

BEAD DRAFT SUBAWARD AGREEMENT (FOR NON-LOW EARTH ORBIT PROVIDERS)

*[This Draft is intended to provide guidance to provisionally awarded subrecipients,
but BEAM may continue to make revisions prior to contract execution
based on comments received and any additional official guidance.]*

**BROADBAND EXPANSION AND ACCESSIBILITY OF MISSISSIPPI
BROADBAND, EQUITY, ACCESS AND DEPLOYMENT (BEAD) GRANT**

BEAM Agreement No.

Project Name: _____

Federal Award Identification Number (FAIN): 28-20-B080

Federal Award Date: November 16, 2022

Assistance Listings Number and Title: 11.035

Subrecipient Unique Entity Identifier (UEI) Number:

Subrecipient Tax ID Number:

FIXED AMOUNT SUBAWARD AGREEMENT

This Fixed Amount Subaward Agreement (this “**AGREEMENT**”) is entered into on this ____ day of _____, 202__ (the “**EFFECTIVE DATE**”), between the Department of Finance and Administration Office of Broadband Expansion and Accessibility of Mississippi (“**BEAM**”), a pass-through entity as defined in 2 C.F.R. § 200.1 and _____, UEI Number: _____ (“**SUBRECIPIENT**”).

NOW, THEREFORE, the parties hereto intend to be legally bound hereby and in consideration of the mutual covenants hereinafter contained do hereby agree as follows:

1. SUBAWARD MAXIMUM AMOUNT/SOURCE OF FUNDING/GOVERNING AUTHORITIES

BEAM hereby agrees to make to the Subrecipient and the Subrecipient hereby agrees to accept from BEAM a fixed amount subaward in the maximum amount of \$_____ (the “**SUBAWARD**”), on the terms and conditions set forth herein. The source of the Subaward is an allocation by the National Telecommunications and Information Administration (“**NTIA**”) of the United States Department of Commerce (“**COMMERCE**”) of approximately \$1.2 billion in funding from the Broadband Equity, Access, and Deployment (“**BEAD**”) program established under Section 60102 (“**SECTION 60102**”) of the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (the “**INFRASTRUCTURE ACT**”), to the Office of Broadband Expansion and Accessibility of Mississippi (“**BEAM**”), Federal Award ID Number 28-20-B080 (as the same may be amended from time to time, the “**FEDERAL AWARD**”).

The Subaward is governed by Subrecipient’s application (to the extent accepted by BEAM), including supporting documents (the “**APPLICATION**”), the Infrastructure Act, including Section 60102, the

Broadband Expansion and Accessibility of Mississippi (BEAM) Act, Miss. Code Ann. §§ 77-19-1 *et seq.* (the “**BEAM ACT**”) and implementing regulations at 12 Miss. Admin. Code Pt. 12, the BEAD Notice of Funding Opportunity No. NTIA-BEAD-2022 (“**NOFO**”), as modified by NTIA BEAD Restructuring Policy Notice issued June 6, 2025 (the “**RESTRUCTURING POLICY NOTICE**”), the Federal Award, including the Specific Award Conditions incorporated therein, the General Terms and Conditions for the NTIA Broadband Equity, Access & Deployment Program (BEAD) Program Funds, April 2024 (“**BEAD GENERAL TERMS AND CONDITIONS**”), the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R 200 (the “**UNIFORM GUIDANCE**”), except to the extent NTIA has determined certain provisions to be inapplicable, 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” (the “**NTIA POLICY NOTICE**”), the “Obligations for Subgrantees Deploying Network Projects: Guidance” issued by NTIA in August 2025 (the “**AUGUST 2025 GUIDANCE**”), Commerce’s Financial Assistance Standard Terms and Conditions, subject to any deviations thereto made by Commerce (“**COMMERCE STANDARD TERMS AND CONDITIONS**”), 48 C.F.R. Part 31, Contract Cost Principles and Procedures, the BEAD Initial Proposal, Volumes I and II, and the BEAD Final Proposal (together, the “**PROPOSAL**”), and any other guidance issued by BEAM, NTIA or Commerce regarding the BEAD program, in each case to the extent not rescinded or modified,¹ and all other applicable federal and state statutes, regulations, and executive orders, all of which are incorporated into this Agreement and with which Subrecipient agrees to comply (collectively, the “**GUIDANCE**”).

In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner that emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, Subrecipient should prioritize following the language contained in these authorities in the following order (from highest to lowest priority): Section 60102, the Specific Award Conditions of the Federal Award, the Restructuring Policy Notice, the BEAD General Terms and Conditions, the NOFO (as modified), the Commerce Standard Terms and Conditions, the BEAM Act and implementing regulations and the Proposal.

Notwithstanding any provision of this Agreement to the contrary, BEAM’s obligation to make disbursements hereunder is subject to receipt of sufficient funds under the Federal Award.

2. PROJECT

A. *Project Description.* Subrecipient agrees that it will apply the funds disbursed pursuant to the Subaward only to allowable costs of the project described in its Application with respect to the awarded broadband serviceable locations (“**BSLs**”) listed on **Attachment 1** (the “**PROJECT**”). Subrecipient may transfer one or more awarded BSLs to another internet service provider, or receive one

¹ The Restructuring Policy Notice declared obsolete and rescinded the following Policy Notices:

- Broadband Equity, Access, and Deployment (BEAD) Program: Selecting the Most Robust, Affordable, Scalable Technology, released June 26, 2024; and
- Broadband Equity, Access, and Deployment (BEAD) Program: Alternative Broadband Technology Policy Notice, released December 12, 2024.

or more BSLs from another internet service provider, only with the written consent of BEAM and on such terms as BEAM may require. In that event, Attachment 1 will be amended accordingly.

B. *Pre-Construction and Construction Activities.* Subrecipient will not implement construction activities (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) prior to (i) the completion of all applicable NEPA requirements of the National Environmental Policy Act (“NEPA”), 42 USC 4321 *et seq.*, and issuance by NTIA and BEAM, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) (hereinafter “**DECISION DOCUMENTS**”) that meets the requirements of NEPA, (ii) the completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (“NHPA”), 54 USC 300101 *et seq.*, including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American Tribes; (iii) the completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act, 16 USC 1531 *et seq.*, and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act, 33 USC 1251 *et seq.*, as applicable, and (iv) demonstration of compliance with all applicable conditions placed on the Project as the result of the applicable consultations described above or any other processes and compliance with all other applicable environmental laws and regulations. Without limiting the generality of the foregoing, Subrecipient will timely prepare any required NEPA and NHPA documents and obtain any required permits and adhere to any applicable statutory deadlines to ensure both initial and ongoing compliance with all permitting and environmental processes(s). Subrecipient will adhere to the provisions of the NTIA memorandum to State Historic Preservation Offices, Tribal Historic Preservation Officers, and Internet for All grant recipients authorizing such grant recipients to initiate Section 106 consultation for NTIA funded projects.

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

C. *Permitting.* Prior to initiating any construction or ground disturbance activities, Subrecipient shall acquire all permits and approvals required for construction and deployment of the Project to the extent required by federal, tribal, state and local authorities.

D. *Mississippi 811.* Subrecipient will not engage in excavation of any kind in furtherance of the Project before meeting the notification and other requirements of Title 77, Chapter 13, of the Mississippi Code of 1972, as amended, and 12 Miss. Admin. Code Pt. 12, R.2.2.4. Subrecipient shall coordinate and participate in a pre-construction meeting with all relevant underground utility operators and all involved county and municipal leadership at least thirty (30) days prior to the Project start date. Subrecipient shall also make reasonable efforts to confer with underground utility operators about line placement prior to excavations as the Project progresses. Subrecipient will include identical requirements in its contracts with contractors and subcontractors with respect to the Project.

E. *Network Deployment, Performance and Service Requirements.* The Project must meet the following technical requirements, including performance measurements and resilience against network outages:

1. The Project must deliver speeds of not less than 100 megabits per second (“**Mbps**”) for downloads and 20 Mbps for uploads for BSLs;² speeds of not less than one Gigabit symmetrical for Community Anchor Institutions (as defined in Section 60102);³ and 95 percent of latency measurements during testing windows to fall at or below 100 milliseconds round trip time. If the Project uses unlicensed fixed wireless (“**ULFW**”) technology, Subrecipient (a) must demonstrate the ability to provide at least 5 Mbps (100Mbps downstream service – to be scaled for higher speed commitments) of simultaneous capacity to each awarded BSL, must reserve base station capacity to account for periods of higher interference, and (c) adhere with network equipment manufacturer best practice or guidance regarding items such as capacity/loading of base station radios, minimum signal strength and backhaul requirements. *See* Restructuring Policy Notice, Appendix A.

2. Subrecipient must have protocols in place to ensure the Project’s outages do not exceed, on average, 48 hours over any 365-day period except in the case of natural disasters or other force majeure occurrence. Subrecipient should develop a comprehensive outage management plan that includes preventive maintenance schedules, metrics for measuring outages, quick response teams for outage resolution, and clear communication channels for informing customers about outages and expected restoration times, incorporating best practices as described in the August 2025 Guidance.

3. Subrecipient must commence service to each customer within a BSL who desires service no later than four years from the Effective Date of this Subaward (unless extended by BEAM) on terms that are reasonable and nondiscriminatory.

4. If the Project involves laying fiber optic cables or conduit underground or along a roadway, it shall include interspersed conduit access points at regular and short intervals in accordance with a plan proposed by Subrecipient and approved by BEAM. The Subaward may be used to deploy broadband infrastructure in or through any area required to reach interconnection points or otherwise to ensure the technical feasibility and financial sustainability of the Project providing broadband service to an unserved location, underserved location, or Eligible Community Anchor Institution (as defined in Section 60102).

5. Subrecipient shall adhere to quality-of-service standards as established by the Assistant Secretary of Commerce for Communications and Information (the “**ASSISTANT SECRETARY**”).

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

² 80 percent of Subrecipient’s download and upload measurements must be at or above 80 percent of the required speed (*i.e.*, an 80/80 standard). *See Performance Measures Order*, 34 FCC Rcd at 6528, para. 51; NOFO at note 80.

³ Section 60102 defines “community anchor institution” as:

an entity such as a school, library, health clinic, health center, hospital or other medical provider, public safety entity, institution of higher education, public housing organization, or community support organization that facilitates greater use of broadband service by vulnerable populations, including low-income individuals, unemployed individuals, and aged individuals.

47 USCA §1702(a)(2)(E).

7. Subrecipient shall deploy robust network infrastructure and schedule regular performance testing in accordance with NTIA guidance to ensure that the Project can consistently meet or exceed the performance standards.

F. *Human Subjects Research.* The Project cannot include research involving human subjects.

G. *Special Award Conditions.* [INCLUDE, IF APPLICABLE]

3. PERIOD OF PERFORMANCE

The period of performance and the budget period for this Subaward begins on the Effective Date and ends on the fourth anniversary thereof (as may be extended by BEAM, the “**PERIOD OF PERFORMANCE**”). Subrecipient agrees to complete all tasks included in the Project within the Period of Performance. BEAM will have no obligation to make disbursements of the Subaward for costs incurred outside of the Period of Performance regardless of the reason for Subrecipient’s delay in completing the Project.

4. PURPOSE

The purpose of this Project is to make an investment in the construction and deployment of broadband infrastructure. The Subaward is not for Research and Development.

5. CONSIDERATION AND PAYMENT/CLAWBACKS

A. *Project Cost.* The total Project cost at the date of this agreement is reasonably estimated to be [INSERT AMOUNT].

1. The Subaward shall not exceed [INSERT AMOUNT]
2. Subrecipient provided matching funds shall not be less than [___ % of Project cost]
3. Other federal funding (if applicable) [INSERT SOURCE AND AMOUNT]

B. *Matching Funds.* Matching funds provided by Subrecipient shall not be less than ___ percent of the total Project cost, must be derived from non-Federal funds (or funds from a Federal regional commission or authority or as otherwise allowed by Section 60102), and must be used for allowable costs. Matching funds must be paid out at the same general rate as the Subaward funds or before the Subaward funds are expended. If the total Project cost at the completion of the Project is less than the amount estimated at the date of execution of this Agreement, the Subaward may be reduced to ensure that the matching funds percentage shall remain at ___ percent of the actual total Project cost as required herein. Neither fees above the estimated actual cost nor profit shall be considered reasonable costs when determining the reasonable estimate of actual costs.

C. *Payment Disbursements.* BEAM will disburse the Subaward to the Subrecipient in installments to reimburse for allowable costs of the Project in consideration for achievement of each of the milestones described in **Attachment 2** hereto. The consideration to be paid for each milestone, as outlined in **Attachment 2**, may be reduced to the extent that the actual allowable costs associated with achieving such milestone are less than the amount associated with such milestone as identified in **Attachment 2**. The

milestone schedule must include specific deadlines including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of environmental assessments or environmental impact statements.

D. *Program Administrative Costs.* Program Administrative Costs, whether direct or indirect costs, will not be allowed. “**PROGRAM ADMINISTRATIVE COSTS**” means the costs of administering the Subaward and complying with grant administration and audit requirements.

E. *Conditions to Disbursements.*

BEAM’s obligation to make any disbursement of the Subaward upon completion of a milestone is subject to the following conditions, as well as any others set forth in this Agreement:

1. Subrecipient shall not be in default under this Agreement;
2. The Project shall have progressed at a rate and in a manner reasonably satisfactory to BEAM;
3. BEAM’s receipt of the certificate, supporting documentation and invoice corresponding to such disbursement in substantially the form as set forth in the web-based portal, and BEAM’s verification of the milestone completion;
4. The representations, warranties and certifications of the Subrecipient made in this Agreement and in the Application are true and correct as of the date of the disbursement request, including a certification in a format prescribed by BEAM that Subrecipient has and will continue to have sufficient financial resources to cover its allowable costs of the Project until BEAM authorizes subsequent disbursements.
5. Except for disbursements for pre-implementation activities described below, Subrecipient must have demonstrated its satisfaction of the conditions set forth at Section 2.B above. Pre-implementation activities include, without limitation, activities necessary for the completion of the following:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award application costs;
- Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
- Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts 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).

F. *Improper Expenditures.* Any item of expenditure by Subrecipient under the terms of this Agreement for which a corresponding disbursement of the Subaward has been made that is found by

auditors, investigators, other authorized representatives of BEAM, Commerce, NTIA, the Mississippi State Auditor or other federal or state instrumentality to be improper, unallowable, ineligible, in violation of federal or state law, or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of Subrecipient, shall become Subrecipient's liability, and shall be repaid by Subrecipient to BEAM, immediately upon notification of such; provided that the Subrecipient shall not use BEAM funds to satisfy such liability unless BEAM consents or so directs in writing. Notwithstanding the foregoing, if Subrecipient disputes the finding in writing to BEAM within 15 days of such notification, then repayment will not be due until immediately following notification of BEAM's adverse determination of the dispute, which determination shall be in BEAM's sole discretion. This provision shall survive the expiration or termination of this Agreement, but shall expire at the end of the Federal Interest Period (as defined below).

The following costs are specifically identified as prohibited under the BEAD program:

1. *Prohibition On Use of Grant Funds for Covered Communications Equipment or Services under the Secure and Trusted Communications Networks Act.* Subrecipient (including contractors and subcontractors of Subrecipient) may not use grant funds received under the BEAD Program to purchase or support any covered communications equipment or service (as defined in Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608)).

2. *Prohibition on Profit and Fees.* A profit, fee, or other incremental charge above actual cost incurred by Subrecipient is not an allowable cost under the BEAD program.

3. *Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining.* Subrecipient may not use grant funds received under the BEAD program, whether directly or indirectly, to support or oppose collective bargaining.

4. *No Duplication of Federal Funding.* The Subaward may not be used to duplicate costs, services, connections, facilities, or equipment that have been authorized through another federal program. BEAM, the NIST Grants Office and NTIA reserve the right to disallow any expenses that they determine constitute duplication of federal funds or service.

5. *Other Prohibited Uses.*

- Personal expenses of employees, executives, board members, and contractors, and family members thereof, or any other individuals affiliated with the Subrecipient, including but not limited to personal expenses for housing, such as rent or mortgages, vehicles for personal use and personal travel, including transportation, lodging and meals;
- Gifts to employees; housing allowances or other forms of mortgage or rent assistance for employees except that a reasonable amount of assistance shall be allowed for work-related temporary or seasonal lodging; cafeterias and dining facilities; food and beverage except that a reasonable amount shall be allowed for work-related travel; entertainment;
- Expenses associated with: tangible property not logically related or necessary to the Project or authorized non-deployment use; corporate aircraft, watercraft, and other motor vehicles designed for off-road use except insofar as necessary or reasonable to access portions of the

Project area not readily accessible by motor vehicles travelling on roads; tangible property used for entertainment purposes; consumer electronics used for personal use; kitchen appliances except as part of work-related temporary or seasonal lodging assistance; artwork and other objects which possess aesthetic value;

- Payment of any bonus or commission for the purpose of obtaining approval or concurrence under this Agreement;
- Any partisan political activity or to further the election or defeat of any candidate for public office or to influence the approval or defeat of any ballot issue;
- Political contributions; charitable donations; scholarships; membership fees and dues in clubs and organizations; sponsorships or conferences or community events not logically related or necessary for the intended use of the Subaward; nonproduct-related corporate image advertising; and
- Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.

G. *Excess Funds.* To the extent the full amount of the Subaward is not used in the completion of the Project, BEAM may reduce the amount of the Subaward accordingly and reallocate the excess funds for any eligible purpose. This provision shall survive the expiration or termination of this Agreement.

6. SPECIFIC CONDITIONS – NOTIFICATIONS TO SUBRECIPIENT

BEAM reserves the right, upon notice to Subrecipient, to impose reasonable specific conditions on Subrecipient based on risk assessments, performance and any other factors BEAM might use to safeguard the resources provided by NTIA and to help ensure timely achievement of the agreed-on milestones, as contemplated by 2 C.F.R. 200.208.

These specific conditions will apply until the Subrecipient has addressed the risks, to the reasonable satisfaction of BEAM, within the time required. Once the corrective action has been satisfactorily addressed, the Subrecipient can request BEAM to remove the specific conditions. BEAM will respond to the request within 30 days.

7. NOTICES

Unless otherwise specified in this Agreement, all notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) when received if sent by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section):

Attention: BEAD Contract Administration
550 High Street
Sillers Bldg. – 18th Floor
Jackson, MS 39201
E-mail:

Attention: [Name of Subrecipient]
Address:
Phone:
E-mail:

8. NON-LIABILITY AND INDEMNITY

The Subrecipient hereby agrees that under no circumstances will it hold or seek to hold either NTIA, COMMERCE or BEAM liable for any third-party claims for damages arising from the implementation of any activity funded under this Agreement. Subrecipient is solely responsible for the supervision, direction, and control of the Project. Subrecipient is not an agent of BEAM. Subrecipient assumes full responsibility for compliance with the laws and regulations of the Government of the United States of America and the State of Mississippi.

In no event shall BEAM or its employees or agents be liable, whether in contract, warranty, or tort (including negligence or strict liability), to Subrecipient for any indirect, consequential (*e.g.*, lost profits), multiple or punitive damages or attorneys' fees of any nature arising out of or in connection with this Agreement.

Subrecipient agrees to defend, indemnify, and hold harmless (including reasonable attorney's fees and expenses) BEAM from and against any third-party claims arising from or related to this Agreement.

9. AUTHORITY OF AGENTS

BEAM and Subrecipient each hereby covenant to the other that the authorized agents who have signed on behalf of each party above each have unrestricted and full authority to represent their respective organizations in all matters related to this Agreement.

10. TERMINATION/OTHER REMEDIES

A. *Termination for Default.* BEAM may, by notice of default to the Subrecipient, terminate this Agreement and its obligation to make any disbursement hereunder if any event occurs which would constitute a default by Subrecipient, provided that the Subrecipient does not cure such failure to BEAM's satisfaction within 30 calendar days (or more if authorized in writing by BEAM) after receipt of notice from BEAM specifying the failure.

B. *Termination for Convenience.* This Subaward may be terminated in whole or in part by BEAM with 30 days' notice to Subrecipient, without cause, when it is in BEAM's interest to do so.

C. *Settlement Upon Termination.* If BEAM terminates this Subaward in whole or in part, it will at most be obligated to disburse the Subaward with respect to allowable Project costs already incurred and verified to BEAM's satisfaction as of the termination date, net of any damages caused by Subrecipient's default, if applicable. Upon termination for default as provided in sub-section A above, BEAM may recoup any Subaward funds disbursed.

D. *Termination Not Exclusive.* The rights and remedies of BEAM in this Section 10 to terminate the Agreement are in addition to any other rights and remedies provided to BEAM and NTIA and Commerce by state or federal law, under this Agreement (*see* Section 24) or under the Uniform Guidance, including without limitation 2 C.F.R. 200.339 and 2 C.F.R. 200.340.

11. NON-ASSIGNMENT AND LOWER-TIER SUBAWARDS.

Subrecipient shall not assign or transfer this Subaward or Project Property (as hereinafter defined), either in whole or in part, or assign the right to receive any payments coming due hereunder, either in whole or in part, without prior written consent of BEAM, NTIA and the NIST Grants Officer. Similarly, lower tier subawards, when approved, may not be further assigned in whole or in part without prior written consent of BEAM. Any such assignment or transfer not in accordance with this Section shall be void.

Nothing in this Agreement prohibits Subrecipient from contracting with qualified third parties to perform aspects of its work under this Agreement, provided that Subrecipient (i) remains fully liable for the acts and omissions of the contractor and (ii) ensures that all required terms of this Agreement are applicable to the contractor.

Subrecipient will include the clause set forth in the NOFO titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 C.F.R. Parts 180 and 1200. Subrecipient may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. To verify the eligibility of any prospective lower tier participants, Subrecipient may, but is not required to, check the System for Award Management Exclusions website (<https://sam.gov>).

Except for transactions explicitly authorized by NTIA, if Subrecipient knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition

to other remedies available to the federal government, NTIA may pursue available remedies, including suspension or debarment.

12. WARRANTIES AND REPRESENTATIONS

Subrecipient warrants and represents that it is duly formed and existing, has all rights necessary to perform its obligations hereunder, and has duly authorized the execution and delivery of this Agreement and the performance of its obligations hereunder. Additionally, Subrecipient warrants that all services performed hereunder shall be performed to the highest industry standards and Subrecipient agrees to correct or re-perform any services not in compliance with this standard at no additional cost. Subrecipient warrants and certifies to the best of its knowledge and belief, that it and its principals: (a) are not presently debarred, suspended, excluded or disqualified or proposed for debarment or suspension by any governmental department or agency, (b) have not within a three-year period preceding this Subaward been convicted of or had a civil judgment rendered for commission of fraud or a criminal offense in connection with a public sector (Federal, State, or local) contract described in 2 C.F.R. 180.800(a), (c) are not currently subject to debarment for any of the reasons set forth in 2 C.F.R. 180.800(b) through (3), (d) have not had one or more public transactions (Federal, State, or local) terminated within the preceding three years for cause or default, (e) are not currently the subject of a civil or criminal investigation or an inspector general audit, (f) have neither solicited nor obtained bid or proposal information or source selection information related to the Federal Award, (g) do not have a relevant conflict of interest or the appearance thereof, (h) have not offered anything of value to a current or former U.S. Government Procurement Official who participated personally and substantially in the Federal Award, and (i) have not made and will not make any payment of money or anything of value, directly or indirectly, to any government official, political party, or candidate for a political office for the purpose of obtaining or retaining business. Subrecipient agrees to notify BEAM immediately should it learn that any of the above warranties or representations is no longer fully correct.

Subrecipient makes the further warranties, representations and certifications set forth on Attachment 3 hereto, which is incorporated herein as if fully set forth herein.

13. GOVERNING LAW/JURISDICTION AND VENUE/SEVERABILITY

This Agreement is governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law, without giving effect to the principles of conflicts of law. Subrecipient agrees to comply with all applicable Federal, State, foreign, provincial, and local laws, ordinances and regulations, and all applicable orders and regulations of the Executive Branch, other departments, agencies, and instrumentalities of the United States Government. Subrecipient agrees that if federal or state law, or NTIA guidance, conflicts with this Agreement, BEAM is authorized to, and shall, act in accordance with the applicable state or federal law or NTIA guidance.

Subrecipient agrees that any action arising out of, or relating to, this Agreement may only be brought in a federal or state court of proper subject matter jurisdiction located in Hinds County, Mississippi. Subrecipient consents to the personal jurisdiction of these courts.

If any provision of this Agreement, or any requirement incorporated in this Agreement, is determined to be invalid or unenforceable, such determination shall not affect the other provisions of this

Agreement or incorporated requirements, which shall be enforced as if the invalid provision was not a part thereof and shall be interpreted so as to best effect the intent of the parties in entering into this Agreement.

14. CLAIMS RELATED TO FEDERAL AWARD

If a binding decision is made by Commerce or NTIA under the Federal Award and it pertains to the subject matter of this Agreement, then such decision also shall be binding upon Subrecipient. If, as a result of any such decision, BEAM is unable to obtain payment or reimbursement under the Federal Award or is required to refund or credit the relevant amount, Subrecipient shall, on demand, promptly withdraw its invoice(s) and/or repay such amount(s) to BEAM

15. PUBLIC ANNOUNCEMENTS OR RELEASES.

BEAM may include public acknowledgements in published and other collateral materials indicating that the Project is funded by the Infrastructure Act.

16. PROPERTY.

All property and equipment acquired or improved by Subrecipient and charged to BEAM under this Subaward (“**PROJECT PROPERTY**”) shall be the property of the Subrecipient subject to the condition that, until December 31 of the tenth year after the Project is closed out in accordance with 2 C.F.R. 200.344 (the “**FEDERAL INTEREST PERIOD**”), the Subrecipient and any approved successors, assignees, or transferees:

(1) must use the Project Property for the authorized purposes of the Project in the same manner as they use comparable real property and equipment within their networks in the ordinary course of their business, subject to the rights to disposition provided below,

(2) must continue to provide internet service to the BSLs and at the standard initially agreed upon by BEAM and Subrecipient, initiating service at standard installation charges within ten business days of a request from any consumer in the awarded BSLs,

(3) must participate in federal programs that provide low-income consumers with subsidies on broadband internet access services,

(4) must comply with the requirements of 2 C.F.R. 200.310 (Insurance), which may be satisfied by adequate self-insurance,

(5) must follow reasonable industry-standard commercial practices for managing equipment in the normal course of business, and must use inventory controls indicating the applicable Federal Interest (defined below) and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 C.F.R. 200.313(d). If Subrecipient does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 C.F.R. 200.313(d),

(6) must maintain records of real property that include an indication of the applicable Federal Interest,

(7) must comply with the use and disposition requirements of 2 C.F.R. §200.311 or §200.313(c)(4) and 313(e), as applicable, as follows:

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

b. Subrecipient 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 and from BEAM. (A merger or combination between Subrecipient and another entity where Subrecipient is not the surviving entity, or a transfer of a controlling interest in Subrecipient to a third party, will be considered a transfer of Project Property.) NTIA will provide additional information concerning the review and approval process for transactions involving Project Property.

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

(8) must, if and to the extent required by the NIST Grants Officer, record liens or other appropriate notices of record, and continuation statements, acceptable in form and substance to NTIA and BEAM, to indicate that Project Property has been acquired or improved with a federal award and that use and disposition conditions apply to the Project Property. Subrecipient authorizes BEAM and the NTIA and/or the NIST Grants Officer to file such notices and continuation statements as it determines to be necessary or convenient to disclose and protect the Federal Interest in the Project Property. These notices will include, (i) with respect to real property, a Covenant of Purpose, Use and Ownership in form and substance acceptable to BEAM and NTIA to be recorded in the real property records in the county in which the real property is located, and (ii) with respect to equipment, a UCC-1 to be filed with the Mississippi Secretary of State prior to any sale or lease and not later than the closeout of the Subaward, meeting the requirements of the BEAD General Terms and Conditions, paragraph 48.C. A certified copy of the filed UCC-1, and any continuation statement, must be provided to the Grants Officer within 15 calendar days of its filing, along with a certification from legal counsel, licensed in Mississippi, in form and substance as described in the BEAD General Terms and Conditions, paragraph 48.C and otherwise in form and substance acceptable to NTIA and the NIST Grants Officer.

Subrecipient agrees that for the duration of the Federal Interest Period, it holds the Project Property in trust for the beneficiaries of the Project and the Federal Government retains an undivided, equitable reversionary interest in the Project Property (the “**FEDERAL INTEREST**”).

Subrecipient may encumber Project Property only after provision of notice to NTIA and the NIST Grants Officer, and only if Commerce 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, Commerce would receive the portion of the fair market value of the property that is equal to Commerce's percentage contribution to the Project costs. Subrecipient may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of Project Property during the Federal Interest Period.

Subrecipient must comply with the insurance requirements of 2 C.F.R. 200.310, and must comply with 2 C.F.R. 200.312 to the extent any federally-owned real property or equipment is used by the Subrecipient.

Except as specified above, the property standards set forth in 2 C.F.R. 200.314-315 shall not apply to Subrecipient for purposes of the Subaward. Subrecipient must comply with 2 C.F.R. 200.316.

17. PROGRAM INCOME.

Consistent with the NTIA Policy Notice, income generated by subrecipients from subawards will not be considered program income (as defined in 2 C.F.R. 200.1), and subrecipients may use such income without restriction. Income from indefeasible rights of use (IRUs) and leases relating to broadband income will also not be considered program income.

18. COST PRINCIPLES AND PROCUREMENT.

Consistent with the NTIA Policy Notice, Subrecipients receiving fixed amount subawards of BEAD funds are not required to comply with the procurement standards contained in 2 C.F.R. 200.318-320 and 200.324-326 of the Uniform Guidance. All other Procurement Standards, *i.e.*, 2 C.F.R §§ 200.317, 200.321-200.323, and 200.327, remain as requirements.

19. COMPLETE SUBAWARD, MODIFICATION, WAIVER.

This Agreement is the complete and exclusive statement of the understandings between the parties with regard to the subject matter hereof, and supersedes in its entirety any previous understandings, whether oral or written. This Agreement may not be altered, amended, or modified in any manner whatsoever except upon the mutual agreement of both parties evidenced by a signed modification. All modifications will be issued and signed by the BEAM Director or his/her designee. The issuance of information, advice, approvals, or instructions by BEAM technical personnel or other representatives shall be deemed expressions or personal opinions only and shall not affect the rights and obligations of the parties hereunder unless the same is in writing, is signed by the BEAM Director or her/his designee, and which expressly states that it constitutes an amendment or change to this Agreement.

Neither party shall be deemed to have waived any right or remedy unless such waiver is made expressly and in writing.

20. RECORDS MAINTENANCE AND EXAMINATION OF RECORDS AND AUDIT

A. Subrecipient shall maintain a financial management system and financial records related to all transactions with funds received pursuant to this Agreement sufficient to evidence compliance with this Agreement. Subrecipient agrees to administer all such funds in accordance with applicable federal and state requirements, including the Guidance. Subrecipient shall adopt such additional financial management procedures as may from time-to-time be prescribed by BEAM if required by applicable federal or state laws or regulations, or the Guidance. Subrecipient shall maintain detailed, itemized documentation and other records of all Subaward funds received and expenses incurred pursuant to this Agreement. All books and records shall be maintained for a period of five years from the date of final disbursement of the Subaward. In addition, Subrecipient shall permit NTIA, the Commerce Inspector General and any other authorized federal agency, or their authorized representatives, the State Auditor, and BEAM and its representatives, access to and the opportunity to examine all books and records and all cost or pricing data of any type and in any form pertinent to the Federal Award or performance of this Agreement or the accounting therefor. Such persons shall also have timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such books and records. Subrecipient acknowledges that NTIA, the Commerce Inspector General, or another authorized federal agency, or the State Auditor, may conduct an audit of the Subaward at any time. Subrecipient acknowledges that Subpart F – Audit Requirements of the Uniform Guidance (2 C.F.R. 200.500 *et seq.*) applies to the Subaward unless the following exception is available. For so long as Subrecipient is a for-profit entity, Subrecipient is not subject to Subpart F. During the Period of Performance, Subrecipient shall submit annually to BEAM audited financial statements within 30 days of completion by Subrecipient's auditors. BEAM also requires for-profit subrecipients to submit to pre-award audits, monitoring during the term of this Agreement, and post-award audits, which requirements may be satisfied by the submission of an audit or other documentation that covers multiple subawards and multiple federal programs. For-profit subrecipients may use the Schedule of Expenditures of Federal Awards (SEFA) as a framework for how to organize expenditure data across programs. With respect to any fiscal year of the Subrecipient in which it expends more than \$750,000 in Federal awards, Subrecipient will submit to BEAM and the Grants Officer either (i) a financial related audit of each Commerce grant or subgrant in accordance with Generally Accepted Government Auditing Standards, or (ii) a program specific audit for each grant or subgrant in accordance with the requirements contained in 2 CFR §200.507.

B. BEAM retains the right to conduct a financial or programmatic review or otherwise ensure adequate accountability of funds provided under this Subaward. The Subrecipient further agrees to meet with BEAM personnel on these and any compliance issues in a timely manner.

C. BEAM has the right to monitor Subrecipient and its subcontractors using procedures as determined by BEAM or as required by applicable federal law. The Federal government and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subrecipient shall allow BEAM to perform all pre-award, award and post-award monitoring required by

the Guidance. BEAM shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the Federal Interest Period. BEAM shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Project.

D. Subrecipient will establish and widely publicize telephone numbers and email addresses for BEAM's compliance officer and/or Subrecipient's internal ethics office (or comparable entity) for the purpose of reporting waste, fraud or abuse in the BEAD program. Subrecipient shall produce copies of materials used for such purpose upon request of NTIA.

BEAM's compliance officer is: [TO COME]

Email:

Telephone:

21. PERFORMANCE BOND/LETTER OF CREDIT

Provider shall furnish to BEAM either a Performance Bond in the amount of one hundred percent (100%) of the Subaward or a Letter of Credit ("LOC") that meets the requirements of this Section within thirty (30) days of the Effective Date of this Agreement. The expense of the Performance Bond or LOC shall be borne by Subrecipient.

If, at any time, a surety that issued a Performance Bond required by this Agreement is found to be not in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Mississippi, Subrecipient will be required to provide a Performance Bond with a qualified surety, which Subrecipient shall furnish to BEAM within ten (10) days after receipt of notice from BEAM or after Subrecipient otherwise becomes aware of such conditions.

If Subrecipient elects to furnish a LOC, such LOC shall be in the amount of at least twenty-five percent (25%) of the Subaward, unless otherwise agreed in writing by BEAM, and shall be issued by a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration. Such LOC shall be accompanied by an opinion of counsel acceptable to BEAM that neither the LOC nor its proceeds will be part of the Subrecipient's bankruptcy estate in the event of Subrecipient's bankruptcy.

If, at any time, the issuing bank of an LOC is found to be not in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Mississippi, an LOC from another financial institution will be required, which Subrecipient shall furnish to BEAM within ten (10) days after receipt of notice from BEAM or after Subrecipient otherwise becomes aware of such conditions.

BEAM, at its option, may permit Subrecipient to provide a letter of credit or performance bond in a lesser amount upon achievement of specific deployment milestones that are publicly specified by BEAM and applicable to all subrecipients subject to the LOC requirement as provided in the BEAD Letter of Credit Waiver Notice issued by Commerce at <https://broadbandusa.ntia.gov/funding-programs/policies-waivers/BEAD-Letter-of-Credit-Waiver>.

22. REPORTS

Subrecipient will provide monthly (during the first year of this Agreement), semi-annual and annual reports to BEAM on the status of the Project in such form and containing such information as BEAM or the Assistant Secretary may prescribe from time to time, including but not limited to all of the information required by NTIA pursuant to NOFO Section VII.E (excluding sub-paragraphs 9 and 12 thereof), beginning with the first month that Subrecipient receives a disbursement pursuant to this Agreement and continuing throughout the Period of Performance. Subrecipient will provide such reports through a verified, digitally signed export or upload from its OSS, BSS, and/or NMS system to include data fields specified by BEAM for each required reporting field. Reports will be due within 15 days of the end of the period for which the report is being made. Annual reports will be due within 15 days of the end of each calendar year through and including the last day of the Federal Interest Period. As soon as is known, Subrecipient will report to BEAM with respect to the Project its start date for construction (planned and actual), the date of completion of construction (planned and actual) and the date of initiation of operations (planned and actual).

Subrecipient acknowledges that reporting requirements set forth in this Agreement may be updated by BEAM from time to time, and Subrecipient shall comply with any reasonable reporting requirements determined by BEAM to be necessary to meet the reporting requirements established by the Assistant Secretary and certify that the information in the report is accurate. Subrecipient further acknowledges that BEAM must make all Subrecipient reports available to NTIA upon request. BEAM may exercise its right to collect any information from Subrecipient or Subrecipient's subcontractors related to grant administration activities at any time for reporting and monitoring purposes.

23. ADDITIONAL COVENANTS OF SUBRECIPIENT

Subrecipient covenants as follows:

A. Subrecipient will comply with, and will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with the Subaward, or undertaken pursuant to the Bead program, the equal opportunity clause provided under 41 C.F.R. 60-1.4(b) (minus references therein to Executive Order 11246 which has been revoked) which is incorporated herein by reference.

Subrecipient along with any sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Commerce's Title VI regulations, 15 C.F.R. Part 8, which are herein incorporated by reference and made a part of this Agreement.

Subrecipient agrees to use the Subaward in an equitable and nondiscriminatory manner.

B. Subrecipient will comply with applicable federal labor and employment laws.

C. If Subrecipient employs mechanics or laborers in connection with the Project, Subrecipient will comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5), with respect to the mechanics or laborers so employed.

D. Subrecipient will comply with all applicable environmental laws and regulations with respect to the Project. Without limiting the generality of the foregoing, Subrecipient will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 1251-1387). Subrecipient will report violations of any applicable environmental laws or regulations to NTIA and the Regional Office of the Environmental Protection Agency.

E. Subrecipient (including its subcontractors) shall not obligate or expend funds received pursuant to the Subaward, or any matching funds, to procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract to procure or obtain equipment, services or systems that use any covered telecommunications and video surveillance equipment or services provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities), or equipment that is otherwise prohibited by 2 C.F.R. 200.216. Further, funds received pursuant to the Subaward may not be used to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China, absent a waiver from the Assistant Secretary.

F. Subrecipient will comply with applicable provisions of the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Parts 180, 1200 and 1326, including the requirement to include a term or condition in all lower tier covered transactions that the Subaward is subject to 2 C.F.R. Part 180 and 31 C.F.R. Part 19.

G. Subrecipient will comply, and will require its lower tier subrecipients and subcontractors to comply, with the Build America, Buy America Act (“**BABA**”) and 2 C.F.R 200.322, consistent with applicable legal authorities, such as Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021), 2 C.F.R. Part 184, OMB Memo M-24-02, and any applicable waivers issued by Commerce or NTIA, including the National Telecommunications and Information Administration Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program, effective February 22, 2024. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

H. Subrecipient will disclose in writing to NTIA and BEAM any potential conflict of interest affecting the Subaward in accordance with 2 C.F.R. 200.112.

I. Subrecipient will inform, and will require its lower tier subrecipients and contractors to inform, their respective employees in writing, in the predominant native language of its workforce, of their rights and remedies under 41 USC 4712 (Protections for Whistleblowers).

J. Subrecipient is required to provide at least one low-cost option, approved by NTIA, to all households eligible for the FCC Lifeline Program for Low-Income Consumers, offering speeds of 100 Mbps download and 20 Mbps upload, with maximum round-trip latency of 100 milliseconds (or such higher performance standard as the FCC may adopt) for the duration of the Federal Interest Period. Subrecipient's low-cost option is described in **Attachment 4**. Subrecipient affirms that its low-cost option price was established solely by Subrecipient.

Subrecipient's low-cost service option must detail:

- All recurring charges to the subscriber, as well as any non-recurring costs or fees to the subscriber;
- The plan's basic service characteristics (download and upload speeds and latency; the LCSO must be at least 100/20 Mbps and <100ms latency);
- The plan's price and, as applicable, how the price will change over time;
- Whether the subgrantee will define Eligible Subscriber more broadly than the RPN.

Subrecipient will provide data to the Assistant Secretary in a manner and format as established by the Assistant Secretary as necessary for the Assistant Secretary to carry out his or her duty under Section 60102 to establish a publicly available website containing prescribed information regarding available subsidies and low-income service plans.

Once the Project is in service, Subrecipient must provide public notice, online and through other means, of that fact to individuals residing in the BSLs to which broadband service has been provided and share the public notice with BEAM. Subrecipient will carry out public awareness campaigns, online and through other means, in its service areas that are designed to highlight the value and benefits of broadband service in order to increase the adoption of broadband service by consumers. Public awareness campaigns shall be designed in a manner that reflects any unique needs of the specific demographics of the area at issue. BEAM shall have the right to request and review Subrecipient's public notices and public awareness campaign materials. Such requests must be made in writing and Subrecipient shall comply within fifteen calendar days of receipt of the request.

K. Subrecipient will comply with the requirements of Mississippi's Comprehensive Emergency Management Plan ("CEMP") applicable to its operations. Specifically, CEMP ESF #2 Communications Annex, and ESF #3 Public Works and Engineering Annex, must be followed. Subrecipient is encouraged to enter into mutual aid agreements with utility partners to ensure a rapid and safe emergency service restoration response. Mutual aid agreements should include order of restoration strategies that minimize the destruction of broadband infrastructure.

L. Subrecipient will maintain an active SAM registration with current information as required by 2 C.F.R. Part 25 until the later of its final report required under this Agreement or receipt of its final disbursement hereunder. *See* 2 C.F.R. Part 25, Appendix A.

M. Subrecipient will notify BEAM of any transfers of control or ownership that are subject to Federal Communications Commission (FCC) approval at the time of filing with the FCC.

N. Subrecipient agrees that it will comply, and will require its lower tier subrecipients or subcontractors to comply, with all applicable Federal, state, and local laws and regulations, and all applicable terms of the Federal Award, including without limitation the Specific Award Conditions and the BEAD General Terms and Conditions. Subrecipient will monitor its lower tier subrecipients' and subcontractors' compliance as described herein.

O. The power of eminent domain will not be used in connection with the Subaward without the prior written consent of NTIA.

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

Q. During construction of the Project, Subrecipient shall:

1. Ensure that it meets all deadlines in approved plans and specifications;
2. Provide for required construction permits and adequate construction inspection;
3. Promptly pay costs incurred for the Project for which it seeks reimbursement under the Subaward.

R. Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of NHPA. Subrecipient must notify BEAM and NTIA of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subrecipients should have an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards monitor ground disturbance for Project activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials.

If any potential archeological resources or buried human remains are discovered during construction, Subrecipient must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify BEAM, NTIA and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of BEAM and NTIA.

24. REMEDIES FOR NONCOMPLIANCE

Without limiting the availability of other remedies hereunder, or otherwise legally available remedies (including without limitation a breach of contract or other causes of action or remedies under the Uniform Guidance, including without limitation 2 C.F.R. 200.339 and 2 C.F.R. 200.340), BEAM shall have the following remedies upon giving Subrecipient notice of its noncompliance with any requirement of this Agreement or the Guidance:

A. Temporarily withhold disbursements of the Subaward pending correction of the noncompliance; and/or

B. Wholly or partially suspend or terminate the Subaward; and/or

C. Recommend to NTIA that a suspension or disbarment proceeding be initiated under 2 C.F.R. part 180; and/or.

D. *Clawbacks.* BEAM may recoup any Subaward funds already disbursed in the event of Subrecipient's noncompliance with the BEAD Program's requirements, including but not limited to failure to deploy network infrastructure, if applicable, within four years from the Effective Date and failure to continue the availability of broadband service to the awarded BSLs for the duration of the Federal Interest Period, which noncompliance is not cured within 30 calendar days after Subrecipients' receipt of notice from BEAM specifying such noncompliance; and/or

E. *Forced Sale.* If Subrecipient, at any time, is no longer able to provide broadband service to the BSLs covered by this Agreement at any time on a retail basis, then remedial action may be taken by BEAM to ensure continuity of service. In consultation with NTIA, BEAM shall require Subrecipient to sell the network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or sell the network in its entirety to a new provider who commits to providing services under the terms of the BEAD Program.

If any action at law or in equity is necessary to enforce BEAM's rights or Subrecipient's obligations under this Agreement, including without limitation Subrecipient's repayment liability pursuant to Section 5.F hereof, BEAM shall be entitled to reasonable attorneys' fees, costs and disbursements incurred with regard to such enforcement, in addition to any other relief to which it is entitled.

25. FURTHER ASSURANCES

Each of the parties hereto agrees to take such further actions as may be reasonably required to carry out the purposes of this Agreement and give effect to the transactions contemplated herein.

26. PUBLIC DISCLOSURE/PROPRIETARY INFORMATION

Subrecipient acknowledges that (i) BEAM is required to comply with applicable provisions of the Mississippi Accountability and Transparency Act of 2008, Miss. Code Ann. §§ 27-104-151 *et seq.* (the "**TRANSPARENCY ACT**"), provided that BEAM is not required or permitted by the Transparency Act to disclose trade secrets or other proprietary information, including confidential vendor information, or any other information that is required to be kept confidential by state or federal law; and (ii) BEAM is required to comply with applicable provisions of the Mississippi Public Records Act of 1983, Miss. Code Ann. §§ 25-61-1 *et seq.* (the "**PUBLIC RECORDS ACT**"), and Section 77-19-7(d) of the BEAM Act. BEAM shall give timely notice to Subrecipient pursuant to Section 25-61-9 of the Public Records Act and Miss. Admin. Code, Title 12, Part 2, Rule 1.7, of any request for records of Subrecipient submitted to BEAM.

Subrecipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance, and other reports

submitted by it pursuant to this Agreement, may be used by Commerce in conducting reviews and evaluations of its financial assistance programs and for statistical purposes. For this purpose, information and data may be accessed, reviewed, and evaluated by Commerce employees, other federal employees, 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. The Subrecipient is required to support such reviews and evaluations by submitting the financial and performance information and data required by this Agreement in an accurate and timely manner, and by cooperation with Commerce and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), the Subrecipient is reminded that it must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with the Subaward.

NTIA has pledged to 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.*). If a report contains information or data deemed to be confidential commercial information, law enforcement sensitive or important to national security interests, or that otherwise should not be publicly disclosed, that information should be identified, bracketed, and marked 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.

Subrecipient should be familiar with the regulations governing Protected Critical Infrastructure Information (6 C.F.R. Part 29) and Sensitive Security Information (49 C.F.R. Part 1520), as these designations may provide additional protection to certain classes of homeland security information.

27. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which constitutes an original, and all of which together constitute one and the same agreement. The signatures of BEAM and Subrecipient need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending party's signature is as effective as signing and delivering the counterpart in person.

28. FORCE MAJEURE

No party shall be deemed to have defaulted under or breached this Agreement to the extent that its failure or delay in fulfilling or performing any term of this Agreement is caused by or results from the following force majeure events: (a) acts of God, (b) flood, earthquake, natural disaster, epidemic, pandemic, or unforeseen catastrophic fire or explosion; (c) war, invasion, hostilities, terrorist threats or acts, riot or other civil unrest, or (d) national or regional declared emergency, provided that each party shall endeavor to continue to perform its obligations under the Agreement so far as reasonably practicable, and provided further, however, that no delay in performance shall be excused beyond the Period of Performance. After the Period of Performance, BEAM will have no obligation to make disbursements of the Subaward regardless of the reason.

29. CLOSE-OUT

On submission of the voucher for payment for the final milestone, the Subrecipient must certify that the Project is completed, that service operations and management systems infrastructure are operational and have been placed into service, and that the Subrecipient will make no further claim against BEAM after final payment.

Attachments

1. Project Description
2. Milestones
3. Certifications, Assurances, Representations Other Statements of the Subrecipient
4. Low-Cost Service Option

SUBRECIPIENT'S ACKNOWLEDGEMENTS AND SIGNATORY PAGE

On behalf of _____, I hereby acknowledge our understanding and acceptance of the terms and conditions of this Agreement and Subaward and agree to fully comply with the terms and conditions.

Name (PRINT)	
Signature	
Title	
Date	

PASS THROUGH ENTITY'S ACKNOWLEDGEMENTS AND SIGNATORY PAGE

On behalf of BEAM, I hereby accept the Subrecipient's acknowledgement of understanding and acceptance of the terms and conditions of this Agreement and Subaward and agree to administer the Subaward accordingly.

Name (PRINT)	
Signature	
Title	
Date	

One original of the fully executed Agreement to be provided to the Subrecipient.

Attachment 1 – Project Description/BSLs

The Project, as described in the Application, will be constructed and deployed to service the following broadband serviceable locations:

DRAFT

Attachment 2 - Milestones

Subrecipient shall be paid the corresponding installment upon invoicing BEAM when each of the milestones, detailed in the table below, is completed. Certifications of completion will be in substantially the applicable form set forth in **the portal** and will detail:

1. Milestone description;
2. Date milestone was completed;
3. Verification of the completion of the milestone;
4. The agreed on installment of the Subaward for the completion of the milestone.

Invoices will be in substantially the form set forth in **the portal**.

BEAM will, within a timely period, take steps to verify completion of each milestone before payment.

Payment will be made within 45 days of verification of completion of each milestone.

Invoices can only be submitted for milestones that are completed within the Period of Performance.

Prior written authorization of BEAM is required for exceptions to these terms.

MILESTONE TABLE: As set forth in the portal with respect to the Project.

Attachment 3 – Certifications, Assurances, Representations, Other Statements of Subrecipient

Part I – Certifications and Assurances

1. Certification Regarding Compliance with FCC Form 477, Rules, Regulations

The Subrecipient certifies that it is an “eligible broadband service provider” (as defined in the BEAM Act), and it has timely filed Federal Communication Commission Form 477s and the Broadband DATA Act submission, if applicable, and otherwise has complied with the FCC’s rules and regulations.

2. Certification Regarding Management of Cybersecurity and Supply Chain Risk

The Subrecipient attests as follows:

A. Cybersecurity

1. Subrecipient has a cybersecurity risk management plan (the plan) in place that is either: a. operational; or b. ready to be operationalized upon providing service;
2. The plan reflects the latest version of the National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
3. The plan will be submitted to BEAM prior to the allocation of funds;
4. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
5. Any substantive changes to the plan will be submitted to BEAM within 30 days of such change.

B. Supply Chain Risk Management (SCRM)

1. Subrecipient has a SCRM plan in place that is either: a. operational; or b. ready to be operationalized;
2. The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, *Key Practices in Cyber Supply Chain Risk Management: Observations from Industry* and related SCRM guidance from NIST, including NIST 800-161, *Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations* and specifies the supply chain risk management controls being implemented;
3. The plan will be submitted to BEAM prior to the allocation of funds;
4. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
5. Any substantive changes to the plan will be submitted to BEAM within 30 days of such change.

The Subrecipient agrees that, to the extent it relies in whole or in part on network facilities owned or operated by a third party (e.g., purchases wholesale carriage on such facilities), it will obtain the above attestations from its network provider with respect to both cybersecurity and supply chain risk management practices.

Both Subrecipient’s cybersecurity risk management plan and supply chain risk management plan must incorporate strategies for mitigating risks associated with natural disasters, such as wildfires, flooding, tornadoes, hurricanes, etc., as applicable. The plans should reflect current best practices, including those described in the August 2025 Guidance, and demonstrate preparedness for physical and digital disruptions. Subrecipient must ensure that all hardware and software components are secure and sourced from reputable suppliers.

- 3. Certification regarding Labor Laws.** The Subrecipient hereby certifies that it has a demonstrated record of, and will continue compliance with, all applicable Federal labor and employment laws.
- 4. Byrd Anti-Lobbying Certification (required by 31 C.F.R. 1352)**

The undersigned certifies, to the best of his or her knowledge and belief, and agrees that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

(3) The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including contracts, subawards, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

(4) The undersigned will file a disclosure form at the end of each 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 by the undersigned pursuant to subparagraph (2) above.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, United States Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. Certification Regarding Terrorist Financing, Implementing Executive Order 13224

By signing and submitting this application, the prospective recipient provides the certification set out below:

(1) The Subrecipient, to the best of its current knowledge, did not provide, within the previous ten years, and will take all reasonable steps to ensure that it does not and will not knowingly provide, material support or resources to any individual or entity that commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated, or participated in terrorist acts, as that term is defined in paragraph (3) below. The Certification in the preceding sentence will not be deemed applicable to material support or resources provided by the Subrecipient pursuant to an authorization contained in one or more applicable licenses issued by the U.S. Treasury's Office of Foreign Assets Control (OFAC).

(2) The following steps may enable the Subrecipient to comply with its obligations under paragraph (1):

- a. Before providing any material support or resources to an individual or entity, the Subrecipient will verify that the individual or entity does not (i) appear on the master list of [Specially](#)

Designated Nationals and Blocked Persons, which is maintained by OFAC, or (ii) is not included in any supplementary information concerning prohibited individuals or entities that may be provided to the Subrecipient.

- b. Before providing any material support or resources to an individual or entity, the Subrecipient also will verify that the individual or entity has not been designated by the United Nations Security (UNSC) sanctions committee established under UNSC Resolution 1267 (1999) (the “1267 Committee”) [individuals and entities linked to the Taliban, Usama bin Laden, or the Al-Qaida Organization]. To determine whether there has been a published designation of an individual or entity by the 1267 Committee, the Subrecipient should refer to the consolidated list available online at the Committee’s Web site: https://main.un.org/securitycouncil/en/sanctions/1267/aq_sanctions_list.
 - c. Before providing any material support or resources to an individual or entity, the Subrecipient will consider all information about that individual or entity of which it is aware and all public information that is reasonably available to it or of which it should be aware.
 - d. The Subrecipient also will implement reasonable monitoring and oversight procedures to safeguard against assistance being diverted to support terrorist activity.
- (3) For purposes of this Certification -
- a. “Material support and resources” means currency or monetary instruments or financial securities, financial services, lodging, training, expert advice, or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.”
 - (i) “Training” means instruction or teaching designed to impart a specific skill, as opposed to general knowledge.
 - (ii) “Expert advice or assistance” means advice or assistance derived from scientific, technical, or other specialized knowledge.
 - b. “Terrorist act” means -
 - (i) an act prohibited pursuant to one of the 12 United Nations Conventions and Protocols related to terrorism; or
 - (ii) an act of premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents; or
 - (iii) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.
 - c. “Entity” means a partnership, association, corporation, or other organization, group, or subgroup.

- d. References in this Certification to the provision of material support and resources must not be deemed to include the furnishing of Commerce funds or Commerce-financed commodities to the ultimate beneficiaries of Commerce assistance, such as recipients of food, medical care, micro-enterprise loans, shelter, etc., unless the Subrecipient has reason to believe that one or more of these beneficiaries commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.
- e. The Subrecipient's obligations under paragraph (2) above are not applicable to the procurement of goods and/or services by the Subrecipient that are acquired in the ordinary course of business through contract or purchase, e.g., utilities, rents, office supplies, gasoline, etc., unless the Subrecipient has reason to believe that a vendor or supplier of such goods and services commits, attempts to commit, advocates, facilitates, or participates in terrorist acts, or has committed, attempted to commit, facilitated or participated in terrorist acts.

This Certification is an express term and condition of this transaction, and any violation of it will be grounds for unilateral termination of the Agreement by NTIA prior to the end of its term.

Part II – Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction

- (a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, none of the funds made available by that Act may be used to enter into an assistance award with any organization that –
 - (1) “Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency has direct knowledge of the conviction, unless the agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”; or
 - (2) “Has any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency has direct knowledge of the unpaid tax liability, unless the Federal agency has considered, in accordance with its procedures, that this further action is not necessary to protect the interests of the Government”.

(b) **Applicant Representation:**

1. The Applicant represents that it is [] is not [] an organization that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.
2. The Applicant represents that it is [] is not [] an organization that has any unpaid Federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

By signing below the Subrecipient provides certifications, assurances and representations for (1) Certification Regarding Compliance with FCC Form 477, Rules, Regulations, (2) Certification Regarding Management of Cybersecurity and Supply Chain Risk, (3) Certification regarding Labor Laws, (4) the Certification Regarding Lobbying, (5) the Certification Regarding Terrorist Financing Implementing Executive Order 13224, and (6) the Representation by Organization Regarding a Delinquent Tax Liability or a Felony Criminal Conviction.

These certifications and assurances are given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Subrecipient by NTIA through BEAM, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Subrecipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in these assurances, and that the United States will have the right to seek judicial enforcement of these assurances. These assurances are binding on the Subrecipient, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign these assurances on behalf of the recipient.

Name of Subrecipient _____

Typed Name and Title _____

Signature _____

Date _____

Attachment 4 – Low-Cost Service Option

DRAFT