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**BEAD Grant Agreement Exhibits List:**

Attachment 1 – Project Description/ Notice of Award

Attachment 2 – Approved Application

Exhibit 1 - Approved Project Plan in Funding Application – Project Schedule 1.1

Exhibit 2 - Approved Project Budget and Funding Sources in Application

Exhibit A: Scope of Work

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Exhibit C: Request for Approval of Evidentiary Materials Form

Exhibit C-2: Grantee/Subrecipient/Contractor Debarment Review Certification

Exhibit C-3: Grantee Project Area Floodplain Status Certification

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Schedule 2: Description of Subgrantee’s Procurement Process

Schedule 3: Subgrantee’s Form of Subcontractor Agreement

**SUBGRANT AGREEMENT  
BETWEEN  
THE WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT  
OFFICE OF BROADBAND  
and  
(Subrecipient)**

This Subgrant Agreement (“Grant Agreement” or “Agreement”) is between the West Virginia Department of Economic Development, (hereinafter, "Department" or “WVDED”) by and through the Office of Broadband (“Office”) and \_\_\_\_\_ (hereinafter, "Subgrantee" “Grantee” or “Subrecipient”). This Subgrant Agreement is for the \_\_\_\_\_ (Project Name) as further described in the approved Project Plan included with the application for funding.

**A. DEFINITIONS**

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

“**Assistant Secretary**” means the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator.

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

“**BABA**” means the Build America, Buy America Act, which as part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927, establishes 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.

“**BEAD Program**” means the Broadband Equity, Access, and Deployment Program, authorized by the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021).

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

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

“**CAI**” means a community anchor institution as identified in the approved Application.

“**Closeout Date**” is the date when the Department determines Subgrantee 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.

“**Department**” means the West Virginia Department of Economic Development or “WVDED”.

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

“**Federal Interest Period**” is the period during which Subgrantee will hold in trust for the beneficiaries of the BEAD Program all Project Property. The Federal interest in Project Property will start upon acquisition or improvement thereof, and continue through the end of the tenth (10th) year thereafter. For example, if this award is closed out in 2027, regardless of the month, the Federal Interest Period will last until December 31, 2037.

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

“**Grant Funds**” means the West Virginia BEAD program funding awarded for this Project as identified in Attachment 1 (the Total Amount of the Federal Award committed to Subgrantee by the pass-through entity).

“**Initial Proposal**” means WVDED’s BEAD Initial Proposal, as approved by NTIA on December 14, 2023 and as it may subsequently be amended, available at <https://broadband.wv.gov>.

“**Matching Funds**” means funds provided by Subgrantee to meet the BEAD Program’s non-federal match requirement.

“**Middle Mile Infrastructure**” A) means any broadband infrastructure that does not connect directly to an end-user location, including a CAI; and (B) includes—(i) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea

cables, transport connectivity to data centers, special access transport, and other similar services; and (ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links (per BEAD NOFO, pgs. 13-14).

“**NEPA**” is the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.)

“**NHPA**” is the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.)

“**NIST**” is the National Institute of Standards and Technology, the entity within the USDOC that administers BEAD Program grants.

“**NTIA**” is the National Telecommunications and Information Administration, the entity within the USDOC responsible for implementing the BEAD Program.

“**Pass-through Entity (PTE)**” Means the Eligible Entity Recipient of the BEAD award (i.e. the Department), or any subgrantee or subrecipient of the Department that provides a subaward to a subrecipient to carry out part of a federal program.

“**Program Income**” is income directly generated by a supported activity or earned as a result of the federal award during the period of performance.

“**Program Procedures**” means the WV BEAD Program Procedures, available at:

<https://broadband.wv.gov/wp-content/uploads/2024/08/WVDED-BEAD-Deployment-Program-Procedures-21Aug2024.pdf>.

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

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

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

“**Reliable Broadband Service**” means broadband service that the Broadband DATA Maps show is accessible to a location via: (i) fiber optic technology; (ii) Cable Modem/Hybrid fiber-coaxial technology;

(iii) digital subscriber line (DSL) technology; or (iv) terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

**“Subaward”**, as defined in the Federal Uniform Guidance for Federal Awards, 2 CFR 200.1 (“Uniform Guidance”), means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a federal award received by the pass-through entity. It does not include payments to a contractor, beneficiary, or participant.

**“Subgrantee/Subrecipient”** means an entity that receives Grant Funds.

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

**“(USDOC) Financial Assistance Standard Terms and Conditions”** means the Department of Commerce Financial Assistance Standard Terms and Conditions (Nov. 12, 2020) *available at* [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).

**“Unserved Location”** means a broadband-serviceable location that the Federal Communications Commission’s (FCC) Broadband DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with: (i) a speed of not less than 25 Megabits per second (Mbps) for downloads; (ii) a speed of not less than 3 Mbps for uploads; and (iii) latency less than or equal to 100 milliseconds (see BEAD NOFO, p. 17).

**“Unserved Service Project”** means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations. This may be as small as a single unserved broadband-serviceable location (per BEAD NOFO, p. 17).

**“Underserved Service Project”** means a project in which not less than 80 percent of broadband-serviceable locations served by the project are unserved locations or underserved locations (per BEAD NOFO, p. 16).

**“UGPN”** is the Uniform Guidance Policy Notice published by NTIA on December 26, 2023, titled “Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.”

Capitalized terms not otherwise defined herein shall have the same meaning ascribed thereto in the West Virginia Code or, if not defined therein, the BEAD NOFO.



## B. RECITATIONS

WHEREAS, the State of West Virginia and the West Virginia Department of Economic Development, Office of Broadband (“Department”) received funds as an Eligible Entity “Recipient” through the Infrastructure Investment and Jobs Act (“IIJA” or “Infrastructure Act”) 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) also known as the Bipartisan Infrastructure Law, for the purposes of broadband expansion as part of the United States Department of Commerce (“USDOC”) as administered by the National Telecommunications and Information Administration (“NTIA”) Broadband Equity, Access and Deployment Program (“BEAD Program”); and \_\_\_\_\_ (“Subgrantee” or “Subrecipient”);

WHEREAS the Department is authorized to make grant funds available to qualified subgrantees under the WV BEAD Program pursuant to W. Va. Code § 31G-1A-2;

WHEREAS, the Department has selected the Subgrantee/Subrecipient to implement activities and services as described herein to accomplish certain purposes of the Infrastructure Act and the BEAD Program;

WHEREAS, the Department will provide funds to the Subgrantee from the BEAD Program, or from other sources, as may be available and as determined by the Department in its sole discretion, for the activities and services contemplated to be implemented herein;

NOW, THEREFORE the parties mutually agree as follows:

### 1. FEDERAL AWARD IDENTIFICATION

Information identifying this Federal subaward is set forth in Attachment 1 (Project Description) to this Agreement.

### 2. GENERAL COMPLIANCE REQUIREMENTS, PRIORITY, AND DEFINED TERMS

The Subgrantee must perform its obligations under this Agreement in a manner that complies, and enables the Department to comply with, all requirements contained in the following authorities: 47 U.S.C. § 1702, §60102 of the IIJA,<sup>1</sup> the BEAD NOFO,<sup>2</sup> the USDOC Standard Terms and Conditions,<sup>3</sup> the General Terms and Conditions for the BEAD Program,<sup>4</sup> The Specific Award Conditions applicable to West Virginia’s

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<sup>1</sup> <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>.

<sup>2</sup> <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

<sup>3</sup> [https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF\\_0.pdf](https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%2012%20November%202020%20PDF_0.pdf).

<sup>4</sup> [https://broadbandusa.ntia.doc.gov/sites/default/files/2024-05/BEAD\\_IPFR\\_GTC\\_04\\_2024.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2024-05/BEAD_IPFR_GTC_04_2024.pdf).

BEAD Award (\_\_\_\_\_), the WV BEAD Program Procedures, the WV BEAD Subrecipient Compliance and Reporting Guidance, and West Virginia's Initial Proposal.<sup>5</sup> In the event of any conflict between the terms of this Agreement and the authorities identified in the preceding sentence, the authorities identified in the previous sentence shall control.

In any case where the 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 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 award's Specific Award Conditions; the General Terms and Conditions for the BEAD Program; the BEAD NOFO; the USDOC Standard Terms and Conditions, the West Virginia BEAD Deployment Program Procedures, and the State of West Virginia's BEAD Initial Proposal.

The definitions in the BEAD NOFO shall apply to capitalized terms not otherwise defined herein.

### **3. NATURE OF AWARD**

The Subgrantee shall deploy Qualifying Broadband Service to End Users and CAIs as described in Subgrantee's Application. This Project must provide Qualifying Broadband Service to all broadband serviceable locations and CAIs identified in the Application and at the speeds and latency standards articulated therein.

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

It is understood and agreed by the parties that, because the West Virginia BEAD Program is new, and because the funding of the program is dependent upon both State and Federal regulations, certain requirements, such as reporting obligations, may change over time. The Subgrantee shall remain obligated to comply with the current and future obligations of the West Virginia BEAD Program through the Closeout Date, except for those obligations that survive closeout and remain in force during the Federal Interest Period (e.g. requirements related to property standards, service availability, affordability programs participation, low-cost broadband service options, and reporting requirements, and ensuring continuity of service to end users in the event of default).

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<sup>5</sup> The BEAD Program Procedures, the WV BEAD Subrecipient Compliance and Reporting Guidance, and West Virginia's Initial Proposal are all available at <https://broadband.wv.gov/>.

#### **4. SUBGRANTEE RESPONSIBILITIES TO DEPLOY BROADBAND INFRASTRUCTURE AND PROVIDE BROADBAND SERVICE**

##### **4.01 Scope:**

4.01(a) The scope of work for Project to be partially funded by the Department is briefly described in Exhibit A hereto, and more extensively in the Project Plan included with the application for funding (“Application”) submitted by the Subgrantee, and any modifications to the Application or Project/Project Plan must be approved in advance by the Department or its designee, in writing, as described herein at Section 13.03. The Subgrantee will confer with Department regarding the status of items which need to be satisfied or waived, as shown on the Request for Approval of Evidentiary Materials, provided as Exhibit C incorporated herein by reference, prior to the Department issuing a Notice to Proceed with Pre-Implementation Activities (“NTPPIA”) to subgrantee, as described in Section 4.04(a) herein. All work on the Project will materially conform to the plans set forth in the Project Plan included with the Application for funding, unless the Department approves a material change in the Project, in which case the work shall conform to the Application plans and the material change, as applicable.

4.01(b) Upon receipt of a written Notice to Proceed with Construction (“NTPC”), as described in Section 4.04(c) herein from the Department, the Subgrantee agrees to implement the Project Plan as presented in its Application for funding under the terms and conditions herein.

4.01(c) The Subgrantee represents that it has or will secure personnel or contractors with the necessary qualifications and experience required to perform the services under this Agreement. The Subgrantee shall require that its private partners, if any, are registered and licensed to do business in the State of West Virginia. The Subgrantee, its employees, and private partners, if any, shall be licensed pursuant to all applicable federal, state and local laws, ordinances, rules and regulations and shall upon request provide proof of all licenses.

##### **4.02 Budget:**

4.02(a) The Project Budget and Funding Sources approved in Subgrantee’s Application are fully incorporated herein by reference (“Budget”). Any subsequent modifications to the Budget shall otherwise be in a form and substance satisfactory to the Department and consistent with applicable requirements of law. If necessary and upon request, the Department may require a more detailed or supplementary Budget breakdown, and the Subgrantee shall provide such detailed or supplementary Budget information in a timely fashion in the form and content prescribed by the Department.

4.02(b) The Subgrantee shall cause the Budget to be in sufficient detail to provide a sound basis for the Department effectively to monitor the Subgrantee's performance under this Agreement and to meet the requirements of the IJA and the BEAD Program rules and regulations that must be complied with to allow payments of Project funds to the Subgrantee.

4.02(c) If the Project Budget and Funding Sources include another source of federal funds which require Davis-Bacon Act compliance, then the Project Budget must be based upon wage levels required by the Davis-Bacon Act and regulations and court and administrative orders applying the Davis-Bacon Act.

4.02(d) Budget Changes and Transfer of Funds. Under the USDOC Standard Terms and Conditions and the Uniform Guidance 2 CFR 200.308, the Subgrantee must report deviations from the Subgrantee's approved award budget, project, program scope, or objective(s) to the Department. The Subgrantee shall request prior written approval from the Department for the following program and budget-related reasons:

- 1.) Changes in the scope or objective of the project (even if no associated budget revision);
- 2.) Changes in key personnel (employees and contractors) identified by name or position in the federal award;
- 3.) The disengagement from the project for more than three months by the project director;
- 4.) The transfer of funds budgeted for participant support costs to other budget categories;
- 5.) Subaward activities not proposed in the application and approved by WVDED;
- 6.) The need for additional funds to complete the project;
- 7.) Transferring funds between construction and non-construction work under the federal award.

#### **4.03 Performance Measures:**

4.03(a) Performance Measures. All funding necessary to complete this Project should be secured at the awarding of this Agreement. Achievement and compliance with the performance measures will be evaluated based upon the Project Plan as presented in the Application, which is fully incorporated by reference ("Performance Measures"). These Performance Measures establish goals against which performance under this Agreement can be measured and evaluated during regular scheduled monitoring visits or reviews by the Department. Failure to substantially meet these Performance Measures can result in suspension of reimbursement payments, termination of this Agreement, and/or prohibit the Subgrantee from being eligible to submit an application for future fiscal year allocations until such time as outlined situations are resolved.

4.03(a)(1) Broadband Speed Requirements. As per the Department's WV BEAD Deployment Program Procedures, funded projects must deliver broadband with speeds of not less than 100

Mbps for downloads and 20 Mbps for uploads in accordance with the FCC's 80/80 metric. That is, if the Department or any other entity assigned by the Department tests the end user speeds of these plans, the requirements will only be met if 80% of tests meet or exceed 80% of the required speeds and 95% of latency measurements must be at or below 100 milliseconds round trip. Funded Network connections to eligible CAIs shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads. The Department shall ensure that such connections can be used to provide business data services. Broadband service to CAIs must be provided by fiber-optic technology; cable modem/hybrid fiber-coaxial technology; digital subscriber line (DSL) technology; or terrestrial fixed wireless technology utilizing entirely licensed spectrum or using a hybrid of licensed and unlicensed spectrum.

4.03(b) Speed and Latency. The Subgrantee must comply with the with the standards and testing protocols for speed and latency established by the FCC in prior grant programs, requiring that such testing be performed from the customer premises of an active subscriber to a remote test server at an end-point consistent with the requirements for an FCC-designated Internet Exchange Point ("IXP").

4.03(c) Network Outages. The Subgrantee agrees that their funded network outages shall not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrences and shall comply with any Department-developed metrics for measuring outages once the Subgrantee's network is operational.

4.03(d) Conduit Access Points. For BEAD-funded network deployment projects involving laying fiber-optic cables or conduit underground or along a roadway, the Subgrantee's project must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities.

For projects proposing to lay conduit, per NTIA guidelines, the Subgrantee must deploy a reasonable amount of excess conduit capacity.

4.03(e) The Department will conduct compliance reviews, including on-site reviews. The Department will provide the Subgrantee with reasonable advance notice of compliance reviews, typically two weeks in advance. The Subgrantee will make all records directly related and reasonably necessary to ensure the Subgrantee's compliance with this Agreement available upon request by the Department. Monitoring will include, but not be limited to, the following:

4.03(e)(1) Construction inspections and review of construction progress.

4.03(e)(2) Review of Project financial records to ensure compliance with applicable state and federal financial management, cost principles, and audit requirements that are reasonably related to the Project.

4.03(f) Inspection and Testing of Materials. The Subgrantee acknowledges and agrees that all materials and equipment used in the completion of the Project shall be subject to adequate inspection and testing in accordance with accepted standards. The Subgrantee agrees that 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 agrees that it shall ensure that documentation of such inspection and testing is catalogued and retained by the Subgrantee. WVDED requires that the Subgrantee undertake and complete its project in a manner that is technically sound and that meets design and construction methods and uses materials that are approved, codified, recognized, meet standard or acceptable levels of practice, or otherwise are determined to be generally acceptable by the design and construction industry.

4.03(f)(1) When (a) all construction has been completed, Subgrantee's architect/engineer has conducted its own final inspection, and any deficiencies have been corrected, and (b) all Project Completion Criteria (See Exhibit J) have been met, Subgrantee shall submit written certification to the Department that the Project was placed into service, as defined in 47 USC 1702(h)(4)(C) for last-mile broadband deployment projects, by the end of the Period of Performance and request that the Department certify completion of the Project and initiate closeout per Section 12.04 below.

4.03(f)(2) Scheduling Inspection for Final Acceptance. The Subgrantee shall cooperate with the Department, which will schedule a final inspection for the Project and other construction activities following completion of all construction activities as well as the architect/engineer's own final inspection. Representatives of the NTIA, Department, the architect/engineer, and the Subgrantee and/or contractor(s) may attend the Department's final inspection for the Project.

4.03(g) Acceptance or Rejection of Project/Enforcement. The Subgrantee acknowledges that the Department may take enforcement action against the Subgrantee if Subgrantee fails to comply with any applicable requirement contained in § 60102 of IJJA, the BEAD NOFO, USDOC Standard Terms and Conditions, BEAD General Terms and Conditions, WVDED BEAD Program Procedures, the BEAD Compliance Guide, WVDED's Initial and Final Proposals, and this Agreement. The Department reserves the right to disallow costs and recover funds disbursed on the basis of audit or review, even following closeout of the Agreement. If the Subgrantee fails to substantially comply with the Application, the Department will provide notice and an opportunity to cure within 30 days or such other reasonable time

as may be specified in the notice. If the Subgrantee fails to cure such non-compliance within the time provided by the Department, the Department shall have the discretion to take one or more of the following actions:

4.03(g)(1) Require additional Project monitoring to ensure compliance with the Application.

4.03(g)(2) Require the Subgrantee to obtain technical or management assistance in order to ensure compliance with the Application.

4.03(g)(3) Reduce the Program Funds to be disbursed under this Agreement in an amount not to exceed the difference between the full amount awarded for the Project and the total amount for which the Subgrantee has submitted a Request for Payment that is consistent with progress made in complying with the Application as of the date of the expiration of the cure period specified in Section 4.03(g) above and require the Subgrantee to revise the Budget based on the reduction of Project funds, such Budget revision to be approved by the Department.

4.03(h) The Department reserves the right to recapture funds remaining due to cost underruns.

4.03(i) Unauthorized use of Funds – Federal Measures. To the extent that the Assistant Secretary of Commerce for Communications and Information or the Inspector General of the Commerce Department determines that the Subgrantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, the Assistant Secretary shall, if appropriate, recover the amount of funds that were so expended.

4.03(j) The Subgrantee agrees that if it fails to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act, the Assistant Secretary may take corrective action, including recoupment of funds from the Subgrantee.

4.03(k) The Subgrantee agrees that NTIA and the Department may also enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of grant funds. Such penalties shall include, but shall not be limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel. See also Section 9.05(a-c) of this Agreement below regarding Deductions and Withholding of funds.

4.03(l) Construction Timeline/Period of Performance. The Subgrantee agrees that it shall complete Project construction and begin providing service to each customer that desires broadband service within the Subgrantee's Project area not later than four (4) years after the date on which the Subgrantee receives an

award from the Department. Should the Subgrantee propose a faster timeline than the four-year program deadline in Subgrantee's application, the Subgrantee shall be bound by that faster timeline commitment. Regarding extensions, WVDED may extend the deadline above in limited circumstances after consultation and approval by NTIA. Should the Subgrantee request an extension, such request for extension must be made in writing by the Subgrantee to the Department. The period of performance begins on the Grant Date.

4.03(l)(1) Extension of the Construction Timeline/Period of Performance. The Department may, at its sole discretion, extend the period of performance by up to one (1) year if the Subgrantee demonstrates to the Office that: (1) Subgrantee has a specific plan for use of the Grant Funds, with project completion expected by a specific date not more than five years after the Grant Date; (2) construction on the Project is underway; or (3) extenuating circumstances require an extension of time to allow the Project to be completed.

4.03(m) Closeout. Closeout shall be conducted according to the timelines and in the manner set forth in 2 CFR 200.344 and as further described in Section 12.04 below. Closeout does not affect (a) any of the rights, requirements, and obligations set forth in 2 CFR 200.345, or (b) any of the Subgrantee's obligations that survive closeout and remain in force during the Federal Interest Period as described below (e.g. requirements related to property standards, service availability, affordability programs participation, low-cost broadband service options, and reporting requirements, and ensuring continuity of service to end users in the event of default).

4.03(n) Energy Efficiency. The Subgrantee, where feasible, shall apply design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the Project's construction.

#### **4.04 Implementation/Construction Measures:**

4.04(a) Notice to Proceed with Pre-Implementation Activities. The Subgrantee shall not commence implementation and BEAD funds will not be disbursed to the Subgrantee until any necessary environmental review is complete and NTIA has approved any decision document. Prior to making any eligible expenditures, Subgrantee must obtain the Notice to Proceed with Pre-Implementation Activities ("NTPPIA"). To do so, the Subgrantee must provide each of the items to the Department, requested as part of the evidentiary materials documentation exhibit to the Subgrantee's Agreement (Request for Approval of Evidentiary Materials) with WVDED. Once the NTPPIA is issued by WVDED, Office of



Broadband, the Subgrantee may begin pre-construction activities, such as Project design, permit applications/right-of-way practices, and logistical efforts. The following are permissible pre-implementation activities, including: 1) Pre-construction planning, including engineering design and 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 as applicable; 4) administrative activities; 5) pre-award application activities; 6) activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or 6) 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).

If the Subgrantee undertakes unauthorized Project activities in contravention of the above, NTIA has advised that the Subgrantee does so at the Subgrantee's own risk and may face de-obligation of funding.

4.04(b) Changes to Project Scope. The Subgrantee shall seek approval from the Department for any change to the Application after the completion of environmental and historic preservation review pursuant to Section 13.03 of this Agreement. The Department shall in turn inform NTIA, and the change(s) will be evaluated for compliance with applicable requirements.

4.04(c) Notice to Proceed with Construction. After issuance of the NTPPIA, the Subgrantee shall submit its engineered design to WVDED. Included in this Notice to Proceed with Construction ("NTPC") request, WVDED requires the Subgrantee to provide copies of any West Virginia Division of Highways (DOH) permits and other applicable permits and clearances, including but not limited to, Dig Once Notifications, pole attachment agreements, and bond agreements, as applicable. If the Project involves work on private property or property outside of the right-of-way, the Subgrantee must also provide evidence to the Department of any required easements or clearances. The Subgrantee acknowledges and agrees that it may only request grant funds for construction after receiving a NTPC from the Department.

4.04(d) Engineered Design Requirements. The Subgrantee shall follow all Department guidelines for specifications for its network designs. These requirements include but are not limited to providing a Network Design Certification form (Exhibit O), a Design Project Checklist (Exhibit P), and a Detailed Design Checklist (Exhibit Q). The Subgrantee's designs shall be prepared under the review of a licensed Professional Engineer (P.E.), or a degreed engineer with substantial relevant experience. The Subgrantee shall submit credentials of the engineer as part of this requirement.

4.04(e) Requirements During Construction. During construction, the Subgrantee shall be responsible for: 1) Ensuring that the Subgrantee 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) Promptly paying costs incurred for grant funded activities; and 6) Monitoring contractors' compliance with federal, state, and local requirements.

4.04(e)(1) The Subgrantee shall comply with and meet industry-standard network resiliency, hardening, and risk mitigation practices with regard to the constructed network, including but not limited to:

- (a) Telcordia Blue Book, Manual of Construction Procedures – SR 1421;
- (b) Federal Emergency Management Agency (FEMA) Building Resource Library;
  - (i) FEMA P-348 – Protecting Building Utility Systems from Flood Damage;
  - (ii) FEMA P-2181 – Flood Mitigation Handbook for Public Facilities;
  - (iii) FEMA 182 – Landslide Loss Reduction: A Guide for State and Local Government Planning;
- (c) West Virginia State and Regional Planning and Development Council Hazard Mitigation plans.

In the event that the Subgrantee cannot meet any of the standards as dictated by the Department's program, it must provide the Department with a clear explanation so as to allow the Department to determine if an exception is warranted.

4.04(e)(2) Disaster Recovery and Preventative Maintenance Plans. Prior to operating its network, the Subgrantee must produce and receive approval on a disaster recovery plan and also a preventative maintenance plan in accordance with the Department's BEAD Program Procedures, Section 7.17.

4.04(e)(3) Safety. The Subgrantee must comply with and ensure that its contractors and subcontractors on the Project comply with all applicable safety standards as part of participation in this Program, including but not limited to compliance with the National Electric Code's (NEC) definition of standard practice (See *Rules for the Government of Electric Utilities*, Engineering Requirements, § 150-3-5.1.1) For practice not covered by the NEC, the Subgrantee shall follow the current edition of the National Electrical Safety Code (NESC), American National Standards Institute Publication (ANSI-C2), issued by the Institute of Electrical and Electronic Engineers.

Further, in compliance with the West Virginia Public Service Commission (WVPSC) pole attachment rules, *Rules for the Government of Pole Attachments*, 150 C.S.R. 38, the Subgrantee and its contractors must follow the utility's published safety guidelines if available, but if unavailable, the Subgrantee attacher/contractor shall follow the most recent published edition of the NESC guidelines.

4.04(e)(4) Public Notice. The Subgrantee is encouraged to post signage and to include public acknowledgements in published and other collateral materials (e.g. press releases, marketing materials, webpages, plaques) satisfactory to the Department, NTIA, and NIST that identifies grant funded activities and indicates that those activities are "funded by the Infrastructure Investment and Jobs Act." The Subgrantee is encouraged to use the Official Investing in America emblem in accordance with the guidelines and design specifications found in the Building A Better America Brand Guide found here: <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. The Subgrantee should use best effort to use recycled or recovered materials when procuring signs.

#### **4.05 Certification – Subaward Completion:**

Pursuant to 2 CFR 200.201(b)(4) of the Uniform Guidance, the Subgrantee must certify in writing to the Department at the end of the BEAD award that the broadband infrastructure project funded under their subaward was completed. (See USDOC/NTIA Policy Notice, Tailoring the Uniform Guidance to the BEAD Program<sup>6</sup> and the attached Exhibit J). Accordingly, the Subgrantee shall certify to the Department that the broadband infrastructure 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.

#### **4.06 Default and Termination:**

4.06(a) Any change in Federal and/or State law which significantly alters the Subgrantee's required activity, or any change in the availability of funds shall be viewed as binding and shall warrant good faith renegotiation of the provisions of the Grant Agreement that are affected under Section 13.03 of this

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<sup>6</sup> ([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))

Agreement. This change in circumstance includes suspension, termination, or reduction by the federal grantor agency of the grant to the Department under which this Grant Agreement is made. If such modification proves unsuccessful, the Grant Agreement may be terminated upon written notice of either party to the other party at least thirty (30) days before the effective date of termination.

4.06(b) This Grant Agreement may be cancelled by either party prior to the Department issuing any reimbursements, with or without cause, upon thirty (30) days' notice in writing, and delivered by mail or in person. Further, no provision of this Grant Agreement shall be construed as limiting the Department's ability to cancel this Grant Agreement for convenience with 30 days' notice, pursuant to W. Va. Code § 5A-3-62(a)(15).

4.06(c) Upon default, as defined below, the Department shall give the Subgrantee thirty (30) days written Notice of Default and Right to Cure. If the default has not been cured within such thirty-day period, then this Grant Agreement shall terminate automatically upon its own terms without further notice or demand. Default shall include Subgrantee's:

4.06(c)(1) Failure to fulfill for any reason in a timely and proper manner its obligations under this Grant Agreement;

4.06(c)(2) Failure for any reason to comply with such additional conditions as may be lawfully applied by the federal grantor agency to the Subgrantee and Department;

4.06(c)(3) Failure to demonstrate compliance with any corrective action plans approved by the Department.

4.06(d) The Department expressly reserves all remedies at law and equity, including without limitation, the right to seek all appropriate relief upon the filing of a voluntary or involuntary petition for the Subgrantee's reorganization or liquidation under any bankruptcy or insolvency laws providing for the relief of debtors.

4.06(e) In the event of any termination, all property and finished or unfinished documents, data, and studies prepared by Subgrantee under this Grant Agreement shall be disposed of according to directive of the federal awarding agency and the Department, and Subgrantee may be entitled to compensation for any unreimbursed expenses reasonably and necessarily incurred in satisfactory performance of the Grant Agreement.

4.06(f) Notwithstanding the above, the Subgrantee shall not be relieved of the liability to the Department for any damages sustained by the Department by virtue of any breach of the Grant Agreement by the Subgrantee. The Department within its sole discretion may withhold payments due the Subgrantee under

this Grant Agreement, or withhold payments due under any other grant agreement between the Subgrantee and Department or its operating units as payment for damages. The Department within its sole discretion may use the withheld amounts as security to cover unliquidated damages sustained by the Department as reasonably estimated by the Department until such time as the exact amount of damages due the Department from the Subgrantee is agreed upon or otherwise determined.

4.06(g) The Department shall provide the Subgrantee with notice, in writing, of conditions endangering performance. If after such notice Subgrantee fails to remedy the conditions contained in the notice within thirty (30) days or other reasonable amount of time necessary to cure, the Department shall issue an order to stop all work immediately. The Department shall be obligated only for services rendered and accepted before the date of the notice of termination.

## **5. GRANT AGREEMENT TERM/PERIOD OF PERFORMANCE**

This Grant Agreement shall be effective for the period commencing on the Grant Date and ending on closeout. Time is of the essence with respect to Subgrantee's provision or performance of services and activities under this Grant Agreement.

## **6. FUNDING**

### **6.01 Source of Funds:**

6.01(a) The Source of Funds Schedule, attached as Exhibit B, identifies the source of funds to be used as payment for the term of this Grant Agreement.

6.01(b) Federal funds are identified by the applicable Catalog of Federal Domestic Assistance (CFDA) numbers and the appropriated federal revenue fund account number(s).

6.01(c) State funds, if any, are identified by the specific appropriated general revenue fund and/or appropriated/non-appropriated special revenue fund account number(s).

### **6.02 Conditions for Receipt of Grant Funds/Service Obligations:**

6.02(a) State funds provided by the Department, if any, to the Subgrantee under this Grant Agreement may not be used by the Subgrantee as a match or cost-sharing provision to secure other federal monies without prior written approval by the Department.

6.02(b) Service Availability. The Subgrantee explicitly acknowledges that for the duration of the Federal Interest Period, that the Subgrantee shall be capable of performing a standard installation of Qualifying

Broadband Service to an End User, at a standard installation charge, within 10 business days after the date on which a service request is submitted.

6.02(c) For the duration of the Federal Interest Period, services offered by the Subgrantee over funded networks must allow subscribers in the service area to utilize the FCC's Affordable Connectivity Program (ACP), or any successor program. In addition, the Infrastructure Act (IIJA) requires that each Subgrantee receiving BEAD funding to deploy network infrastructure offer at least one low-cost broadband service option. Also during the entirety of the Federal Interest Period, the Subgrantee shall be responsible for following the definition of this "low-cost broadband service option" as published in the Department's BEAD Deployment Program Procedures.<sup>7</sup> Eligible subscribers eligible for subsidy may apply the subsidy to the proposed service option. The Subgrantee must continue to offer the low-cost broadband service option to eligible subscribers, during the Federal Interest Period, which generally lasts for ten years following closeout.

6.02(d) The Subgrantee will establish a separate bank account ("Project Bank Account") for receipt and disbursement of Project funds, to the exclusion of other revenue and expenses of the Subgrantee to the extent practicable.

6.02(e) Consumer Protections. The Subgrantee must not impose data usage caps on any plans offered over a Funded Network or impose any unjust or unreasonable network management practices. The Subgrantee shall certify this through its semiannual reporting requirements as indicated in Section 12.01(a), Reports and Records, of this Agreement.

6.02(f) Access to Service. The Subgrantee and any operator of a funded network under this Program shall provide access broadband services to each customer served by the Project that desires broadband service on terms that are reasonable and non-discriminatory.

6.02(g) Public Notice. The Subgrantee shall, during the Period of Performance, carry out public awareness campaigns in the Project service areas that highlight the value and benefit of broadband service in order to increase the adoption of broadband service by consumers. Such awareness campaigns must include information regarding low-cost service plans and any federal subsidy programs for low-income households such as the Federal Communications Commission's (FCC) Lifeline Program, the Affordable Connectivity Program (ACP), and any successor programs. The Subgrantee shall conduct these public awareness campaigns in an equitable and nondiscriminatory manner, and the Subgrantee shall use a variety of communications media as well as languages other than English when warranted based on

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<sup>7</sup> See <https://broadband.wv.gov>.

community demographics. Following deployment of the Subgrantee's funded network, the Subgrantee shall provide notice of the deployment to individuals in the locations where broadband service has been provided and shall share this notice with WVDED.

6.02(h) Interconnection Requirements and Wholesale Access. If the Subgrantee receives funds to deploy Middle Mile Infrastructure under the BEAD program in connection with service to an Unserved Service Project or an Underserved Service Project, the Subgrantee shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. If the Subgrantee constructs Middle Mile Infrastructure, the Subgrantee shall be required via contract or other binding mandate, to allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network. At a minimum, this duty includes the physical interconnection of the Subgrantee's middle mile infrastructure to a requesting party's facilities for the exchange of traffic. In addition, the Subgrantee shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. The Subgrantee shall make its rates and terms for interconnection reasonable and nondiscriminatory. If the Subgrantee is awarded funding for the deployment or upgrade of Middle Mile Infrastructure it shall negotiate in good faith with any requesting party (including public, Tribal, private, non-profit, or other parties) making a bona fide request for interconnection. The Subgrantee shall report through the subgrantee reporting process established in Section VII.E.2 of the BEAD NOFO (and see also the reporting requirements in "Reports and Records" (Section 12 of this Agreement, below) any interconnection requests made to the Subgrantee during that year as well as the status of those requests.

6.02(i) Wholesale Obligation on Default/Continuity of Service. The Parties agree that if the Subgrantee, at any time during the Federal Interest Period, is no longer able to provide broadband service to the end user locations covered by the subgrant at any time on a retail basis, the Subgrantee must take remedial action to ensure continuity of retail service. The Subgrantee shall, after consultation with and as approved by the Department and NTIA, either (a) sell Project network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or (b) sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program. The Department may require Subgrantee to take either remedial action so long as such action results in continued retail service to end users in the grant area.

6.02(j) Cybersecurity Risk Management Plan. The Subgrantee must have a cybersecurity risk management plan that is either: a) operational if the Subgrantee is already providing service prior to receiving its BEAD grant award; or b) that is ready to be operationalized when the Subgrantee begins providing service if not yet providing service prior to the grant award.

The cybersecurity risk management plan must meet the following requirements (per BEAD NOFO, p. 70):

- (1) It must reflect the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity and the standards and controls set forth in Executive Order 14028 – Improving the Nation’s Cybersecurity;
- (2) It must specify the security and privacy controls being implemented;
- (3) It must be reevaluated and updated on a periodic basis and as events warrant; and
- (4) The plan must be submitted to WVDED prior to funds being allocated and if the subgrantee makes any changes to the plan, a new version must be submitted to WVDED within 30 days.

6.02(k) Supply Chain Risk Management (SCRM). The Subgrantee must have a supply chain risk management (SCRM) plan that is either: a) operational if the Subgrantee is already providing service at the time of their BEAD grant award; or b) that is ready to be operationalized at the time the Subgrantee begins providing service if not yet providing service prior to the grant award. The SCRM plan must:

- (1) be based on 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;
- (2) specify the supply chain risk management controls being implemented;
- (3) be reevaluated and updated on a periodic basis and as events warrant; and
- (4) be submitted to WVDED prior to funds being allocated and if the subgrantee makes any changes to the plan, a new version must be submitted to WVDED within 30 days.

6.02(l) Third Party Cybersecurity and SCRM. If the Subgrantee relies in whole or in part on network facilities owned or operated by a third party, it must obtain attestations regarding the above practices (Cybersecurity and SCRM) from its network provider with regard to both cybersecurity and supply chain risk management practices.

6.02(m) Financial Qualifications/Obligations. As certified to in the Subgrantee’s Application materials for BEAD funding, the Subgrantee shall have funds available for all project costs that exceed the amount of the grant. To the extent that the Department disburses BEAD funding to the Subgrantee upon the completion of the tasks associated with the Subgrantee’s award, the Subgrantee certifies that it shall have sufficient financial resources to cover its eligible costs until WVDED authorizes subsequent reimbursements to Subgrantee.



6.02(n) Letter of Credit/Performance Bond. Prior to entering this Agreement with WVDED, the Subgrantee shall have submitted to the Department either evidence of prequalification for an irrevocable standby letter of credit (“LoC”) or a performance bond greater than or equal to 10% of the Award Funds. If the letter of credit option is selected by the Subgrantee, the Subgrantee shall also submit an opinion letter from legal counsel clearly stating that the terms of the prequalified letter of credit will not be treated as the Subgrantee’s property in the event of Subgrantee’s bankruptcy. For the letter of credit option, the prequalification letter must be issued by an entity eligible to issue the letter of credit in accordance with the WVDED BEAD Program Procedures Section 2.7.1. (See <https://broadband.wv.gov>) The actual letter of credit shall be presented with the NTPC request, and may not be amended or cancelled without the consent of all parties to the letter or credit. The LoC will only be called by the Department after the Department initiates Enforcement under Section 4 of this Agreement and Subgrantee fails to cure the material deficiency.

6.02(o) Performance Bond. In lieu of a letter of credit, the Subgrantee may instead obtain a qualified performance bond from an acceptable surety provider and present that with its NTPC request. (See WVDED BEAD Program Procedures Section 2.7.2) If the Subgrantee selects this option, the performance bond must be in an amount no less than 10% of the Award Funds for the duration of the buildout to 100% of project locations, or until the end of the award period of performance, whichever occurs first. A link to acceptable performance bond issuers can be found in Footnote 8 of the NTIA’s BEAD Letter of Credit Waiver. (See <https://broadbandusa.ntia.doc.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver>)

**6.03 Matching Funds:**

The Subgrantee shall provide Matching Funds in the amount of \_\_\_\_\_, as specified in the attached Exhibit B to this Agreement. The Subgrantee may use grant funds for eligible expenses prior to using all matching funds, and these grant funds will be reimbursed on a pro rata basis up to the maximum amount of the grant. The Subgrantee acknowledges that the Department does not allow in-kind match in general for subgrantees under this Program, but the Department will permit in-kind match for utility partners in limited circumstances (i.e. “donated” indefeasible rights of use (IRUs)).

**6.04 Maximum Amount Available:**

The Department agrees to pay the Subgrantee a sum not to exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_) under this Grant Agreement, as shown on Exhibit B. This amount shall be paid on a reimbursement basis and shall be based on actual costs incurred by the Subgrantee during the period of

performance. This not to exceed amount can only change by a written agreement which is signed by both parties hereto.

**6.05 Subject to Funds Availability:**

6.05(a) This Grant Agreement is subject to the appropriation and availability of Federal and/or State funds. If the funds are not appropriated as anticipated, or they are otherwise unavailable, the Department reserves the right to reduce or terminate this Grant Agreement upon written notice to the Subgrantee.

6.05(b) Such reduction or termination shall not be deemed a breach of this Grant Agreement by the Department.

6.05(c) Upon receipt of a written notice of termination of funding, the Subgrantee shall cease all work associated with the Grant Agreement. Within ten days of receipt of a written notice of reduction in funding, Subgrantee shall confer with the Department to modify the scope of the Project.

6.05(d) If termination occurs, the Subgrantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date, provided funds are available.

6.05(e) Upon termination, except in cases of gross negligence and/or willful misconduct, the Subgrantee shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages of any description or amount.

**6.06 Program Income:**

Program income is income directly generated by a supported activity or earned as a result of the federal award during the period of performance. In the case of fixed amount subawards whose major purpose is a broadband infrastructure project, BEAD subrecipients may retain program income without restriction. As a result, subrecipients may retain program income, such as income derived from the servicing and use of supported networks and connections (e.g., wholesale revenues, end-user subscription revenues, etc.), for profit. Despite this additional flexibility for the use of program income, this does not change the BEAD Program's prohibition on Eligible Entities or the Subgrantee claiming profit and fees as allowable costs. Proposed subrecipient budgets thus may not include profit, fees, or similar charges.

**7. AUTHORIZING STATUTES AND REGULATIONS**

**7.01 Environmental, Cultural, and Right of Way Review Responsibilities, Notice to Proceed with Construction (NTPC):**

7.01(a) NEPA is generally applicable to BEAD infrastructure projects. The Subgrantee is obligated to complete and return to the Department a completed environmental checklist as well as additional environmental review forms provided as Exhibits D, D-2, and D-3 hereto before the Department will issue a Notice to Proceed with Construction (NTPC).

7.01(b) Projects or contracts costing in excess of \$150,000 are subject to the Clean Air Act, 42 USC 7401-7671q, and the Federal Water Pollution Control Act, 33 USC 1251-1387.

7.01(c) The Subgrantee is responsible for complying with applicable permitting requirements of the West Virginia Division of Highways (DOH) and county or municipal permitting siting requirements. Grantee is obligated to demonstrate compliance with the General Guidelines for Fiber Optic Permitting with DOH RW, provided as Exhibit E hereto before the Department will issue an NTPC.

7.01(d) Underground installations in the DOH right of way are subject to the Dig Once Policy, W.Va. Code §17-2E-5, unless exempted therein.

7.01(e) The Subgrantee is obligated to confer with the West Virginia State Historic Preservation Office (SHPO) regarding the applicability of Section 106 of the National Historic Preservation Act to the Project, to submit any information required by SHPO, and to receive a communication from SHPO that no further action is required related to a Project before the Department will issue an NTPC for the Project.

7.01(f) The Subgrantee shall refrain from undertaking any physical activities until the Grantee has submitted all applicable permits and clearances to the Department and the Department has issued an NTPC following its review which includes such activities. This limitation applies to all parties in the development process, including public or private nonprofit or for-profit entities, or any of their contractors.

7.01(g) The Subgrantee agrees to provide the Department 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 is required by law to fulfill its environmental requirements.

7.01(h) The Subgrantee agrees to advise the Department 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 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.

7.01(i) Eminent Domain. The Subgrantee agrees that it shall not use any power of eminent domain available to the Subgrantee (including the commencement of eminent domain proceedings) for use in connection with the grant for the purpose of advancing the economic interests of private parties. The Subgrantee further agrees that it will not accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the BEAD grant for the purpose of advancing the economic interests of private parties. The Subgrantee acknowledges and understands that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the subgrantee or any other entity that has the power of eminent domain, in connection with the grant requires prior written consent from NTIA. Any use of eminent domain without prior written consent of NTIA constitutes an unauthorized activity and/or use of funds under the award, and subjects the subgrantee to appropriate enforcement action by WVDED, including but not limited to the disallowance of award costs and the termination of an award.

7.01(j) Flood Disaster Protection Act. In accordance with 42 U.S.C. § 4002 et seq., the Subgrantee shall purchase flood insurance if its Project is in a flood prone area.

## **7.02 Labor Practices:**

In order to be selected for award by the Department, the Subgrantee must provide its demonstrated record of and plans to be in compliance with Federal labor and employment laws. A Subgrantee without a record of labor and employment law compliance must make specific, forward-looking commitments to strong labor and employment standards and protections with respect to BEAD-funded projects as described in further detail in Section IV.C.1.e of the BEAD NOFO prior to being selected for award by the Department. The Subgrantee shall prioritize in its procurement employers with high labor standards with no recent violations of federal or state labor and employment laws, employers that use project labor agreements and community benefits agreements that offer wages at or above the prevailing rate, and employers utilizing local workers.

The Subgrantee must comply with, and ensure that any of its contractors and subcontractors comply with, federal labor and employment laws. The Subgrantee shall adhere to the plan for ensuring labor compliance provided in its application submitted to the Department, which includes plans for ensuring compliance with applicable wage scales/overtime payment practices for each class of employees involved in construction; labor standards and protections; and the Subgrantee's use of an appropriately

skilled/credentialed workforce (for the Subgrantee as well as any contractors and subcontractors of the Subgrantee.

If the Subgrantee's workforce is not unionized, for each job title required to carry out the proposed work, the Subgrantee must comply with, and ensure that any contractors or subcontractors on the project comply with safety training, certifications, licensure (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training as relevant depending on title and work), including having a robust in-house training program with established requirements tied to certifications, titles; and practices related to professional certifications and/or in-house training in place to ensure that deployment is done at a high standard.

If the Subgrantee utilizes a source of funds which requires compliance with the Davis-Bacon Act, then the Subgrantee and its contractors shall be required to comply with the Davis-Bacon Act. Additionally, If the amount of funds awarded from BEAD funds for the Project exceeds \$5 million in expected total costs, then the Project will be subject to the reporting requirements which require certifications and detailed reporting requirements as described in Section 7.03 Labor Reporting, below.

**7.03 Labor Reporting:**

Subgrantees for BEAD-funded projects greater than \$5 million in expected total cost are subject to the following requirements as part of their regular, at minimum, quarterly reporting requirements:

- 1) The Subgrantee must provide one of the following:
  - (A) A certification that, for the project, all laborers and mechanics employed by contractors and subcontractors in the performance of the Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the "Davis-Bacon Act"), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of West Virginia in which the work is to be performed; or
  - (B) If the Grantee does not provide the certification in 7.03(1)(A) above, the Grantee must provide a Project employment and local impact report detailing:

- i. The number of employees of contractors and sub-contractors working on the Project;
- ii. The number of employees on the Project hired directly and hired through a third party;
- iii. The wages and benefits of workers on the Project by classification; and
- iv. Whether those wages are at rates less than those prevailing. (As determined by US Secretary of Labor in accordance with subchapter IV of chapter 31 of Title 40, United States Code ("Davis-Bacon Act"))

The Subgrantee must maintain sufficient records to substantiate this information upon request.

- 2) In addition, the Subgrantee must provide:
  - (A) A certification that the Project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), or
  - (B) If the Subgrantee does not provide the certification in 7.03(2)(A) above, the Subgrantee will provide a Project workforce continuity plan, detailing:
    - i. Steps taken and to be taken by the Subgrantee to ensure the Project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the Project (as required in the BEAD NOFO, Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities such as unions, community colleges, or community-based groups;

ii. Steps taken and to be taken by the Subgrantee to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the Project;

iii. Steps taken and to be taken by the Subgrantee to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g. OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;

iv. The name of any subcontracted entity performing work on the Project, and the total number of workers employed by such entity, disaggregated by job title; and

v. Steps taken and to be taken by the Subgrantee to ensure that workers on the Project receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market.

## **8. PROCUREMENT AND PROPERTY STANDARDS**

### **8.01 Procurement Standards:**

8.01(a) Secure and Trusted Communications Networks Act. The Subgrantee acknowledges and understands that the Subgrantee (including any contractors or subcontractors of the Subgrantee) may not use BEAD grant funds to procure or obtain, or extend a contract to procure or obtain, or enter into a contract to procure or obtain any covered communications equipment or service covered by and as defined by Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608) or 2 CFR § 200.216. The Subgrantee shall refer to the Federal Communications Commission's (FCC) published list for the current listing of covered entities, available at <https://www.fcc.gov/supplychain/coveredlist>.

8.01(b) Under the Infrastructure Investment and Jobs Act (IIJA), the Subgrantee acknowledges and agrees that the Subgrantee and any contractors or subcontractors of the Subgrantee may not use BEAD funding

to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China unless a waiver of this requirement is received from the Assistant Secretary of the USDOC for Communications and Information ("Assistant Secretary"). This requirement is independent of the Build America, Buy America Act ("BABA") requirements and waiver (see 8.01(c) below).

8.01(c) Build America, Buy America Act (BABA Compliance). The Build America, Buy America Act (BABA), part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927, establishes 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 Subgrantee and any contractors or subcontractors of the Subgrantee shall comply with the BABA domestic content procurement preference general requirements under 2 CFR § 200.322 and 2 CFR Part 184 as well as the Limited General Waiver requirements for purchases of iron, steel, manufactured products, and construction materials used for its BEAD Project as applicable and as detailed in the BEAD NOFO, *WVDED Guide to Reporting and Compliance Obligations for BEAD Subrecipients*, *USDOC Limited General Applicability Nonavailability Waiver of the Buy American Domestic Content Procurement Preference* (Full text of Waiver: <https://www.commerce.gov/sites/default/files/2024-02/BABA%20Waiver%20Signed.pdf>).

The Subgrantee acknowledges and understands that the Subgrantee (including its contractors and subcontractors) are responsible for knowledge of and compliance with the above BABA and waiver requirements, and that these requirements shall also apply to products purchased with matching funds as well.

As part of compliance with these requirements, the Subgrantee, its contractors, and any subcontractors shall consult the NTIA published list of manufacturers of products that have certified compliance with the BABA requirements. The Subgrantee shall consult the BEAD BABA self-certification list available at [https://www.commerce.gov/sites/default/files/2024-07/BABA\\_Self\\_Certification\\_List.PDF](https://www.commerce.gov/sites/default/files/2024-07/BABA_Self_Certification_List.PDF) as well as the NTIA's *BABA Compliance and Self Certification page* ([https://broadbandusa.ntia.doc.gov/technical-assistance/BABA\\_Compliance\\_and\\_Self\\_Certification](https://broadbandusa.ntia.doc.gov/technical-assistance/BABA_Compliance_and_Self_Certification)).

The Subgrantee shall ensure that it and any of its contractors and subcontractors demonstrate compliance with BABA before that product is installed or used in its Project. As part of this compliance, manufacturers of such products shall provide to the Subgrantee a BABA certification letter for equipment that requires domestic production under BABA under the BEAD Waiver. The Subgrantee must maintain this certification letter in the event of an audit. In addition to the above requirements, the Subgrantee must report certain



information on finished waived electronics used in its BEAD Project. The Subgrantee agrees that it shall compile and share with WVDED a reporting tracker on the finished waived electronics used in its BEAD Project. The Subgrantee shall consult the NTIA's *BABA Reporting Compliance and Documentation Requirements and Procedures* ([https://broadbandusa.ntia.doc.gov/sites/default/files/2024-07/BABA\\_Compliance.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2024-07/BABA_Compliance.pdf)) in concert with WVDED published compliance materials regarding BABA, and shall comply with such requirements as well as ensure compliance by its contractors and subcontractors and each shall maintain inventory records of all Project equipment as may be procured with funds provided herein.

8.01(d) Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (2 CFR § 200.321). The Subgrantee acknowledges and agrees that, when possible the Subgrantee should ensure that small businesses, minority businesses, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor's List) are considered by it, and by its contractors and subcontractors as set forth below. Such consideration means: (1) These business types are included on solicitation lists; (2) These business types are solicited whenever they are deemed eligible as potential sources; (3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types; (4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these business types; (5) Utilizing organizations such as the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce; and (6) Requiring a contractor under this BEAD award Program to apply this section to subcontracts.

8.01(e) Domestic Preferences for Procurements (2 CFR § 200.322). The Subgrantee acknowledges and agrees that it should, to the greatest extent practicable, and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products) and comply with 2 CFR § 200.322 as well as the above section 8.01(c) of this Grant Agreement regarding BABA compliance. The requirements of this section must be included in all subawards, contracts, and purchase orders under the BEAD Federal award.

8.01(f) Procurement of Recovered Materials (2 CFR § 200.323). The Subgrantee agrees that it shall comply and the Subgrantee shall ensure that its contractors comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of

recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery to the extent permitted by state law; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA. The Subgrantee agrees that it should, to the greatest extent practicable and consistent with the law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products or services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

8.01(g) Required Contract Provisions for federal awards (2 CFR § 200.327). The Subgrantee agrees that its contracts must contain the applicable contract provisions described in Appendix II to 2 CFR Part 200. Such provisions include but are not limited to provisions regarding:

- (1) Breach/remedies;
- (2) Termination;
- (3) Equal Employment Opportunity Clause (see 41 CFR 60-1.4(b) in accordance with Executive Order 11246, as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60);
- (4) Contract Work Hours and Safety Standards Act (For contracts over \$100,000);
- (5) The Clean Air Act and Federal Water Pollution Control Act (contracts in excess of \$150,000);
- (6) Debarment and Suspension;
- (7) The Byrd Anti-Lobbying Amendment certification;
- (8) Procurement of Recovered Materials (see Section 6002 of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act);
- (9) The Prohibition on Covered Communications Services and Equipment (see the Secure and Trusted Communications Networks Act and 2 CFR Section 200.216;
- (10) Domestic Preferences for Procurements (See 2 CFR 200.322).

The Subgrantee is responsible for determining applicability of each of these contract provisions.

8.01(h) Procurement Policy. The Subgrantee shall provide a copy of its procurement policies and procedures as part of the required documentation to be submitted to the Department along with this

Agreement (See Exhibit C to this Agreement - Evidentiary materials list). In addition, the Subgrantee shall be required to provide to the Department documentation of the procedures used to procure any subcontractors associated with the awardees' project.

8.01(i) State Procurement/Bonding Requirements (For Subgrantees that are state or political subdivision (i.e. "public subgrantees") only). In addition to the above procurement requirements, if the Subgrantee is a state entity or a political subdivision without a private ISP partner, it must comply with the following:

8.01(i)(1) Architect/Engineer Contracts. The public subgrantee shall procure services in accordance with Chapter 5G of the WV State Code and be in compliance with the relevant broadband infrastructure deployment Uniform Guidance procurement provisions noted above.

8.01(i)(2) Construction Contracts. Public subgrantees are required to procure construction contracts in accordance with either Ch.5, Art. 22 or applicable state multiphase procurement statutes, and be in compliance with the relevant broadband infrastructure deployment Uniform Guidance procurement provisions noted above.

8.01(i)(3) For projects with an estimated value over \$25,000, public subgrantees shall solicit sealed bids for all construction-related contracts or supplies.

8.01(i)(4) Transactions under \$25,000 whether construction-related contracts, supplies, or professional services should be procured in a manner that provides maximum open and free competition and files are to be maintained to document such activities.

8.01(i)(5) The Subgrantee acknowledges and understands that if the above requirements apply to it as a public subgrantee, that any attempts by the Subgrantee to segregate the Project into sections in order to circumvent competitive procurement may be cause for termination of its Grant Agreement with WVDED.

8.01(i)(6) For required public bids for public subgrantees under this section 8.01(i), the public subgrantee shall publish notice as a Class II legal advertisement in the newspaper with the largest circulation serving the general area within a period of fourteen consecutive days with at least an interval of six full days within such period between the date of the first publication and the date of the second publication preceding the final date of submitting bids.

8.01(i)(7) If the Subgrantee is a public, non-profit entity, the Subgrantee shall have available upon request for review by the Department or its designated representative, bid documents and other evidence of compliance with these procedures. The resolution of bid and contract disputes shall be the responsibility of the Subgrantee if it is a public subgrantee under this subsection 8.01(i).

8.01(j) If the Subgrantee is a public entity without a private partner or a non-profit subgrantee, as otherwise required by law, a grant that requires the contracting or subcontracting for construction or facility improvements under \$25,000 shall provide for the Subgrantee to follow local or State requirements relating to bid guarantees, performance bonds, and payment bonds provided that the subgrantee's and State's interest are adequately protected and that such contracts can be executed in a timely manner; otherwise, bonding requirements shall be the same as for contracts exceeding \$25,000. Such subgrantees shall follow the requirements under W. Va. Code Chapter 5, Article 22 regarding government construction contracts.

8.01(k) Insurance. The Subgrantee is responsible for obtaining appropriate levels and types of insurance to cover all aspects of the Project, specifically including Workers Compensation, and the Subgrantee shall procure such other insurance in its judgment as appropriate, such as commercial general liability, personal injury liability, independent contractor's liability, contractual liability, product liability, completed operations liability, fire damage, medical payments, business automobile liability, excess liability, employer's liability, and builder's risk. The Subgrantee's obligations under this Agreement will not be diminished due to the Subgrantee incurring a loss affecting the Project which is not covered by the Subgrantee's policies of insurance. The Department's payments to the Subgrantee will not be increased due to Subgrantee incurring a loss related to the Project which is not covered by the Subgrantee's policies of insurance.

## **8.02 Property Standards (Property, Equipment and Supplies):**

8.02(a) Uniform Guidance Procurement Standards. The 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 (If the Subgrantee is a State or Indian Tribe only), 200.321-200.323, and 200.327, remain as requirements. The following property standards apply to Subgrantees of broadband infrastructure deployment subawards.

8.02(b) For purposes of this Agreement, the Subgrantee acknowledges and understands that the useful life of Project Property shall coincide with the Federal Interest Period. As such, the Subgrantee acknowledges that the obligations described in this section regarding Property Standards shall survive beyond the Period of Performance and the closeout of the award.

8.02(c) Property Standards/Title. The Subgrantee acknowledges and agrees that title to real property or equipment acquired or improved under this BEAD Program vests in the Subgrantee upon acquisition, subject to the following exceptions and clarifications.

8.02(c)(1) Existing Commercial Practices. Subrecipients must follow their existing commercial practices for managing equipment and use inventory controls indicating the applicable federal interest and loss prevention procedures. If the Subgrantee does not have existing practices, they must comply with 2 CFR 200.313(d) (Management Requirements).

8.02(c)(2) Compliance with Use and Disposition Requirements of Uniform Guidance. Subgrantee must comply with the use and equipment disposition requirements of 2 CFR § 200.313(c)(4) and 313(e) as follows:

8.02(c)(2)(i) 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 USDOC Standard Terms and Conditions § A.01) to the USDOC 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.

8.02(c)(2)(ii) The 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.

8.03(c)(2)(iii) The Subgrantee must notify the Department (WVDED) 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.

8.02(c)(3) The Subgrantee must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property. Subgrantee shall refer to the attached Exhibit M (Requirements to Document the Federal Interest in BEAD-Funded Property) to meet this requirement.

8.02(c)(4) The 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 USDOC 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 USDOC would be entitled to receive, on an equal footing (“*pari-passu*”) basis with other first position creditors, the portion of the current fair market value of the property that is equal to the USDOC’s percentage of contribution to the project costs. For example, if the USDOC had contributed 50% of the project costs, the USDOC would receive, on a *pari-passu* basis, 50% of the current fair market value of the Project Property when liquidated. As of the April 2024 BEAD *General Terms and Conditions* notice, USDOC/NTIA noted that they would address the notice requirement for encumbrances in future guidance.

8.02(c)(5) Pursuant to exceptions approved by the United States Office of Management and Budget as described in the Uniform Guidance Policy Notice (UGPN), the property standards set forth in 2 CFR 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.

8.02(c)(6) Property Trust Relationship. The 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.

8.02(c)(7) Insurance. The Subgrantee must comply with the insurance requirements of 2 CFR § 200.310, which requires the Subgrantee to provide the equivalent insurance coverage for real property or equipment acquired or improved with federal funds as provided to the property and equipment owned by the Subgrantee. Federally-owned property does not need to be insured by the Subgrantee unless required by the terms and conditions of the federal award.

8.02(c)(8) Federally-owned property. The Subgrantee must comply with 2 CFR 200.312 to the extent that any Federally-owned real property or equipment is used by the Subgrantee.

**8.03 Prior Approval for Equipment and other Capital Expenditures:**

Capital expenditures for general purpose equipment; special purpose equipment; and improvements to land, buildings, or equipment which materially increase their value are unallowable except with the prior

written approval of the Department and must be included as a separate budgetary line item in the approved Project Budget. Additionally, the Grantee shall be bound by any special terms, conditions or restrictions regarding capital expenditures for property and equipment as disclosed in Exhibit I of this Agreement.

## **9. PAYMENT TERMS AND CONDITIONS**

### **9.01 Payment Methodology:**

The Grant Disbursement Request Form, attached as Exhibit F, shall constitute the manner whereby requests for payments are made to the Department by the Subgrantee. The Subgrantee may invoice the Department once a month to include all expenses.

### **9.02 Budget:**

The Project Budget in the approved application for funding, shall constitute the amount available to the Subgrantee for work performed under this Agreement. This amount is the same as the maximum provided in section 6.04 of this agreement.

### **9.03 Payment of an Invoice:**

9.03(a) The Subgrantee must submit engineered designs prior to payment of an invoice. Designs must be prepared under the review of a professional engineer (P.E.), or an engineer with substantial demonstrated experience designing cable or fiber networks whose credentials are submitted along with the design. The Department requires credentials to be submitted as part of this requirement.

9.03(b) The Department shall pay to the Subgrantee funds available under this Agreement based upon information submitted by the Subgrantee for allowable costs permitted under this Agreement and consistent with the approved budget.

9.03(c) Payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter relating to this Agreement. Such payment by the Department shall not be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced.

### **9.04 Unallowable Costs:**

The Subgrantee's invoice shall be subject to reduction for amounts included in any invoice or prior payment made which are determined by the Department not to constitute allowable costs on the basis of audits, reviews, or monitoring of this Agreement, whether under the terms of this Agreement or any

applicable Federal and State laws, programmatic regulations, public policy and/or administrative requirements.

**9.05 Deductions & Withholdings:**

9.05(a) The Department may deduct amounts or withhold payments invoiced by the Subgrantee under this or any other grant agreement between the Grantee and the Department or its operating units if the Subgrantee fails to comply with any requirements of this Agreement or any other grant agreements between the Subgrantee and the Department or its Bureaus, Offices, Divisions, or other operating units.

9.05(b) Funds withheld due to unsatisfactory or delayed Project performance or failure to comply with the terms and conditions of this Agreement or any other grant agreement between the Department or its other operating units may be restored upon satisfactory completion of the condition that caused the withholding.

9.05(c) The Department will retain 10% of any grant award until Project completion, including approval of all closeout documents and reporting requirements.

**10. STANDARDS FOR FINANCIAL MANAGEMENT**

**10.01 Financial Management System:**

10.01(a) As required by 2 CFR 200.302(b), and 2 CFR 200.334-337, the Subgrantee's financial management system must provide for the following:

10.01(a)(1) The Subgrantee's financial management system must provide for the identification of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number, year the Federal award was issued, and name of the Federal agency or pass-through entity.

10.01(a)(2) The Subgrantee's financial management system must provide for accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements in 2 CFR 200.328 and 2 CFR 300.329.

10.01(a)(3) The Subgrantee's financial management system must maintain records that sufficiently identify the amount, source, and expenditure of Federal funds for the Federal award(s). These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, as well as assets, expenditures,



income, and interest. All records must be supported by source documentation, including but not limited to invoices from vendors.

10.01(a)(4) The Subgrantee's financial management system must provide for effective control over and accountability for all funds, property, and assets. The Subgrantee must safeguard all assets and ensure that they are used solely for authorized purposes in accordance with 2 CFR 200.303.

10.01(a)(5) The Subgrantee's financial management system must provide for comparison of expenditures with budget amounts for each Federal award.

10.01(a)(6) The Subgrantee's financial management system must provide for written procedures to implement the requirements of 2 CFR 200.305 (regarding payment methods).

10.01(b) For BEAD funded projects exceeding \$5,000,000 in expected total costs, the Subgrantee must maintain sufficient records to substantiate compliance with applicable labor reporting requirements as described in Section 7.03 above (Labor Reporting) upon request.

10.01(c) The Subgrantee's financial and accounting records pertaining to this Agreement must be closed out at the end of the Grant Agreement period and must identify any excess monies or revenue over expenditures.

**10.02 Cost Principles:**

10.02(a) The Subgrantee acknowledges and agrees that Award Funds shall be used solely for reimbursable costs incurred for implementation and operation of the Project and for no other purpose. The use of Award Funds will adhere to the terms of this Agreement, and the following authorities: 47 U.S.C. § 1702, the BEAD NOFO, the USDOC Standard Terms and Conditions, the General Terms and Conditions for the BEAD Program, The Specific Award Conditions applicable to West Virginia's BEAD Award (\_\_\_\_\_), the WV BEAD Program Rules, WV BEAD Subrecipient Compliance and Reporting Guidance, and West Virginia's Initial Proposal. In addition, the use of Award Funds shall adhere to the restrictions on pre-implementation activities set forth in Section 4.04(a) and Exhibit D-3 to this Agreement (Environmental and Historic Preservation Review). The Department and the Subgrantee understand and agree that the Department may not reimburse the Subgrantee for costs that the Federal Grant Officer determines are not eligible for reimbursement pursuant to West Virginia's BEAD Program award.

10.02(b) The Subgrantee shall perform all necessary efforts to assist the Department in verifying for the benefit of West Virginia and Federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in Subgrantee's Application, beginning

on the Grant Date. If the Subgrantee fails to spend or fails to document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within that timeframe, Subgrantee agrees to immediately return to the Department any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to the Office, upon request, within 10 business days.

### **10.03 Eligible and Ineligible Costs**

10.03(a) The Department will determine eligible and ineligible costs under the program based upon its posted program procedures, which shall be posted prior to the commencement of any construction on the part of the Subgrantee and shall remain in effect for the term of this Agreement.

10.03(b) The use of Award Funds will adhere to the terms of this Agreement, the authorities identified in Section 2 of this Agreement, and the restrictions on pre-implementation activities set forth in Section 4 (Subgrantee Responsibilities) to this Agreement. The Parties understand and agree that the Department may not reimburse Subgrantee for costs that the Federal Grant Officer determines are not eligible for reimbursement pursuant to the West Virginia BEAD Program award. The Parties agree to work in good faith to ensure that awards determined by the Department to be reimbursable under this Agreement are found reimbursable by the Federal Grant Officer.

10.03(c) The Subgrantee acknowledges that in order for a cost to be reimbursable under this Agreement, it must “be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles.” (See BEAD NOFO at p. 81). The Subgrantee further acknowledges that while federal cost principles set forth in the Uniform Guidance (2 CFR 200) do not govern this Agreement, the Department will look to those principles, in concert with its published WV BEAD Program Procedures (<https://broadband.wv.gov>) in reviewing cost showings.

10.03(d) The Subgrantee shall refund to the State or Federal government any expenditures that are ineligible for which State or Federal funds were received.

10.03(e) If Subgrantee’s Project Costs exceed the amount of the Award funds, the Subgrantee acknowledges and agrees that the Subgrantee shall be responsible for such costs. If the available Award Funds are insufficient to satisfy all Project Costs, the Subgrantee shall nevertheless be responsible for fulfilling its obligations under this Agreement.

10.03(f) Costs reimbursed by other Federal/state funding streams. The Subgrantee must not seek reimbursement for the same cost item from different funding sources. The Subgrantee must immediately provide written notice to the Department and the USDOC/NTIA program officer and USDOC grants officer

if after receiving the BEAD Program Subgrant award, other financial assistance is received by the Subgrantee to fund any portion of the scope of work incorporated into the BEAD funded award. The Subgrantee acknowledges and understands that the USDOC will not fund costs that are funded by other sources.

10.03(g) Excessive costs. The Subgrantee agrees that any costs that appear excessive and/or are without justification as well as any costs not considered to be eligible under the Program Procedures will not be reimbursed. Further, the Subgrantee acknowledges and agrees that costs deemed to be ineligible must not be paid for with matching funds committed to an award.

10.03(h) Match and Regional Commission Funding, Funding from other Federal Programs. Under the IIJA, matching funds for the BEAD program may come from a federal regional commission or authority. If the Department or the Subgrantee utilizes federal regional commission funding as a match, the Subgrantee acknowledges and understands that the project will need to comply with all BEAD programmatic requirements and any requirements imposed by the federal regional commission.

## **11. AUDITS AND MONITORING**

### **11.01 Audit Requirements:**

11.01(a) The Subgrantee shall cooperate with the Department (WVDED) and the U.S. Department of Commerce (USDOC) and NTIA with respect to any audit of the Department's Programs or this award.

11.01(b) Public, non-profit subgrantees. In particular, if the Subgrantee is a public non-profit organization that expends \$1,000,000 or more in federal award funds (in the aggregate across all subawards that the Subgrantee receives in its fiscal year), then the Subgrantee is subject to the 2 CFR 200 Subpart F audit requirements and must submit either a single audit or program specific audit to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). If the Subgrantee is of the type referenced above, it shall certify that it will refer to Subpart F referenced above and comply with the applicable audit requirements of 2 CFR § 200.500 through § 200.520. In accordance with 2 CFR § 200.425, (Audit services), the Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to approval of the Grants Officer.

11.01(c) Commercial subgrantees. If the Subgrantee is a commercial, for-profit entity, it shall not be subject to the 2 CFR 200 Uniform Guidance Subpart F audit requirements, but it shall be subject to requirements as stipulated in the award between NTIA and WVDED. If the Subgrantee expends \$1,000,000 or more in federal award funds during their fiscal year, the Subgrantee shall submit either: (1) a financial

related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a program-specific audit for each award or subaward in accordance with the requirements contained in 2 CFR 200.507.

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

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

The Subgrantee shall perform all necessary efforts to assist the Department in verifying for the benefit of WVDED and Federal auditors that Award Funds have been expended in a manner consistent with this Agreement within the timeframe established in the Subgrantee's Application, beginning on the Grant Date. If the Subgrantee fails to spend or fails to document the expenditure of Award Funds on eligible Project-related expenses, which include properly approved material changes to the Project, within that timeframe, the Subgrantee agrees to immediately return to the Department any Grant Funds that it failed to spend appropriately. Those funds, regardless of source, shall be returned to the Department, upon request, within 10 business days.

Additionally, under 2 CFR 200.501, WVDED is obligated to ensure compliance by commercial entity subgrantees through pre-award audits, monitoring throughout the course of the agreement term, and through post-award audits.

11.01(d) The Subgrantee acknowledges and NTIA, USDOC Office of Inspector General, or other authorized federal agencies may conduct an audit of an award at any time.

11.01(e) The Subgrantee agrees that it has reviewed, understands, and will comply with State accountability requirements of W. Va. Code §12-4-14.

**11.02 Monitoring:**

11.02(a) The Subgrantee acknowledges and agrees that it shall cooperate with the Department and comply with any Department requests in monitoring the activities of the Subgrantee as necessary, and to provide reasonable assurance that the Subgrantee uses grant funds for intended and authorized purposes; complies with laws, regulations and the provisions of contracts or grant agreements; and achieves performance goals.

11.02(b) The Subgrantee shall fully cooperate and assist both the USDOC/NTIA and the Department or its authorized representative(s) with respect to the monitoring responsibilities and activities referenced herein, or with respect to any and all other monitoring activities deemed necessary and appropriate by the Department at its sole discretion. Notwithstanding the administrative and reporting requirements presently cited within this Agreement, the Subgrantee shall allow, at no cost to the Department, for the performance of onsite monitoring reviews by the Department or its authorized representative(s) with reasonable advance notice to Subgrantee, typically 14 days, and agrees to provide any reasonable and necessary technical assistance, reports, records, documentation and to comply with all requests for information as deemed necessary and appropriate by the Department, at its sole discretion, to fulfill its monitoring responsibilities and objectives. The Department or its authorized representative(s) shall be given access to all relevant information and personnel as such information directly relates to the performance of this Grant Agreement to ensure that Project activities and costs are consistent with goals and objectives of the Grant. Monitoring may result in access to the Subgrantee's Confidential Information. "Confidential Information" includes all information regarding either the Department's or the Subgrantee's business which has been marked or is otherwise communicated/designated as being "proprietary", "confidential", or which reasonably should be known by the receiving party to contain proprietary or confidential information. Confidential Information shall only be disseminated to the extent required to fulfill the obligations under this Grant Agreement. Confidential Information should be protected in the same manner that each party protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

11.02(c) If, from its monitoring efforts, the Department uncovers deficiencies or errors in the Subgrantee's administration of this Grant or related Project/program, the Department shall notify the Subgrantee in writing of said errors or deficiencies and required corrective action. The Subgrantee agrees to take immediate and timely corrective action as determined by the Department to rectify any identified and reported errors or deficiencies and to resolve the matter such that said errors or deficiencies are corrected within thirty (30) days or longer if, in the exclusive judgment of the Department, the correction of such errors requires a longer period of time.

11.02(d) The Subgrantee acknowledges and agrees that it will comply with the reporting requirements as set forth in Section VII.E of the BEAD NOFO, as well as comply with the obligations as set forth in the Uniform Guidance (2 CFR Part 200), as well as the USDOC Financial Assistance Standard Terms and Conditions, which requirements are summarized in Exhibit G to this Agreement.

11.02(e) Transparency and Accountability.

11.02(e)(1) Prevention of Waste, Fraud, or Abuse. Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, the Department or NTIA may direct a member or members of the Subgrantee's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing the Subgrantee's finances and overseeing any contractors, sub-contractors or Subgrantees (for financial matters and/or general oversight related to the grant). NTIA or the Department (WVDED) will provide instructions on when and how to take such training(s)

11.02(e)(2) The Subgrantee certifies that, as part of the transparency and accountability requirements of the Program, the Subgrantee will also establish and widely publicize telephone numbers and email addresses for the Subgrantee's internal ethics office (or comparable entity) for the purpose of reporting waste, fraud, or abuse in the Program. The Department (WVDED) is obligated to timely disclose to the USDOC Office of Inspector General (OIG) in writing whenever in connection with a BEAD award, performance, or closeout of the BEAD grant or subgrant, if the Department has credible evidence that any employee, agent, or subgrantee has committed:

- (1) 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
- (2) A violation of the civil False Claims Act (31 U.S.C. §§ 3729-3733).

11.02(e)(3) Monitoring for fraud. The Subgrantee must monitor award activities for common fraud schemes, including but not limited to:

- (1) false claims for materials and labor;
- (2) bribes related to the acquisition of materials and labor;
- (3) product substitution;
- (4) mismarking or mislabeling on products and materials; and
- (5) time and materials overcharging.

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

11.02(e)(4) Whistleblower Protections. The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award, including this Agreement. Section F.05 of the USDOC Standard Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

The Subgrantee acknowledges and understands that the Subgrantee and employees or contractor (including subcontractors and personal services contractors) of a Grantee, Subgrantee, contractor, subcontractor or personal services contractor working on BEAD-funded grant awards are subject to whistleblower rights and remedies under federal law. As such the Subgrantee may not discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information that the employee reasonably believes is evidence of: gross mismanagement of a federal contract or award; a gross waste of federal funds; an abuse of authority (i.e., an arbitrary and capricious exercise of authority that is inconsistent with the mission of NTIA or the USDOC or the successful performance of a contract or grant awarded by NTIA or the USDOC) relating to a federal contract or award; a substantial and specific danger to public health or safety; or a violation of a law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The Subgrantee shall inform its employees and contractors, in writing, in the predominant language of the workforce or organization, of employee whistleblower rights and protections under 41 U.S.C. § 4712, as described above and at: <https://www.oig.doc.gov/Pages/Whistleblower-Protection-Program.aspx>.

### **11.03 Failure to Comply:**

Non-performance, termination, and other remedies for non-performance will be handled consistent with the authorities set forth in Section 2 of this Agreement, to include 2 CFR § 200.339. The Subgrantee's failure to comply with any of the requirements within the Audits and Monitoring Section of this Grant Agreement or failure to respond in a timely manner to the Department's request for reports, records, documentation or other information related to monitoring may result in disallowed or delayed payment to Subgrantee for the reimbursement of costs, suspension, or termination of funding for this and other grants and contracts with the Department. When a determination or decision regarding non-performance

is to be made, the Department shall make such determination or decision by exercising good faith and reasonable discretion.

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

- (1) Failure to comply with the low-cost broadband service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act.
- (2) Failure to meet other Federal or West Virginia statutory obligations.
- (3) Wasteful, fraudulent, or abusive expenditure of Award Funds.
- (4) Failure to provide Broadband Service at the minimum advertised connection speed and cost at the advertised rate as set forth in Attachment 2 (Approved Application).

**11.04 Penalties for Non-Performance:**

11.04(a) General Authority. The Department and NTIA may enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of Award Funds. Such penalties include, but are not limited to, imposition of additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel.

11.04(b) Additional Conditions. Penalties for non-performance by the Subgrantee may include the imposition of additional conditions, as described in 2 CFR 200.208.

11.04(c) Remedies when Additional Conditions are Insufficient. If the Department or NTIA determine that non-performance cannot be remedied by imposing additional conditions, the Department or NTIA may take one or more of the following actions, as appropriate in the circumstances:

11.04(c)(1) Temporarily withhold reimbursement payments pending correction of the deficiency by the Subgrantee or more severe enforcement action by the Department or NTIA.

11.04(c)(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

11.04(c)(3) Wholly or partly suspend or terminate this Agreement.

11.04(c)(4) Recommend the initiation of suspension or debarment proceedings by NTIA or USDOC as authorized under 2 CFR part 180 and USDOC regulations.



11.04(c)(5) Withhold further West Virginia Broadband Investment Plan awards.

11.04(c)(6) Take other remedies that may be legally available.

11.04(d) Clawback. If the Department or NTIA determine that the Subgrantee has failed to comply with any material requirement under applicable law or this Agreement and the Subgrantee cannot or will not remedy such failure, the Department may require the Subgrantee to return up to the entire amount of the Grant Funds to the Department, at the discretion of the Department, subject to the authority of the Assistant Secretary to direct the Department to clawback funds for material non-performance.

If the Subgrantee fails to provide the minimum advertised connection speed and cost at the advertised rate described in Attachment 2 to this Agreement (Application), the Subgrantee shall forfeit any Grant Funds, up to the entire amount received through the West Virginia BEAD program. The Department shall use its discretion to determine the amount forfeited. If the Subgrantee is required to forfeit Grant Funds under this provision, the Subgrantee is liable for up to the amount disbursed plus interest. The number of subscribers that subscribe to Broadband Service offered by the Subgrantee in the project area shall not be a measure of performance under this Agreement for the purposes of this provision.

The Parties acknowledge that NTIA may pursue clawback of funds directly from the Department if the Department fails to ensure the Subgrantee accountability to the fullest extent of the law. To the extent NTIA successfully pursues clawback from the Department on these grounds, the Subgrantee shall reimburse the Department in an amount equal to the clawback.

11.04(e) Reversion. Subject to the exception set forth in Section 14.15, if the Subgrantee fails to perform and fails to return the full forfeited amount required pursuant to this Section, in addition to all other remedies available to the Department at law and under this Agreement, the ownership and use of the broadband infrastructure funded by the West Virginia BEAD Program shall revert to the Department.

11.04(f) Make Whole. Notwithstanding any other provision of this Agreement, if the Subgrantee fails to complete the Project in a material respect, the Subgrantee, at the discretion of the Department, may be required to reimburse the Department the actual cost to finish the project. The actual cost to finish the project shall be determined by the Department in consultation with the Subgrantee. If the Department determines that the Subgrantee has made a good faith effort to complete the Project, the Department will not require the Subgrantee to reimburse the Department an amount greater than the remaining cost per End User as set forth in Attachment 2 (Approved Application) to this Agreement.

## **12. REPORTS AND RECORDS**

### **12.01 Required Reports:**

12.01(a) The Subgrantee certifies that it will comply with all applicable reporting and record retention requirements the source of which may be Federal and State laws, programmatic regulations, public policy and/or administrative requirements, including but not limited to quarterly project and expenditure reports as indicated in Exhibit G for the duration of the Subgrant. References to these requirements and further guidance may be found in the general terms and conditions of this grant agreement as well as the attached the list of reporting requirements in the attached Exhibit G. The Subgrantee will further adhere to the conditions and regulations for reporting, as outlined in this Agreement, the West Virginia BEAD Program Procedures, and Department published compliance materials. The Subgrantee shall file reports with the Department, NIST, and/or NTIA as specified in Exhibit G. The Subgrantee acknowledges that the reporting requirements set forth in this Agreement (including Exhibit G) may be updated from time to time, and the Subgrantee shall comply with any other reasonable reporting requirements determined by the Department (WVDED) to meet the reporting requirements established by the Assistant Secretary and certify that the information in the report is accurate. The Subgrantee further acknowledges that the Department must make all Subgrantee reports available to NTIA upon request. The Subgrantee shall maintain sufficient records to substantiate all information submitted in reports under this Agreement.

12.01(b) The Subgrantee shall provide to the Department information required and requested by the Department to enable the Department to satisfy the filing of the annual performance report to the Federal government. For a comprehensive listing of all reporting requirements under the Program, please see the attached Exhibit G.

12.01(c) Prior to final payment, the Subgrantee shall provide to the Department final as-built network documentation in a manner and format approved by the Department.

### **12.02 Record Retention:**

12.02(a) The Subgrantee shall retain all financial records, supporting documents, statistical records, and all other records pertinent to this Grant Agreement for a period of five years from the date of submission of the final expenditure report or payment of final invoice. Further, the Department and the Subgrantee shall support BEAD Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the U.S. Department of Commerce and external program evaluators.

12.02(b) If any litigation, claim, or audit is started before the expiration of the five-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

12.02(c) Records for equipment acquired with Federal funds shall be retained for five years after final disposition.

**12.03 Access to Records:**

12.03(a) As part of the Subgrantee's participation in this Program, the Subgrantee shall allow the Department, the NTIA and the United States Department of Commerce (USDOC), the USDOC Office of Inspector General (OIG), Comptroller General of the United States Government Accountability Office (GAO), State Auditors, Program auditors, or any duly authorized representatives have the right of timely and unrestricted access to books, documents, papers, or other records of the Subgrantee, as such books, documents, papers, or other records directly relate to the Subgrantee's obligations and compliance with this Grant Agreement, excluding attorney-client privileged materials in order to make audits, examinations, excerpts, transcripts and copies of such documents.

12.03(b) This right also includes timely and reasonable access to the Subgrantee's past and present personnel for the purpose of interviewing and discussing matters related to such documents.

12.03(c) The rights of access are not limited to the required retention period, but shall last throughout the required retention period or as long as records are retained, if longer.

12.03(d) The subgrantee waives any confidentiality, privacy privilege, or proprietary defenses regarding audits or monitoring, excluding the attorney-client privilege.

**12.04 Closeout:**

12.04(a) Closeout shall be completed when the Department: (a) is in receipt of the final quarterly project and expenditure report; (b) has determined that all monitoring and audit findings have been formally addressed and are resolved; and (c) has received a completed, final Project audit and has determined that any findings have been resolved.

The Subgrantee will comply with the closeout procedures and provide to the Department within 90 days any outstanding financial, performance, or other reports required. Additionally, the Subgrantee must liquidate all financial obligations incurred under the award and refund any balances of unobligated cash paid in advance or paid that is not authorized by the Department, in writing, to be retained by the Subgrantee for use in other projects.

12.04(b) Within thirty (30) calendar days of the receipt of all outstanding reports, the Department will make a final settlement under this award, reflecting any upward or downward adjustments necessary.

12.04(c) The closeout of this Agreement does not affect the following:

12.04(c)(1) The right of the Department to disallow costs and recover funds on the basis of a later audit or other review;

12.04(c)(2) The obligation of the Subgrantee to return any funds due as a result of later refunds, corrections, or other transactions; or

12.04(c)(3) The Subgrantee's obligations regarding audits, property management and disposition (if applicable), and records retention.

### **13. STANDARD TERMS AND CONDITIONS**

#### **13.01 Representations and Warranties:**

The Subgrantee represents and warrants:

13.01(a) it is authorized to do business in the State of West Virginia;

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

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

13.01(d) To the best of the Subgrantee's knowledge, there are no pending or threatened actions or proceedings before any court or administrative agency which may materially adversely affect the financial condition or operation of the Subgrantee.

13.01(e) The Subgrantee warrants that the Project developed hereunder shall be free from material defects in design and implementation, and shall continue to meet the specifications agreed to in this Agreement until the Closeout Date. Until the Closeout Date, the Subgrantee shall, without additional charge to the Department, correct any such defects and make such additions, modifications, or

adjustments to the Project as may be necessary to keep the Project operating as specified in its Application.

13.01(f) The Subgrantee warrants the specific operating performance characteristics of the services developed and/or installed hereunder as stated in its Application and any approved material changes to the Project, if applicable.

**13.02 Required Approvals:**

The Department is not bound by this Grant Agreement until it is approved and signed by the appropriate Department and/or State officials in accordance with applicable West Virginia State laws and regulations.

**13.03 Modifications:**

13.03(a) Grant Agreement modifications and change orders will be negotiated by the Department and the Subgrantee to address material changes including, but not limited to, the terms and conditions, costs, available funding, time of completion, or scope of work included under this Grant Agreement.

13.03(b) As soon as possible after receipt of a written material change request, but in no event more than thirty (30) days, the Subgrantee shall provide the Department a written statement verifying the material change has no price impact on the Grant Agreement. If there is a price change, the Subgrantee shall provide a description of the price increase or decrease involved in implementing the change, which price change must be approved by the Department prior to it being effective.

13.03(c) The Department agrees to execute a change order, if approved, within thirty (30) days of receipt of Subgrantee's written change request.

13.03(d) No material changes in scope to the Project are authorized or are to be implemented by the Subgrantee until a written change order is received and approved in writing by the Department and other applicable agencies.

13.03(e) Resolution of Disputes. Resolution of disputes between the Department and the Subgrantee concerning administrative and programmatic matters during the terms of this Agreement shall be initiated through consultation and discussion at the Department's Administrative Offices with final decision on questions of policy or fact being determined by the Secretary of the Department or his/her designated representative. Nothing in this Agreement shall be construed as making the final decision on a question of law, or to limit in any manner any remedies or recourses available under applicable laws. Citizens' complaints or disputes regarding Subgrantee performance or actions relative to the approved Project are the responsibility of the Subgrantee.

**13.04 Assignment or Transfer:**

The Subgrantee shall not modify, convey, sell, transfer, assign, delegate, or otherwise dispose of the Grant Agreement or any portion thereof or of any right, title or interest therein without the prior, written consent of the Department. Any attempt at assignment or transfer without such consent shall be void. The Department and the Subgrantee acknowledge that any assignment or transfer of this Agreement is subject to the requirement to obtain prior written approval from NTIA and NIST. Any assignment or transfer of the Subgrantee's rights and obligations approved by the Department shall be subject to the provisions of this Agreement.

**13.05 Subgranting:**

The Subgrantee shall not enter into a subgrant agreement for any of the work performed under this Agreement without obtaining the prior written approval of the Department. If additional subgrant agreements are approved by the Department, they shall be entered into subject to the terms of this Grant Agreement.

**13.06 Completeness:**

13.06(a) This Agreement, including the exhibits hereto, is complete and contains the entire understanding between the parties relating to this Agreement.

13.06(b) This Agreement supersedes all prior understandings, representations, negotiations, and agreements between the parties, written or oral.

13.06(c) If there is a conflict between any of the terms of this Agreement as specified in Sections 1 through 19 and the approved Application, the terms of this Agreement shall govern.

**13.07 Severability:**

If any terms and conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions shall not be affected and shall remain in effect. To this end, the terms and conditions of this Agreement are declared severable.

**13.08 Successors and Assigns:**

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

**13.09 Waivers:**

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

**13.10 Terms and Conditions:**

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

**13.11 Access to Information, Software and Data:**

The Subgrantee shall work with the Department to ensure that any reports or other documentation submitted by the Subgrantee as required by this Agreement can be accessed and read by the Department.

**13.12 Licensure and Registrations:**

13.12(a) The Subgrantee certifies that it is registered and licensed to do business in the State of West Virginia. The Subgrantee and its employees, sub-grantees, and any contractors or subcontractors of the Subgrantee and any subgrantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.

13.12(b) The Subgrantee acknowledges and agrees that it will obtain and maintain an active registration with the System for Award Management (SAM) (<https://www.sam.gov>) and any successor federal contracting system. In doing so, the Subgrantee is required to obtain and report to the Department its Unique Entity Identifier (UEI) obtained as a result of the Subgrantee's SAM.gov registration.

**13.13 Department Right of Approval:**

The Department shall have the right in its sole discretion to refuse to permit any employee of the Subgrantee, or employee of an approved agent, assignee, or subcontractor of the Subgrantee, to be located at a Department work location, or to provide services to the Department or its clientele pursuant to this Grant Agreement.

#### **13.14 Force Majeure Events:**

Neither the Department nor the Subgrantee shall be liable or responsible to the other, or be deemed to have defaulted under or breached this Grant Agreement, for any failure or delay in fulfilling or performing any material term of this Grant Agreement, when and to the extent such party's (the "Impacted Party") failure or delay is caused by or results from the following force majeure events ("Force Majeure Event(s)"): (a) acts of God; (b) flood, fire, earthquake, natural disaster, explosion, pandemic, epidemic, or quarantine restrictions; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Grant Agreement; (f) declared national, state or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the control of the Impacted Party. The Department has the discretion and shall determine whether the Subgrantee's failure to perform is due to an occurrence over which the Subgrantee has no control.

The Impacted Party shall give notice within 7 business days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

#### **14. COMMUNICATIONS AND CONTACTS**

##### **14.01 Contacts:**

A list identifying contact persons for each party is attached as Exhibit H.

##### **14.02 Notices:**

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

If to the Department, then to:

West Virginia Department of Economic Development



Office of Broadband  
Attention: Kelly Workman, Executive Director  
1900 Kanawha Blvd., E., Building 3, Ste. 600  
Charleston, WV 25303  
Phone No: (304) 558-2234  
E-mail Address: Kelly.A.Workman@wv.gov

If to the Subgrantee, then to:

[Name]

Attention:

[Address 1]

[Address 2]

E-mail: [email]

**14.03 Party Changes:**

Each party shall provide a written notice of changes in contact persons, address, telephone, fax numbers, and email addresses.

**15. INDEPENDENT GRANTEE**

**15.01 Relationship:**

15.01(a) The relationship of the Subgrantee to the Department will be that of an independent grantee and no principal-agent relationship or employer-employee relationship is contemplated or created by the parties to this Agreement.

15.01(b) The Subgrantee shall be responsible for selecting, supervising, and compensating individuals employed pursuant to the terms of this Agreement.

15.01(c) Neither the Subgrantee nor any employees or contractors of the Subgrantee shall be deemed to be employees of the Department for any purposes whatsoever, and neither the Subgrantee nor any employees or contractors of the Subgrantee shall be eligible to participate in any benefit program unless

such program is specifically available to the Subgrantee by the State of West Virginia as a separate, distinct and standalone benefit not arising from the Department and this Agreement.

15.01(d) The subgrantee shall be exclusively responsible for the payment to its employees and contractors of all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, compliance with the wage and hour law, and all other applicable employment laws.

## **16. INDEMNIFICATION AND HOLD HARMLESS**

### **16.01 Indemnification and Hold Harmless:**

To the extent permitted by law, the Subgrantee shall indemnify and hold harmless the Department, its Bureaus, Offices, Commissions, State of West Virginia, its officers, agents, subcontractors and employees of each entity from and against any and all loss, damage, liability and from any claims for damages arising from bodily injury, including death, which may be sustained or claimed to be sustained by any person, including employees of the Subgrantee or its subcontractors or agents, and from any damages to property, including loss of use, and including property of the Department and State of West Virginia, caused by or arising out of or claimed to have been caused or to have arisen out of an act or omission of the Subgrantee or its agents, employees or subcontractors in connection with the performance of this Agreement, or caused by or arising out of or claimed to have been caused or to have arisen out of the concurrent negligence of the Subgrantee, its agents and employees, in connection with the performance of this Agreement, whether or not insured against; provided, however, that the foregoing indemnification will not cover loss, damage or liability arising from the sole negligence of the Department, its agents and employees; and the Subgrantee shall at its own cost and expense defend any claim, suit, action, or proceeding, whether groundless or not, which may be commenced against the Department or State of West Virginia, and the Subgrantee shall pay all judgments which may be recovered in any such actions, claims, proceedings or suits and defray any and all expenses, including costs and attorney's fees, which may be incurred as a result of such actions, claims, proceedings or suits. Notwithstanding the foregoing, in the event of such actions, claims, proceedings or suits, the Department shall be entitled, if it so elects, to representation by attorneys of its own selection. The obtaining by the Subgrantee of a release or discharge of liability running to the Subgrantee shall not diminish nor affect in any way the rights of the Department and the obligation of the Subgrantee.

## **17. ASSURANCES & PUBLIC POLICY REQUIREMENTS**

### **17.01 Assurances:**

17.01(a) Conflicts of Interest: The Subgrantee attests that it, its officers or members, employees, or subgrantees presently have no interest and shall not acquire any interest, direct or indirect which would conflict or compromise in any manner the performance of services or work to be performed in connection with the Project that is the subject matter of this Agreement. The Subgrantee further attests that during the performance of the Agreement, the Subgrantee shall periodically question its officers, members and employees concerning such interests. Any such interest discovered shall be promptly presented in detail to the Department. The Subgrantee will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal gain. The Subgrantee, as applicable, will promptly notify the Department should it become aware of any violation or attempt at circumventing the requirements of this section by the Subgrantee.

17.01(b) Transactions with Affiliated Business Entities or Relatives: The Subgrantee shall make a full disclosure in writing to the Department of any corporation, partnership, sole proprietorship, or other business entity of any kind which is a wholly or partially owned entity of the Subgrantee or whose relatives supply goods or services to the Subgrantee or work for or provide services to the Subgrantee.

### **17.02 Public Policy Requirements:**

17.02(a) Certifications Regarding Debarment & Suspension.

17.02(a)(1) The Subgrantee certifies that no entity, agency, or person associated with the Subgrantee is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." Further, the Subgrantee certifies and agrees that, in accepting BEAD funding, the Subgrantee shall provide the certification below and comply with the following requirements of the Code of Federal Regulations ("C.F.R."): 2 CFR Part 180 (Executive Office of the President of the United States, Office of Management and Budget (OMB), "Guidelines to Agencies on Governmentwide Debarment and Suspension", 2 CFR Part 1200 (Nonprocurement Suspension and Debarment), and 2 CFR Part 1326 (Nonprocurement Debarment and Suspension).

17.02(a)(2) The Subgrantee also certifies that the Subgrantee will not knowingly enter into any transaction with any person or entity, unless authorized by the United States Department of Commerce (“USDOC”), or the NTIA, who is proposed for debarment (under 48 CFR Part 9, Subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation. Further, as certified to in Subgrantee’s Application materials, the Subgrantee certifies that it shall include the USDOC/NTIA “Instructions for Lower Tier Participant Certification” (See BEAD NOFO pgs. 78-80 and the Attached Exhibit L) without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require Subgrantee’s contractors and subcontractors to comply with 2 CFR Parts 180 and 1200. (NOTE: the terms “covered transaction”, “debarment”, “suspension”, “ineligible participant”, “person”, “voluntarily excluded”, and others in this section 17.02(a) are defined in 2 CFR Parts 180, 1200, and 1326.) In addition to the contracts covered under 2 CFR 180.220(b) of the Office of Management and Budget (OMB) guidance (i.e. contracts of \$25,000 or greater) this section applies to a Subgrantee subcontract with exceeds or is expected to equal or exceed \$25,000.

17.02(a)(3) In addition to the above, the Subgrantee certifies that it will also include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions” (“Certification”) (See BEAD NOFO p. 80) lower tier covered transactions and in all solicitations for lower tier covered transactions (i.e. contracts or subcontracts it makes with other entities equal to or greater than \$25,000). The following is the full text of that Certification, and is also in the attached Exhibit L:

**Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions:**

The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

17.02(a)(4) The Subgrantee acknowledges and understands that under NTIA regulations, the Subgrantee may rely on the certifications of prospective participants in the “covered transactions” it enters into (i.e. the certifications of contractors and subcontractors) that these participants are not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from participation in the covered transaction unless the Subgrantee knows that the certifications are erroneous.

17.02(a)(5) The Subgrantee certifies that it, as well as its contractors or subcontractors if part of a covered transaction, are each responsible for ensuring that their principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions.

17.02(a)(6) The Subgrantee also certifies and agrees that if at any time following its Certification the Subgrantee learns that the Certification made by it as part of its Lower Tier Participant Certification was erroneous when it was submitted, or has become erroneous by reason of changed circumstances, the Subgrantee shall provide immediate written notice to WVDED.

17.02(a)(7) The Subgrantee also certifies and agrees that unless authorized by the U.S. Department of Commerce (USDOC)/NTIA, if the Subgrantee knowingly enters into a transaction with someone debarred, proposed for debarment or suspension, or voluntarily excluded from participation in a transaction (meaning a person’s agreement to be excluded under the terms of a settlement between the person and one or more agencies), the USDOC or NTIA may pursue available remedies, including suspension and debarment of the subgrantee.

**17.03 Anti-Collusion and Prohibited Communications:**

17.03(a) The Subgrantee agrees that it has reviewed, complied with, and will continue to comply with the Department’s BEAD Program Anti-Collusion and Prohibited Communication Policy and Certification (“Anti-Collusion Policy” or “Policy”) in fulfilling its obligations under the Grant Agreement. A copy of the Policy is attached as Exhibit N to this Agreement.

17.03(b) The Subgrantee acknowledges that the above-described Anti-Collusion Policy is primarily intended to apply throughout the Program from the application phase through the awarding of selected projects by WVDED. The Subgrantee certifies that if violations of the Policy by the Subgrantee is discovered at any point, the Subgrantee acknowledges and understands that sanctions include ineligibility for BEAD funding (pre-award), to rescission of award(s) (post-award), to criminal prosecution and punishment.

**17.04 Disclosure of Publicly Funded Projects:**

Also as part of the prospective subgrantee pre-application process, the Subgrantee is required to disclose information on any applications that they, or their affiliates (as defined in 47 USC Section 153(2)), have been awarded, have submitted, or plan to submit to publicly-funded broadband deployment opportunities as per NTIA requirements (See BEAD NOFO, p. 75). If at the time of application, the Subgrantee did not anticipate or have any expectation that it would have opportunities that it would need to disclose, but later discovers that it does, the Subgrantee certifies that it shall contact WVDED and provide updated information as soon as it becomes known to the Subgrantee.

**17.05 State Broadband Reporting Requirements:**

The Subgrantee acknowledges and understands that subgrantees that receive any state or federal moneys, and which have used that money to install infrastructure used for broadband services, must provide information to WVDED, Office of Broadband (WV Code § 31G-1A-3(e)). In particular, the Subgrantee certifies that it will provide information about broadband availability, pricing, and speeds, and do so on an annual basis as required by the Department. Information must be reported statewide at the address level for all broadband networks operated by the Subgrantee. WVDED intends to coordinate information requested with required reporting under the Federal Communications Commission's (FCC) Broadband Data Collection mapping initiative to minimize reporting burdens.

**17.06 Certification of a Drug Free Workplace:**

17.06(a) In accordance with Public Law 100-690 Drug-Free Workplace Act of 1988 the Subgrantee certifies the following requirements for a drug free workplace will be provided and/or maintained with a good faith effort including, at a minimum, having a policy statement and an ongoing drug awareness program. If such a policy and practice have not been established heretofore, the Subgrantee agrees to do so within thirty (30) calendar days after the commencement of this Agreement.

17.06(b) The Subgrantee agrees to publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a federally controlled substance is prohibited in the workplace and specifying the actions that will be taken against employees for violation of such prohibition. The Subgrantee also agrees to make it a requirement that each employee who will be engaged in the provision of service under this Agreement be given a copy of this statement and that each such

employee understands that, as a condition of employment, the employee will abide by the terms of the statement.

17.06(c) The Subgrantee also agrees to establish and/or maintain an ongoing drug-free awareness program to inform employees about the dangers of drug abuse in the workplace, any available drug counseling or rehabilitation, and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

**17.07 Certifications Related to Lobbying:**

17.07(a) The Subgrantee shall not endorse or support any candidate running for partisan political office, and no federal or state funds under this Agreement shall be expended to support any legislative lobbying efforts of the Subgrantee related to specific legislation. The Subgrantee shall certify that no federal appropriated funds have been paid or will be paid, by or on behalf of the Subgrantee or an employee thereof, to any person for purposes of influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

17.07(a)(1) The Subgrantee shall require that the language of this certification be included in the award documents for all subawards at all tiers (including, but not limited to subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements), and that all subrecipients shall certify and disclose accordingly.

17.07(a)(2) This certification is a material representation of fact upon which reliance was placed when this Agreement was made. Submission of this certification is a prerequisite for making and entering into this Agreement imposed under 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty.

17.07(b) If the Subgrantee uses funds other than federally appropriated funds and those funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the Subgrantee shall immediately complete and submit a disclosure form to report lobbying (SF-LLL form). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form

previously filed. The Department must submit any required SF-LLL forms, including those from the Subgrantee, contractors, and subcontractors, to the USDOC or NTIA Grants Officer in accordance with USDOC Standard Terms and Conditions.

**17.08 Civil Rights:**

17.08(a) The Subgrantee agrees to abide by all Federal and State laws, rules and regulations that prohibit any unlawful discrimination or violations of civil rights. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 - 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by the Department and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; (d) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (e) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (f) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (g) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (h) sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (i) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (j) any other nondiscrimination provisions in the specific statute(s) under which application for Federal and State assistance is being made; and, (k) the requirements of any other nondiscrimination statute(s) which may apply to this grant. The Subgrantee shall insert a similar provision in all subcontracts and subawards for activities covered under this Agreement. The Subgrantee acknowledges that failure to abide by the above laws, rules, and regulations may result in cancellation of the Subgrantee's award and/or recoupment of funds already disbursed to the Subgrantee.

17.08(b) Additionally, as part of being selected for a BEAD award, the Subgrantee must satisfy the following authorities:

- (1) Parts II and III of Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319), which requires that federally assisted construction contracts incorporate and fulfill the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor



regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).

- (2) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency (65 Fed. Reg. 50121), which requires federal agencies to examine the services that they provide, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. Note that the Department of Commerce issued policy guidance on March 24, 2003 (68 Fed. Reg. 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that nonfederal entities provide meaningful access to their LEP applicants and beneficiaries.
- (3) Executive Order 13798, Promoting Free Speech and Religious Liberty, and Office of Management and Budget, M-20-09—Guidance Regarding Federal Grants and Executive Order 13798 (January 16, 2020), which provides that States or other public grantees may not condition sub-awards of federal grant money in a manner that would disadvantage grant applicants based on their religious character.

17.08(c) The Subgrantee acknowledges and agrees that it shall cooperate with the Department in carrying out the Department's reporting responsibilities to the NTIA and USDOC under Title VI of the Civil Rights Act. The Department shall collect and review information from the Subgrantee to ascertain the Subgrantee's compliance with all applicable requirements before and after providing financial assistance to the Subgrantee. Among the information which may be requested of the Subgrantee are:

- (1) The manner in which services are or will be provided by the program in question, and related data necessary for determining whether any persons are or will be denied such services on the basis of prohibited discrimination;
- (2) The population eligible to be served by race, color, and national origin;
- (3) Data regarding covered employment, including use or planned use of bilingual public-contract employees serving beneficiaries of the program where necessary to permit effective participation by beneficiaries unable to speak or understand English;
- (4) The location of existing or proposed facilities connected with the program, and related information adequate for determining whether the location has or will have the effect of unnecessarily denying access to any persons on the basis of prohibited discrimination;

- (5) The present or proposed membership, by race, color and national origin, in any planning or advisory body which is an integral part of the program;
- (6) Where relocation is involved, the requirements and steps used or proposed to guard against unnecessary impact on persons on the basis of race, color or national origin.

**17.09 Program Fraud Civil Remedies Act:**

The authorized official signing for the Subgrantee certifies that the statements herein are true, complete, and accurate to the best of his or her knowledge, and that he or she is aware that any false, fictitious, or fraudulent statements or claims may subject him or her to criminal, civil, or administrative penalties. The undersigned agrees the Subgrantee organization will comply with all terms and conditions of the Agreement.

**17.10 The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively):**

The Subgrantee acknowledges and understands that the making or presenting of any false, fictitious, or fraudulent statement, representation, or claim to or against the United States or to or against any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, may occasion imprisonment and fines under Federal law.

**17.11 The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733):**

The Subgrantee acknowledges and understands that suits may be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.

**17.12 The Copeland Anti-Kickback Act (18 U.S.C. § 874):**

The Subgrantee agrees that it shall comply and ensure that its contractors and subcontractors (pursuant to 40 U.S.C. § 3145) comply with the Copeland Anti-Kickback Act, which prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of the employee's compensation under an employment contract.

**17.13 Relocation Assistance and Real Property Acquisition:**

The Subgrantee agrees that it shall comply with The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and the implementing regulations issued at 15

C.F.R. Part 11, which provide for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

**17.14 Hatch Act:**

To the extent applicable, the Subgrantee acknowledges and agrees that it shall comply with the Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which prevents pernicious political activities by employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.

**17.15 Certifications Regarding Federal Convictions, Unpaid Taxes:**

The Subgrantee acknowledges and understands that in order to ensure compliance with Federal law pertaining to financial assistance awards, the Subgrantee's authorized representative may be required to periodically provide certain certifications to the USDOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns, and other such certifications as may be required by Federal law.

**17.16 Trafficking Victims Protection Act (22 U.S.C. § 7104):**

The Subgrantee acknowledges and understands that The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any recipient or subrecipient engages in certain activities related to trafficking in persons.

**17.17 Lobbying Restrictions:**

17.17(a) The Subgrantee shall comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, the Subgrantee must comply with the USDOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award and require the disclosure of the use of non-Federal funds for lobbying.

17.17(b) Disclosure of Lobbying Activities. If the Subgrantee receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds relating to a covered Federal action, it must submit a completed Form SF-LLL (Disclosure of Lobbying Activities) to the Department. The Form SF-LLL must be

submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Department shall submit any required SF-LLL forms, including those received from the Subgrantee, its contractors, and subcontractors, to the USDOC/NTIA Grants Officer.

## **18. OTHER TERMS AND CONDITIONS**

### **18.01 Confidentiality of Records/ Protected and Proprietary Information:**

18.01(a) General. Strict standards of confidentiality shall be maintained in accordance with State and Federal laws. As certified to in the Application phase, and in accordance with Section IX.B of the BEAD NOFO, the Subgrantee acknowledges and understands that information submitted in both applications for financial assistance, as well as information and data contained in financial, performance, and other reports submitted by the Subgrantee, are public records, except for a broadband service provider's trade secret and proprietary information, and may be used by the United States Department of Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. Information and data may be accessed, reviewed, and evaluated by the Department and the U.S. Department of Commerce employees, other state and federal employees, state and federal agents and contractors, and/or by non-federal personnel, all of whom enter into appropriate confidentiality and nondisclosure agreements covering the use of such information.

18.01(b) The Subgrantee also agrees 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 United States Department of Commerce, NTIA, The Department (WVDED), and external program evaluators. In accordance with 2 CFR § 200.303(e), the Subgrantee and WVDED each agree to take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with the BEAD award or this Agreement.

18.01(c) NTIA will protect confidential and proprietary information from public disclosure consistent with applicable law, including the Trade Secrets Act, as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 et seq.)

18.01(d) Subgrantee Responsibilities – Confidential Information. In the event that a submission contains information or data deemed to be confidential commercial information or that otherwise should not be publicly disclosed, the Subgrantee shall identify, bracket, and mark such information as Privileged,

Confidential, Commercial or Financial Information. Based on these markings, the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law.

18.01(e) Law Enforcement Sensitive Information. The Subgrantee acknowledges and understands that some of the information submitted in the course of applying for funding under this Program, or provided in the course of a project may be considered law enforcement sensitive or otherwise important to national security interests. Examples of this information may include threat, risk, and needs assessment information, and discussions of demographics, transportation, public works, and industrial and public health infrastructures.

18.01(f) Subgrantee Responsibilities. As a condition of applying for BEAD funding, the Subgrantee certifies that, if the Subgrantee submits information that contains law enforcement sensitive information, that such information should be identified, bracketed, and marked appropriately. Based on these markings, the Subgrantee will ensure that the confidentiality of the contents of those pages will be reviewed for protection consistent with applicable law. Along with their submitted applications, the Subgrantee certifies that they will be familiar with the regulations governing Protected Critical Infrastructure Information (PCCI) (See 6 C.F.R. Part 29), and Sensitive Security Information (SSI) (See 49 C.F.R. Part 1520).

**18.02 No Waiver/Strict Performance Required:**

Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be deemed to have been waived, modified, deleted except by a written amendment signed by the parties.

**18.03 Titles, Tense:**

In construing this Agreement, whenever appropriate, the singular tense shall be deemed to mean the plural and vice-versa. Titles of sections and paragraphs used herein are for the purpose of facilitating ease of reference only and shall not be construed to be a part of this Agreement.

**18.04 State and Federal Compliance:**

The Subgrantee shall comply with all applicable State and Federal laws and regulations in the performance of this Agreement.

**18.05 Organization and/or Personnel Changes:**

The Subgrantee agrees to inform the Department of any changes of key personnel or organizational structure affecting the operation of the Subgrantee or its provision or performance of activities or services under this Agreement.

**18.06 Taxes and Obligations:**

18.06(a) The Subgrantee certifies it is current on all taxes and obligations due the federal, state, and local governments.

18.06(b) The Subgrantee certifies that the Subgrantee shall report and include all BEAD grant award funds as gross income for purposes of federal income tax reporting. The Subgrantee shall do so until such time as the USDOC or NTIA establish otherwise, or any new federal legislation is passed that would exclude such funding from gross income for federal tax purposes.

**18.07 Information Technology Policies:**

If the Subgrantee has access to Department data systems or if the Subgrantee uses the Department's Wide Area network (WAN), the Subgrantee agrees to comply with all of the Department's Information Technology Policies, including, but not limited to, the Information Technology Resource Policy and the Hardware/Software Policy. The Subgrantee agrees to only use these systems for activities related to the work performed under this Agreement.

**18.08 Governing Law and Venue:**

This Agreement shall be governed by the laws of the State of West Virginia and the United States. Any legal action regarding this Agreement must be brought in the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia, at Charleston. Nothing in this contract is intended to waive, nor shall it act as a waiver of, the sovereign immunity of the State of West Virginia.

**19. SPECIAL TERMS AND CONDITIONS**

19.01(a) Any special terms and conditions required as a condition for receiving and expending funds under this Agreement are attached as Exhibit I.

19.01(b) If any of these special terms and conditions required by federal statute, codified federal regulation, applicable West Virginia Code citations, administrative rules, or Department policies conflict with any other terms and conditions of this Agreement, the special terms and conditions shall control.

19.01(c) If the special terms and conditions conflict with federal statutes, codified federal regulations, applicable West Virginia Code citations, administrative rules, or Department policies, such special terms and conditions are void.

DRAFT

IN WITNESS WHEREOF, the parties have caused this Grant Agreement to be signed and dated as shown below.

**FOR (The Subgrantee entity name)**

*Subgrantee Authorized Signature:* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Printed Name and Title:*

\_\_\_\_\_

*FEIN:* \_\_\_\_\_

*Taken, sworn and subscribed before me this* \_\_\_ *day of* \_\_\_\_\_, *20*\_\_\_.

*Notary Public Signature:* \_\_\_\_\_

*My Commission Expires:* \_\_\_\_\_

**FOR THE WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT**

*Department Authorized Signature:* \_\_\_\_\_ *Date:* \_\_\_\_\_

*Printed Name and Title:*

\_\_\_\_\_

*Taken, sworn and subscribed before me this* \_\_\_ *day of* \_\_\_\_\_, *20*\_\_\_.

*Notary Public Signature:* \_\_\_\_\_

*My Commission Expires:* \_\_\_\_\_