability insurance policy, the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 shall be named as additional insureds for all liability arising from the Contract.

**13.4.2 Waiver of Subrogation:** Each insurance policy shall provide for a waiver of subrogation against the State of Nevada, its officers, employees and immune contractors as defined in NRS 41.0307 for losses arising from work/materials/equipment performed or provided by or on behalf of Provider.

**13.4.3 Cross Liability:** All required liability policies shall provide cross-liability coverage as would be achieved under the standard Insurance Services Office (ISO) separation of insureds clause.

**13.4.4 Deductibles and Self-Insured Retentions:** Insurance maintained by Provider shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the State. Such approval shall not relieve Provider from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed fifty thousand dollars (\$50,000.00) per occurrence, unless otherwise approved by the Risk Management Division.

**13.4.5 Policy Cancellation:** Except for ten (10) days' notice for non-payment of premiums, each insurance policy shall be endorsed to the State that without thirty (30) days prior written notice to the State of Nevada, c/o OSIT the policy shall not be canceled, non-renewed or coverage and/or limits reduced or materially altered, and shall provide that notices required by this Section shall be sent by certified mail to the address shown on page one (1) of this contract.

**13.4.6 Approved Insurer:** Each insurance policy shall be issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and, currently rated by A.M. Best as "A-VII" or better.

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**13.5 Evidence of Insurance:** Prior to the start of any work, Provider must provide the following documents to the contracting State agency:

**13.5.1 Certificate of Insurance:** The Acord 25 Certificate of Insurance form or a form substantially similar must be submitted to the State to evidence the insurance policies and coverages required of the Provider. The certificate must name the State of Nevada, its officers, employees, and immune contractors as defined in NRS 41.0307 as the certificate holder. The certificate should be signed by a person authorized by the insurer to bind coverage on its behalf. The State project/Contract number; description and Contract effective dates shall be noted on the certificate, and upon renewal of the policies listed, Provider shall furnish the State with replacement certificates as described within Attachment BB *Insurance Schedule*.

**Mail all required insurance documents to OSIT, as identified on Page 1 of this Contract.**

**13.5.2 Additional Insurance Endorsement:** An Additional Insured Endorsement signed by an authorized insurance company representative must be submitted to the State to evidence the endorsement of the State as an additional insured.

**13.5.3 Schedule of Underlying Insurance Policies:** If Umbrella or Excess policy is evidenced to comply with minimum limits a copy of the underlying Schedule from the Umbrella or Excess insurance policy may be required.

**13.5.4 Review and Approval:** Documents specified above must be submitted for review and approval by the State prior to the commencement of work by the Provider. Neither approval by the State nor failure to disapprove of the insurance furnished by the Provider shall relieve Provider of its full responsibility to provide the insurance required by this Contract. Compliance with the insurance requirements of this Contract shall not limit the liability of Provider or its subcontractors, employees or agents to the State or others, and shall be in addition to and not in lieu of any other remedy available to the State under this Contract or otherwise. The State reserves the right to request and review a copy of any required insurance policy or endorsement to ensure compliance with these requirements.

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## ARTICLE XIV – GENERAL PROVISIONS

**14.0 Entire Contract and Modification.** This Agreement, and its integrated exhibits and attachment(s), constitute the entire agreement of the parties and as such are intended to be the complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Should the federal laws, regulations or guidance governing this federal award be later altered, changed or modified by NTIA, DOC, Treasury or Congress, the parties will engage in good faith negotiations to amend or modify this Agreement to reflect such changes. Any such changes will be evidenced by a written amendment to this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this contract shall be binding upon the Parties unless the same is in writing and signed by the Parties to be charged.

**14.1 Counterparts:** This Contract, and any amendments, may be executed in counterparts.

**14.2 Remedies:** Except as otherwise provided for by law or this Agreement, the rights and remedies of the parties shall not be exclusive and are in addition to any other rights and remedies provided by law or equity,

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including, without limitation, actual damages permitted by law, and prevailing party's reasonable attorneys' fees, and costs. For purposes of an award of attorneys' fees to either party, the parties stipulate and agree that a reasonable hourly rate of attorneys' fees shall be one hundred and fifty dollars (\$150.00) per hour. Any judgment or award in favor of the State shall bear interest at the rate of ten percent per annum. The State may set off consideration against any unpaid obligation of Provider to any State agency in accordance with NRS 353C.190. In the event that Provider voluntarily or involuntarily becomes subject to the jurisdiction of the Bankruptcy Court, the State may set off consideration against any unpaid obligation of Provider/Subgrantee to the State or its agencies, to the extent allowed by bankruptcy law, without regard to whether the procedures of NRS 353C.190 have been utilized.

**14.3 Limited Liability:** The State will not waive and intends to assert available NRS Chapter 41 liability limitations in all cases. Contract liability of both parties shall not be subject to punitive damages. Damages for any State breach shall never exceed the amount of funds appropriated for payment under this Agreement, but not yet paid to Provider/Subgrantee, for the Fiscal Year budget in existence at the time of the breach. For third party claims arising from Provider/Subgrantee's gross negligence or willful misconduct or tort liability shall not be limited.

**14.4 Force Majeure:** Neither Party shall be in default by reason of any failure or delay in the performance of the terms and conditions, of one or more of its obligations hereunder, to the extent such failure or delay is caused by a Force Majeure event, and such failure arises out of causes beyond the control of the non-performing Party including, but not limited to: Acts of God or nature, earthquake, storms, fire, floods, winds, epidemics, pandemics, acts of governmental authority, such as changes to government codes, ordinances, actions, laws, rules, regulations or restrictions; war or civil disorder; quarantines; strikes or other labor disputes (other than such excused Party's employees); freight embargoes, acts of omissions of other entities or other causes beyond such Party's control. Such Party shall notify the other Party in writing of the existence of the event, and such Party shall exercise commercially reasonable efforts to minimize the time of any such delay. If an event of Force Majeure continues for more than ninety (180) days, and if the non-affected Party cannot, (i) resolve the matter within such time period, or (ii) provide the affected Party with an alternative solution to such matter within the same time period, with the alternative solution to be substantially similar in effect to the matter affected by the Force Majeure, the affected Party may terminate this Agreement.

**14.5 Indemnification and Defense:** To the fullest extent permitted by law, Provider shall indemnify, hold harmless and defend, not excluding the State's right to participate, the State from and against all liability, claims, actions, damages, losses, and expenses, including, without limitation, reasonable attorneys' fees and costs, arising out of any breach of the obligations of Provider under this contract, or any alleged negligent or willful acts or omissions of Provider, its officers, employees and agents. Provider's obligation to indemnify the State shall apply in all cases except for claims arising solely from the State's own negligence or willful misconduct. Provider waives any rights of subrogation against the State. Provider's duty to defend begins when the State requests defense of any claim arising from this Contract.

**14.6 Representations Regarding Independent Contractor Status.** Provider represents that it is an independent contractor, as defined in NRS 333.700(2) and 616A.255, warrants that it will perform all work under this contract as an independent contractor or subgrantee and warrants that the State of Nevada will not incur any employment liability by reason of this Agreement or the work to be performed under this Agreement. To the extent the State incurs any employment liability for the work under this Agreement; Provider/Subgrantee will reimburse the State for that liability. Provider/Subgrantee acknowledges that this Agreement in no way means that they are a contractor or employee of the federal government, by virtue of this subgrant award.

**14.7 Compliance with Local, State, Federal Legal Obligations.** Provider shall procure and maintain for the duration of this Agreement any state, county, city or federal license, authorization, waiver, permit qualification or



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certification required by statute, ordinance, law, or regulation to be held by Provider to provide the goods or services required by this Agreement. Provider shall provide proof of its compliance upon request of the OSIT. Provider will be responsible for paying all taxes, assessments, fees, appraisals, premiums, permits, and licenses required by law. Real property and personal property taxes are the responsibility of Provider in accordance with NRS 361.157 and NRS 361.159. Provider agrees to be responsible for payment of any such government obligations not paid by its subcontractors during performance of this Agreement.

**14.8 Waiver of Breach:** Failure to declare a breach or the actual waiver of any particular breach of the Contract or its material or non-material terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

**14.9 Severability** If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist, and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

**14.10 Delegation/Prohibition of Assignments:** Except for assignment between Provider to its affiliate, neither party shall assign, transfer, or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, subject to any restrictions imposed in accordance with the *Uniform Guidance* and the BEAD Program NOFO. It is understood and agreed to by the Parties hereto that a change or transfer of the rights, duties and obligations of the designated state agency from one government agency to another and shall not constitute an unlawful assignment.

**14.11 No Third Party Beneficiary:** This Agreement is made solely and specifically for the benefit of the State of Nevada, through the Governor's Office of Science, Innovation and Technology, including its successors and assigns and no other person, corporation or other legal entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise. The State is not liable for obligations of any other entity which joins or uses any contract resulting from this solicitation.

**14.12 State Ownership of Proprietary Information.** Any data or information provided by the State to Provider and any documents or materials provided by the Provider to the State in the course of this Agreement ("State Materials") shall be and remain the exclusive property of the State and all such State Materials shall be delivered into State possession by Provider upon completion, termination, or cancellation of this Contract.

**14.13 Public Records:** Pursuant to NRS 239.010, information or documents received from Provider may be open to public inspection and copying. The State has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Provider may label specific parts of an individual document as a "trade secret" or "confidential" in accordance with NRS 333.333, provided that Provider thereby agrees to indemnify and defend the State for honoring such a designation. The failure to label any document that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any release of the records.

**14.14 General Warranty:** Provider warrants that all services, deliverables, and/or work products under this Agreement shall be completed in a workmanlike manner consistent with standards in the trade, profession, or industry; shall conform to or exceed the specifications set forth in the incorporated attachments; and shall be fit for ordinary use, of good quality, with no material defects at the time of delivery. This includes compliance with the requirements with respect to licensing and bonding through the State of Nevada, including but not limited to the State Contractor's Board.

**14.15 Proper Authority.** The Parties hereto represent and warrant that the person or entity executing this Agreement on behalf of each party has full power and authority to enter into this Contract. Any services

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performed by Provider before this Contract is effective or after it ceases to be effective are performed at the sole risk of Provider.

**14.16 No Boycott of Israel:** In signing this Agreement, Provider certifies that it is not engaged in, and agrees for the duration of this Agreement, not to engage in, a boycott of Israel. Boycott of Israel means, refusing to deal or conduct business with, abstaining from dealing or conducting business with, terminating business or business activities with or performing any other action that is intended to limit commercial relations with Israel; or a person or entity doing business in Israel or in territories controlled by Israel, if such an action is taken in a manner that discriminates on the basis of nationality, national origin or religion. It does not include an action which is based on a bona fide business or economic reason; is taken pursuant to a boycott against a public entity of Israel if the boycott is applied in a nondiscriminatory manner; or is taken in compliance with or adherence to calls for a boycott of Israel if that action is authorized in 50 U.S.C. § 4607 or any other federal or state law.

**14.17 Time of the Essence:** Time is of the essence with respect to each and every term and provision of this Agreement.

**14.18 Survival:** Any and all provisions of this Agreement which, by their nature, would reasonably be expected to be complied with or performed after the expiration or termination of this Agreement, including but not limited to: service obligations, record retentions, liability, audits, protection of federal property interests, proprietary information, service speeds and latency, the Low-Cost Service Plan, Risk Management, Supply Chain Risk Management, duties during the Federal Interest Period, intellectual, real or personal property rights and interests, choice of law, jurisdiction, venue and disclosure of data and confidential information, shall survive and be enforceable after the expiration or termination of this Agreement.

**14.19 Assignment and Successors:** Neither Party shall transfer or assign, voluntarily or by operation of law or otherwise, its obligations under the Agreement without the prior written consent of the other party, except no such consent shall be required in the event of a merger, reorganization, consolidation or sale of substantially all of a Party's assets or business, in which case the assigning party shall provide notice to the non-assigning party. This Agreement and all rights, duties, covenants and obligations contained herein shall extend to and be binding upon any successor(s), heirs, administrators and assigns of the respective party.

**14.20 Service to Specific RPAs; No RPA Trading/Transfers:** Provider may not assign or transfer or otherwise delegate any right, duty, responsibility or obligation to serve an RPA, created or awarded pursuant to this Agreement, without the express written consent of all awarding federal agencies (i.e., NTIA or DOC ) and OSIT, except for approved successors of Provider. Any such assignment, transfer or delegation to another provider without written authorization will be void and constitute a material breach of this Agreement.

**14.21 Conflicting Language; Interpretation:** In any case where language between two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, the Parties agree to prioritize following the language contained in these authorities in the following order (from highest to lowest priority): 47 U.S.C. § 1702; the Grant Award's specific award conditions; the [General Terms and Conditions for the BEAD Program; the BEAD NOFO](#); the RPN, and any subsequent guidance published by the Department of Commerce, NTIA, the OSIT BEAD Grant Manual, and this Agreement and Exhibits.

**14.22 Governing Law and Forum:** This Agreement shall be construed and the legal relations between the parties determined in accordance with applicable federal law and the laws of the **State of Nevada**, without giving effect to any choice of law rules which may direct the application of the laws of any other jurisdiction. The Parties consent to the exclusive jurisdiction of and venue in the First Judicial District Court, Carson City, Nevada for enforcement of this Contract, and consent to personal jurisdiction in such court for any action or proceeding arising out of this Contract.

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**14.23 Attachments:** Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment or Exhibits, and this Agreement shall be construed consistent with the terms of the Agreement. Unless otherwise expressly authorized by the terms of the Agreement, no modification or amendment to the Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto

**14.24 Assignment of Antitrust Claims:** Provider irrevocably assigns to the State any claim for relief or cause of action which Provider now has, or which may accrue to Provider in the future by reason of any violation of State of Nevada or federal antitrust laws in connection with any goods or services provided under this Contract.

**14.25 Review and Understanding:** The parties, after review by legal counsel, have read and understand the terms, conditions and obligations in this Agreement and agree to be bound by the terms herein.

**IN WITNESS WHEREOF**, the duly authorized representative of each Party has signed herein below on the date first written above.

**STATE OF NEVADA ("OSIT")**

Dated: \_\_\_\_\_

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

Governor's Office of Science, Innovation  
& Technology.

\_\_\_\_\_, **Provider**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
NAME, TITLE

APPROVED AS TO FORM:

**OFFICE OF THE NEVADA ATTORNEY GENERAL**

Dated: \_\_\_\_\_

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

## DRAFT TEMPLATE 08-22-25

This DRAFT Nevada BEAD Subgrant Agreement template is for planning purposes and information for eligible BEAD applicants. The Office of Science, Innovation & Technology reserves the right to modify or update this document as necessary to implement Federal, State, or Local requirements, or for any other reason to administer the BEAD Program.

### Exhibit A – DEFINED SERVICES – SCOPE OF WORK

Provider/Applicant submitted its response to the Request for Application issued by OSIT during the BEAD application period ending \_\_\_\_\_. The Project was subject to a challenge period and deemed final.

#### For Priority Broadband Projects:

Provider will construct and deploy \_\_\_\_\_ of Broadband Assets/Facilities, and related broadband equipment to achieve Qualifying Broadband Service, as set forth in the PRRFA, at speeds of no less than 100 Mbps upload and 20 Mbps download and latency less than or equal to 100 milliseconds, at the most affordable total price to the customer(s), as proposed/offered in the PRRFA (approximately \_\_\_\_\_ BSLs, and \_\_\_\_\_() CAI's).

For CAI's, Provider will construct and deploy Broadband Assets, infrastructure and equipment capable of delivering Internet speeds not less than one (1) Gbps for downloads and uploads alike and latency less than or equal to 100 milliseconds.

**[INSERT CHART OR TABLE]**

#### Project Description:

1. Provider must create a fully functioning, commercially serviceable broadband network and service within the designated RPAs that meet the Project standards.
2. Provider is responsible for designing, developing, constructing, installing and deploying a broadband network. Creation of this broadband Project will require Provider to:
  - a. Acquire such permissions, equipment, outside plant, and other broadband infrastructure equipment, materials, broadband facilities or Project Property, as is necessary to construct, install, create, and maintain the broadband network and construct and install related Facilities to serve the BSLs and CAI's identified in the RPA and PRRA,
  - b. Design, install, construct, test, maintain and operate its broadband network and ,
  - c. Acquire all necessary real property interests or access rights to real property for the purpose of installing conduit, fiber optic cable or transmission lines.
3. Where broadband services are delivered through LEO Satellite Technology, Provider is responsible for:
  - a.
  - b.
  - c.

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d.

### **Project Completion Standards:**

1. Provider agrees and warrants that, upon completion, the broadband network will have all of the following characteristics:

Service Area: The broadband network will provide broadband to the entirety of the area depicted in the awarded RPAs.

b. The network will serve each of the residential and business/CAI addresses identified in the RPAs (Schedule J, and as identified in the PRRRA) and upon completion, the network will serve the BSLs/CAIs at the pricing schedules and service speeds for residential and CAI's, at the locations identified in the RPAs.

c. Service Speeds: Each of the BSLs or CAIs will be able to purchase reliable broadband internet at minimum speeds in accordance with the BEAD NOFO and BEAD PRN, and any subsequent guidance from NTIA,

d. Provide a low-Income Plan as identified and proffered by Provider in the PRRFA. The low-income plan will be offered to qualifying low-income households, as would have qualified under the FCCs Lifeline Program.

### **Project Installation and Service Standards – Low Earth Orbiting Satellite Service**

**[PENDING]**

### **Inspection and Testing of Materials**

The Subgrantee shall ensure that all materials and equipment used in the completion of the work shall be subject to inspection, testing, and verification of delivery of services in accordance with accepted standards as provided by OSIT and/or the FCC and/or NTIA. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Subgrantee shall ensure that available documentation of same is catalogued and retained, particularly with respect to any of its own equipment being placed into use under this Project in accordance with this Agreement.

### **Requirements During Construction**

During construction, the Subgrantee, as applicable, is responsible for:

- Ensuring that it meets all deadlines in approved plans and specifications, with the exception of force majeure events or delays beyond Provider's reasonable control;
- Monitoring the progress of grant funded activities;
- Reporting progress;
- Providing for required construction permits and adequate construction inspection;

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- Promptly paying costs incurred for grant funded activities;
- Monitoring contractors' compliance with Federal, State, and local requirements; 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.

**{See [Exhibit J](#) for Locations and Timelines }**



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### **Exhibit B – SPECIAL INSTRUCTIONS**

#### **PERMITTING, ENVIRONMENTAL AND HISTORICAL COMPLIANCE**

Provider will comply with the requirements of all applicable Federal, state and local environmental laws, regulations and standards. The BEAD NOFO, BEAD Restructuring Notice, and subsequent guidance documents note key requirements, which are included below for informational purposes only. Provider is responsible for ensuring compliance with the federal and state environmental obligations. See Exhibit \_\_\_\_ for additional information.

A. BEAD funds may not be disbursed to Provider prior to the following:

- a. The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*) (NEPA), and issuance by NTIA and the Grantee, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- b. Completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, *et seq.*) (NHPA).
- c. Consultations with the U.S. Fish and Wildlife Service (USFWS) or National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*)
- d. 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

NHPA Compliance: To ensure the timely completion of historic preservation review for all BEAD- funded activities, the Grantee must:

- A. At the earliest possible time, conduct tribal notification via the FCC’s Tower Construction Notification System (TCNS) *when required*.
- B. Provide notice to Tribes regarding preferred communication means, as identified in TCNS.
- C. Environmental and historic preservation compliance, through the required use of NTIA’s own Environmental Screening and Permitting Tracking Tool (ESAPTT) to streamline National Environmental Policy Act (NEPA) approvals.
- D. Apply the Advisory on Historic Preservation (ACHP) Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities.
- E. Adhere to the provisions of the NTIA memorandum to SHPOs and Tribal Historic Preservation Officers (THPOs);
- F. Notify NTIA of any Tribal request for government-to-government consultation or any activity that may impact a historic property or a property of religious or cultural significance to a Tribe; and

#### **REMEDIATION AND RESTORATION OF PROJECT SITES**

- Provider will comply with all state and federal obligations pertaining to remediation and restoration of any disturbed ground resulting from this Project.

- Remediation and restoration will be a requirement for any phase of construction where a permit has been issued and such action is required by the permitting agency.
- Restoration, remediation and cleanup will be to the satisfaction of the State and any permitting agencies.
- Provider shall provide a brief description of the restoration plans prior to commencing construction, with the expectation that a more detailed restoration plan will be delivered prior to construction begins.
- Work site restoration will include the placement of seed, mulch, sod, water, gravel, soil, sand, and all other materials as warranted.
- Backfill material will consist of clean fill. Backfilling, tamping, and compaction will be performed to the satisfaction of the State, the representative of the applicable permitting agency, and/or the railroad representative.
- Provider will be responsible for any restoration complaints not properly addressed arising within one year after final acceptance.
- Excess material will be disposed of properly. Debris from clearing operations will be properly disposed of by the Provider/subcontractors as required by permitting agencies or the railroad. Railroad ties, trees, stumps or any foreign debris will be removed, stacked, or disposed of by the Provider as per requirements by the applicable permitting agencies and/or the State.
- Road shoulders, roadbeds, and railroad property will be left in a safe state at the end of each day. No payment for installation will be permitted until cleanup has been completed to the satisfaction of the applicable permitting agency(ies) and/or the State.
- Site clean-up will include the restoration of all concrete, asphalt, or other paving materials to the satisfaction of the applicable permitting agencies, and/or the State.

**Exhibit C – TECHNICAL SPECIFICATIONS**

**(CONSTRUCTION STANDARDS FOR FIBER, FIXED WIRELESS/TOWER INSTALLATION, LEO SATELLITE  
SERVICE OBLIGATIONS)**

The Provider will adhere to the following construction standards for the applicable Broadband Assets and Facilities, and network plans that were included in the Provider's Response to the Request for Application for this Project, subject to review and approval by the OSIT Project Manager.

Any specifications required by the BEAD Program, which were unintentionally omitted, will be reviewed and specifications modified to accommodate and meet the federal grant requirements.

**Exhibit D – NOTICE TO PROCEED [Example]**

**(Provider Compliance with Bonding and Insurance Requirements)**

**STATE OF NEVADA  
GOVERNOR’S OFFICE OF SCIENCE, INNOVATION & TECHNOLOGY**

**NOTICE TO PROCEED**

Date of Notice: \_\_\_\_\_ [Date to be inserted by the State]  
Notice No./Date: \_\_\_\_\_  
Phase No./Description: \_\_\_\_\_  
Subgrantee: \_\_\_\_\_  
Project No./Name: \_\_\_\_\_

**To:**

This Notice to Proceed Authorizes Provider to commence construction of the above-referenced phase, subject to the following limitations or restrictions:

- 1.
- 2.
- 3.

Subgrantee is hereby authorized and directed to proceed to Phase \_\_ within ten (10) days from the date of this Notice to Proceed.

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

Nevada Governor’s Office of Science, Innovation  
and Technology

\_\_\_\_\_

Date

When issued by the State, this Notice to Proceed is to be delivered to the Principal Representative of Subgrantee.

**Exhibit E – ENVIRONMENTAL COMPLIANCE REQUIREMENTS [RESERVED]****Federal Laws which May Apply:**

- A. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)
- B. ENDANGERED SPECIES ACT (ESA)
- C. MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT (MSA)
- D. CLEAN WATER ACT (CWA)
- E. CLEAN AIR ACT (CAA)
- F. NATIONAL HISTORIC PRESERVATION ACT (NHPA)
- G. RIVERS AND HARBORS ACT 1899
- H. ENVIRONMENTAL EXECUTIVE ORDERS

The Grantee must comply with the requirements of all applicable Federal, state, and local environmental laws, regulations, and standards and must ensure that Subgrantee and all subcontractors comply with all such requirements as well.

**I. PROCESS – GENERAL NEPA REVIEW. OSIT AS LEAD AGENCY.**

OSIT will serve as a joint lead agency for NEPA and will design and implement a program to ensure compliance by the work implemented by subgrantees. As a joint lead agency, OSIT will fulfill the role of lead agency, as defined in 42 U.S. Code § 4336a, with respect to proposed deployment activities undertaken. OSIT shall supervise the preparation of required Environmental and Historic Preservation (EHP) compliance documents or, depending on the complexity of the deployment activity and the capability of the subgrantee implementing the deployment activity, may directly assist in the preparation of such documents. In all cases, OSIT shall centrally review and concur with the findings and recommendations of all EHP compliance documentation prior to approval. OSIT has retained subject matter experts (SME) and GIS specialists to both coordinate review activities and to prepare environmental review documents, as necessary.

OSIT will use its in-house NEPA-specific GIS compliance platform, an advanced, web-based mapping and environmental data screening tool developed over the past year, to assess project implementation plans from the subgrantees detailing the description and location of deployment activities intended to provide broadband service, and will require all subgrantees to submit to OSIT project-specific data via Shapefiles in a uniform and structured format that specified attributes required to assess a project's environmental impact, if any. This uniform format ensures that project data is consistently and accurately collected statewide and is compatible with OSIT's NEPA-specific GIS compliance platform and the NTIA's Environmental Screening and Permitting Tracking Tool (ESAPTT) environmental screening questionnaire. To promote the submission of high-quality Shapefiles, OSIT will provide Shapefile template and Shapefile Submissions Guide designed for the purpose of submitting geospatial data for BEAD. Subject Matter Experts (SMEs) will input GIS data obtained from subgrantees into the NEPA-specific assessment tool and create a detailed report for each project. The report will include:

- detailed project location;
- construction methods;
- proximity to environmental or historic resources or areas of concern (i.e., those listed among NTIA's Extraordinary Circumstances);

- identification of potentially affected sensitive areas; and
- a completed environmental questionnaire.

The report will document in advance of input into ESAPTT the absence or presence of Extraordinary Circumstances.

The OSIT SMEs will then review the information provided by the subgrantees and the report generated from our NEPA-specific GIS compliance tool and determine the appropriate level of review required based on NTIA's programmatic and general NEPA guidance. This assessment will proceed concurrently and in alignment with the ESAPTT submission. Using the outputs from OSIT's compliance tool and as required by NTIA's restructuring policy and ESAPTT guidance, OSIT authorized users will input finalized and reviewed project data into ESAPTT, where the following will occur:

- upload of project descriptions, maps, and other project information;
- completion of the Environmental Screening Questionnaire;
- selection of applicable Categorical Exclusions based on automated screening logic;
- documentation of the Extraordinary Circumstances, as applicable;
- upload of any relevant supporting documentation (e.g., agency consultations); and
- generation and transmission of draft NEPA Decision Memos to NTIA for review and final approval.

*Additional information pertaining to this process will be provided in a subsequent instructional document from OSIT.*

#### **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:*

- a. 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;
- b. 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;
- c. 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
- d. Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

#### **General NEPA Review**

The Parties agree that Subgrantee MUST:



1. 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;
2. 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
3. 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 OSIT shall certify the sufficiency of all Subgrantee decision documents either by:

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

Subgrantee shall, as directed by OSIT Submit all decision documents—including any supporting environmental documentation required or requested by NTIA—to 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 OSIT requires to:

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

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

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

1. How the Grantee should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS sections;

2. How the Grantee and/or Subgrantee should evaluate what level of environmental review is appropriate and determine what type of decision document is required for a grant funded activity to proceed;
3. NTIA's criteria for determining whether each type of decision document meets the requirements of NEPA;
4. How the Grantee and/or Subgrantee should format decision documents;
5. How the Grantee should submit decision documents and any other required environmental documentation to NTIA;
6. How the Grantee will work with cooperating agencies;
7. How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
8. NTIA's process for notifying the Grantee 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 OSIT 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**

The allowable use of Award Funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:

1. Pre-construction planning, including collecting information necessary to complete environmental reviews;
2. Applications for environmental permits;
3. Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
4. Administrative costs;
5. Pre-award application costs;
6. Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
7. Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts 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 de-obligation of funding if impacts cannot be avoided, minimized, or mitigated. Grantee shall notify the OSIT 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.

**Exhibit F – CONSTRUCTION TIMELINE**

**All dates provided are based on estimated delivery dates. Delivery dates are contingent on acceptance dates.**

**Exhibit G – DISBURSEMENT MILESTONES***[SUBJECT TO MODIFICATION BASED ON PROVIDER PROJECT PLAN]*

<b>Milestone</b>	<b>Percentage payment based on milestone verification</b>	<b>Documentation or conditions required</b>	<b>Other considerations</b>
Delivery of Project Plan, Execution of Agreement, Preliminary assessments of Federal lands, ROWs NEPA Obligations and OSIT Consultation	3%		All bonding and insurance requirements must be in place.
Execution of Contract for Consultants for Permitting	5%	Signed contracts w/ consultants	
Execution of materials contracts and Contractor contract	5%	Fully executed contracts by all required parties	
Preparation and Submittal of Environmental Documents to OSIT for ESAPTT	5%		
Complete Outstanding ESAPTT Work	2%		
Engineering and permitting phase 1 (25% of miles)	2.5%	Submission to OSIT of completed engineering drawings; completion of permitting requirements and submissions and acceptance by permitting entity for 25% of miles per phase.	
Engineering and permitting phase 2 (25% of miles)	2.5%		
Engineering and permitting phase 3 (25% of miles)	2.5%		
Engineering and permitting phase 4 (25% of miles)	2.5%		
Construction phase 1	10%	Copies of testing data, as-built maps, and OSIT field verification	
Construction phase 2	10%		
Construction phase 3	10%		
Construction phase 4	10%		
Construction phase 5	10%		
Construction phase 6	10%		
Completion of network. Certification that Network meets BEAD performance Standards; Final location list verified; Field verification; Remediation & Restoration complete	Holdback of 10% of total funds	Confirmation of all completed construction and activation, speed testing, OTDR testing, as-builts, and OSIT field verification	Determine whether any outstanding unpaid fines.

**“Construction Phase - 10 percent”, as used above, represents approximately 1/6<sup>th</sup> of the BSLs.**

Construction completion to include installation of all broadband assets or infrastructure , fixed wireless, new fiber equipment, LEOs or other broadband delivery equipment and systems as specified in the PRRFA, necessary to provide Qualified Broadband Services, and all known remediation and restoration work performed in a manner as required by law, regulation or permit.

For the purposes of this Agreement, and consistent with the Federal Communications Commission’s Broadband Data Collection, Subgrantee may certify that it has “reached” a location when it is capable of performing a standard installation of Qualifying Broadband Service, 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 CFR § 1.7001(a)(19).

## Exhibit H – REPORTING REQUIREMENTS

### Monthly Progress Reports:

Subgrantee shall, for the duration of this Agreement, submit to the Office a “**Monthly Progress Report**” for the Project for the period ending the last calendar day of each month, due no later than seven calendar days following the end of each reporting period. The report shall include, at a minimum:

1. Miles of Project network constructed; and
2. Milestone/status of each location for that month;
3. End Users that obtained access to broadband service during the reporting period;
3. Award Funds expended, reported in a manner consistent with the requirements by OSIT and BEAD.
4. All instances of known damage to existing underground utilities that occur during the construction or installation of broadband infrastructure funded by BEAD funds allocated to the State of Nevada, in a manner and form specified by OSIT.

### Semi-Annual Reporting BEAD Requirements

Subgrantee shall, for the duration of this Agreement, submit 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 15 calendar days following the end of each reporting period.

The Semiannual Progress Report shall contain the following information:

1. Executive Summary of Work during quarter, including work accomplished, problems encountered, expenditures, assessment of risks, potential risks or challenges facing the Project.
2. A list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
3. New Project locations served within the relevant reporting period and, for each such service and whether service taken (if applicable);
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;
6. A description of the peak and off-peak actual speeds of the broadband service being offered;
7. A description of the maximum advertised speed of the broadband service being offered;
8. A description of the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
9. Any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
10. **A SF-425, Federal Financial Report**, that meets the requirements described in the DOC Financial Assistance Standard Terms and Conditions (dated 11/12/2020), Section A.01 for Financial Reports;



11. **A SF-429, Real Property Status Report Federal Financial Report** that meets the requirements described in the DOC Financial Assistance Standard Terms and Conditions, Section A.01 for Real Property Status Reports;
12. **A SF-427, Tangible Personal Property Status Report**, that meets the requirements described in the Department of Commerce Financial Assistance Standard Terms and Conditions (dated November 12, 2020), Section A.01 for Tangible Personal Property Status Reports;
13. Certification by an officer of Subgrantee that the information in the Semiannual Progress Report is accurate.

### **Annual Reporting Requirements**

Subgrantee shall, for the duration of this Agreement, submit to the Office an “Annual Progress Report” for the Project for the period ending December 31 of each year (or any portion thereof) no later than 30 calendar days following the end of each reporting period. The Annual Progress Report shall include, at a minimum:

1. A summary of the items contained in the grant 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 local government(s), state government, railroad, private entity, or person in connection with the Project during the term of this Agreement.
6. Any delays encountered when obtaining right-of-way permission(s).
7. Evidence consistent with the Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as set forth in Attachment 2.
8. Unless Subgrantee meets one of the exceptions set forth in 2 CFR 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 90 calendar days after the expiration of the period of performance.

Exhibit H – con't.

### OSIT REPORTING REQUIREMENTS

Provider will immediately report utility strikes, safety issues, and injuries in real-time, if possible, to the OSIT Project Manager.

#### **Daily**

Upon commencement of construction and deployment of workers in the field, daily monitoring will be required. Daily monitoring will be accomplished through a required platform provided by OSIT and will require a designated field crew member to advise OSIT Project Manager, on a daily basis, a **location of, and number of**, Provider's construction crews in the field.

FIELD CREW WILL IMMEDIATELY NOTIFY PROVIDER , who will notify the OSIT Director of Operations or designee of any of the following:

- 1) Workplace incidents or threats affecting the safety or welfare of Provider's employees, subcontractors, their vehicles or personal property.
- 2) Actual Utility strikes
- 3) Injuries to any worker requiring leaving the construction site for medical care.
- 4) Injuries or incidents involving any third parties or member of the public.
- 5) Traffic incidents involving Provider or Contractor vehicles or pedestrians.

#### **Weekly**

Provider will submit a weekly construction report to OSIT Project Manager, which will include, at minimum, the following information:

- 1) Certification that contractor and/or subcontractor(s) are in compliance with established safety protocol in the field.
- 2) Status of all outstanding permits, and permits applied for, using OSITs Permit & Construction Tracking Spreadsheet
- 3) Provide weekly count of footage of aerial installation (if applicable), fiber trenching (if buried), or other construction progress, including all progress on any installation of towers, cable, cabinets, handholes, fiber cable replaced, number of splice cases and locations.
- 4) Summary of public complaints that includes the identity of the complainant and the substance of the complaint, and any proposed resolution.

**Exhibit I – FINAL FIBER, FIXED WIRELESS OR ALTERNATIVE TECHNOLOGY CONSTRUCTION REPORT****Monthly Progress Reports:**

1. **Update/Status Report on Permit Applications** – Permits submitted, fees paid, permits approved, permits rejected, issues/bottlenecks, anticipated approval date of permit.
2. **Update/Status Report of Miles** of Project network constructed; and
3. **Service Request/Service Activation:** End Users that obtained access to broadband service during the reporting period;
4. **Award Funds expended**, reported in a manner set forth by OSIT.

**FINAL CONSTRUCTION DOCUMENTATION:**

The Provider should submit to OSIT the following final construction documentation. Provider and the State of Nevada will continue to optimize any reporting throughout delivery and is open for adjustments as needed:

1. Final Broadband Equipment and Asset Worksheets with sequential footages for each span attached as worksheets to Construction Drawings.
2. Where applicable, final Fiber Diagrams to accompany fiber worksheets.
3. Where applicable, all Low Level Design diagrams and information on broadband network.
4. Final Project As-Built Drawings in a format designated by OSIT.
5. Final Deliverable Package submitted to OSIT through OSIT Director of Operations-
  - a. All Final Project Documentation-Redline as Built Drawings (Showing-Aerial. UG, Bore Construction w/Bore Profiles, towers, etc.).
  - b. Close out & sign-off all construction permits.
  - c. Broadband assets or broadband facilities created, constructed or deployed, including fiber Cable Pulling Sequential Footages, maintenance fiber coils, diagrams, and locations of broadband network assets and construction.
  - d. Construction As-Built Drawings: Developed in collaboration with the OSIT Director of Operations, depending on technology deployed.

**6. FINAL INSTALLATION & SERVICE DOCUMENTATION FOR LOW EARTH ORBIT SATELLITE:**

Certification re: service is available to a percentage of BSLs in the project area, or once the subscription rate reaches a set percentage of locations in the project area.

*[PENDING]*

**Exhibit J – LOCATIONS AND AWARD TABLE**

Specific BSL locations, service levels and pricing align with the Provider’s proposal in its Response to the Request for Application. Pricing and service levels will be provided in a digital format, as submitted to OSIT for the High-Speed NV Phase III Initiative, and which information is hereby incorporated by this reference.

*[Insert Locations and Pricing Table ]*

## Exhibit K – FEDERAL GRANT PROVISIONS

### 1. APPLICABILITY OF PROVISIONS.

- 1.1. The Grant to which these Grant Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Grant Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Grant Federal Provisions shall control.
- 1.2. The State of Nevada is accountable to the Federal Awarding Agency for oversight of their Subrecipients, including ensuring their Subrecipients comply with Federal statutes, Federal Award terms and conditions, and reporting requirements, as applicable.
- 1.3. Any Subrecipient that issues a subaward to another entity (2<sup>nd</sup> tier Subrecipient), must hold the 2<sup>nd</sup> tier Subrecipient accountable to these provisions and adhere to all reporting requirements.
- 1.4. These Grant Federal Provisions are subject to the Award as defined in 2 C.F.R. §200.1 of these Grant Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Nevada agency or institutions of higher education.

### 2. DEFINITIONS.

- 2.1. For the purposes of these Grant Federal Provisions, the following terms shall have the meanings ascribed to them below.
  - 2.1.1. “Award” means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance that an Entity receives or administers.
  - 2.1.2. “Entity” means:
    - 2.1.2.1. A non-federal Entity, foreign public entity; foreign organization, non-profit organization, domestic for-profit organization (for 2 C.F.R. Parts 25 and 170 only), foreign non-profit organization (for 2 C.F.R. Part 170 only); federal agency, but only as a Subrecipient under an Award or Subaward to a non-federal entity (or 2 C.F.R. § 200.1); or a foreign for-profit organization (for 2 C.F.R. Part 170 only).
  - 2.1.3. “Executive” means an officer, managing partner or any other employee in a management position.
  - 2.1.4. “Federal Awarding Agency” means a federal agency providing a federal Award to a Recipient as described in 2 C.F.R. § 200.1.
  - 2.1.5. “Non-Federal Entity” means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient. Notwithstanding the definition of “non-Federal entity” in 2 C.F.R. § 200.1, for the purposes of this Agreement, the definition of Non-Federal Entity includes for-profit entities.
    - 2.1.5.1. “Nonprofit Organization” means any corporation, trust, association, cooperative, or other organization, operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest that is not organized primarily for profit, and uses net proceeds to maintain, improve, or expand the operations of the organization.
  - 2.1.6. “OMB” means the Executive Office of the President, Office of Management and Budget.
  - 2.1.7. “Pass-through Entity” means a non-federal entity that provides a Subaward to a Subrecipient to carry out part of a federal program (i.e. OSIT).

- 2.1.8. “Recipient” means the Nevada Office of Science, Innovation identified as the Grantor in the Grant.
- 2.1.9. “Subaward” means an award by a Recipient (OSIT) to a Subrecipient (Provider), or a contractor funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 C.F.R. § 200.101.
- 2.1.10. “Grantee,” “Subrecipient” or “Subgrantee” means an Entity receiving federal funds (i.e. Provider) through a Recipient (i.e. OSIT) to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Recipient, including program compliance requirements.
- 2.1.11. “System for Award Management (SAM)” means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 2.1.12. “Total Compensation” means the cash and noncash dollar value earned by an Executive during the Subrecipient’s preceding fiscal year (see 48 C.F.R. § 52.204-10, as prescribed in 48 C.F.R. § 4.1403(a)). It includes salary and bonuses, awards of stock, medical benefits and reimbursements, and other certain other compensation. See
- 2.1.13. “Transparency Act” or “FFATA” means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.14. “Uniform Guidance” means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- 2.1.15. “Unique Entity ID” means the Unique Entity ID established by the federal government for a Grantee or Subrecipient at <https://sam.gov/content/home>.

### **3. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID REQUIREMENTS.**

- 3.1. Grantee shall maintain the currency of its information in SAM until Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 3.2. Unique Entity ID. Grantee shall provide its Unique Entity ID to its Recipient and shall update Grantee’s information at <http://www.sam.gov> at least annually after the initial registration, and more frequently if required by changes in Grantee’s information.

### **4. TOTAL COMPENSATION.**

- 4.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
- 4.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
- 4.1.2. In the preceding fiscal year, Grantee received:
- 4.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
- 4.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.1.2.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

## **5. REPORTING.**

5.1. Pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Grant Federal Provisions. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

## **6. SUBRECIPIENT REPORTING REQUIREMENTS.**

6.1 Subrecipient agrees to comply with any reporting requirements established by the NTIA, BEAD Program, Governor's Office and Office of the State Controller. Subrecipient will cooperate with OSIT should additional reporting requirements occur after this Agreement is executed. If there are additional reporting requirements, the State will provide notice in writing of such additional reporting requirements.

## **7. PROCUREMENT STANDARDS.**

7.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law.

7.2. A Subrecipient shall not procure certain prohibited telecommunications and video surveillance services or equipment (2 C.F.R. § 200.216)

## **8. ACCESS TO RECORDS.**

8.1. A Subrecipient shall permit Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 C.F.R. § 200.332 (Requirements for pass-through entities), 2 C.F.R. § 200.300 (Statutory and national policy requirements) through 2 C.F.R. § 200.309 (Period of performance), and Subpart F - Audit Requirements of the Uniform Guidance.

## **9. CERTIFICATIONS.**

9.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 C.F.R. § 200.208. Submission may be required more frequently if the Subrecipient fails to meet a requirement of the Federal Award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed, or the level of effort was expended. 2 C.F.R. § 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

## **10. EXEMPTIONS.**

[RESERVED].

## **11. EVENT OF DEFAULT AND TERMINATION.**

11.1. Termination (2 C.F.R. § 200.340). The Federal Award may be terminated in whole or in part as follows:

- 11.1.1. By the Federal Awarding Agency or Pass-through Entity, if a Subrecipient fails to comply with the terms and conditions of a Federal Award;
- 11.1.2. By the Federal Awarding Agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities or funding is terminated;
- 11.1.3. By the Federal Awarding Agency or Pass-through Entity with the consent of the Subrecipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;



- 11.1.4. By the Subrecipient upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 11.1.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

**Exhibit L – PROPERTY STANDARDS FOR BROADBAND PROJECTS**

1. Subgrantee is not required to comply with the Procurement Standards set forth in 2 CFR 200.318-320 and 200.324-326. All other Procurement Standards, *i.e.*, 2 CFR 200.317, 200.321-200.323, and 200.327, remain as requirements.
2. Subgrantee must comply with 2 CFR 200.312 to the extent any Federally owned real property, or equipment is used by Subgrantee.
3. 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 CFR 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 CFR 200.313(d).
4. Subgrantee must comply with the **use and equipment disposition** requirements of 2 CFR § 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:
    - (a) 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
    - (b) 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 U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee’s ability to perform in accordance with its subgrant.
5. Subgrantees must **record liens or other appropriate notices of record**, in accordance with state requirements, that indicates the 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 AA to this Agreement.
6. Subgrantee may **encumber Project Property** only after provision of notice to NTIA and to the Federal Grant Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to 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.

7. Pursuant to exceptions approved by the United States Office of Management and Budget as described in the UGPN, the property standards set forth in 2 CFR 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.
8. Subgrantee must comply with 2 CFR 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.
9. Subgrantee must comply with the insurance requirements of 2 CFR 200.310.

#### PROPERTY STANDARDS FOR LOW EARTH ORBIT SATELLITE

**[PENDING]**

**Exhibit M – PROVIDER’S REDACTED RESPONSE TO RFA**

Providers redacted response to the HSNV Phase III, Request for Application, is incorporated herein including executory provisions, scope of work and deliverables referenced therein.

**Exhibit N - CERTIFICATIONS OF PROVIDER****I. CERTIFICATION RE: DEBARMENT AND SUSPENSION**

Provider hereby certifies, to the best of its knowledge and belief, that it and its principals, agents, and its subcontractors:

1. Are not presently debarred, suspended, or proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Are not presently debarred, suspended or proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by the State of Nevada, or any of its departments or agencies;
3. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
4. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
5. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Provider/Subgrantee is unable to certify any of the statements in this certification, such party shall attach an explanation to this proposal.

Dated: \_\_\_\_\_

\_\_\_\_\_  
 Authorized Representative of Provider  
 Name \_\_\_\_\_  
 Title \_\_\_\_\_

**II. CERTIFICATION RE: CYBERSECURITY AND SUPPLY CHAIN RISK MANAGEMENT.**

Provider hereby certifies, it has read and is familiar with the NIST Framework for Improving Critical Infrastructure Cybersecurity, and:

1. It has a cybersecurity risk management plan in place that is either operational or ready to be operationalized upon providing service.
2. Its Plan adheres to the National Institute of Standards and Technology (NIST) framework for Improving Critical Infrastructure Cybersecurity.
3. Its Cybersecurity Plan will be reassessed and updated regularly, on at least an annual basis.
4. The Plan – and any changes to it – will be submitted to OSIT upon demand in a reasonable time.

Provider further certifies that its Plan has addressed the following topics and issues:

1. Review of devices, system, data and staff to identify cybersecurity risks;

2. Development of a comprehensive threat detection system that continuously monitors network traffic for signs of unauthorized access or anomalies.
3. System for conducting regular penetration testing to evaluate the effectiveness of existing security measures.
4. An evaluation of the Provider's business governance, mission, objectives and stakeholders to ensure proper prioritization of cybersecurity.
5. A complete risk assessment and risk management strategy.
6. A supply chain risk management (SCRM) strategy to address risks related to suppliers and other third parties.
7. Implementation of identify management and authentication controls to limit and vet any systems' users;
8. Deployment of cybersecurity training for staff and affiliates or key vendors.
9. A functioning data security platform that protects the confidentiality and integrity of your data
10. Creation of security policies to protect your data along with a plan to enforce those policies
11. Application of technology that actively protects your data and other systems.
12. A system for continuous monitoring and detection of security anomalies, issues, or major events.
13. A written process for how and by whom a cybersecurity event will be handled, addressing responses to cybersecurity incidents and means for communication about them as needed, both internally and externally.
14. A detailed process or set of steps for analyzing cybersecurity incidents when and after they occur, and mitigating future incidents

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Provider

Name \_\_\_\_\_

Title \_\_\_\_\_

### III. CERTIFICATION RE: SIGNAGE AND PUBLIC ACKNOWLEDGEMENT; LICENSE TO USE NTIA/DOC/OSIT LOGO.

Provider certifies that it will provide signage at work locations identifying the Project as one funded under the Infrastructure, Investment and Jobs Act; that it will comply with the NTIA rules pertaining to signage, including securing prior approval for the use and display of federal agency logos, representing NTIA, DOC, Treasury and/or OSIT logo, In the manner required by each agencies.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Provider

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

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

**IV. CERTIFICATION RE: UCC-1 FILING & ATTORNEY’S CERTIFICATE**

Provider certifies it has read and understands the requirements set forth in Attachment AA, herein below, that it will comply with the obligations set forth in Attachment AA to protect the Federal Interests in the Project Property as required by the BEAD NOFO, and that the filing of the UCC-1 Form and Letter from Counsel with the Nevada Secretary of State is a pre-condition to receive the final milestone payment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Provider:

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

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



**Exhibit O – LETTER OF CREDIT [Examples]****[PENDING FOR LEO SATELLITE PROVIDERS]**

The Letter of Credit shall be in the amount of twenty-five percent (25%) of the full amount of the Agreement Funds, unless otherwise agreed in writing by OSIT by an institution. The financial institution, whether bank or credit union, must “well capitalized”, as determined by federal bank regulations promulgated by the Federal Deposit Insurance Corporation, the Federal Reserve, and the Office of the Comptroller of the Currency. An issuing credit union must be insured by the National Credit Union Administration. Subgrantee’s may also secure a LOC from banks rated BBB- or higher by the by Nationally Recognized Statistical Rating Organizations (NRSROs), as recognized by the Securities and Exchange Commission (SEC).

If, at any time, a bank or credit union that issued a Letter of Credit required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Nevada, a Letter of Credit from another bank or credit union will be required, which Provider shall furnish to OSIT within ten (10) days after receipt of notice from the State or after Provider otherwise becomes aware of such conditions.

**SAMPLE LETTER OF CREDIT, FORM OF DRAFT, AND CERTIFICATE OF TERMINATION OF LOC****IRREVOCABLE STANDBY LETTER OF CREDIT****No. 123***To be placed on Bank Letterhead**\*Fixed End Date Version*

[Name of Issuing Bank or Credit Union]

[Address of Issuing Bank or Credit Union]

Date of Issuance: \_\_\_\_\_

Amount: \_\_\_\_\_

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

**BENEFICIARY**

State of Nevada

Governor’s Office of Science, Innovation &amp; Technology

680 W. Nye Ln, Ste 104

Carson City NV 89703

**LETTER OF CREDIT PROVIDER**

[Formal Name of Winning Bidder/Applicant]

Address

Address

Dear Sir/Madam:

We hereby establish, at the request and for the account of [Winning Bidder/Applicant], in your favor, as required under the Broadband Equity, Access, and Deployment Program Notice of Funding Opportunity at 72, § IV.D.2.a.ii (BEAD NOFO) issued by the National Telecommunications and Information Administration (“NTIA”), and the State of Nevada’s Initial Proposal Volume and Final Proposal, as approved by the NTIA, our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in the amount of *[State amount of Letter of Credit in words and figures]*.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring to the number of this Letter of Credit, accompanied by your written and competed certificate signed by you substantially in the form of Annex B, attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at Issuing Bank Address and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than one (1) banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by *[check or wire transfer of funds]* to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are not permitted under this Letter of Credit. This Letter of Credit is not transferable or assignable in whole or in part.

This Letter of Credit shall automatically renew for one (1) year periods from the then current Expiration Date unless *[Issuing Bank]* gives written notice of non-renewal to the Nevada Governor’s Office of Science, Innovation and Technology (“OSIT”) by a nationally recognized overnight delivery service with a copy to the OSIT at 680 W. Nye Lane, Ste 104, Carson City, Nevada 89703, at least sixty (60) days but not more than ninety (90) days prior to the expiry thereof, or such earlier date as the Letter of Credit is terminated (the “Expiration Date”). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

This Letter of Credit shall be canceled and terminated upon receipt by the undersigned of OSIT’s certificate purportedly signed by two (2) authorized representatives of OSIT in the form attached as Annex C.

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the Internet Service Provider (ISP) (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the “ISP”), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the Nevada, including the Uniform Commercial Code as in effect in the State of Nevada.

Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit. Signature Name of Signatory Title of Signatory.

Name of Bank or Credit Union

Signature of Authorized Agent

EXHIBIT O - CONTINUED

**ANNEX A**  
**Form of Draft**

To: [Bank or Credit Union]

DRAWN ON LETTER OF CREDIT No: 123

AT SIGHT,

PAY TO THE ORDER OF THE NEVADA GOVERNOR'S OFFICE OF SCIENCE, INNOVATION &  
TECHNOLOGY BY [CHECK OR WIRE TRANSFER]

FUNDS TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Account (\_\_\_\_\_) AS NEVADA BEAD PROGRAM REPAYMENT.

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS  
\$[AMOUNT IN NUMBERS]

Governor's Office of Science, Innovation &  
Technology

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

## EXHIBIT O - CONTINUED

**ANNEX B****Draw Certificate**

The undersigned hereby certifies to [*Name of Issuing Bank/Credit Union*] (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. 123 (the “Letter of Credit”) issued by the Bank in favor of the Nevada Governor’s Office of Science, Innovation & Technology (“OSIT”) and (b) the Broadband Equity, Access, and Deployment (BEAD) Program’s Notice of Funding Opportunity at 72, § IV.D.2.a.ii, (BEAD NOFO), issued by the National Telecommunications and Information Administration on May 12, 2022, and the State of Nevada’s Initial Proposal Volume 2, approved by the NTIA (the “BEAD Program Requirements”), pursuant to which Name of Selected Subawardee (the “Provider”) has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the BEAD program Requirements), that:

The [*Name of Selected Subawardee*] has [describe the event that triggers the draw], which is evidenced by a letter signed by the Director of the Nevada Governor’s Office of Science, Innovation & Technology or [his/her] designee, dated \_\_\_\_\_, 20\_\_\_\_, a true and correct copy of which is attached hereto. Accordingly, a draw of the entire amount of the *Letter of Credit No. 123* is authorized.

OR

The OSIT certifies that given notice of non-renewal of Letter of Credit No. 123 and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the BEAD Program Requirements, OSIT is entitled to receive payment of \$\_\_\_\_\_, representing the entire amount of Letter of Credit No. 123.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Governor’s Office of Science, Innovation &  
Technology

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

## EXHIBIT O - CONTINUED

ANNEX CCertificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [*Name of Bank or Credit Union*] (the “Bank”), with reference to (a) Irrevocable Standby Letter of Credit No. 123 (the “Letter of Credit”) issued by the Bank in favor of the Nevada Governor’s Office of Science, Innovation and Technology (“OSIT”), and (b) the requirements set forth in the Broadband Equity, Access, and Deployment (BEAD) Program’s Notice of Funding Opportunity, and subsequent BEAD Program Restructuring Policy Notice, issued by the National Telecommunications and Information Administration (the “BEAD Program Requirements”) and the State of Nevada’s Initial Proposal Volume 2, and Final Proposal approved by the NTIA (all capitalized terms used herein but not defined herein having the meaning stated or described in the BEAD Program Requirements), that:

1. [include one of the following clauses, as applicable]

(a) The BEAD Program Requirements have been fulfilled in accordance with the provisions thereof; or

(b) [*Provider/Selected Subawardee*] has provided a replacement letter of credit satisfactory to the OSIT.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate and effective upon receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Governor’s Office of Science, Innovation & Technology

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

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT P – WAIVER OF LETTER OF CREDIT – PERFORMANCE BOND [Example]

[PENDING FOR LEO SATELLITE PROVIDERS]

Date of Issuance: \_\_\_\_\_

Amount of Bond: \_\_\_\_\_

OBLIGEE/BENEFICIARY

State of Nevada

Governor’s Office of Science, Innovation & Technology

680 W. Nye Ln, Ste 104

Carson City NV 89703

GUARANTOR/SURETY COMPANY

Address

Address

Dear Sir/Madam:

We hereby establish, at the request and for the account of [Subgrantee/Principal], in your favor, as required under the Broadband Equity, Access, and Deployment Notice of Funding Opportunity at 72, § IV.D.2.a.ii (BEAD NOFO), Waiver regarding BEAD Letter of Credit Requirement (Oct. 23, 2023), the BEAD Restructuring Policy Notice (June 2025), and subsequent Letter of Credit Guidance Notice issued by the National Telecommunications and Information Administration (“NTIA”), and as required by the State of Nevada’s Final Proposal, our commitment to issue a Performance Bond in the sum of *[State amount of Bond in words and figures]*, on behalf of [Subgrantee/Principal] which sum represents 100% of the federally funded portion of the award sum.

The undersigned certifies that it possesses a Nevada Certificate of Authority as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570, 2025 Revision) and, if an award is made, hereby commits to issue a Performance Bond in the requisite amount for [Subgrantee/Contractor/Principal] for 100% of the federally funded portion of the award amount, naming the Nevada Governor’s Office of Science, Innovation and Technology (“OSIT”) as the Obligee. It is understood and agreed that a Performance Bond must be secured prior to the [Subgrantee/Principal] entering into any award agreement with OSIT.

The undersigned further acknowledges the Performance Bond requirements may be modified under certain permissible events, such as where OSIT issues funding on a reimbursable basis and the Subgrantee/Principal meets deployment milestones or, where OSIT issues funding on a reimbursable basis consistent with the BEAD NOFO (Section IV.C.1.b) and any subsequent notices and guidance issued by the NTIA, and reimbursement is for periods of no more than six months each.

The Performance Bond requirements will be presumed to be set at 100% of the subaward amount but may be modified in accordance with the terms and conditions set forth in the Nevada Initial Proposal, Vol. 2, and at the discretion of OSIT.

Sincerely,

Guarantor/Surety Company

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



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

**[LETTER OF CREDIT REQUIREMENTS FOR LEO SATELLITE – PENDING]**

## EXHIBIT P – WAIVER OF LETTER OF CREDIT – PERFORMANCE BOND [sample]

## PERFORMANCE BOND

*[LANGUAGE SUBJECT TO MODIFICATIONS]*

Institution/Agency: \_\_\_\_\_

Project No./Name: \_\_\_\_\_

**BONDING COMPANY: DO NOT MAKE ANY CHANGES TO THE LANGUAGE IN THIS BOND.**

CONTRACTOR/Principal:

*Name**Address*

SURETY:

*Name**Address*

OWNER/Obligee:

Authorized Rep:

State of Nevada, by and through Nevada Governor's Office

Of Science, Innovation &amp; Technology

680 W. Nye Lane, Suite 104

Carson City, NV 89703

\_\_\_\_\_, ("Principal"), with its primary place of business at:

\_\_\_\_\_, an \_\_\_\_\_

\_\_\_\_\_, ("Surety"), holding a Certificate of Authority from the U.S. Secretary of Treasury as an acceptable surety on federal bonds as identified in the Department of Treasury Circular 570, and a company having a Certificate of Authority to conduct surety insurance business in the State of Nevada, are hereby held and firmly bound unto the State of Nevada, by and through the Governor's Office of Science, Innovation and Technology ("Obligee") in the maximum penal sum of \_\_\_\_\_ Dollars XX/100 (\$ \_\_\_\_\_) ("Penal Sum").

WHEREAS, the above-named Principal has been awarded a federal grant pursuant to the Infrastructure Investment and Jobs Act, Broadband Equity, Access and Deployment (BEAD) program under Federal Award No. \_\_\_\_\_, and that Principal and Obligee have entered into a subgrant agreement, No. \_\_\_\_\_, titled, the HSNV Phase III Telecommunications Construction and Service Agreement, BEAD Project Fund Program ("Contract") in furtherance of the High-Speed NV Initiative, Phase III Project (hereafter collectively, "the Project"), implemented by Obligee under its selection process, and is now required to furnish security in the form of a surety bond to secure performance of the Contract and that the Principal shall promptly, fully and faithfully perform all undertakings, covenants, terms, conditions and agreements of said Contract during the term of said Contract, any extensions thereof may be granted by an amendment, and shall also well perform and fulfill all undertakings, covenants, terms and conditions and agreements of any and all duly authorized modifications of said Agreement that may hereafter be made, notify of which modifications to the Surety being hereby waived, then this obligation of completion of the Project for the construction and

deployment of a broadband infrastructure project, more completely described in the Contract, and its Exhibits, to wit: \_\_\_\_\_

For purposes of this Surety Bond, Work associated with this Project shall be deemed completed upon the following: \_\_\_\_\_

No other contractual obligations of the Contract shall be covered by this Bond.

In accordance with the Contract, Qualifying Broadband service to an address locations shall mean: \_\_\_\_\_

**NOW, THEREFORE,** It is the condition of this Bond that, once the Principal completes the Contract Work and can provide \_\_\_\_\_, as explained above, the Surety's obligations under this Bond will terminate. Otherwise, the Surety's obligations shall remain in full force and effect. The Obligor may not invoke the provisions of this Surety Bond if the Obligor is in material breach of its obligations under the Contract.

Regardless of the number of years this Surety Bond is in force or the number of claims made under this Surety Bond, the Surety's aggregate liability under this Bond shall not exceed the maximum Penal Sum.

**SURETY OBLIGATIONS.** If the Principal is in default pursuant to the terms of the Contract regarding said Work and the Obligor has so declared the Principal in default or breach, the Surety may remedy the default to the satisfaction of the Obligor, or shall promptly:

- (1) Complete the Principals obligations regarding the Work in accordance with its terms and conditions of the Contract, with the consent of the Obligor, , or
- (2) Obtain a bid or bids for submittal to the State Representative for completing the Contract in accordance with its terms and conditions, and upon determination by the State Representative and Surety through another entity acceptable to the Obligor and in accordance with any state or federal procurement rules, and the Surety shall make sufficient funds available to the successor entity to pay for completion of the Principals' unfulfilled obligations under the Contract, up to the maximum Penal Sum of the Bond; or
- (3) Reimburse the Obligor sufficient funds to pay the cost of completion, less the balance of the Agreement price but not exceeding, including other costs and damages for which the Surety may be liable hereunder, up to the amount of the Penal Sum.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the State of Nevada.

**IN WITNESS WHEREOF** said Principal and Surety have executed this Bond, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

(Corporate Seal)

**ATTEST:**

\_\_\_\_\_  
Secretary

(Corporate Seal)

**THE PRINCIPAL**

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

**SURETY**

\_\_\_\_\_  
By: \_\_\_\_\_  
Attorney-in-fact

**THIS BOND MUST BE ACCOMPANIED BY POWER OF ATTORNEY, EFFECTIVELY DATED**

Note: This bond may be issued simultaneously with another bond conditioned, if required, for the full and faithful payment for all labor and material of the Agreement.

**Exhibit Q - BEAD NOFO REQUIREMENTS – for Subgrantees****1. Award Compliance Requirements, Prioritization and Terminology**

Grantees must comply with all requirements contained in 1) 47 U.S.C. § 1702, 2) the BEAD NOFO, 3) the Department of Commerce Standard Terms and Conditions, 4) the General Terms and Conditions for the BEAD Program, and 5) the Specific Award Conditions applicable to each individual award.

**2. Grantee, Subgrantee, and Contractor Compliance with Applicable Requirements**

Each Subgrantee or contractor, including lower tier Subgrantees or subcontractors, must comply with all applicable Federal, state, and local laws and regulations, and all applicable terms and conditions of this award. *See* NOFO Section IX.G.4.

**3. Prevention of Waste, Fraud, and Abuse**

Subgrantees/Recipients will be monitored by OSIT 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;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Subgrantees/subrecipients are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (*See also* 2 CFR Part 180, 31 USC 3321, and 41 USC 2313.)

**4. Protection of Whistleblowers**

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information). Federal award recipients and Subgrantees must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.

**5. Signage and Public Acknowledgements**

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 burden.

**6. Requirements During Construction**

During construction, the Subgrantee, as applicable, is responsible for:

- Ensuring that it meets all deadlines in approved plans and specifications;
- Monitoring the progress of grant funded activities;
- Reporting progress;

- Providing for required construction permits and adequate construction inspection;
- Promptly paying costs incurred for grant funded activities;
- Monitoring contractors' compliance with Federal, State, and local requirements; 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.

#### **7. Inspection and Testing of Materials**

Provider shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. The Grantee shall ensure that documentation of same is cataloged and retained.

#### **8. Environmental and Historic Preservation (EHP) Review**

Provider must comply with the requirements of all applicable Federal, state, and local environmental laws, regulations, and standards and must ensure that Subgrantees comply with all such requirements as well.

#### **9. Scheduling Inspection for Final Acceptance**

The Grantee will schedule a final inspection for each broadband infrastructure project and other construction activities when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of the Grantee, the architect/engineer, and the Subgrantee and/or contractor(s) will attend the Grantee's final inspection for each project. NTIA must be given reasonable advance notice of each final inspection so that a representative of NTIA may participate.

#### **10. Domestic Preference for Procurements (Build America, Buy America)**

Build America, Buy America Act (BABA) established domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act. The Grantee shall comply with BABA consistent with applicable legal authorities. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

#### **11. Prohibition on Use for Covered Communications Equipment or Services**

A Grantee or Subgrantee (including contractors and subcontractors of Subgrantees) may not use BEAD grant funds to purchase or support any communications equipment or service covered by either the Secure and Trusted Communications Networks Act of 2019 (47 USC 1608) or 2 CFR 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).

#### **12. Ensure Subgrantee Accountability**

Grantee must include sufficient accountability procedures within its program to ensure Subgrantee compliance with all applicable Program requirements. **The Grantee must include in any subgrant agreement reasonable provisions allowing for recovery of funds in the event of a Subgrantee's noncompliance with the BEAD Program's requirements**, including but not limited to failure to deploy network infrastructure in accordance with mandated deadlines.

**13. Civil Rights and Nondiscrimination Law Compliance**

Prior to distributing any BEAD funding to a Subgrantee, Subgrantee is required to agree, by contract or other binding commitment, to abide by the non-discrimination requirements set forth in the legal authorities listed in the NOFO, to the extent required by current or subsequent guidance issued by NTIA, and to acknowledge that failure to do so may result in cancellation of any subgrant and/or recoupment of funds already disbursed. *See also* NOFO IV.C.I.g.

**14. Network Capabilities**

Every Funded Network must meet the criteria related to speed and latency and network outages outline in the NOFO IV.C.2.a. Any subgrant agreement for a Funded Network permits the Subgrantee to use the subgrant to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of a project providing broadband service to an unserved location, underserved location, or eligible community anchor institution.

**15. Deployment Deadlines and Benchmarks**

Each Subgrantee must deploy its Funded Networks and begin providing broadband service to each customer that desires broadband service not later than four years after the date on which the Subgrantee receives the subgrant for the applicable network.

**16. Conduit Access Points – Where Fiber Optic Cable or Conduit is Installed Underground**

Pursuant to 47 U.S.C. § 1702(h)(4)(D), any Funded Network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities. Where a project proposes to lay conduit, the Grantee shall require prospective Subgrantees to propose to deploy a reasonable amount of excess conduit capacity and to propose a conduit access point interval as part of the grant application process and shall consider the adequacy of the prospective Subgrantee's proposed excess conduit capacity and access points when evaluating the application.

**17. Affordability and Low-Cost Plans**

Each Subgrantee must offer at least one low-cost broadband service option. NTIA or the Grantee may take corrective action, including recoupment of funds from the Subgrantee, for noncompliance with the statutory low-cost plan requirement. Subgrantee must ensure that services offered over Funded Networks allow subscribers in the service area to utilize the FCC's Lifeline Program or any successor program, and that Subgrantees continue to offer the low-cost broadband service option to eligible subscribers, during the Federal Interest Period..

**18. Public Notice**

Subgrantees must carry out public awareness campaigns in their 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, including information about low-cost broadband service options for eligible subscribers. Once a Funded Network has been deployed, each Subgrantee shall provide public notice, online and through other means, of that fact to individuals residing in the locations to which broadband service has been provided and share the public notice with the Grantee that awarded the subgrant. *See* NOFO IV.C.2.c.iv.

## 19. Cybersecurity and Supply Chain Risk Management

Subgrantee shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards (NIST) and Technology and the Federal Communications Commission (FCC). Prior to allocating any funds to a Subgrantee, the Grantee shall, at a minimum, require a prospective Subgrantee to attest that Subgrantee has a cybersecurity risk management plan (the plan) in place that is either operational, or ready to be operationalized upon providing service, if the prospective Subgrantee is not yet providing service prior to the grant award;

The plan will be reevaluated and updated on a periodic basis and as events warrant.

If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to the Grantee/OSIT within 30 days. The Grantee must provide a Subgrantee's plan to NTIA upon NTIA's request.

With respect to **supply chain risk management (SCRM)**, prior to allocating any funds to a Subgrantee, the Grantee shall, at a minimum, require a prospective Subgrantee to attest that 1. The prospective Subgrantee has a SCRM plan in place that is either: a) operational, if the prospective Subgrantee is already providing service at the time of the grant; or b) ready to be operationalized.

The 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;

**The plan will be reevaluated and updated on a periodic basis and as events warrant; and will be submitted to the Grantee prior to the allocation of funds.** If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to the Grantee within 30 days. The Grantee must provide a Subgrantee's plan to NTIA upon NTIA's request.

The Grantee also must ensure that, to the extent a BEAD Subgrantee relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), obtain the above attestations from its network provider with respect to both cybersecurity and supply chain risk management practices. *See* NOFO IV.C.2.c.vi.

## 20. Protected and Proprietary Information

The Grantee and Subgrantees are expected to support Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the Department of Commerce and external program evaluators. In accordance with 2 CFR 200.303(e), Grantees and Subgrantees are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award. *See also* NOFO IX.B.

## 21. Subgrantee Reporting

The Subgrantee shall submit to the Grantee a report, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Subgrantees must certify that the information in the report is accurate. Each report shall describe each type of broadband infrastructure project and/or other eligible activities carried out using the subgrant and the duration of the subgrant. Grantees may add additional reporting requirements or increase the frequency of reporting with the approval of the Assistant Secretary and must make all Subgrantee reports available to NTIA upon request. *See also* NOFO VII.E.2.



**22. Tribal Consent to Deploy on Tribal Land**

Consistent with NOFO section IV.B.7.a.ii.IO and IV.B.9.b.I5, the Grantee may not issue a subgrant to deploy broadband service Projects that include any locations on Tribal Lands without receiving a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.

**23. Encumbrances**

Subject to the exception below, Grantees and Subgrantees must not encumber property without prior disclosure to and approval from NTIA and NIST. Grantees and Subgrantees may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of grant funded property during Federal Interest Period.

The following exception applies to subgrants whose major purpose is a broadband infrastructure project. Subgrantees may encumber real property and equipment acquired or improved under such subgrants only after provision of notice to NTIA and to the Grants 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 real property and equipment such that, if the real property and equipment 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 property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

**Exhibit R - CERTIFICATE OF SUBSTANTIAL COMPLETION**

PROVIDER/SUBGRANTEE NAME AND ADDRESS	CERTIFICATE OF SUBSTANTIAL COMPLETION
	<p><b>PROJECT ID:</b></p> <p><b>CONTRACT ID:</b></p> <p><b>FEDERAL ID:</b></p> <p><b>CONTRACT DATE:</b></p>
<p>As the duly authorized representative of _____, I hereby certify that the work under this contract has been executed in accordance with the terms, conditions, plans and specifications and services set forth in this Contract, and that the Project Area will be substantially completed, have been found acceptable, and services delivered to the remaining Broadband Serviceable Locations within the Project Areas, except for the portion of work listed on the reverse side of this document.</p> <p>The Parties will perform the balance of the contract, with an anticipated final completion on or before the _____ day of _____, 202____.</p> <p>I further certify that I have, or will have, complied with federal reporting requirements, and have submitted all data, documentation and materials required by the Contract in furtherance of the obligations imposed on OSIT under the BEAD NOFO, NTIA, DOC, the federal and state grant obligations, and that the undersigned will comply with finalizing any remaining work, and complete all final reporting requirements, provide all necessary supporting documentation, comply with close out obligations, and/or provide any missing documentation upon request by OSIT, NTIA or DOC, required by the BEAD Program grant obligations no later than _____.</p> <p>Dated this _____ day of _____, 2025 at _____, Nevada.</p> <p>_____  PROVIDER/Subgrantee's Name</p> <p>_____  Signature of Authorized Representative</p> <p><b>THE UNDERSIGNED ACKNOWLEDGES AND ACCEPTS THIS CERTIFICATE.</b></p> <p><b>Nevada Governor's Office of Science, Innovation &amp; Technology</b></p> <p><b>By:</b> _____</p>	

**Exhibit S – CERTIFICATE OF COMPLETION OF PROJECT MILESTONE**

<b>PROVIDER/SUBGRANTEE NAME AND ADDRESS</b>	<b>COMPLETION OF:</b> [ ] MILESTONE _____
	<b>CONTRACT ID:</b> <b>FEDERAL ID:</b>
<b>RPA LOCATIONS:</b>	

**CERTIFICATE OF COMPLETION OF PROJECT MILESTONE**

As the duly authorized representative of the Nevada Governor’s Office of Science, Innovation & Technology, I hereby certify that Provider has performed the agreed upon work, and that Provider has met all requirements to meet the milestone identified herein, that such work has been completed or performed in accordance with the terms, conditions, plans and specifications in the contract, and that all necessary documents requested by OSIT have been submitted/verified and/or approved by OSIT.

Payment for completion of Milestone \_\_\_\_\_, is hereby authorized.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2025 at \_\_\_\_\_, Nevada.

**Nevada Governor’s Office of Science, Innovation & Technology**

\_\_\_\_\_

**PROVIDER HEREBY ACKNOWLEDGES RECEIPT OF THIS CERTIFICATION.**

\_\_\_\_\_  
PROVIDER/Subgrantee’s Name

\_\_\_\_\_  
Signature of Authorized Representative

**Exhibit T - CERTIFICATE OF PROJECT COMPLETION & ACCEPTANCE**

<b>PROVIDER/SUBGRANTEE NAME AND ADDRESS</b>	<b>PROJECT ID:</b>
	<b>CONTRACT ID:</b>
	<b>FEDERAL ID:</b>
	<b>TOTAL SUBGRANT AMOUNT PAID:</b>

**CERTIFICATE OF PROJECT COMPLETION & ACCEPTANCE**

As the duly authorized representative of \_\_\_\_\_, I hereby certify that the work under this contract has been completed in accordance with the terms, conditions, plans and specifications, and Provider has deployed a functioning network, capable of delivering Qualifying Broadband Service to the Broadband Serviceable Location set forth in this Contract; that Service Activation may occur to subscribing End Users and that the authorized representative of OSIT, by its countersign, has accepted the Project and deemed Provider to have fulfilled its deployment and service obligations.

Provider further certifies that all required testing, verification and inspections have been completed, records provided to OSIT, and that it will comply with remaining federal reporting and close out requirements imposed on OSIT by the BEAD Program and Federal Grant Award obligations, the State grant obligations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2026 at \_\_\_\_\_, Nevada.

\_\_\_\_\_  
PROVIDER/Subgrantee's Name

\_\_\_\_\_  
Signature of Authorized Representative

**THE UNDERSIGNED HEREBY ACKNOWLEDGES THAT THE PROJECT IS ACCEPTED AS COMPLETE AND AUTHORIZES RELEASE OF THE FINAL MILESTONE PAYMENT.**

**Nevada Governor's Office of Science, Innovation & Technology**

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

## ATTACHMENT AA - NOTICE OF FEDERAL INTEREST IN PROJECT PROPERTY

**Recordation of the Federal Interest in BEAD-Funded Property**

- A. **Useful Life and Compliance with 2 CFR 200.311, 200.313.** For the purposes of this award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period as defined in Term 49 below. During the useful life of the BEAD-funded property, the Grantee must adhere to the requirements contained in the terms and conditions of the award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance.
- B. **Documentation of the Federal Real Property Interest:** For BEAD-funded real property, the Grantee or Subgrantee must prepare and properly record a “**Covenant of Purpose, Use and Ownership**” (**Covenant**) or Notice of Federal Interest, as may be required. The Covenant acknowledges that the Subgrantee will hold title to the BEAD-funded property in trust for the public purposes of the BEAD financial assistance award and obligates the Provider, among other commitments, to 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. Such documents will 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 supplement this requirements with additional guidance or suggested sample forms to record notice of the Federal interest in real property.
- C. **Documentation of Federal Property Interest/UCC-1 Filing & Attorney’s Certification.** Pursuant to 2 C.F.R. § 200.316, after acquiring all or any portion of the equipment under this award, the Grantee or Subgrantee shall properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the State’s Uniform Commercial Code (UCC). **This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant or subgrant, as applicable.** Also, a clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1.

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

*The Equipment set forth at Attachment A hereto was acquired with funding under a financial assistance award (Award Number) issued by the National Institute of Standards and Technology, U.S. Department of Commerce. As such, the U.S. Department of Commerce retains an undivided equitable reversionary interest (Federal interest) in the Equipment for [insert number] years after the end of the year in which the award is closed out in accordance with 2 CFR 200.344.*

- D. **Attorney Certification Requirement:** In addition, within 15 calendar days following the required UCC filing(s), the Grantee shall provide the Grants Officer with complete and certified copies of the filed UCC forms and attachments for the equipment acquired with NTIA BEAD funding including all subgrants, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney’s Certification), that the UCC filing was properly executed and filed in

accordance with applicable state law. The Attorney's Certification must include the below or substantively similar language:

NIST Award Number: XX-XX-XXXX

*Pursuant to 28 USC1746,1 hereby certify as follows:*

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

*I am licensed to practice law in the State of Nevada, 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, recorded on\_\_\_\_\_, as Instrument Number:\_\_\_\_\_ and consists of recorded pages as certified by the Nevada Secretary of State.*

*I certify that this UCC-1 form(s) has/have been validly executed and properly recorded as noted above.*

*I certify under the penalty of perjury that the foregoing is true and correct.*

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

\_\_\_\_\_  
*(Attorney name and title)*

*(Address and phone number)*

In addition, during the estimated useful life of the [type of equipment, e.g. robotic equipment], the Grantee or Subgrantee is hereby authorized and directed by the Grants Officer to timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to the Grants Officer within 15 calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to NTIA and the National Institute of Standards and Technology (NIST) Grants Officer.

**ATTACHMENT BB - INSURANCE SCHEDULE****[AMOUNTS SUBJECT TO MODIFICATION]****INSURANCE REQUIREMENTS:**

Provider/Subgrantee and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Provider/Subgrantee, its agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Provider/Subgrantee from liabilities that might arise out of the performance of the work under this contract by the Provider/Subgrantee, its agents, representatives, employees or subcontractors and Provider/Subgrantee is free to purchase additional insurance as may be determined necessary.

- A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Provider/Subgrantee shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a "following form" basis.

**1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage that shall include explosion, collapse and underground (XCU) coverage

• General Aggregate	\$TBD
• Products – Completed Operations Aggregate	\$2,000,000
• Personal and Advertising Injury	\$2,000,000
• Each Occurrence	\$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Provider/Subgrantee, including completed operations."

**2. Excess Liability (in addition to the General Liability limits noted above and Auto Liability Limits).**

• Each occurrence	\$ 1,000,000
• Other aggregate (where applicable)	\$ 2,000,000

- a. The policy shall be written on a following form basis.

b. The policy shall be endorsed to include the following additional insured language: "The State of Nevada, its Nevada Governor's Office of Science Innovation and Technology (OSIT) shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Provider/Subgrantee, including completed operations."

c. In Lieu of providing project specific policy, Provider shall notify the State in the event claims filed against the policy are greater than fifty percent (50%) of required limits.

**3. Railroad Protective Liability (Applicable, if construction is being performed within 50 ft of Railroad Right-a-Way, see attached Exhibit A for statewide rail map)**

Whenever construction operations covered under said contract are to be performed upon or in proximity to railroad property, obtain railroad protective liability insurance including public liability and property damage coverage in limits not less than required by the Railroad.

More detailed information regarding railroad maps can be found at the following website: [https://www.dot.nv.gov/mobility/state-rail-maps/-folder-1497#docan1707\\_4280\\_2934](https://www.dot.nv.gov/mobility/state-rail-maps/-folder-1497#docan1707_4280_2934)

a. Such insurance shall be approved by the Railroad before any work is performed on or adjacent to Railroad property and shall be carried until all work required to be performed on or adjacent to the Railroad's property under the terms of the contract is satisfactorily completed as determined by the OSIT, and thereafter until all tools, equipment and materials have been removed from Railroad's property and such property is left in a clean and presentable condition.

b. Furnish the OSIT with one certified copy of the executed policy as required and, in addition, furnish the UPRR representative policies as required.

c. A certification on such copies of insurance shall guarantee that the policy required below will not be amended, altered, modified, or canceled insofar as the coverage contemplated hereunder is concerned, without at least 10 days' notice mailed by registered mail to the OSIT and to the Railroad.

**4. Automobile Liability - Bodily Injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.**

Combined Single Limit (CSL) \$1,000,000

a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada, its Nevada Governor's Office of Science, Innovation and Technology (OSIT) shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Provider/Subgrantee, including automobiles owned, leased, hired or borrowed by the Provider/Subgrantee.

**5. Worker's Compensation and Employers' Liability**

Workers' Compensation

Statutory



## Employers' Liability

Each Accident	\$500,000
Disease – Each Employee	\$500,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

6. **Builders' Risk Insurance or Installation Floater:**

- a. In an amount equal to the initial Agreement amount. Builder Risk Insurance shall also cover all building materials and equipment used for the project regardless of whether it is stored at build sites or designated storage areas. The State of Nevada, Governor's Office of Science, Innovation and Technology (OSIT) shall be insureds on the policy. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs, flood and earth movement.
- b. Policy shall be maintained until whichever of the following shall first occur: (1) final payment has been made; or, (2) until no person or entity, other than the State of Nevada, has an insurable interest in the property required to be covered. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy by the State.
- c. Policy must provide coverage from the time any covered property becomes the responsibility of the Provider, and continue without interruption during construction or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.
- d. The policy shall contain a waiver of subrogation against the State of Nevada.
- e. Provider is responsible for the payment of all policy deductibles.

7. **Professional Liability (Errors and Omissions Liability)**

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Provider warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained, or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

- B. **PERFORMANCE BONDING (CONSTRUCTION PROJECT):** (In accordance 2 CFR part 200.326 (See Exhibit A Resources), bonds shall entitle the State (Owner) to call upon the surety to complete the

contract in one of two ways: (1) the surety and the State can choose a new Provider to complete the contract and the surety pays the costs; or (2) the State alone choose to terminate the contract by selecting another Provider and the surety pays the costs.

Bonds shall be in place prior to disbursement of federal funds and shall be a sum equal to the full or total amount of the contract awarded. Bonds (performance and payment bonds) shall be supplied to Contracting Agency prior to commencement of the work.

(a) A performance bond on the part of the **contractor for 100 percent of the contract price**. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.

1. The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 (<http://www.fms.treas.gov/c570/>.)

C. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include the following provisions:

1. On insurance policies where the State of Nevada, Governor's Office of Science, Innovation and Technology is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Provider's General Liability insurance coverage shall be primary insurance and noncontributory with respect to all other available sources.

D. **NOTICE OF CANCELLATION:** Provider shall for each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided or canceled except after providing thirty (30) days prior written notice been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to Brian Mitchell, or current Director, Nevada Governor's Office of Science Innovation and Technology (OSIT). Should Provider fail to provide State timely notice, contractor will be considered in breach and subject to cure provisions set forth within this contract.

E. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an “A.M. Best” rating of not less than AVII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Provider from potential insurer insolvency.

F. **VERIFICATION OF COVERAGE:** Provider shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to

commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to: Brian Mitchell, or current Director, Nevada Governor's Office of Science, Innovation and Technology (OSIT). Should the Provider/Subgrantee fail to provide State timely notice, Provider will be considered in breach and subject to cure provisions set forth in this contract. The State project/contract number and project description shall be noted on the certificate of insurance.

- G. **SUBCONTRACTORS:** Provider shall furnish to the State separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to the minimum requirements identified above.
- H. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Risk Management Division or the Attorney General's Office, whose decision shall be final. Such action will not require a formal Contract amendment but may be made by administrative action.

**ATTACHMENT CC - PROJECT COMPLETION CRITERIA**

1. A *“project completion report”* signed by an officer of Subgrantee including:
  - b. An attestation by an officer of Subgrantee that the Project has been completed in all material respects, to include, but not limited to:
    - 1) 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 and the BEAD NOFO
    - 2) Subgrantee is capable of performing a standard installation of Qualifying Broadband Service at all End Users, at a standard installation charge, within 10 business days after the date on which a service request is submitted.
    - 3) Subgrantee is capable of providing Qualifying Broadband Service to all End Users and CAIs included in the Project at the speed and latency standards specified in the Application and the BEAD NOFO.
    - 4) Subgrantee has completed all RPA commitments identified in the Application.
  - c. A technical report sufficiently demonstrating, in OSIT’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 and the BEAD NOFO.
2. Proof sufficient for OSIT to determine, in its sole discretion, whether Subgrantee has provided public notice, online and through other means, of the fact that the Project has been completed, and Broadband Service is available to individuals residing in the locations to which Broadband Service has been provided.
3. 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.

**ATTACHMENT DD - ASSURANCE RE: COMPLIANCE WITH 2 C.F.R. 200.216****Prohibition on Certain Telecommunication and Video Surveillance Services or Equipment**

As a condition of receipt of federal financial assistance from the Federal Government, any Subrecipient will adhere to the following requirements and assurance below and represents that all information contained in its proposal is true and correct. Compliance with these Assurances will apply to all funding disbursed by OSIT.

As required by 2 C.F.R. § 200.216, recipients and Subrecipients of federal funds, including borrowers, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications **equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)**. Recipients, Subrecipients, and borrowers also may not use federal funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by **Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company** (or any subsidiary or affiliate of such entities).
- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 C.F.R. § 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:
  1. Obligating or expending federal funds for covered telecommunications and video surveillance services or equipment or services as described in 2 C.F.R. § 200.216 to:
    - a. Procure or obtain, extend or renew a contract to procure or obtain.
    - b. Enter into a contract (or extend or renew a contract) to procure; or
    - c. Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

Federal funds may not be used for purchases of equipment from vendors listed in Public Law 115-232. Any equipment purchased from a proscribed vendor using federal funds shall be removed and replaced by Subgrantee at Subgrantee's expense. Ineligible costs may be disallowed or recaptured by the State or Federal Government.

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 Grantee

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 Date

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 State Agency Grant Manager

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 Date

**ATTACHMENT EE - CERTIFICATE OF PLANS BY PROFESSIONAL ENGINEER [EXAMPLE]**

The undersigned licensed professional engineer, certify that I have reviewed the technical plans and documentation pertaining to the proposed broadband project for the BEAD program, including:

- **Project Timeline and Milestones:** The proposed project schedule including the build-out timeline and milestones.
- **Network Design Documents:** All design documents, including engineering drawings, specifications, and logical network diagrams.
- **Technical Narrative:** The detailed description of the proposed network, including its connection to backhaul infrastructure and its technical capabilities.
- **Project Cost Estimates:** The detailed itemization of project costs and the associated budget.
- **Location and Geographic Information:** The maps and shapefiles of the proposed network's footprint, including all Broadband Serviceable Locations (BSLs) and Community Anchor Institutions (CAIs) to be served.

Based on my professional expertise and review, I hereby certify that:

1. **Completeness and Accuracy:** The materials submitted as part of this application's Project Plan are complete, accurate, and represent a technically viable project.
2. **Performance Requirements:** The proposed network design can deliver reliable broadband service that meets or exceeds the BEAD program's performance requirements for all locations within the project area, including:
  - **Residential and Business Locations:** Speeds of at least 100 Mbps download and 20 Mbps upload with latency less than or equal to 100 milliseconds.
  - **Community Anchor Institutions (CAIs):** Speeds of at least 1 Gbps download and 1 Gbps upload with latency less than or equal to 100 milliseconds.
3. **Deployment Timeline:** The project is technically feasible and can be built out, and service initiated, within the required four-year timeframe from the date of the subgrant award.
4. **Code and Regulatory Compliance:** The design and specifications comply with all relevant federal, state, and local codes, regulations, and industry standards.
5. **Risk Mitigation:** The design accounts for potential risks, including current and future weather and climate-related events, and has a clear plan for network outages.

I understand that this certification is a binding professional statement, and I am a licensed professional engineer in good standing in the State of Nevada.

**Professional Engineer Information:**

Full Name:

License Number:

Licensed State/Territory:

Expiration Date:

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