

GRANT AGREEMENT  
for  
BROADBAND EQUITY, ACCESS, AND DEPLOYMENT  
(BEAD)  
between  
THE STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC  
OPPORTUNITY  
and  
{Subgrantee\_Name}

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## PART I

### A. SUBGRANTEE INFORMATION

Subgrantee Name: Click or tap here to enter text.

Agreement Number: Click or tap here to enter text.

### B. SUBGRANTEE ADDRESS

Name: Click or tap here to enter text.

Title: Click or tap here to enter text.

Address: Click or tap here to enter text.

Phone: Click or tap here to enter text.

Subgrantee Representative: Click or tap here to enter text.

Address: Click or tap here to enter text.

Contact Information (Phone/E-Mail): Click or tap here to enter text.

### C. GRANT ADMINISTRATOR/ADDRESS

Contact Name: Click or tap here to enter text.

Organizational Unit: Click or tap here to enter text.

Address: Click or tap here to enter text.

Telephone Number: Click or tap here to enter text.

Grant Administrator Representative: Click or tap here to enter text.

Address: Click or tap here to enter text.

Contact Information (Phone/E-Mail) Click or tap here to enter text.

### D. GRANT PERIOD

*This Agreement will commence on Click or tap here to enter text. and continue through Click or tap here to enter text. No activity will be performed and no costs to the State will be incurred prior to the effective date of the Agreement. Throughout the Agreement, the effective date Click or tap here to enter text., shall be referred to as the start date. This Agreement is in full force and effect for the period specified.*

### E. RECIPIENT RELATIONSHIP IN GRANT AGREEMENT

*For the purposes of this Agreement, the Michigan High-Speed Internet Office (MIHI), created by the State of Michigan's Department of Labor and Economic Opportunity (LEO), is designated as a recipient of Federal funds from the US Department of Commerce, National Telecommunications and Information Administration (NTIA). Through its administration of such Federal dollars through Subgrantee organizations, LEO also is recognized as a pass-through entity by the US Federal government. By executing this Agreement and administering Federal funds on behalf of*

*LEO, Click or tap here to enter text. is considered a Subrecipient of Federal funds, also known as a Subgrantee.*

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**F. TOTAL AUTHORIZED BUDGET:**

**Total Authorized Budget:**     *\$Click or tap here to enter text.*

**Federal Contribution:**       *\$Click or tap here to enter text.*

**State Contribution:**         *\$Click or tap here to enter text.*

**Local Contribution:**         *\$Click or tap here to enter text.*

**Other Contribution:**         *\$Click or tap here to enter text.*

**SIGMA Vendor ID:**                     {vendor\_no}

**Assistance Listing #(ALN):**       11.035

**Agreement Authority**

*Authority to enter into this grant Agreement exists in the Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, et seq., and the Department of Commerce, National Telecommunications and Information Administration (NTIA) regulations implementing Section 60102 and all related policies and guidance. This grant Agreement is issued as a Fixed Amount Subaward per 2 CFR § 200.333 and meets the requirements of 2 C.F.R. § 200.201. All references to 2 CFR 200 are referencing the language for the 2 CFR 200 version in effect through September 30, 2024.*

**Agreement Purpose**

*The purpose of this Agreement is to facilitate timely completion by Subgrantee of the broadband infrastructure Project, as described in Exhibit A – Statement of Work, while complying with all requirements found in the laws, regulations, and official guidance implementing the broadband awards made from the Broadband Equity, Access, and Deployment (BEAD) program. This grant Agreement is subject to additional State laws, rules, and requirements set forth in this Agreement.*

## **G. STATE OF MICHIGAN EXHIBITS AND ORDER OF PRECEDENCE**

*The following Exhibits and attachments are included with this Agreement:*

*Exhibit A, Statement of Work.*

*Exhibit B, Budget*

*Exhibit C, Grant Federal Provisions*

*Exhibit D, Byrd Anti-Lobbying Certification*

*Exhibit E, BEAD Special Conditions*

*Exhibit F, Assurances of Compliance with 2 C.F.R 200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*

*Exhibit G, Reporting Waste, Fraud, and Abuse to the State of Michigan Office of Inspector General*

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

*Exhibit C, Grant Federal Provisions*

*Exhibit E, BEAD Special Conditions*

*Exhibit D, Byrd Anti-Lobbying Certification*

*Exhibit F, Assurances of Compliance with 2 C.F.R 200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment*

*Michigan Special Provision in Section \_\_ of the main body of this Agreement*

*The provisions of the other sections of the main body of this Agreement*

*Exhibit G, Reporting Waste, Fraud, and Abuse to the State of Michigan Office of Inspector General*

*Exhibit A, Statement of Work*

*Exhibit B, Budget*

With respect to the order of precedence stated herein, such order shall not supersede, but rather compliment and be harmonized with, the order of precedence provided for in Section 58, Entire Agreement, of this Agreement.

## H. PRINCIPAL REPRESENTATIVE

### FOR THE STATE

Name: Click or tap here to enter text.

Michigan High-Speed Internet Office (MIHI),  
Department of Labor and Economic Opportunity (LEO)

Address: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

### FOR SUBGRANTEE

Name: Click or tap here to enter text.

Organization: Click or tap here to enter text.

Address: Click or tap here to enter text.

E-mail: Click or tap here to enter text.

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

<b>Federal Awarding Agency:</b>	U.S. Department of Commerce, National Telecommunications and Information Administration (NTIA)
<b>Grant Program:</b>	Broadband Equity, Access, and Deployment Program
<b>Assistance Listing Number:</b>	11.035
<b>Federal Award Number:</b>	26-20-B109, Amendment Number 1
<b>Federal Award Date:</b>	October 9, 2024
<b>Federal Award End Date</b>	* June 30, 2032
<b>Federal Statutory Authority:</b>	Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60102, Public Law 117-58, 135 Stat. 429 (November 15, 2021) (Infrastructure Act) also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, <i>et seq.</i>
<b>Total Amount of Federal Award:</b>	\$1,559,362,479.29

(this is not the amount of this grant Agreement)

*\* Funds may not be available through the Federal Award End Date subject to the provisions in §C and §F below of this Agreement.*



**I. SIGNATURE PAGE**

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and agrees that the signer is duly authorized and empowered to execute this Agreement and to bind the Party authorizing such signature.

**SUBGRANTEE**

Insert Legal Name of Subgrantee  
Insert Legal Name of Subgrantee Representative

By:

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

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

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

**STATE OF MICHIGAN**

Department of Labor and Economic Opportunity

By:

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

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

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

**Agreement Effective Date:** \_\_\_\_\_

This Agreement is not valid until signed and dated above by both Parties.

## PART II

### J. GENERAL INFORMATION

*This is Grant # {ctr\_t\_no} between the Michigan Department of Labor and Economic Opportunity (LEO), and {Subgrantee\_name} (Subgrantee), subject to terms and conditions of this grant agreement and any attachments expressly incorporated herein, which together shall be referred to as the “Agreement.”*

General Information	
<b>Subgrantee Name:</b> <i>*Name must match the name associated with its unique entity identifier</i>	{Subgrantee_name}
<b>EGrAMS Application Number:</b>	{ctr_t_no}
<b>Subgrantee’s Unique Entity Identifier (UEI):</b>	{uei_no}
<b>Federal Award Identification Number (FAIN):</b>	{fain_no}
<b>Subgrantee’s SIGMA Vendor ID:</b>	{vendor_no}
<b>Federal Award Date (of award to pass-through entity by the Federal Agency):</b>	{fed_awd_dt}
<b>Period of Performance Start Date:</b>	{start_dt}
<b>Period of Performance End Date:</b>	{end_dt}
<b>Amount of Federal Funds Obligated By this action by the pass-through entity to Subgrantee:</b>	\${ctr_t_amt}
<b>Total Amount of Federal Funds Obligated to the Subgrantee by the pass-through entity including the current obligation:</b>	\${ctr_t_amt}

General Information	
<b>Total Amount of the Federal Award committed to the Subgrantee by the pass-through entity:</b>	#{ctrl_amt}
<b>Federal Award Project Description**:</b> <b>**Required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)</b>	<b>Conduct “last-mile broadband deployment projects” as that term is used in Section IV.B.7.a.ii of the BEAD NOFO, for the purpose of bringing access to high-speed internet service to unserved locations, underserved locations, and eligible Community Anchor Institutions.</b>
<b>Name of Federal Awarding Agency:</b>	National Telecommunications and Information Administration (NTIA), US Department of Commerce (DOC)
<b>Name of Pass-through Entity:</b>	Michigan High-Speed Internet Office (MIHI), Department of Labor and Economic Opportunity (LEO)
<b>Contact Information for Awarding Official of Pass-through Entity:</b>	{ctrl_adm_name}, {ctrl_adm_dsg} {ctrl_adm_ph} {ctrl_adm_email}
<b>Assistance Listing Number (ALN):</b> <b>(formerly CFDA #)</b>	11.035
<b>Indirect Cost Rate of Federal Award:</b> <b>(Including if the de minimis rate is charged per 2 CFR §200.414 Indirect (F&amp;A) costs)</b>	{idc_rate}
<b>Matching Cost Contribution</b>	#{matching contribution}

## **K. PARTIES**

This Agreement (“Agreement”) is entered into by and between Subgrantee named in Part II §J of this Agreement (“Subgrantee”), and the STATE OF MICHIGAN, acting by and through the state agency named in Part II §J of this Agreement (“LEO”). Subgrantee and LEO agree to the terms and conditions in this Agreement.

## **L. TERM AND EFFECTIVE DATE**

### **1. Effective Date**

This Agreement shall not be valid or enforceable until the Effective Date shown on the Signature Page in Part I, and the project work must be completed by the project end date reflected in Part II §J of this Agreement. LEO shall not be bound by any provision of this Agreement before the Effective Date and shall have no obligation to pay Subgrantee for any Work performed or expense incurred before the Effective Date, except as described in Part II §O.4, or after the project end date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project schedule in Exhibit A, Statement of Work.

### **2. Initial Term**

The Parties’ respective performances under this Agreement shall commence on the Period of Agreement Start Date provided in §D Grant Period in Part I of this Agreement and shall terminate on the Initial Agreement Expiration Date in §D Grant Period in Part I of this Agreement (the “Initial Term”) unless sooner terminated or further extended in accordance with the terms of this Agreement.

The Term of this Agreement shall commence on the Effective Date and shall continue until LEO remits a formal project closeout notification, evidencing completion of all Work in accordance with Exhibit A of this Agreement, unless sooner terminated in accordance with the terms of this Agreement. Such formal project closeout notification shall be provided to Subgrantee in a writing identified as such and shall be signed by an authorized representative of LEO or their designee.

### **3. Extension Terms**

#### **3.1.State’s Option**

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for successive periods of one year or less at the same rates and under the same terms specified in this Agreement (each such period an

“Extension Term”). In order to exercise this option, LEO shall provide written notice to Subgrantee in a correspondence that shall identify itself as such and that shall be signed by an authorized representative of LEO or their designee. The Term of this Agreement, including any Extension Term(s), may not extend beyond the Federal Award End Date.

### 3.2.Subgrantee Request

If Subgrantee anticipates that the Project cannot be completed by the then-current Initial Term, or Extension Term, Subgrantee must request, in writing, a grant extension, at least sixty (60) days before the then-current Initial Term or Extension Term expires. The request must contain a narrative explaining the need for the extension. Per 2 CFR § 200.308(g)(2), a one-time extension may not be exercised for the sole purpose of using unobligated balances. Approval of the request is contingent upon federal/state limitations and at the discretion of LEO and shall not extend beyond the Federal Award End Date.

### 4. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, LEO, at its discretion, upon written notice to Subgrantee pursuant to Part II, §L.3.1 and as provided in Part II, §AA, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an “End of Term Extension”), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement agreement or modification extending the total term of this Agreement. The Term of this Agreement, including any End of Term Extension(s), may not extend beyond the close of the period of performance for the Federal Award, and may be subject to approval by the Federal Awarding Agency making the Award.

### 5. Subgrantee Termination

Subgrantee may request termination of this Agreement by sending notice to LEO that includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subgrantee shall return the Project Mobilization Milestone disbursement payment. Approval of termination shall be at the sole discretion of LEO, which may condition approval upon return of some, or all, of any previous payments from LEO. If the effective date of the termination occurs in between Milestones, and LEO determines that the termination does not necessitate full return of all grant funds up to the subsequent milestone, then the Subgrantee may receive funding for the number of BSLs connected before the

effective date, subject to LEO review and approval. Part II, §U of this Agreement details the relevant procedures associated with the State's termination of this Agreement.

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## **M. DEFINITIONS**

The following terms shall be construed and interpreted as follows:

1. **“Administrative Guide to State Government”** means the set of policies and procedures used by the State of Michigan which presents the major processes through which the State of Michigan operates, with the Administrative Guide to State Government including interagency or statewide requirements and authorizations.
2. **“Agent”** means a person that has been entrusted with important powers or responsibilities that are to be carried out on behalf of one of the parties..
3. **“Agreement”** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
4. **“Agreement Funds”** means the total of all of the funds contemplated by this Agreement including **Grant Funds** and **Matching Funds**.
5. **“Allowable Costs”** means costs determined in accordance with the cost principles identified in 2 C.F.R. Part 200, including Subpart E of such regulations for States and non-profit organizations, and in 48 C.F.R. Part 31 for commercial organizations, as well as in the grant program’s authorizing legislation. In addition, costs must be reasonable, necessary, allocable, and allowable for the proposed project or other eligible activity and conform to generally accepted accounting principles.
6. **“Amendment”** means an instrument in writing that alters, amends, waives or discharges this agreement or any provision thereof. An amendment to this Agreement is effective only upon the signature of the parties and after approval by the State.
7. **“Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
8. **“Award Amount”** means the maximum amount of Grant Funds which may be paid to the Subgrantee under this Agreement.
9. **“BEAD”** means the Broadband Equity, Access, and Deployment (BEAD) Program (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) (Infrastructure Act), also known as the Bipartisan Infrastructure Law, 47 U.S.C. § 1701, *et seq.*, and the Department of Commerce, National Telecommunications and Information Administration (NTIA) regulations implementing Section 60102 and all related policies and guidance, including the NTIA’s BEAD Restructuring Policy Notice
10. **“Breach of Agreement”** means the failure of a Party to perform any of its obligations in

accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subgrantee, or the appointment of a receiver or similar officer for Subgrantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a Breach of Agreement.

11. **“Broadband Equipment”** means the materials, components, and supplies used to construct, maintain, or operate a broadband network.
12. **“Broadband Serviceable Location”** (BSL) is a residential or business location in the United States where fixed broadband internet access can be installed as defined by the Federal Communications Commission (FCC).
13. **“Budget”** means the budget detailed in Exhibit B for the Work described in Exhibit A.
14. **“Business Day”** means any day in which LEO is open and conducting business, but shall not include Saturday, Sunday or any day on which LEO observes one of the holidays recognized by the State of Michigan. Any other reference to “day” means calendar day.
15. **“Cable Franchise Agreement”** means the grant of authority issued by a network owner to the Subgrantee, or an affiliate of Subgrantee, to own and operate its network in the public rights of way date.
16. **“Capital Asset”** means tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with GAAP. These can include land, buildings (facilities), equipment, and intellectual property.
17. **“Closeout”** means the process by which MIHI determines that all applicable administrative actions and all required work of the Federal award have been completed and takes actions as described in § 200.344 of Uniform Guidance to close the award.
18. **“Community Anchor Institution”** means 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, but not limited to, low-income individuals, unemployed individuals, children, the incarcerated, and aged individuals, per Section 60102(a)(2)(E) of the Infrastructure Act.
19. **“Compliance”** means the fulfillment of all statutes, laws, regulations and orders of federal, state, county, or municipal authorities which impose any obligations or duty upon the Subgrantee, including the acquisition of any and all necessary permits
20. **“Confidential Information”** means any and all information and documentation of a party that: (a) has been marked “confidential” or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked “confidential” or with words of similar meaning, was



subsequently summarized in writing by the disclosing party and marked “confidential” or with words of similar meaning; and, (c) should reasonably be recognized as confidential information of the disclosing party. The term “Confidential Information” does not include any information or documentation that was: (a) subject to disclosure under the Michigan Freedom of Information Act (MI FOIA), MCL 15.231 et seq.; (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party’s proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Grant Agreement, in all cases and for all matters, State Data is deemed to be Confidential Information.

21. “**Conflict of Interest**” means an officer, member or employee of the Subgrantee, or representative, officer, or employee of the State or of the governing body of the locality or localities in which the Project is to be performed who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of such Project, participates in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership, or association in which he or she is directly or indirectly interested, or has any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.
22. “**Contractor**” has the meaning given by 2 C.F.R. 200.1.
23. “**Data**” mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, recordings, analyses, graphic representations, notes, letters, memoranda, and documents, all whether finished or unfinished.
24. “**Default**” or “**Events of Default**” means any one or more of the following acts or omissions of the Subgrantee: Failure to perform the Project based on milestone progress or on schedule; failure to submit any report required hereunder; failure to maintain, or permit access to, the records required hereunder; or failure to perform any of the other covenants and conditions of this Agreement. Extensions granted by the LEO will not contribute to a project being deemed in default.
25. “**Effective Date**” means the date on which this Agreement is approved and signed by an authorized representative of LEO or their designee e as shown on the Signature Page for this Agreement.
26. “**End of Term Extension**” means the time period defined in Part II, §L.4.
27. “**Entity**” means a Non-Federal Entity or a non-profit organization or for-profit organization.
28. “**Equipment**” means tangible personal property (including information technology systems,

broadband equipment, cable, fiber, materials, components, and supplies used to construct, maintain, or operate a broadband network) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes or \$5,000.

- 29. **“Exhibits”** means the attachments included with this Agreement.
- 30. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 31. **“Extension Term”** means the time period defined in Part II, §L.3.
- 32. **“Facilities”** means a place or building used to construct, maintain, or operate a broadband network.
- 33. **“Federal Award”** means an award of Federal financial assistance or a cost-reimbursement agreement, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subgrantee, an Entity, as defined in Exhibit C, or an individual that is a beneficiary of a Federal program.
- 34. **“Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient as described in 2 C.F.R. § 200.1. The U.S. Department of Commerce is the Federal Awarding Agency for the Federal Award that is the subject of this Agreement.
- 35. **“Federal Interest Period”** means the Federal Interest Period defined in Part III, Exhibit E, term 31.
- 36. **“Fixed Amount Subaward”** means a type of grant under which the Federal Awarding Agency or pass-through entity provides a specific level of support. Accountability is based primarily on performance and results. (For additional information on Fixed Amount Subawards, see 2 C.F.R. § 200.333 and the U.S. Department of Commerce’s “BEAD Policy Notice of Part 200 Exceptions” available at: [https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD\\_Policy\\_Notice\\_of\\_Part\\_200\\_Exceptions\\_Related\\_Issues.pdf](https://broadbandusa.ntia.doc.gov/sites/default/files/2023-12/BEAD_Policy_Notice_of_Part_200_Exceptions_Related_Issues.pdf).)
- 37. **“Funded Network”** means any broadband internet service belonging to or operated by the Subgrantee which is funded in any way and to any extent with BEAD funds.
- 38. **“Goods”** means any movable material acquired, produced, or delivered by Subgrantee as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subgrantee in connection with the Services.
- 39. **“Grant”** means the Grant to which these Grant Federal Provisions are attached.
- 40. **“Grant Application”** means the completed application form promulgated by the MIHI and all attachments, documentation and communications provided in support of the application by Subgrantee.
- 41. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or

otherwise made available for payment by LEO under this Agreement.

42. "**Groundbreaking Activities**" refer to activities that involve the physical construction or placement of broadband infrastructure. Examples of groundbreaking activities include, but are not limited to, excavation and trenching, site preparation, installation of conduits, purchase or setting up equipment. Groundbreaking activities do not include preparatory actions to carry out project work, such as engineering or securing permitting.
43. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State. Incidents include, without limitation, (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.
44. "**Infrastructure**" means the Facilities or Equipment used in the deployment of broadband service.
45. "**Initial Term**" means the time period defined in Part II, §L.2.
46. "**Lien Waiver**" means a legally binding document confirming receipt of payment for Work and waives a Subcontractor's or supplier's right to file a mechanic's lien on the property. For the purpose of this Agreement, Lien Waiver includes conditional and unconditional waivers.
47. "**Matching Funds**" means the funds provided by Subgrantee as a match required to receive the Grant Funds, per BEAD NOFO Section III.B Cost Sharing or Matching. Appropriate cost sharing actions are further detailed in 2 CFR § 200.306 Cost sharing.
48. "**MI FOIA**" means the Michigan Freedom of Information Act, MCL 15.231, et seq.
49. "**MIHI**" means the Michigan High-Speed Internet Office.
50. "**Milestone**" means a milestone as indicated in Exhibit A, Appendix 3.
51. "**Network**" means the communication network extension that Subgrantee builds to eligible broadband serviceable locations (BSLs) and Community Anchor Institutions (CAIs).
52. "**Non-Federal Entity**" means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient. Notwithstanding the definition of "non-Federal entity" in 2 C.F.R. § 200.1, for the purposes of this Agreement, the definition of Non-Federal Entity includes for-profit entities.

53. **“Nonprofit Organization”** means any organization that: Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; Is not organized primarily for profit; and Uses net proceeds to maintain, improve, or expand the organization’s operations; and Is not an Institute of Higher Education (IHE).
54. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
55. **“Party”** means LEO or Subgrantee, and **“Parties”** means both LEO and Subgrantee.
56. **“Pass-through Entity”** means a recipient or subrecipient that provides a Subaward to a Subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity flows through the subaward agreement between the pass-through entity and subrecipient.
57. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or other credit card information as may be protected by state or federal law.
58. **“PII”** means personally identifiable information including, without limitation, any information collected, used, processed, stored, generated, or maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, address, telephone number, e-mail address, credit card information, social security number, date of birth, place of birth, mother’s maiden name, biometric data and/or records, or an individual’s name in combination with any other of the elements here listed; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
59. **“Project”** means the broadband infrastructure project to be completed by Subgrantee pursuant to this Agreement, as further described in the “Project Description” and “Work Description” subsections in Part III, Exhibit A.
60. **“Project Closeout”** means the final confirmation from LEO that the Project meets all Project Completion Standards, Part III, Exhibit A Section 3.2, and that Subgrantee otherwise met the Project Closeout conditions detailed in Part III, Exhibit A Section 4.12.
61. **“Project Phase”** means a project phase as indicated in Part III, Exhibit A, Appendix 3.
62. **“Real Property”** means land, including land improvements, structures, and appurtenances thereto, but excludes moveable machinery and equipment.
63. **“Recipient”** means the State agency shown in Part II §J of this Agreement, for the purposes of this Federal Award.
64. **“Service Area”** means the area designated by Subgrantee in which Subgrantee will construct a broadband network to provide reliable broadband to residents and businesses. For purposes of this Agreement, the Service Area is depicted in the map in Appendix 1 of this Exhibit A.
65. **“Serviceable”** means a location in the Service Area which has access to the Broadband Service, subject to the installation conditions of the Cable Franchise Agreement, upon Project Closeout.

66. **“Services”** means the services to be performed by Subgrantee as set forth in this Agreement and shall include any services to be rendered by Subgrantee in connection with the Goods.
67. **“State of Michigan Financial Management Guide”** means the State of Michigan’s consolidation of financial management policies and procedures. A copy of the State of Michigan Financial Management Guide can be obtained upon request to LEO.
68. **The “State Fiscal Year”** means a 12-month period beginning on October 1 of each calendar year and ending on September 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
69. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under MI FOIA.
70. **“Subaward”** means an award provided by a pass-through entity to a Subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. The term does not include payments to a contractor, or to a beneficiary of, or a participant in, a Federal program.
71. **“Subcontractor”** means third parties, if any, engaged by Subgrantee for the purpose of obtaining goods and services for the Subgrantee’s own use with respect to the project, resulting in a procurement relationship as defined in 2 CFR 200.331.
72. **“Subgrantee”** is synonymous with Subrecipient, meaning an Entity that receives a subaward from a Recipient (e.g., the State of Michigan Department of Labor and Economic Opportunity) to carry out part of a Federal program on the Recipient’s behalf.
73. **“Subgrantee Records”** means any and all Subgrantee data, information, and records, regardless of physical form. This definition is restricted to records relevant to the Subgrantee’s BEAD-funded project.
74. **“Subrecipient”** means an Entity, as defined in Exhibit C, that receives a subaward from a Recipient (e.g., the State of Michigan Department of Labor and Economic Opportunity) to carry out part of a Federal program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. A Subrecipient is subject to the terms and conditions of the Federal Award to the Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a Federal program. For the purposes of this Agreement, Subgrantee is a Subrecipient. Further details regarding subrecipient and contractor determinations are provided in 2 CFR § 200.331.
75. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <https://www.sam.gov>.

76. **“Tax Information”** means federal and State of Michigan tax information including, without limitation, federal and State tax returns, return information, and such other tax-related information as may be protected by federal and State law and regulation. Tax Information includes, but is not limited to all information defined as federal tax information in Internal Revenue Service Publication 1075.
77. **“Term”** means the Initial Term, any Extension Term(s), and any End of Term Extension(s), collectively. The Term of this Agreement shall not extend beyond the Federal Award End Date..
78. **“Total Compensation”** means the cash and noncash dollar value an executive earns during the entity’s preceding fiscal year. This includes all items of compensation as prescribed in 17 C.F.R. § 229.402(c)(2).
79. **“Total Project Funds”** means the total of all of the funds contemplated by this Agreement including Grant Funds and Matching Funds.
80. **“Transparency Act”** or **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
81. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, also known as 2 CFR 200. For the purpose of this award, the version of Uniform Guidance published in September 2024 contains the applicable standards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
82. **“Unique Entity ID”** (UEI) is the universal identifier for Federal financial assistance applicants, as well as recipients and their direct subrecipients (first tier subrecipients).
83. **“Work”** means the Goods delivered and Services performed pursuant to this Agreement.
84. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

## **N. STATEMENT OF WORK**

Subgrantee shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. LEO shall have no liability to compensate Subgrantee for the Work not specifically set forth in this Agreement.

## **O. PAYMENTS TO SUBGRANTEE**

### **1. Grant Funds Amount**

Payments to Subgrantee are limited to the unpaid, obligated balance of the Grant Funds. LEO shall have no obligation to pay Subgrantee any amount under this Agreement that exceeds the Grant Funds Amount for each State Fiscal Year shown in Part II, §J of this Agreement.

### **2. Payment Procedures**

#### **2.1. Invoices and Payment**

LEO shall pay Subgrantee in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.

Subgrantee shall initiate payment requests to LEO, in a form and manner approved by LEO. Subgrantee agrees that it will not attempt to invoice LEO for any Work, materials, or supplies which are not Allowable Costs, as detailed in Exhibit A.

LEO shall pay each invoice within sixty (60) days following LEO's receipt of that invoice, so long as the amount invoiced contains all the required reporting details specified by LEO and any inquiries to confirm work completion is/are satisfactory satisfied. If LEO determines that the amount of any invoice is not correct, then Subgrantee shall make all changes necessary to correct that invoice.

Pursuant to MCL 17.54, amounts not paid by LEO within sixty (60) days of LEO's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 61<sup>st</sup> day equal to 0.75% of the payment to the subgrantee to which payment is due, with LEO paying such additional amount equal to 0.75% of the payment due for the first month and each succeeding month or portion of a month the payment remains past due. Provided, however, that: interest shall not accrue on unpaid amounts that LEO disputes in writing or for which LEO is exercising its right to deny or withhold payment, as further detailed in Section U and interest shall not accrue if a payment is delayed because of a good faith disagreement between LEO and Subgrantee, unless the dispute is resolved in favor of Subgrantee. Subgrantee shall invoice LEO separately for accrued interest on delinquent amounts, and

the invoice shall reference the delinquent payments, the number of day's interest to be paid and the interest rate.

The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under this Agreement. Subgrantee agrees that, while payment by LEO will occur as Work is properly invoiced pursuant and subject to the other terms of this Agreement, ultimate acceptance by LEO of all Work will need to be verified pursuant to the Project Closeout process detailed in Exhibit A.

## 2.2.Payment Disputes

If Subgrantee disputes any calculation, determination or amount of any payment, Subgrantee shall notify LEO in writing of its dispute within thirty (30) days following the earlier to occur of Subgrantee's receipt of the payment or notification of the determination or calculation of the payment by LEO. LEO will review the information presented by Subgrantee and may make changes to its determination based on this review. The calculation, determination or payment amount that results from LEO's review shall not be subject to additional dispute under this subsection, except that Subgrantee shall have the right to seek legal or equitable relief in a court of competent jurisdiction with respect to LEO's calculation, determination or amount of any payment determination. No payment subject to a dispute under this subsection shall be due until after LEO has concluded its review, and LEO shall not pay any interest in any amount during the period the payment is subject to dispute under this subsection.

## 2.3.Available Funds-Contingency-Termination

LEO is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subgrantee beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Michigan Special Provisions section of this Agreement). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, LEO's obligation to pay Subgrantee is contingent upon the federal funds or non-State funds continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and LEO's liability for such payments shall be limited to the amount remaining of such Grant Funds. If federal funds are not appropriated, or otherwise become unavailable to fund this Agreement, for any reason, LEO may, upon written notice, terminate this Agreement, in whole or in part, without



incurring further liability. LEO shall, however, remain obligated to pay for Work that is delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in Part II, §L.5.

#### 2.4.Federal Recovery

The closeout of a Federal Award does not affect the right of the Federal Awarding Agency or LEO to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined in Section P.6 (Maintenance).

### 3. Matching Funds

If applicable, Subgrantee shall provide Matching Funds as shown in Part II §J of this Agreement, and in Exhibit A and Exhibit B. A match percentage will be determined between Subgrantee and LEO, which will apply uniformly to each payment. Subgrantee's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to matching those funds which are duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subgrantee. Subgrantee represents to LEO that the amount designated as Matching Funds is not subject to conditions restrictions, or encumbrances which could prevent Subgrantee's use of the Matching Funds. Subgrantee does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subgrantee.

### 4. Milestone Payments to Subgrantees

LEO shall release payment, as further detailed in Exhibit A and Exhibit B, via a milestone-based payment schedule, not exceeding the Grant Funds Amount in Part II, §J, except that Subgrantee may change the amounts between each line item of the Budget without formal modification to this Agreement, as long as Subgrantee obtains prior written approval from LEO. The change shall not modify the Agreement Funds Amount, the maximum amount for any State Fiscal Year, or any requirements of the Work. Subgrantee's costs for Work performed after the Term of this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be considered an Allowable Cost. The Subgrantee shall submit regular financial status reports that document expenditures incurred for the project. Costs may only be submitted if those costs are incurred in performance of the Work, and:

- a. Permitted under the terms of Exhibit A;

- b. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
- c. Equal to the actual net cost to Subgrantee (i.e., the price paid minus any items of value received by Subgrantee that reduce the cost actually incurred).

5. Close-Out

Closeout will be conducted on the timelines and in the manner set forth in 2 CFR 200.344. Subgrantee shall close out this Award no later than forty-five (45) days after the end of the Term of this Agreement. To complete closeout, Subgrantee shall submit to LEO all deliverables (including documentation) necessary to document the completion of work as defined in this Exhibit A of this Agreement, and Subgrantee's final funding disbursement request or invoice. LEO will withhold the final milestone payment until all final documentation has been submitted and accepted by LEO. If the Federal Awarding Agency has not closed this Federal Award within one year and ninety (90) days after the Federal Award End Date due to Subgrantee's failure to submit required documentation or Subgrantee's failure to complete the Work, then Subgrantee may be prohibited from applying for new grants through LEO until such documentation is submitted and accepted.

6. Option Letters/Notice to Proceed

Subgrantee shall not engage in groundbreaking activities related to the deployment or upgrade of network infrastructure prior to LEO providing a written Notice to Proceed approval to commence construction. Costs that are contingent on the issuance of this notice to proceed with construction activities include, but are not limited to, internal or subcontracted labor costs associated with construction activities, construction materials (other than materials on hand and not pulled from stock), and other costs directly associated with groundbreaking activities.

Subgrantee is eligible from the point of execution of this agreement to engage in pre-construction activities including but not limited to administrative costs, construction and engineering planning costs, and costs associated with obtaining permits necessary to begin construction activities, prior to receiving a written notice to proceed with construction from LEO. Guidance on specific additional cost allowability will be clarified by the assigned LEO project contact.

LEO will issue an official notice to proceed to Subgrantee once LEO has completed a thorough review and approval process of project engineering and design plans. LEO, at its discretion, shall have the option to increase or decrease the number of locations, in the

Service Area (as defined in Exhibit A), as long as such modification does not materially impact the Statement of Work (Exhibit A) or Budget (Exhibit B). In order to exercise this option, LEO shall provide to the Subgrantee a written request for project change that the Subgrantee, in its sole discretion, may accept or decline. This process excludes project changes driven by Federal government mandates or directed by NTIA, which the Subgrantee shall accept without reservation. This section allows LEO, at their sole discretion, to modify the project service area and adjust the grant amount if a location(s) is deemed unserviceable or if new federal funding programs are awarded between the grant award and the start of construction. LEO, at its discretion, can direct Subgrantee to begin performance of any of the Agreement phases described in Exhibit A. In order to exercise this option, LEO shall provide written notice to Subgrantee in a correspondence that shall identify itself as such and that shall be signed by an authorized representative of LEO or their designee.

Subgrantee shall begin Work on each phase no sooner than the effective date of the written notice requiring Subgrantee to complete that phase, or a later date if one is contained in the notice, and shall complete all Work described in Exhibit A of this Agreement for that phase.

## **P. REPORTING - NOTIFICATION**

### **1. Recurring Reports**

In addition to any reports required elsewhere in the main body of this Agreement or pursuant to any Exhibit, including Exhibit A, for any agreement having a term longer than three months, Subgrantee shall submit on a minimum semiannual (twice annual) basis, written reports specifying: (i) progress made for performance measures; (ii) financial expenditures; and (iii) responses to inquiries (e.g., questions and document requests) for the purposes of Federally-required program monitoring. Such reports shall be in accordance with the procedures developed and prescribed by LEO and subgrantees agree to defer to future reporting guidance from NTIA not yet released. Reports shall be submitted to LEO not later than thirty (30) days following the end of the period covered by the report and according to the schedule specified by LEO. Acceptance of any reports, including the reports required under this Agreement, does not constitute acceptance of any Work performed or deliverables provided under this Agreement. Further, no report shall be construed to modify the terms of this Agreement or operate as a waiver of any terms of this Agreement.

## 2. Litigation Reporting

If Subgrantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subgrantee's ability to perform its obligations under this Agreement, Subgrantee shall, within ten (10) days after being served, notify LEO of such action and deliver copies of such pleading or document to LEO's Principal Representative identified in §H of Part I of this Agreement.

## 3. Performance and Final Status

Subgrantee shall submit all financial, performance and other reports to LEO no later than forty-five (45) days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by LEO, containing an evaluation and review of Subgrantee's performance and the final status of Subgrantee's obligations hereunder.

## 4. Violations Reporting

Subgrantee shall disclose, in a timely manner, in writing to LEO and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. LEO or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 C.F.R. Part 180 and 31 U.S.C. § 3321, which may include, without limitation, suspension or debarment.

Subgrantee must promptly disclose whenever, in connection with the Federal Award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations as indicated in 2 C.F.R. § 200.113.

Subgrantee acknowledges the responsibility to produce copies of materials used for such purposes, upon the request of LEO, the State or Federal government.

## 5. Network Outage Notification

During a period of five (5) years following the date of closeout of the Project by the LEO, Subgrantee must provide written notification to the MIHI (as defined in Exhibit A) of any network outage affecting more than twenty-five percent (25%) of service addresses located in the Project area and lasting longer than eight (8) hours. The notification must be made within fifteen (15) days after the outage begins.

## 6. Subgrantee Records

Maintenance: In compliance with 2 CFR § 200.334, Subgrantee shall make, keep, maintain, and allow inspection and monitoring by LEO of a complete file of all records, documents, notes and other written materials, electronic media files, and communications (including e-mails) pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder (“Subgrantee Records”). The definition of “Subgrantee Records” meaning any and all Subgrantee data, information, and records, regardless of physical form, is restricted to records relevant to the Subgrantee’s BEAD-funded project. Subgrantee shall maintain such Subgrantee Records for a period (the “Record Retention Period”) of five (5) years following the Closeout Date documented on the official Closeout Letter issued by LEO to the Subgrantee. . If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by LEO or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and LEO, may notify Subgrantee in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three (3) years following final disposition of such property.

## 7. Use, Security, and Retention

LEO shall use, hold and maintain Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Upon the expiration or termination of this Agreement, LEO shall, to the extent permitted by its retention and disposal schedule, return Subgrantee Records provided to LEO or destroy such Subgrantee Records and certify to the Subgrantee that it has done so. To the extent that LEO’s legal ability to return Subgrantee Records provided to LEO or destroy such Subgrantee Records is restricted by its retention and disposal schedule, Subgrantee Records will be destroyed after the retention period expires. If LEO is prevented by law or regulation from returning or destroying Subgrantee Confidential Information, LEO agrees it will guarantee the confidentiality of, and cease to use, such Subgrantee Confidential Information.

## 8. Inspection

Subgrantee shall permit LEO, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subgrantee Records during the Record Retention Period. Subgrantee shall make Subgrantee Records available during

normal business hours at Subgrantee's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two (2) Business Days' notice from LEO, unless LEO determines that a shorter period of notice, or no notice, is necessary to protect the interests of LEO. If requested by LEO in writing, Subgrantee shall provide an electronic copy of Subgrantee Records in the form of a memory drive, secure file transfer, or other form of electronic transfer.

#### 9. Monitoring

LEO will monitor Subgrantee for the performance of its obligations under this Agreement using procedures as determined by LEO 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 Subgrantee's performance of its obligations under this Agreement using procedures as determined by that governmental entity. Subgrantee shall allow LEO to perform all monitoring required by the Uniform Guidance, based on LEO's risk analysis of Subgrantee, project-specific risk factors, and this Agreement. LEO shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the Term of this Agreement, including, but not limited to, placing specific award conditions on the subaward. LEO shall monitor Subgrantee's performance in a manner that does not unduly interfere with Subgrantee's performance of the Work.

#### 10. Final Audit Report

Subgrantee shall promptly submit to LEO a copy of any final audit report of an audit performed on Subgrantee Records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subgrantee or a third party. Additionally, if Subgrantee is required to perform a single audit under 2 C.F.R. § 200.501, *et seq.*, then Subgrantee shall submit a copy of the results of that audit to LEO within the same timelines as the submission to the federal government.

### **Q. CONFIDENTIAL INFORMATION - STATE RECORDS**

#### 1. Confidentiality

Subgrantee shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subgrantee shall not, without prior written approval of LEO, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by LEO. Subgrantee shall provide for the security of all LEO Confidential Information in accordance with all applicable laws, rules, policies, publications, and guidelines. If Subgrantee or any of its Subcontractors will or may receive the following types of data, Subgrantee or its Subcontractors shall provide for the security of such data according to the following: (i) the

most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information, if applicable; (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI; and (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, if applicable. Subgrantee shall immediately forward any request or demand for State Records to LEO's Principal Representative.

The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Grant Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Grant Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractors is authorized under this Grant Agreement; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Subgrantee obligates the subcontractor in a written Grant Agreement to maintain LEO's Confidential Information in confidence. At LEO's request, any employee of Subgrantee or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

2. Cooperation to Prevent Disclosure of Confidential Information.

Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Grant Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

3. Remedies for Breach of Obligation of Confidentiality.

Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of LEO, at the sole election of LEO, the immediate termination,

without liability to LEO, of this Grant Agreement or any Statement of Work corresponding to the breach or threatened breach.

4. Surrender of Confidential Information upon Termination.

Upon termination of this Grant Agreement or a Statement of Work, in whole or in part, each party must, within 30 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Subgrantee must return LEO Data to LEO following the timeframe and procedure described further in this Grant Agreement. Should Subgrantee or LEO determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 30 calendar days from the date of termination to the other party. However, LEO's legal ability to destroy Subgrantee data may be restricted by its retention and disposal schedule, in which case Subgrantee's Confidential Information will be destroyed after the retention period expires.

5. Undertaking by Subgrantee.

Without limiting Subgrantee's obligation of confidentiality as further described, Subgrantee is responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (a) ensure the security and confidentiality of LEO Data; (b) protect against any anticipated threats or hazards to the security or integrity of LEO Data; (c) protect against unauthorized disclosure, access to, or use of LEO Data; (d) ensure the proper disposal of LEO Data; and (e) ensure that all employees, agents, and downline Subgrantees of Subgrantee, if any, comply with all of the foregoing. In no case will the safeguards of Subgrantee's data privacy and information security program be less stringent than the safeguards used by LEO, and Subgrantee must at all times comply with all applicable LEO IT policies and standards, which will be made available to Subgrantees.

6. Right of Audit by LEO.

Without limiting any other audit rights of LEO, LEO has the right to review Subgrantee's data privacy and information security program prior to the commencement of Grant Agreement Activities and from time to time during the term of this Grant Agreement. During the providing of the Grant Agreement Activities, on an ongoing basis from time to time and without notice, LEO, at its own expense, is entitled to perform, or to have performed, an on-site audit of Subgrantee's data privacy and information security program. In lieu of an on-site audit, upon request by LEO,



Subgrantee agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by LEO regarding Subgrantee's data privacy and information security program.

7. Audit Findings.

Subgrantee must implement any required safeguards as identified by LEO or by any audit of Subgrantee's data privacy and information security program.

8. LEO's Right to Termination for Deficiencies.

LEO reserves the right, at its sole election, to immediately terminate this Grant Agreement or a Statement of Work without limitation and without liability, except for Work completed, if LEO determines that Subgrantee fails or has failed to meet its obligations under this Section, provided LEO shall first give Subgrantee at least thirty (30) Business Days advanced notice and opportunity to cure any perceived deficiencies..

9. Other Entity Access and Nondisclosure Agreements.

Subgrantee may provide State Records to its agents, employees, assigns and Subgrantees as necessary to perform the Work, but shall restrict access to LEO Confidential Information to those agents, employees, assigns and Subgrantees who require access to perform their obligations under this Agreement, per 2 CFR § 200.338. Subgrantee shall ensure all such agents, employees, assigns, and Subgrantees sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subgrantee has access to any LEO Confidential Information. Subgrantee shall provide copies of those signed nondisclosure provisions to LEO upon execution of the nondisclosure provisions.

10. Use, Security, and Retention

Subgrantee shall use, hold and maintain Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Subgrantee shall provide LEO with access, subject to Subgrantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subgrantee shall return State Records provided to Subgrantee or destroy such State Records and certify to LEO that it has done so, as directed by LEO. If Subgrantee is prevented by law or regulation from returning or destroying LEO Confidential Information, Subgrantee agrees it will guarantee the confidentiality of, and cease to use, such LEO Confidential Information.

## 11. Incident Notice and Remediation

If Subgrantee becomes aware of any Incident, it shall notify LEO within seventy-two (72) hours and cooperate with LEO regarding recovery, remediation, and the necessity to involve law enforcement, as determined by LEO. Unless Subgrantee can establish that none of Subgrantee or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Subgrantee shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subgrantee shall take reasonable steps to reduce the risk of incurring a similar type of Incident in the future, which may include, but is not limited to, developing and implementing a remediation plan that is approved by LEO at no additional cost to LEO. LEO may direct reasonable adjustments or modifications to this plan, and the Subgrantee shall make those adjustments and modifications as directed by LEO. If Subgrantee cannot produce its analysis and plan within the allotted time, LEO, in its sole discretion, may perform such analysis and produce a remediation plan, and Subgrantee shall reimburse LEO for the reasonable costs thereof.

## 12. Safeguarding PII

If Subgrantee or any of its Subcontractors will or may receive PII under this Agreement, Subgrantee shall provide for the security of such PII, in a manner and form acceptable to LEO, including, without limitation, LEO non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. If Subgrantee is given direct access to any LEO databases containing PII, Subgrantee shall execute, on behalf of itself and its employees, a certification on an annual basis. Subgrantee's duty and obligation to certify shall continue as long as the Party receiving database access has direct access to any databases of the other Party containing PII. If the Party receiving database access uses any Subcontractors to perform services requiring direct access to the other Party's databases containing PII, the Party receiving database access shall require such Subcontractors to execute and deliver a certification to the Party giving access to its database on an annual basis, so long as the Subcontractor has access to the databases containing PII. Subgrantee shall be solely responsible for managing all PII in accordance with applicable laws and regulations.

## **R. CONFLICTS OF INTEREST**

### 1. Actual Conflicts of Interest

In compliance with 2 CFR § 200.112, Subgrantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the

obligations of Subgrantee under this Agreement. Such a conflict of interest would arise when a Subgrantee or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of the employee's immediate family or the employee's partner, related to the award of, entry into or management or oversight of this Agreement.

2. Apparent Conflicts of Interest

Subgrantee acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to LEO's interests. Absent LEO's prior written approval, Subgrantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subgrantee's obligations under this Agreement.

3. Disclosure to LEO

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

4. Ethics

Subgrantee acknowledges that all LEO employees are subject to the ethical principles described in the Standards of Conduct for Public Officers and Employees, MCL 15.341 et seq., applicable Michigan Civil Service Rules and Regulations, as well as applicable State of Michigan Executive Orders.

**S. INSURANCE**

Subgrantee, at its sole expense and in accordance with 2 CFR 200.310 and 200.312, shall obtain, maintain, and ensure that each Subcontractor shall obtain and maintain, insurance reasonably appropriate to the scope of each Subcontractor's Work. Subgrantee shall also ensure that each Subcontractor shall obtain and maintain insurance reasonably appropriate to the scope of each Subcontractor's Work. Such insurance shall be maintained for the duration of the Project.

All required insurance must protect LEO, the State of Michigan (the "State"), and their respective elected or appointed officials, employees, and volunteers, as additional insureds (where applicable) from claims that may arise out of, are alleged to arise out of, or result from Subgrantee or a Subgrantee's performance; and be primary and non-contributing to any

comparable liability insurance (including self-insurance) carried by LEO and the State. Additionally, all insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an A.M. Best rating of “A-“ or better, and a financial size of VII or better, or as otherwise reasonably approved by LEO. LEO reserves the right to request complete copies of the Subgrantee’s and Subgrantee’s Subcontractors’ insurance policies, including endorsements, at any time.

1. Additional Insured

The State, LEO, and their respective elected or appointed officials, employees and volunteers, shall be named as additional insured on all commercial general liability policies (leases and construction agreements require additional insured coverage for completed operations) required of Subgrantee.

2. Primacy of Coverage

Coverage required of each Subgrantee shall be primary and noncontributory over any insurance or self-insurance program carried by Subgrantee, the State, or LEO with respect to losses for which Subgrantee is responsible.

3. Cancellation

All commercial insurance policies required hereunder shall include provisions providing for thirty (30) days’ prior notice, except for cancellation based on non-payment of premiums, which shall be ten (10) days. Subgrantee shall forward such notice to LEO in accordance with §P within seven (7) days of Subgrantee’s receipt of such notice if such cancellation or non-renewal would result in Subgrantee no longer complying with the requirements of this §S.

4. Subrogation Waiver

All commercial insurance policies secured or maintained by Subgrantee as required under this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against LEO and the State, and their respective elected or appointed officials, employees, and volunteers. Subgrantee must also waive all rights of recovery against LEO for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

5. Certificates

For each commercial insurance plan provided by Subgrantee under this Agreement, upon the request of LEO, Subgrantee shall provide to LEO certificates evidencing Subgrantee's insurance coverage required under this Agreement within seven (7) Business Days following the Effective Date, except that, if Subgrantee's subcontract is not in effect as of the Effective Date, Subgrantee shall provide to LEO certificates showing Subgrantee insurance coverage required under this Agreement within seven (7) Business Days following Subgrantee's execution of the subcontract. Within ten (10) Business Days after the annual renewal of Subgrantee's coverage, Subgrantee shall deliver to the attention of the Grant Administrator of LEO, certificates of insurance evidencing renewals of coverage. At any other time during the Term of this Agreement, but not more often than four (4) times per year, upon request by LEO, Subgrantee shall, within seven (7) Business Days following the request by LEO, supply to LEO evidence satisfactory to LEO of compliance with the provisions of this section.

#### 6. Claims-Made Coverage

If any of the required policies provide **claims-made** coverage, the Subgrantee must: (a) provide coverage with a retroactive date before the Effective Date of the Grant Agreement or the beginning of Grant Agreement Activities; (b) maintain coverage and provide evidence of coverage for three (3) years after completion of the Grant Agreement Activities; and (c) if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Grant Agreement Effective Date, Subgrantee must purchase extended reporting coverage for a minimum of three (3) years after completion of work.

Subgrantee must: (a) provide insurance certificates to the Grant Administrator, containing the agreement or delivery order number, at Grant Agreement formation and within twenty (20) calendar days of the expiration date of the applicable policies; (b) require that Subgrantees maintain the required insurances contained in this Section; (c) notify the Grant Administrator within five (5) business days if any insurance is cancelled; and (d) waive all rights against LEO for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

This Section is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Grant Agreement (including any provisions hereof requiring Subgrantee to indemnify, defend and hold harmless the State, [its departments, divisions, agencies, offices, commissions, officers, and employees](#)).

## **T. BREACH OF AGREEMENT**

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of Breach of Agreement to the other Party. If the notified Party does not cure the breach, at its sole expense, within thirty (30) days after the delivery of written notice, the Party may exercise any of the remedies as described in §U for that Party. Notwithstanding any provision of this Agreement to the contrary, LEO, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of LEO; or if Subgrantee is debarred or suspended under Exhibit C, Section 16.5, Debarment and Suspension, LEO, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement as of the date that the debarment or suspension takes effect.

## **U. REMEDIES**

### **1. LEO's Remedies**

If Subgrantee is in Breach of Agreement under any provision of this Agreement and fails to cure or begin to cure such breach, LEO, following the notice and cure period set forth in §T shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. LEO may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively. The remedies in this §U are in addition to, and not in lieu of, those remedies permitted in or required by Exhibit E, Broadband Equity, Access & Deployment Program (BEAD) Special Conditions.

### **2. Termination for Breach**

In the event of Subgrantee's uncured Breach of Agreement, LEO may terminate this entire Agreement or any part of this Agreement. Additionally, if Subgrantee fails to comply with any applicable terms of the Federal Award, following the notice and cure period set forth in §T of this Agreement, then LEO may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subgrantee shall continue performance of this Agreement to the extent not terminated, if any.

#### **2.1.Obligations and Rights**

To the extent specified in any termination notice, Subgrantee shall not incur further obligations or render further performance past the effective date of such notice and shall, within 7 Business Days of receiving any termination notice, and to the extent specified therein, terminate outstanding orders and subcontracts with third parties. Outstanding orders

and subcontracts with third-parties shall be terminated only to the extent specified in the termination notice and third-party contracts related to Work that has not been cancelled will remain unaffected. However, Subgrantee shall complete and deliver to LEO all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of LEO, Subgrantee shall assign to LEO all of Subgrantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subgrantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subgrantee but in which LEO has an interest. At LEO's request, Subgrantee shall return materials owned by LEO in Subgrantee's possession at the time of any termination. Subgrantee shall deliver all project specific materials in which LEO has an interest that were completed or in the process of completion to LEO at LEO's request. Notwithstanding the foregoing, Subgrantee shall be permitted to retain copies of the project specific and State materials as and to the extent Subgrantee requires same for the continued provision of services.

## 2.2. Payments

Notwithstanding anything to the contrary, LEO shall only pay Subgrantee for milestones reached as of the date of termination, and as otherwise permitted in 2 CFR § 200.343. If, after termination by LEO, LEO agrees that Subgrantee was not in breach or that Subgrantee's action or inaction was excusable, such termination shall be treated as a "suspension" of this Agreement.

## 2.3. Damages and Withholding

Notwithstanding any other remedial action by LEO, Subgrantee shall remain liable to LEO for any damages sustained by LEO in connection with any breach by Subgrantee, and LEO may withhold payment to Subgrantee for the purpose of mitigating LEO's damages until such time as the exact amount of damages due to LEO from Subgrantee is determined. LEO may withhold any amount that may be due Subgrantee as LEO deems necessary to protect LEO against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by LEO in procuring from third parties replacement Work as cover.

## 3. Termination for Non-Performance

In the event Subgrantee has willfully failed to achieve predefined objectives, milestones, or compliance with Agreement terms, such failure shall be considered non-performance and a Default, unless the Parties have mutually agreed upon a modified performance schedule or such failure is excusable pursuant to §0.6. Additionally, this section includes reference to the

Performance Bond and Letter of Credit requirements found in Exhibit A Section 7.2. which Subgrantee is required to provide at the execution of the Grant Agreement in an amount up to total project cost that would be drawn by LEO in the instance of a default by the Subgrantee, and the amount drawn would be up to an amount to cover the actual work of the incomplete remaining buildout of the number of areas to be served by the defaulted project.

Additionally, in the event Subgrantee fails to comply with any requirement under Section 60102 of the Infrastructure Act or the BEAD NOFO as modified by the BEAD Restructuring Policy Notice, the Subgrantee shall be required to return up to the entire amount of the subgrant to LEO as per the grant agreement. LEO will determine the final return amount based on consultation with the Assistant Secretary.

#### 4. Termination for Cause

LEO may terminate this Agreement for cause, in whole or in part, if Subgrantee, as determined by LEO: (a) endangers the value, integrity, or security of any location, data, or personnel; (b) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (c) engages in any conduct that may expose the State to liability; (d) breaches any of its material duties or obligations; (e) fails to abide by any statutory, regulatory, or licensing requirement, or; (f) fails to cure a breach within the time stated in a notice of breach, provided LEO shall first give Subgrantee at least thirty (30) business days advanced notice and opportunity to cure any perceived breach conditions, listed above. Any reference to specific breaches being material breaches within this Grant Agreement will not be construed to mean that other breaches are not material.

If LEO terminates this Grant Agreement under this Section, LEO will issue a termination notice specifying whether Subgrantee must: (a) cease performance immediately, or (b) continue to perform for a specified period. If it is later determined that Subgrantee was not in breach of the Grant Agreement, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section U.5., "Termination for Convenience".

LEO will only pay for amounts due to Subgrantee for Grant Agreement Activities completed in accordance with this Agreement on or before the date of termination, subject to LEO's right to set off any amounts owed by the Subgrantee for LEO's reasonable costs in terminating this Grant Agreement, and as otherwise permitted in 2 CFR § 200.343. The Subgrantee must pay all reasonable costs incurred by LEO in terminating this Grant Agreement for cause, including



administrative costs, attorneys' fees, court costs, transition costs, and any actual and reasonable costs LEO incurs to procure the Grant Agreement Activities from other sources.

5. Termination for Convenience

LEO may immediately terminate this Grant Agreement in whole or in part without penalty and for any reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Subgrantee must: (a) cease performance of the Grant Agreement Activities immediately, or (b) continue to perform the Grant Agreement Activities in accordance with Section Z.**Error! Reference source not found.**1, "Transition Responsibilities". If LEO terminates this Grant Agreement for convenience, LEO will pay all reasonable costs, as determined by LEO, for LEO approved Transition Responsibilities. For the avoidance of doubt, all allowable, reasonable costs and expenses incurred prior to LEO's termination shall be reimbursed and are not discretionary. Subgrantee shall not be reimbursed for performance of any deliverables pursuant to Exhibit A – Statement of Work, after Subgrantee receives the termination notice, except as otherwise permitted in 2 CFR § 200.343. Subgrantee shall not be entitled to recover any lost profits.

6. Force Majeure

Neither party will be in breach of this Grant, including a Default or Event of Default, because of any failure arising from any disaster, or acts of god, or other events that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Subgrantee will not be relieved of a breach or delay caused by its Subgrantees, unless such breach or delay is because of any failure arising from any disaster, acts of god, or other events beyond such Subgrantee's control and without its fault or negligence. If immediate performance is necessary to ensure public health and safety, LEO may immediately Grant with a third party.

7. Remedies Not Involving Termination

LEO, in its discretion, may exercise one or more of the following additional remedies:

7.1.Suspend Performance:

Suspend Subgrantee's performance with respect to all or any portion of the Work pending corrective action as specified by LEO without entitling Subgrantee to an adjustment in price or cost or an adjustment in the performance schedule. Subgrantee shall promptly cease performing Work and incurring costs in accordance with LEO's directive, and LEO shall not be liable for costs incurred by Subgrantee after the suspension of performance.

#### 7.2. Withhold Payment:

Withhold payment to Subgrantee until Subgrantee corrects its Work.

#### 7.3. Deny Payment:

Deny payment for Work not performed, or that due to Subgrantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to LEO; provided, that any denial of payment shall be equal to the value of the obligations not performed.

#### 7.4. Removal:

Demand immediate removal of any of Subgrantee's employees, agents, or Subgrantees from the Work whom LEO deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by LEO to be contrary to the public interest or LEO's best interest.

### 8. Recoupment of Grant Funds

By this Agreement, Subgrantee is agreeing to produce the Project defined in Exhibit A, and that, upon completion, the Project will meet the Project Completion Standards set forth in Exhibit A and to comply with the Project Closeout requirements contained in Exhibit A. Subgrantee agrees that the provisions detailed in the aforementioned sentence are material, that Subgrantee's adherence to these terms is critical to LEO's ability to assess Subgrantee's performance of the grant conditions contained herein, and that LEO needs this information to ensure taxpayer funds are utilized properly. Accordingly, in the event of Subgrantee's uncured Breach of Agreement, Subgrantee agrees LEO shall be entitled to exercise of any of the Remedies described in this Agreement, up to and including pursuing the return of all Grant Funds that the Subgrantee received from LEO by and through this Agreement, and that LEO, in addition to its exercise of any of the Remedies described elsewhere in this Agreement, may pursue the return of all Grant Funds.

#### 8.1. Claw Back

This section outlines the conditions under which the NTIA or LEO can reclaim funds already disbursed if certain conditions or commitments are not met by the Subgrantee, including in the event of outstanding circumstances, Subgrantee's willful non-compliance with any material requirement under applicable law or this Agreement, non-performance, failure to achieve predefined statutory obligations, objectives, milestones, terms, or wasteful, fraudulent, or abusive expenditure of grant funds. Additionally, this section stipulates:

- 8.1.1. If an award is made based on the premise that a Subgrantee has already substantially completed the project, then the penalty for non-completion is the cost to construct infrastructure to all the locations that were awarded in the project area.
- 2.1.1. If the Subgrantee is not able or willing to provide a low-cost service option, the NTIA or LEO will pursue action to claw back funds and initiate efforts to reinstate the low-cost offering across the BEAD-funded project areas, including the requirements of pricing caps on broadband line-item fees.
- 2.1.2. If the Subgrantee is willfully negligent in providing continuing broadband service at the standards certified in its application and required by Federal guidance for the BEAD program established by the NTIA, LEO will pursue action to claw back funds from the Subgrantee's award, commensurate with the loss of non-compliant deployment across each broadband service location in a project area.

## 9. Subgrantee's Remedies

If LEO is in breach of any provision of this Agreement and does not cure such breach, Subgrantee, following the notice and cure period in §T and the dispute resolution process in §V shall have the following remedies:

### 9.1.Reinstatement of Agreement

If this Agreement was wrongfully terminated or suspended, the Parties agree a court may reinstate this Agreement and, in doing so, require that LEO agree to adjustment of dates and extension of the Term as needed to complete the Work and as the court deems just and proper.

### 9.2.Payment of Grant Funds

If a court finds any portion of the Grant Funds was wrongfully withheld or denied, or if suspension of this Agreement was wrongfully made by LEO, Subgrantee shall be entitled to such portion of Grant Funds that were wrongfully withheld or denied, or such portion of the Grant Funds which were not reimbursed due to LEO's wrongful suspension, plus interest on such wrongfully withheld, denied, or unreimbursed funds accruing at the rate and pursuant to the terms set forth in §O.2.2. above.

### 9.3.Specific Performance

Subgrantee may be afforded such specific performance as may be ordered by a court of competent jurisdiction, as allowed in law and equity.

#### 9.4.Funding Limitation

The remedies set forth in subsections “9.1, “9.2”, and “9.3” immediately above are subject to this subsection “9.4”. Subgrantee agrees that the Grant Funds are only an award of funds out of the money allocated to LEO pursuant to the Award. Subgrantee agrees that, as described elsewhere in this Agreement, State law limits the availability of public funds. There is a risk that (i) money that remains unused will revert to other uses, (ii) the functions, duties, or authority of LEO may materially change, or its existence may cease altogether, (iii) BEAD funding may cease to exist or contain no funds, and (iv) the law may change such that, for whatever reason, due to some operation of law, the money will no longer be available. Subgrantee accepts the risk of this occurring. The Parties agree that, in the event funding is temporarily unavailable, a court may direct LEO to allocate funding during the next State Fiscal Year to address the remedies contained in sections “9.1” through “9.3” above.

This §U.8. sets forth the exclusive remedies for Subgrantee. No other remedies are permitted. Subgrantee is on notice that any entitlement to the Grant Funds by Subgrantee is subject to the limitations described in this §U.

## **V. DISPUTE RESOLUTION**

The parties, as defined in §K, will endeavor to resolve any Grant Agreement dispute in accordance with this provision. The dispute will be referred to the parties' respective Grant Administrators or Project Director. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a party makes a determination that a temporary restraining order

or other injunctive relief is the only adequate remedy. This Section does not limit LEO's right to terminate the Agreement.

## **W. NOTICES AND REPRESENTATIVES**

Each individual identified as a Principal Representative in §H, Part I of this Agreement shall be the Principal Representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's Principal Representative at the address set forth in §H, Part I, or (C) as an email with read receipt requested to the Principal Representative at the email address, if any, set forth in §H, Part I of this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's Principal Representative at the address set forth in §H, Part I of this Agreement. Either Party may change its Principal Representative or Principal Representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a Principal Representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

## **X. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION**

### **1. Exclusive Property of the State**

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives or other documents, drawings, models, materials, data and information shall be the exclusive property of the State (collectively, "State Materials"). Subgrantee shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subgrantee's obligations in this Agreement without the prior written consent of LEO. Upon termination of this Agreement for any reason, Subgrantee shall provide all project specific materials upon request and State Materials to the State in a form and manner as directed by LEO. Notwithstanding the foregoing, Subgrantee shall be permitted to retain copies of the project specific and State Materials as and to the extent Subgrantee requires same for the continued provision of services.

### **2. Exclusive Property of Subgrantee**

Subgrantee retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subgrantee including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subgrantee under this Agreement, whether incorporated in a deliverable or necessary to use a deliverable (collectively, “Subgrantee Property”). Subgrantee Property shall be licensed to LEO as set forth in this Agreement or a LEO approved license agreement: (i) entered into as exhibits to this Agreement; (ii) obtained by LEO from the applicable third-party vendor; or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

## **Y. CERTIFICATIONS AND COMPLIANCE**

### **1. Certification of Eligibility**

Subgrantee acknowledges and agrees that criteria for eligibility to participate in the Michigan BEAD Grant Program (“Grant Program”) were set out in the MIHI’s Grant application documents, including the BEAD Guidelines and that only persons or entities that satisfy these criteria may participate in the Grant Program or receive a contract like this Agreement. Subgrantee agrees that Subgrantee is eligible to participate in the Grant Program as of the Effective Date of this Agreement. Subgrantee further agrees that Subgrantee was eligible to participate in the Grant Program at the time Subgrantee submitted its Grant Application (as defined in Exhibit A). Subgrantee further agrees that Subgrantee has an affirmative obligation to immediately notify LEO in writing if, at any time, it becomes aware that it is not, or may not be, eligible to participate in the Grant Program.

### **2. Independence of Application**

2.1. Subgrantee agrees that Subgrantee’s Grant Application, including the price(s) and/or bid amount(s) in Subgrantee’s Grant Application, was arrived at independently without, for the purposes of restricting competition, any consultation, communication, or agreement with any other applicant or competitor. This certification includes, but is not limited to: (i) the price(s) and/or bid amount(s) in Subgrantee’s Grant Application; (ii) the intention to submit an application; and (iii) the methods or factors used to calculate said price(s) and/or bid amount(s).

2.2. Subgrantee further agrees that the price(s) and/or bid amount(s) in Subgrantee’s Grant Application have not been and will not be knowingly disclosed by Subgrantee, directly or indirectly, to any other applicant or competitor before the Grant Program application

process started or before award unless otherwise required by law; and no attempt has been made or will be made by Subgrantee to induce any other persons or entities to submit or not to submit an application or bid for the purpose of restricting competition.

### 3. Periodic Certifications

Subgrantee acknowledges and agrees that, in addition to the certifications Subgrantee makes as part of this Agreement, Subgrantee may make further explicit or implied certifications of compliance with provisions of this Agreement and/or applicable statutes or regulations. Subgrantee further acknowledges and agrees that Subgrantee is under an obligation to, at all times, communicate with LEO with utmost candor and truthfulness including, but not limited to, alerting LEO in writing as soon as Subgrantee becomes aware that any of its certifications or communications are, were, may be, or may have been materially inaccurate, untrue, or false.

### 4. Anti-kickback.

#### 4.1.Prohibition.

Subgrantee agrees that Subgrantee, Subgrantee's employees, and Subgrantee's agents are prohibited from: (i) providing or attempting to provide or offering to provide any kickback; (ii) soliciting, accepting, or attempting to accept any kickback; or (iii) including, directly or indirectly, the amount of any kickback in the price charged by Subgrantee to LEO or in the price charged by a Subgrantee to Subgrantee or to a higher tier Subgrantee.

#### 4.2.Kickback Defined.

##### 4.2.1. Favorable Treatment.

Subgrantee agrees that, as used in this section, "kickback" means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind that is provided to any employee or agent of LEO or any political subdivision of LEO, a Subgrantee, a Subgrantee, or other person or entity connected with the Grant Program for the purpose of improperly obtaining or rewarding favorable treatment in connection with this Agreement or in connection with a subcontract relating to this Agreement or any other grant or projects.

##### 4.2.2. Referrals, Self-dealing.

Subgrantee also agrees that, as used in this clause, "kickback" means the referral without prior written approval from LEO of any business,

including any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind, in connection with this Agreement to any entity in which Subgrantee and/or any of Subgrantee's owners, officers, or employees (and/or any of those persons' immediate family members) has an ownership or investment interest. Subgrantee agrees that, as used in this section, "immediate family member" includes current and former spouses, birth and adoptive parents, children, siblings, stepparents, stepchildren, stepbrothers, stepsisters, cousins, aunts, uncles, fathers-in-law, mothers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, grandparents, grandchildren, and the spouse of a grandparent or grandchild.

5. Notice, Certification.

Subgrantee further agrees that Subgrantee has an affirmative obligation to immediately notify LEO in writing if, at any time, it becomes aware that a kickback has, will, may, or may have occur(ed). Subgrantee agrees that Subgrantee is not aware of any kickbacks that have occurred in connection with the Grant Program prior to the Effective Date of this Agreement.

6. LEO's Discretion.

Subgrantee acknowledges and agrees that LEO may, in its sole discretion, authorize in writing a transaction or business relationship that may otherwise be a kickback. Subgrantee agrees that absent such a written authorization executed by an appropriate officer or agent of LEO, Subgrantee cannot infer and/or rely on any other action by LEO as an approval of a transaction or business relationship that may otherwise be a kickback.

7. Compliance a Precondition of Payment

Subgrantee acknowledges and agrees that Subgrantee's compliance with the provisions of this Agreement and all applicable statutes and regulations is a precondition on LEO's entry into this Agreement as well as LEO's payment to Subgrantee of any and all monies under this Agreement or in connection with the Grant Program irrespective of any action or inaction by LEO to verify or confirm compliance.

8. Affirmative Obligation to Return Funds

Subgrantee acknowledges and agrees that Subgrantee is obligated to, within fourteen (14) days of receipt, return to LEO any monies received in connection with the Grant Program to which Subgrantee is not entitled pursuant to the terms of this Agreement and/or applicable laws and



regulations. Subgrantee further acknowledges and agrees that this obligation to return funds to which Subgrantee is not entitled applies in perpetuity to all funds Subgrantee receives in connection with the Grant Program, irrespective of the deadlines set out in this Agreement, receipt of a Project Closeout Letter (as detailed in Exhibit A), or any amendment or cancellation of this Agreement.

9. Timely Completion

Subgrantee agrees that it shall use best efforts to complete its Work pursuant to this Agreement in a timely and expeditious manner. Subgrantee agrees that it enters into this Agreement without reservation as to its ability to complete Work pursuant to this Agreement in a timely and expeditious manner.

10. Imposition of Sanctions for Fraud or Misconduct

Subgrantee acknowledges and agrees that if Subgrantee submits claims, obtains an excess payment or benefit, and/or fails to pay or underpays an obligation to LEO, willfully by means of false statement, representation, concealment of any material fact, or other fraudulent scheme or device with or without specific intent to defraud, civil liability, monetary penalties, debarment, and/or criminal penalties shall be imposed pursuant to applicable state and/or federal law.

**Z. GENERAL PROVISIONS**

1. Assignment

Subgrantee's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of LEO. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subgrantee's rights and obligations approved by LEO shall be subject to the provisions of this Agreement. In the event LEO provides written consent, any assignment or transfer must be accompanied by a written acceptance of the Grant Agreement by the new entity to which rights and obligations are being transferred or assigned.

Upon notice to Subgrantee, LEO, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Grant Agreement to any other party. If LEO determines that a novation of the Grant Agreement to a third party is necessary, Subgrantee will agree to the novation and provide all necessary documentation and signatures.

2. Subcontractors

Subgrantee shall not enter into any subgrant or subcontract in connection with its obligations under this Agreement without providing notice to LEO. LEO may reject any such Subcontractor, and Subgrantee shall terminate any subcontract that is rejected by LEO and shall not allow any Subcontractor to perform work on this BEAD subgrant after that Subcontractor's subcontract has been rejected by LEO. Subgrantee shall submit to LEO a copy of each such subgrant or subcontract upon request by LEO. All subgrants and subcontracts entered into by Subgrantee in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Michigan, and shall be subject to all provisions of this Agreement. If the entity with whom Subgrantee enters into a subcontract or subgrant would also be considered a Subrecipient, then the subcontract or subgrant entered into by Subgrantee shall also contain provisions permitting both Subgrantee and LEO to perform all monitoring of that subcontract in accordance with the Uniform Guidance.

### 3. Binding Effect

Except as otherwise provided in §Y.1, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

### 4. Authority

Each Party represents and agrees to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

### 5. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

### 6. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format (PDF) shall be deemed to be originals for purposes of execution and proof of this Agreement.

### 7. Entire Agreement

This Agreement, including all exhibits and attachments which are expressly incorporated herein, constitutes the sole and entire agreement of the Parties and supersedes all prior and contemporaneous agreements, whether written or oral, concerning its subject matter. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein. If there is a conflict between the Agreement and the Attachments expressly incorporated in the Agreement, the order of precedence is: 1) first, the Agreement, excluding all Attachments; and 2) second, the Attachments expressly incorporated into the Agreement in the order of precedence specified in Part I, Section G, State of Michigan Exhibits and Order of Precedence, of this Agreement.

#### 8. Modification

Except as otherwise provided in this Agreement, this Agreement may not be amended except by signed agreement between the parties. Notwithstanding the foregoing, no subsequent Statement of Work or Grant Agreement Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

#### 9. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State of Michigan Financial Management Guide, Administrative Guide to State Government, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement. Nothing in this Agreement shall restrict in any way the State's right to promulgate, amend, rescind, or supplement any State statute, regulation, financial management policy and/or procedure located within the State of Michigan Financial Management Guide, policy and/or procedure located within the Administrative Guide to State Government, fiscal or administrative policy, or other authority. In addition, nothing in this Agreement shall restrict in any way the State's right to seek changes to existing laws.

#### 10. External Terms and Conditions

Notwithstanding anything to the contrary herein, LEO shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subgrantee's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

#### 11. Severability

If any part of this Grant Agreement is held invalid or unenforceable by any court of competent jurisdiction, that part will be deemed deleted from this Grant Agreement and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Grant Agreement will continue in full force and effect.

#### 12. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party. Such provisions include but are not limited to provisions concerning warranties and representations, termination, transition, insurance coverage, indemnification, and confidentiality.

#### 13. Tax Exemptions

The LEO is exempt from any applicable federal excise tax, state, and local sales taxes and use taxes. Subgrantee will not include the collection of taxes for which the LEO is exempt in any invoices or payments related to this Agreement. The LEO is not responsible for taxes imposed or assessed on Subgrantee. The LEO shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the LEO imposes or assesses such taxes on Subgrantee. Subgrantee shall be solely responsible for any exemptions from the collection of excise, sales, or use taxes that Subgrantee may wish to have in place in connection with this Agreement.

#### 14. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in §Z.1., this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

#### 15. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege. The express terms of this Agreement shall control and no terms can be modified or waived by the Parties' course of performance or course of dealing.

## 16. Standard and Manner of Performance

Subgrantee shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subgrantee's industry, trade, or profession.

## 17. Licenses, Permits, and Other Authorizations

Subgrantee shall secure, and maintain at all times during the Term of this Agreement, at its sole expense, all easements, rights of way, licenses, certifications, permits, and other authorizations ("Authorizations") required to perform its obligations under this Agreement, and shall ensure that all employees, agents, and Subcontractors secure and maintain at all times during the term of their employment, agency, or Subcontractor status, all Authorizations required to perform their obligations under this Agreement. LEO shall not be obligated to pay any Allowable Cost (as defined in Exhibit A) until Subgrantee provides documentation satisfactory to LEO that Subgrantee has demonstrated that its milestones have been met. LEO may choose, at its sole discretion, to accept documentation indicating that such Authorizations are preliminarily approved, but are still subject to final approval and/or payment.

## 18. Indemnification

### 18.1. General Indemnification

Subgrantee must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Subgrantee (or any of Subgrantee's employees, agents, Subgrantees, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Grant; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Subgrantee (or any of Subgrantee's employees, agents, Subgrantees, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Subgrantee (or any of Subgrantee's employees, agents, Subgrantees, or by anyone else for whose acts any of them may be liable).

The State will notify Subgrantee in writing if indemnification is sought; however, failure to do so will not relieve Subgrantee, except to the extent that Subgrantee is materially

prejudiced. Subgrantee must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if the State deems necessary. Subgrantee will not, without the State's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, the State may, at its own expense, control the defense of that portion of the claim.

#### 18.2. Confidential Information Indemnification

Disclosure or use of State Confidential Information by Subgrantee in violation of §Q may be cause for legal action by third parties against Subgrantee, LEO, or their respective agents. Subgrantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by LEO in relation to any act or omission by Subgrantee, or its employees, agents, assigns, or Subgrantees in violation of §Q.

#### 18.3. Intellectual Property Indemnification

Subgrantee shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Work infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. LEO will notify Subgrantee in writing if indemnification is sought; however, failure to do so will not relieve Subgrantee, except to the extent that Subgrantee is materially prejudiced. Subgrantee must, to the satisfaction of LEO, demonstrate its financial ability to carry out these obligations. LEO is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if LEO deems necessary. Subgrantee will not, without LEO's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any LEO employee, official, or law may be involved or challenged, LEO may, at its own expense, control the defense of that portion of the claim. Any litigation activity on behalf of LEO, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney

designated to represent LEO may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

19. Limitation of Liability and Disclaimer of Damages.

IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO SUBGRANTEE UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS GRANT AGREEMENT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS GRANT AGREEMENT. LEO is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action. LEO is not liable for any work performed by the Subgrantee before the start date or after the end date of this Agreement. Liability of LEO is limited to the terms and conditions of this Agreement and the grant amount.

20. Compliance with State and Federal Law, Regulations, and Executive Orders

Subgrantee shall comply with all applicable State and Federal laws, rules, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements at all times during the Term of this Agreement.

21. Transition Responsibilities.

Upon termination or expiration of this Grant Agreement for any reason, Subgrantee must, for a period of time specified by LEO (not to exceed **90** calendar days), provide all reasonable transition assistance requested by LEO, to allow for the expired or terminated portion of the Grant Agreement Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Grant Agreement Activities to LEO or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Grant Agreement Activities at the established Grant Agreement rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Grant Agreement Activities, training, equipment, software, leases, reports and other documentation, to LEO or LEO's designee; (c) taking all necessary and appropriate steps, or such other action as LEO may direct, to preserve, maintain, protect, or return to LEO all materials, data, property, and confidential information provided directly or indirectly to Subgrantee by any entity, agent, vendor, or employee of LEO; (d) transferring title in and delivering to LEO, at LEO's discretion, all completed or partially completed deliverables prepared under this Grant Agreement as of the Grant Agreement termination date; and (e) preparing an accurate accounting from which LEO and

Subgrantee may reconcile all outstanding accounts (collectively, “**Transition Responsibilities**”). This Grant Agreement will automatically be extended through the end of the transition period.

22. Disclosure of Litigation, or Other Proceeding.

Subgrantee must notify LEO within ten (10) calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, “**Proceeding**”) involving Subgrantee, a Subcontractor, or an officer or director of Subgrantee or a Subcontractor, that arises during the term of the Grant Agreement which may have a material impact on Subgrantee’s ability to perform this Agreement, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Subgrantee’s viability or financial stability; or (2) a governmental or public entity’s claim or written allegation of fraud; or (e) a Proceeding involving any license that Subgrantee is required to possess in order to perform under this Grant Agreement.

23. Non-Exclusivity

Nothing contained in this Grant Agreement is intended nor will be construed as creating any requirements contract with Subgrantee. This Grant Agreement does not restrict LEO or its agencies from acquiring similar, equal, or like Grant Agreement Activities from other sources.



## **AA. MICHIGAN SPECIAL PROVISIONS**

### **1. Required Approvals.**

This Agreement shall not be valid until it has been approved by the Michigan State Controller or designee.

### **2. Fund Availability.**

Financial obligations of LEO payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

### **3. Governmental Immunity.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of applicable state and federal law, including but not limited to the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. § 1346(b). -No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

### **4. Independent Contractor.**

Subgrantee is an independent Subgrantee and assumes all rights, obligations and liabilities set forth in this Agreement. Subgrantee, its employees, and agents will not be considered agents or employees of the State. No partnership or joint venture relationship is created by virtue of this Agreement. Subgrantee, and not LEO, is responsible for the payment of wages, benefits and taxes of Subgrantee's employees and any Subgrantees. Prior performance does not modify Subgrantee's status as an independent Subgrantee. Subgrantee shall not have authorization, express or implied, to bind LEO to any agreement, liability or understanding, except as expressly set forth herein. Subgrantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and LEO shall not pay for or otherwise provide such coverage for Subgrantee or any of its agents or employees. Subgrantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subgrantee shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by LEO, and (iii) be solely responsible for its acts and those of its employees and agents.

### **5. Governing Law**

This Grant Agreement is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Grant Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Grant Agreement must be resolved in Michigan Court of Claims. Subgrantee consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Subgrantee must appoint agents in Michigan to receive service of process.

6. Compliance with Law.

Subgrantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

7. Prohibited Terms.

Any term included in this Agreement that requires LEO to indemnify or hold Subgrantee harmless; requires LEO to agree to binding arbitration; limits Subgrantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio.

8. Software Piracy Prohibition.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subgrantee hereby agrees that, during the term of this Agreement and any extensions, Subgrantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If LEO determines that Subgrantee is in violation of this provision, LEO may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

9. Employee Financial Interest/Conflict of Interest

The signatories aver that to their knowledge, no employee of LEO has any personal or beneficial interest whatsoever in the service or property described in this Agreement.

Subgrantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subgrantee's services and Subgrantee shall not employ any person having such known interests. This does not include shareholders of a public company with ownership of Subgrantee.

#### 10. Vendor Offset and Erroneous Payments

LEO may recover, at LEO's discretion, payments made to Subgrantee in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subgrantee by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between LEO and Subgrantee, or by any other appropriate method for collecting debts owed to LEO.

#### 11. Conflicts and Ethics.

Subgrantee will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Grant Agreement; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Grant Agreement; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Subgrantee, any consideration contingent upon the award of the Grant Agreement. Subgrantee must immediately notify LEO of any violation or potential violation of these standards. This Section applies to Subgrantee, any parent, affiliate, or subsidiary organization of Subgrantee, and any Subcontractor that performs Grant Agreement Activities in connection with this Agreement.

#### 12. Nondiscrimination.

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Subgrantee and its Subgrantees agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, **sexual orientation, gender identity or expression**, height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Grant Agreement.

#### 13. Unfair Labor Practice.

Under MCL 423.324, the State may void any Grant Agreement with a Subgrantee or Subgrantee who appears on the Unfair Labor Practice register compiled under MCL 423.322.

#### 14. Intellectual Property/ Ownership by Subgrantee

Unless otherwise required by law, all intellectual property developed using funds from this Agreement, including copyright, patent, trademark and trade secret, shall belong to the Subgrantee.

15. Media Releases / Website Incorporation / Marketing Collateral

News releases (including promotional literature and commercial advertisements) pertaining to the Grant or project to which it relates must not be made without prior written LEO approval, and then only in accordance with the explicit written instructions of the LEO.

## **PART III - EXHIBITS**

### **EXHIBIT A - STATEMENT OF WORK**

#### **1. INTRODUCTION**

- 1.1. By this Agreement, Subgrantee is agreeing to deliver and maintain broadband to the Service Area (defined below) in accordance with applicable law and the State and federal conditions applicable to the Award and this Agreement.
- 1.2. At all times during the Term of this Agreement, Subgrantee shall comply with all State and Federal laws, rules, regulations, executive orders, State and Federal Awarding Agency policies, procedures, directives, and reporting requirements contained herein at all times during the Term of this Agreement.

#### **2. DESCRIPTION OF THE PROJECT AND WORK**

##### **2.1. Project Description.**

- 2.1.3. Before the project may be closed out, Subgrantee must create a fully-functioning, commercially-serviceable broadband network within the Service Area that meets all of the Project Completion Standards. Subgrantee is charged with installing and deploying a broadband network. Creation of the broadband network will require that Subgrantee do each of the following:
  - 2.1.1. Acquire such Equipment as is necessary to install, create, and maintain the broadband network, and to construct and install its related Facilities.
  - 2.1.2. Design, install, construct, test, maintain, and operate its broadband network; and
  - 2.1.3. Acquire all necessary real property interests or access rights to real property for the purpose of installing its transmission lines.

##### **2.2. Project Completion Standards.**

Subgrantee agrees that, upon completion, the broadband network will have all of the following characteristics:

###### **2.2.1. Service Area:**

The Network will be capable of providing Broadband Service to the entirety of the area depicted in Appendix 1 of Exhibit A, making all locations Serviceable.

###### **2.2.2. Locations Served:**

The Network will make each of the residential and business locations attached hereto as Appendix 2 of Exhibit A Serviceable. Subgrantee agrees that, upon completion, the Network will be capable of serving this comprehensive list of locations (whether residential or business) located within the Service Area with

Broadband Service as specified below; any modifications must be approved in writing by both the Subgrantee and LEO. A location is considered “served” if Subgrantee can initiate service through a routine installation within ten (10) Business Days of a request with no extraordinary monetary charges or delays attributable to the extension of Subgrantee’s network.

#### 2.2.3. Standard Installation:

Subgrantee must deploy the planned broadband network, and be able to perform a standard installation to each funded location that desires broadband services within the Project area not later than four years after the Agreement Performance Beginning Date. For purposes of this requirement, a standard installation is the initiation by a provider of fixed broadband internet access service within 10 Business Days of a request with no charges or delays attributable to the extension of the network of the provider. Subgrantee may charge standard installation fees to subscribers on the BEAD-funded network but may not require subscribers to make modifications to their own or surrounding property or charge fees for the same in connection with installation of broadband services funded by the BEAD program.

#### 2.2.4. Service Speeds and Latency:

Broadband networks shall deliver reliable broadband service to each of the addresses served with speeds of not less than one hundred (100) Mbps for downloads and twenty (20) Mbps for uploads. In addition, ninety-five percent (95%) of latency measurements during testing windows must fall at or below one hundred (100) milliseconds round-trip time. Connections to eligible Community Anchor Institutions, as defined in the BEAD Guidelines, shall be capable of delivering service at speeds not less than one (1) Gigabit per second for downloads and one (1) Gigabit per second for uploads. Subgrantee shall ensure that such connections can be used to provide business data services.

#### 2.2.5. Network Outages:

Each network’s outages shall not exceed, on average, forty-eight (48) hours over any three-hundred sixty-five (365) day period except in the case of natural disasters or other force majeure occurrence. Subgrantee shall ensure a prospective network is designed to meet this requirement and shall develop metrics for measuring outages to be utilized in connection with this requirement once the network is operational.

#### 2.2.6. Conduit Access Points:

Per 47 U.S.C. §1702(h)(4)(D), any Project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals to allow for the use of conduit with available capacity to facilitate the interconnection of unaffiliated entities. If the Project proposes to lay conduit, Subgrantee shall deploy conduit access point intervals as indicated in the approved Grant Application. Network- and project-specific plans for conduit capacity and interspersed access points should be consistent with industry best-practices and construction standards. Projects proposed by last-mile providers do not incorporate an interconnection or open access obligation.

#### 2.2.7. Eligible Subscribers:

Subgrantee agrees to provide discounted broadband service, as proposed in its Grant Application, to eligible subscribers throughout the useful life period of the BEAD-funded network. Subgrantee is responsible for verifying whether a subscriber is an Eligible Subscriber and may ask potential subscribers to provide the same documentation necessary to confirm eligibility as is required under the Federal Communication Commission's Lifeline program.

#### 2.2.8. Risk Management:

Subgrantees shall satisfy the statutory requirement to incorporate best practices defined by the NTIA 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.

#### 2.2.9. Cybersecurity Risk Management:

Prior to the Effective Date of the Agreement, Subgrantee shall provide to LEO a cybersecurity risk management plan (Cybersecurity Plan) that is either operational, or ready to be operationalized upon provision of service. The Cybersecurity Plan must reflect the latest version of the National Institute of Standards and Technology (NIST) Cybersecurity Framework (CSF) and the standards and controls set forth in Executive Order 14028 and specify the security and privacy controls being implemented. The Subgrantee shall reevaluate and update the Cybersecurity Plan on a periodic basis and as events warrant, but not less than annually. If Subgrantee

makes any substantive changes to the Cybersecurity Plan, Subgrantee shall submit a new version to LEO within thirty (30) days. Subgrantee shall comply with its Cybersecurity Plan, as updated by Subgrantee. LEO will provide Subgrantee's Cybersecurity Plan to NTIA upon NTIA's request.

#### 2.2.10. Supply Chain Risk Management (SCRM):

Prior to the Effective Date of the Agreement, Subgrantee shall provide to LEO a SCRM plan (SCRM Plan) that is either operational, or ready to be operationalized upon providing service. The SCRM Plan shall be based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations, and shall specify the supply chain risk management controls being implemented. The Subgrantee shall reevaluate and update the SCRM Plan on a periodic basis and as events warrant, but not less than annually. If Subgrantee makes any substantive changes to the SCRM Plan, a new version must be submitted to LEO within thirty (30) days of adoption. Subgrantee shall comply with its SCRM Plan, as updated by Subgrantee. LEO will provide Subgrantee's SCRM Plan to NTIA upon NTIA's request.

Subgrantee shall ensure that the final outcome of this Project will be improved broadband infrastructure that increases access to high-speed broadband service.

#### 2.3. Work Description

[Add work description here].

#### 2.4. Allowable Costs

Subgrantee understands and agrees that this Award is a Fixed Amount Subaward. For the purposes of this Agreement, the Project Phases are listed in Appendix 3 with their associated Milestones. Grant Funds may only be used for costs described within this section. Subgrantee agrees:

- 2.4.1. To qualify as an "Allowable Cost" an expenditure must be: (i) an Infrastructure expenditure; (ii) an expense that is actually incurred to complete the Work and for the Project Service Area; and (iii) an allowable expense under the Federal Award. Examples of "Allowable Costs" include, but are not necessarily limited to, costs



to: (a) design a system; (b) test a system; (c) purchase materials or equipment used in a system; (d) obtain permits; (e) pay wages to employees or Subcontractors for their work in installing and constructing the Infrastructure in the Project Service Area; (f) connect with other lines; and maintain the project infrastructure. All federal requirements for Allowable Costs must be followed. “Allowable Costs” do not include costs for supporting broadband service delivery beyond those costs enumerated in the approved budget for this project, such as, by way of example and not limitation, employee salary and wages, insurance expenditures, real property acquisition expenditures, attorney, accounting, bookkeeping, actuarial, tax report / compliance, network design or planning work, or any other professional services fees that are incurred in support of satisfying contractual commitments to customers.

- 2.4.2. Grantee agrees that it will not seek reimbursement for any expenditure which does not qualify as an “Allowable Cost.”
- 2.4.3. In the event LEO and Subgrantee disagree as to whether an expenditure should qualify as a “Allowable Cost” and this Agreement does not resolve the dispute, then the Parties agree to first look to the laws and guidance surrounding the Federal Award and, if needed, the Uniform Guidance. If the dispute persists, the Parties agree that LEO may consult with staff to ascertain whether the expenditure is eligible under federal law and regulation for reimbursement. The Parties agree the decision of NTIA shall constitute the final resolution as to whether the expenses qualify as a “Allowable Cost.”
- 2.4.4. Funding for the Project is strictly limited to areas which have an identified need for broadband. Subgrantee understands and agrees that Grant Funds cannot be used for costs that will be reimbursed by other federal or state funding streams. The Grant Funds are only eligible to be claimed as a Project Expenditure if they address additional broadband investment that is not met by existing federal or State funding commitments. Unless other sources of funding are disclosed herein, Subgrantee represents that, as of the Effective Date, it has no knowledge of any other federal, State, or local funding commitments for the Project or the Service Area, and that it has not applied for – or, if applied for, will immediately withdraw – funding from any other federal, State, or local government body for the Project or the Service Area.

- 2.4.5. Payment disbursement requests shall be submitted in a timely manner, in a form acceptable to LEO, and shall be associated with milestones achieved. Lien Waivers shall be submitted with each disbursement request.
- 2.4.6. Subgrantee agrees that, in addition to the record-keeping requirements found in the main body and exhibits of this Agreement, Subgrantee has a specific obligation to preserve all records evidencing any Allowable Costs, including any receipts, invoices, and Lien Waivers concerning a Project Expenditure, and any records showing the ultimate uses for any Equipment or Facilities purchased with grant funds. Subgrantee agrees to promptly furnish any such records, including copies of UCC-1 filings and equipment inventories, to LEO upon LEO's written request. Subgrantee agrees that their Subgrantee's compliance with the terms of this Agreement is critical to LEO's ability to monitor Subgrantee's performance, oversee Subgrantee's use of the Agreement Funds, and, generally, ensure that LEO is serving as a good steward of taxpayer money. Accordingly, Subgrantee agrees that any failure to preserve or destruction of records evidencing the uses of Allowable Costs shall constitute a material Breach of Agreement.
- 2.4.7. Subgrantee shall obtain approval from LEO for all budgets prior to beginning work. The approval of any budget is not confirmation by LEO that specific expenditures by Subgrantee qualify as "Allowable Costs." LEO reserves the right to examine or refuse to remit payment on expenditures which do not qualify as "Allowable Costs."

## 2.5.Budget Modifications

- 2.5.1. For all Budget modifications under 10% (ten percent) of the Budget, Subgrantee may request modification of previously approved budgets to meet Project needs, by providing notice of the modified budget to LEO for approval. Notice shall be in written format, which may include email. Subgrantee shall not move forward with any modification to the Project or Budget until it has been reviewed and approved in writing by LEO.
- 2.5.2. For all Budget modifications 10% (ten percent) or greater of the Budget, including deviation in individual budget line items, Subgrantee shall submit a completed LEO-approved budget modification form, to document all budget modifications and request approval from LEO. Subgrantee shall not move forward with any modification to the Project or Budget until it has been reviewed and approved in writing by LEO.

- 2.5.3. In the event that any budget modification changes the Work described in Exhibit A, Statement of Work, Subgrantee shall not move forward with any modification to the Project or Budget until a formal amendment to this Agreement has been executed and/or an Option Letter has been issued by LEO.
- 2.5.4. Subgrantee agrees that LEO's acceptance and remission of milestone payments constitutes LEO's acceptance of the form of submission, only – and, even then, only to the extent such acceptance is not reversed by the, Federal Awarding Agency, the State of Michigan, or any other governmental entity with authority to review, approve, or overrule expenditures. Subgrantee agrees to provide LEO with access to sites and records needed to evaluate Subgrantee's work, but also agrees that LEO's ultimate acceptance of the work occurs only upon Project Completion, as confirmed by LEO's issuance of a Project Closeout Letter (see §3 of this Exhibit).
- 2.5.5. Signature Authority.  
All Subgrantee notices and requests submitted to LEO pursuant to this §2.5 must be signed and dated by a person authorized to bind Subgrantee to such Budget adjustments.

## 2.6. Notification of Performance Issues

- 2.6.1. Subgrantee shall notify, in writing, LEO, as early as Subgrantee should reasonably know, that the Project may not be completed in accordance with the requirements listed in this Agreement by the end of the agreed Term.
- 2.6.2. Subgrantee's failure to complete the Project by the end of the agreed Term may affect Subgrantee's ability to gain additional funding/contracts in the future in addition to all other remedies set forth in this Agreement.

## 2.7. Subgrantee Responsibilities

- 2.7.1. Subgrantee shall be responsible for the completion of the Work and to provide required documentation to LEO as specified in this Exhibit A, Statement of Work. Subgrantee's completion of all Work in accordance with the deadlines set forth herein is a condition of Subgrantee's continued ability to keep those portions of the Grant Funds which have been distributed to Subgrantee.
- 2.7.2. Subgrantee agrees that it will provide discounted broadband service, as proposed in the Grant Application, to eligible subscribers through the Federal Interest Period of the Project. Subgrantee agrees that this obligation "runs with the infrastructure," and, to the greatest extent allowed by law, no assignment, merger,

divestiture, bankruptcy, sale, transfer or conveyance of the infrastructure or any portion of Subgrantee's business shall impact this obligation.

- 2.7.3. Subgrantee hereby consents and agrees to the terms contained in Exhibit C, Grant Federal Provisions. Subgrantee acknowledges that adherence to the Exhibit C terms is of critical importance to LEO, as the failure to adhere to the Exhibit C terms can result in a revocation or withholding of federal grant funds. Subgrantee accepts all performance and reporting responsibilities contained in this Agreement. Subgrantee agrees to work in good faith with LEO to resolve any deficiencies identified by LEO or any federal agency in Subgrantee's adherence to applicable federal laws, regulations and guidance – including, specifically, the Uniform Guidance so as that LEO can minimize the risk of having federal funding revoked or withheld.
- 2.7.4. Subgrantee understands and agrees that, because the Award arises out of federal funding, Subgrantee must adhere to federal reporting requirements, including, but not limited to, reporting on: (i) its download and upload speeds; (ii) the pricing it offers to end-users for the useful life of the network; and (iii) any data allowances or limitations (both plan-specific and generally). Subgrantee agrees to respond in writing with such information if and when it is requested by the State or any federal agency.

## 2.8. Strict Funding Deadline

- 2.8.1. This Agreement contains a unique Term and unique deadlines by which the Project must be completed and funds must be expended. Without limiting those deadlines, and for avoidance of doubt, Subgrantee agrees that all project work specified in this agreement must be completed and all funds must be distributed by LEO on or by the end of the Term of this Agreement as defined in §M.77. Subgrantee understands that this is required by regulation. Accordingly, Subgrantee agrees that, in the event this Agreement is extended, whether by a validly executed amendment or pursuant to other lawful means, such as the issuance by LEO of an Option Letter, under no circumstances will Subgrantee be disbursed grant funds for activities that occur beyond this date. Subgrantee agrees it has no right to any Grant Funds associated with performance milestones not achieved by Subgrantee prior to the end of the I Term of this Agreement. It is Subgrantee's obligation to construct the Project and in an expedient manner to ensure that all milestones are met before this hard deadline.

### 3. PROJECT PHASES, MILESTONES AND DELIVERABLES

#### 3.1. Project Plan

3.1.1. Subgrantee shall create a Project plan that includes, but is not limited to, the following:

3.1.1.1. A Project timeline, including major Milestones to be achieved during the Project and performance Milestones; and

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

3.1.2. Subgrantee shall submit the initial Project plan to LEO for review and approval within ten (10) Business Days after the Effective Date of this Agreement.

3.1.2.1. Subgrantee and LEO shall work collaboratively to finalize the initial Project plan within ten (10) Business Days after submission.

3.1.3. Subgrantee shall submit an updated Project plan to LEO as part of its recurring outcomes, financial, and monitoring reporting.

3.1.3.1. Subgrantee and LEO shall work collaboratively to finalize the updated Project plan within ten (10) Business Days after submission.

3.1.4. The Project plan shall require that Subgrantee satisfy all Project Completion Standards no later than four (4) years from the Effective Date of this Agreement.

#### 3.2. Recurring Reporting; Funding Disbursement Requests

3.2.1. Subgrantee shall submit recurring reports to LEO in the form specified by LEO. Subgrantee shall submit program progress and financial metrics on a semiannual (twice annual) basis, as specified in Part II, Section P of this Agreement, unless otherwise directed by LEO. These reports shall include, but not be limited to, the following:

3.2.1.1. The percentage of the overall Project that has been completed to date.

3.2.1.2. A description of how the Subgrantee expended the grant funds, including a spending summary that details how Subgrantee's spending during the period aligned with its expected expenditures.

- 3.2.1.3. Any challenges that Subgrantee encountered during the period or that Subgrantee anticipates encountering in the next period.
- 3.2.1.4. The locations served during the period.
- 3.2.1.5. The “take rate,” meaning the percentage of households or businesses in the Service Area that subscribe to the service out of the total number of households or businesses to which that service is available.
- 3.2.1.6. The distance of fiber laid during the period.
- 3.2.2. Subgrantee shall submit funding disbursement requests in a form specified by LEO. Each funding disbursement request shall include a current report of program progress and finances.
  - 3.2.2.1. Subgrantee shall retain all records for costs incurred and expended with grant funds. Such records include, but are not limited to, invoices, receipts, payroll reports, inventory records, work orders, or other documents that demonstrate incurrence of cost and expenditure of funds. The sum of all receipts shall equal the amount being requested on the reimbursement request.
  - 3.2.2.2. LEO may periodically review backup documentation for Project Costs contemporaneously or retroactively. LEO may reject or adjust any current or previously-submitted reimbursement request not supported by receipts and no payment will be made until all required documentation is submitted and approved by LEO, including reports due under Part II, Section P of this Agreement.
  - 3.2.2.3. With the prior written approval of LEO, Subgrantee may elect to submit funding disbursement requests to LEO within fifteen (15) days following the completion of a Project Phase or the completion of an associated Milestone, as identified in Appendix 3, or as otherwise directed by LEO. Otherwise, Subgrantee shall submit its Progress and Financial Report and funding disbursement request to LEO within fifteen (15) days following the end of each calendar quarter.
- 3.3. Subgrantee Project Expenditure Report

Project Expenditure Report (PER) must be submitted at minimum on a semiannual (twice annual) basis and according to the schedule established by LEO. PERs must reflect total actual program expenditures, up to the total agreement amount. Failure to meet financial

reporting responsibilities as identified in this Agreement may result in withholding future payments and/or the establishment of additional reporting requirements.

3.3.1. The Subgrantee representative who submits the PER is certifying to the best of their knowledge and belief that the report is true, complete and accurate and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of this Agreement. The individual submitting the PER should be aware that any false, fictitious or fraudulent information, or the omission of any material facts, may subject them to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise.

#### 3.4.Final Grant Disbursement

This section describes at a high level the process for the Subgrantee to request and receive final funding related to project completion and validation by LEO. Additionally, this section may include, among other requirements: submission and acceptance of a final grant report; certification from a Professional Engineer licensed in any of the 56 Eligible Entities that the project has been completed, that the design and installation conform to all applicable federal, state, and local requirements and standard engineering practice, and that the installed infrastructure will provide the broadband service stated in the application; and delivery of complete as-built network and route information, including where network construction varied from preliminary network routes proposed as part of Grant Award and why such variations exist. Additionally, this section may include a summary of a Grant Retainage from each disbursement may be utilized as a form of Final Grant Disbursement upon completion of the project completion requirements.

#### 3.5.Cause for Modifying Project Service Area

This section allows LEO, at their sole discretion, to modify the project service area and adjust the grant amount if a location(s) is deemed unserviceable or if new federal funding programs are awarded between the grant award and the start of construction.

#### 3.6.Project Incident and Litigation Reporting

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

In addition to the litigation reporting requirements in Part II, Section P of this Agreement, if Subgrantee is served with a pleading or other document in connection with an action before a court or other administrative decision making body, including litigation with subcontractors, partners, or vendors, and such pleading or document relates to this Agreement or the Project, Subgrantee shall, within ten (10) days after being served, notify LEO in writing of such action and deliver copies of such pleading or document to LEO.

### 3.7.Semiannual Report

3.7.1. Subgrantee shall submit, at minimum on a semiannual basis, during the lifetime of the Project, the following:

3.7.1.1.The number of homes and businesses that Subgrantee’s grant-supported broadband network serves.

3.7.1.2.The number of additional homes and businesses that Subgrantee expects to serve through the grant-supported broadband network within the following year.

3.7.1.3.The speed tiers, advertised rates, and services that Subgrantee offers to customers through the grant-supported broadband network, including speed tiers, rates, and other services that Subgrantee offers to eligible subscribers.

3.7.1.4.Other performance metrics as requested, in writing, by LEO.

3.7.2. Reporting of the information above may be required on a more frequent basis for select Subgrantees, as determined by ongoing program monitoring activities. Subgrantee shall submit the Semiannual Report no later than one month prior to the date that LEO must report such information to the Federal government. For each year, this report will be due on the following dates: June 30th and December 31st.

### 3.8.Final Reimbursement Request and Final Progress and Financial Report

3.8.1. Within forty-five (45) days after the completion of the Project, Subgrantee shall submit the final reimbursement request and final Progress and Financial Report to LEO in the form specified by LEO. In addition, Subgrantee shall submit the following to LEO:

3.8.1.1.A comprehensive Project summary in a form specified by LEO.

3.8.1.2.Photos of the Project site and all completed work.

3.8.1.3.Testimonials from subscribers impacted by the Project to further demonstrate the success of the Project.



3.8.2. At the completion of the Project, Subgrantee shall schedule an onsite or remote monitoring visit with LEO, and with the third-party performance-testing certifier. LEO will make reports available for public view after their completion and review by LEO staff and counsel.

3.8.2.1. Additional monitoring will take place through the lifetime of each program, including desk reviews, site visits, and other oversight activities.

3.8.3. If LEO finds that the Project was not completed in accordance with this Agreement by determining that (a) Subgrantee is not serving, or cannot serve, the addresses listed in this Agreement, (b) has not demonstrated significant progress in their final Progress and Financial Report and monitoring visit, or (c) it was determined by the third-party performance-testing certifier that the Project does not meet the original design of, or does not provide the measurable speeds, rates, and services set forth in, Subgrantee's Grant Application, then Subgrantee shall be found to be non-compliant and subject to remedies afforded to LEO under this Agreement.

### 3.9. Final Testing Certification Report

Prior to release of final payment, Subgrantee shall provide third-party performance-testing certification, based on the compliance standards and testing protocols provided by LEO.

### 3.10. Project Closeout – Project Closeout Letter

In addition to the requirements above, upon Subgrantee's submission of its final funding distribution request and final Progress and Financial Report, submission of its Final Testing Certification Report, and Subgrantee's proof, to the satisfaction of LEO, that Subgrantee has met all Project Completion Standards, LEO will issue to Subgrantee a Project Closeout Letter. The Project Closeout Letter will appear in writing, on LEO letterhead, and with date affixed thereto. Unless this Agreement is terminated earlier pursuant to the provisions herein or by law or order of a court, the issuance of the Project Closeout Letter shall terminate Subgrantee's obligations under this Agreement, except for those obligations which by their terms or by their nature continue in force and effect following termination, and extinguish Subgrantee's right to receive any remaining Grant Funds under this Agreement.

## 4. PERSONNEL

### 4.1. Key Personnel.

Subgrantee's personnel, as listed below, are considered essential to the completion of the Work described in this Exhibit A.

4.1.1. Project Director.

Subgrantee's performance hereunder shall be under the direct supervision of [title], [company name], currently [individual's name], who is hereby designated as the responsible administrator of this Project. Subgrantee shall notify LEO within fifteen (15) days of any change in the title, company name, or individual name of the Project Director. The Project Director must have written authority to attest on behalf of Subgrantee and must provide evidence of such authority to LEO.

4.1.2. Construction Manager.

Subgrantee's performance hereunder shall be under the direct supervision of [title], [company name], currently [individual's name], who is hereby designated as the responsible party for coordinating all construction and subcontracted activities on the Project. Subgrantee shall notify LEO within fifteen (15) days of any change in the title, company name, or individual name of the Construction Manager.]

4.2.Replacement.

Subgrantee shall notify LEO and submit qualification documents within 10 days if any key personnel specified above cease to provide services under this Agreement. Subgrantee may replace key personnel only after informing LEO as LEO executed this Agreement in part reliance on Subgrantee's representations regarding key personnel. Subgrantee's notification shall specify, in writing, why the change is necessary, who the proposed replacement is, what their qualifications are, and when the change will take effect. Any time key personnel cease to provide services under this Agreement, LEO, in its sole discretion, may direct Subgrantee to suspend Work until such time as replacements are identified. All notices sent under this subsection shall be sent in accordance with §P of the main body of this Agreement.

5. FUNDING

LEO-provided funds shall be limited to the amount specified in Part II §J of this Agreement.

5.1.Matching Funds.

During the Term of this Agreement, Subgrantee shall provide Matching Funds, as listed in the "Matching Funds Amount" area of Part II §J of this Agreement. Matching Funds must

be maintained in the Matching Funds Percentage Required specified in Part II §J of this Agreement throughout the distribution of Grant Funds to Subgrantee, even if Subgrantee's costs are less than as specified in Part II §J.

## 6. PAYMENT

Payments shall be made in accordance with provisions set forth in §4 of the main body of this Agreement, in this Exhibit A, and in Exhibit B.

6.1. In addition to other remedies set forth in this Agreement, and for avoidance of doubt, LEO may withhold payment(s) if LEO determines such payments are not an Allowable Cost, if any reports, described in §3 of this Exhibit, are not submitted timely, or if Subgrantee does not provide record evidencing the incurrence of expenditures or the uses of funds arising out of expenditures.

6.2. Subcontracted/Subgranted Work Payment Schedule.

If Work is subcontracted or subgranted and such Subcontractors and/or Subgrantees are not previously paid, Subgrantee shall disburse Grant Funds received from LEO to such Subcontractor or Subgrantee within fifteen (15) days after receipt.

6.3. LEO will only disburse payments under this Agreement through electronic funds transfer (EFT). Subgrantees are required to register to receive payments by EFT at the SIGMA website <https://sigma.michigan.gov/PRDVSS1X1/Advantage4>

6.4. If Subgrantee does not register or provides registration information containing errors that prevent accurate payment, the LEO is not liable for failure to provide payment.

6.5. This Agreement does not commit the State of Michigan or the Department of Labor and Economic Opportunity (LEO) to approve requests for additional funds at any time.

6.6. If applicable, travel expenses will not be reimbursed at rates greater than the State Travel Rates without the prior written consent of the Grant Administrator. State of Michigan travel rates may be found at the following website: [https://www.michigan.gov/dtmb/0,5552,7-358-82548\\_13132---,00.html](https://www.michigan.gov/dtmb/0,5552,7-358-82548_13132---,00.html).

6.7. Project Changes.

Subgrantee must obtain prior written approval for project changes from the Grant Administrator.

6.8. Cost Savings.

In the event that Subgrantee realizes Cost Savings or determines that not all funds will be expended, Subgrantee shall notify LEO in writing. Cost Savings do not result in payment

by LEO to Grantee above actual expenditures, but unexpended Grant Funds remain obligated. Cost Savings may be used to provide service to additional Service Areas subject to issuance by LEO of an Option Letter, after consultation with Grantee.

## 7. ADMINISTRATIVE REQUIREMENTS

### 7.1. Monitoring

LEO may monitor the Work as LEO determines is necessary or prudent.

7.1.1. Subgrantee agrees that an important part of LEO's ability to monitor Subgrantee's progress resides in the reports Subgrantee must file with the State and/or federal authorities. Subgrantee hereby agrees that all of its reports will: (i) be made in good faith; (ii) not include materially false or misleading information; and (iii) not omit information which would cause any statements in the reports to be materially false or misleading.

7.1.2. Subgrantee agrees to participate in video and/or telephone calls with MIHI staff, as reasonably requested by the MIHI, to discuss Subgrantee's progress.

### 7.2. Record Review

Subgrantee shall maintain a complete file of all records, documents, communications, notes and other written materials or electronic media, files or communications, which pertain in any manner to the operation of activities undertaken pursuant to this Agreement. Such books and records shall contain documentation of Subgrantee's pertinent activity under this Agreement in accordance with Generally Accepted Accounting Principles. During the Term of this Agreement and for a period of five (5) years following the Project Closeout Letter, Subgrantee must allow the State or federal government access to inspect Project locations and equipment upon request. LEO shall provide Subgrantee reasonable notice of inspections. In addition, at any time during the Term, LEO may demand that Subgrantee provide written documents, whether in hard copy or electronic form, in Subgrantee's possession which relate to or concern the Project. These documents may include, but are not limited to, documents pertaining to billing, invoices, expenditures, Matching Funds, Project Phases, design, Equipment, Facilities, and communications, invoices or other records relating to any Subcontractor's work on the Project. This right is in addition to, and not in lieu of, any of LEO's other rights to obtain documentation under this Agreement.

7.2.1. For avoidance of doubt, and in addition to the record-retention requirements contained in the main body of this Agreement, Subgrantee acknowledges that the record-retention obligations contained at §Q.1. of the main body of this

Agreement require that Subgrantee maintain all records, regardless of their form, which concern or relate to the Project. Subgrantee agrees the maintenance and preservation of these records for the entire Record Retention Period is a material obligation of Subgrantee under this Agreement. Subgrantee agrees to undertake such actions as are needed to preserve all Project records, including, by way of example and not limitation, modifying its record-retention policies and systems to avoid automatic deletion of Project records, and developing independent systems for saving records. Subgrantee further specifically agrees that this obligation to retain records pertains to all Project financial records, including invoices, bills, and records of payments for the Project.

- 7.2.2. LEO and/or the State may choose to monitor or audit the financial records relevant to this Agreement. Audits may occur through any governmental entity with authority to conduct an audit of the Project, this Agreement, the grant Award, or the use of Agreement Funds.

## 8. CONSTRUCTION/RENOVATION

The following subsections shall apply to construction and/or renovation related projects/activities:

### 8.1.Plans and Specifications

- 8.1.1. Construction plans and specifications shall be drawn up by a qualified engineer, or pre-engineered in accordance with Michigan law. Subgrantee, and Subcontractors shall comply with all applicable statutory design and construction standards and procedures that may be required and shall provide LEO with documentation of such compliance.
- 8.1.2. All Work on the Project must comply with all applicable federal, state, and local law.
- 8.1.3. All Work must be undertaken and completed in a manner that is technically sound, meaning that it must meet design and construction methods and use materials that are approved, codified, recognized, and fall under standard or acceptable levels of practice, or are otherwise generally acceptable by the design and construction industry.
- 8.1.4. Subgrantee shall monitor its Subgrantees and/or Subcontractors, if any, during the Term of this Agreement. Results of such monitoring shall be documented by Subgrantee and maintained on file.

8.1.5. Subgrantee must comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). The Subgrantee, and all Subgrantees and subcontractors are responsible for insuring that all precautions are exercised at all times for the protection of persons and property. Safety provisions of all applicable laws and building and construction codes shall be observed. The Subgrantee, and every Subcontractor are responsible for compliance with all federal, state and local laws and regulations in any manner affecting the work or performance of this Agreement and shall at all times carefully observe and comply with all rules, ordinances, and regulations. The Subgrantee, and all Subcontractors shall secure all necessary certificates and permits from municipal or other public authorities as may be required in connection with the performance of this Agreement.

1.1 Performance Bond or Letter of Credit (Deployment Subgrants)

2.1.4. Prior to the Effective Date of this Agreement, Subgrantee shall furnish either a Performance Bond, or a Letter of Credit, to the Michigan High-Speed Internet Office (MIHI), which meets the requirements of this Section 8.2. The expense of the Performance Bond, or Letter of Credit and accompanying opinion letter from legal counsel, shall be borne by Subgrantee and the bonds or letters shall be filed with LEO prior to LEO's issuance of a Notice to Proceed with construction.

8.1.6. Unless Subgrantee elects to furnish a Letter of Credit, Subgrantee shall furnish a Performance Bond in the amount of ten percent (10%) of the full amount of the Agreement Funds, that are executed by a corporate Surety, authorized to do business in the State of Michigan. The expense of these bonds shall be borne by Subgrantee.

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

2.1.5. Optionally, Subgrantee may submit a Letter of Credit, prior to the Effective Date of this grant Agreement. If Subgrantee elects to furnish a Letter of Credit, Subgrantee shall furnish a Letter of Credit substantially equivalent to the model letter of credit established by the Federal Communications Commission in

connection with the Rural Digital Opportunity Fund available at: <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/>. The Letter of Credit shall be in the amount of ten percent (10%) of the full amount of the Agreement Funds, unless otherwise agreed in writing by LEO. To issue the Letter of Credit, Subgrantee may use any United States bank that meets eligibility requirements consistent with those set forth in 47 C.F.R. § 54.804(c)(2) as stated in section IV.D.2.a.ii of the BEAD NOFO as modified by the BEAD Letter of Credit Waiver issued by NTIA on October 23, 2023, and the BEAD Letter of Credit Waiver Update issued by NTIA on July 25, 2025. In addition, Subgrantee shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code. If, at any time, a bank or credit union that issued a Letter of Credit required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Michigan, a Letter of Credit from another bank or credit union will be required, which Subgrantee shall furnish to LEO within ten (10) days after receipt of notice from LEO or after Subgrantee otherwise becomes aware of such conditions.

- 8.1.8. The Subgrantee commits to maintain a letter of credit or performance bond in the amount of ten percent (10%) of the subaward until it has demonstrated to the LEO that it has completed the buildout of one hundred percent (100%) of locations to be served by the project or until the period of performance has ended, whichever occurs first

## 8.2. Performance Bond or Letter of Credit (Low Earth Orbit Capacity Subgrants)

- 2.1.6. Prior to the Effective Date of this Agreement, Subgrantee shall furnish either a Performance Bond, or a Letter of Credit, to the Michigan High-Speed Internet Office (MIHI), which meets the requirements of this Section 8.3. The expense of the Performance Bond, or Letter of Credit and accompanying opinion letter from legal counsel, shall be borne by Subgrantee and the bonds or letters shall be filed with LEO prior to LEO’s issuance of a Notice to Proceed with construction.

- 8.2.1. Unless Subgrantee elects to furnish a Letter of Credit, Subgrantee shall furnish a Performance Bond in the amount of twenty-five percent (25%) of the full amount of the Agreement Funds, that are executed by a corporate Surety, authorized to do business in the State of Michigan. The expense of these bonds shall be borne by Subgrantee.
- 8.2.2. If, at any time, a Surety that issued a Performance Bond required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Michigan, another Surety will be required, which Subgrantee shall furnish to LEO within ten (10) Business Days after receipt of notice from LEO or after Subgrantee otherwise becomes aware of such conditions.
- 8.2.3. Optionally, Subgrantee may submit a Letter of Credit, prior to the Effective Date of this grant Agreement. If Subgrantee elects to furnish a Letter of Credit, Subgrantee shall furnish a Letter of Credit substantially equivalent to the model letter of credit established by the Federal Communications Commission in connection with the Rural Digital Opportunity Fund available at: <https://www.usac.org/high-cost/funds/rural-digital-opportunity-fund/>. The Letter of Credit shall be in the amount of twenty-five percent (25%) of the full amount of the Agreement Funds, unless otherwise agreed in writing by LEO. To issue the Letter of Credit, Subgrantee may use any United States bank that meets eligibility requirements consistent with those set forth in 47 C.F.R. § 54.804(c)(2) as stated in section IV.D.2.a.ii. of the BEAD NOFO as modified by the BEAD Letter of Credit Waiver issued by NTIA on October 23, 2023, and the BEAD Letter of Credit Waiver Update issued by NTIA on July 25, 2025. In addition, Subgrantee shall provide with its letter of credit an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning subgrantee’s bankruptcy estate under Section 541 of the Bankruptcy Code. If, at any time, a bank or credit union that issued a Letter of Credit required by this Agreement is found to be, or ceases to be in strict compliance with any qualification requirements of this Agreement, or loses its right to do business in the State of Michigan, a Letter of Credit from another bank or credit union will be



required, which Subgrantee shall furnish to LEO within ten (10) days after receipt of notice from LEO or after Subgrantee otherwise becomes aware of such conditions.

- 8.2.4. The Subgrantee may reduce its Letter of Credit or Performance Bond by 50% at the point of certification that service is available to each location in the project area. The Letter of Credit can be reduced by an additional 25% of the original amount after the subscription rate reaches at least 25% of all locations in the project area and may be closed out once the subscription rate reaches 50 percent. Regardless of the subscription rate, the Letter of Credit may be terminated four years after the LEO Capacity Subgrantee certifies that it can initiate broadband service within 10 business days of a request to any covered BSL in the project area.

### 8.3.Retainage Withheld

- 8.3.1. An amount equivalent to the final milestone award payment shall be withheld until the Work required by this Agreement has been performed. The withheld percentage of the price of any such Work, improvement, or construction shall be retained until the Work or discrete portions of the Work, have been completed satisfactorily and finally or partially accepted by LEO in writing.

### 8.4.Release of Retainage

- 8.4.1. Subgrantee may, for satisfactory and substantial reasons shown to LEO's satisfaction, make a written request to LEO for release of part or all of the withheld percentage applicable to the Work of a Subcontractor which has completed the subcontracted Work in a manner finally acceptable to Subgrantee, and LEO. Any such request shall be supported by a written approval from the Surety furnishing Subgrantee's bonds (if applicable) and any surety that has provided a bond for the Subcontractor (if applicable). The release of any such withheld percentage shall be further supported by such other evidence as LEO may require, including but not limited to, evidence of prior payments made to the Subcontractor, copies of the Subcontractor's agreement with Subgrantee, any applicable warranties, as-built information, maintenance manuals and other customary closeout documentation. LEO shall not be obligated to review such documentation nor shall they be deemed to assume any obligations to third parties by any review undertaken.

- 8.4.2. Any rights of LEO which might be terminated by or from the date of any final acceptance of the Work, whether at common law or by the terms of this Agreement, shall not be affected by such partial release of retainage prior to any final acceptance of the entire Project.
- 8.4.3. Subgrantee remains fully responsible for the Subcontractor's Work and assumes any risk that might arise by virtue of the partial release to the Subcontractor of the withheld percentage, including the risk that the Subcontractor may not have fully paid for all materials, labor and equipment furnished to the Project.
- 8.4.4. If LEO considers Subgrantee's request for such release satisfactory and supported by substantial reasons, LEO shall make a "final inspection" of the applicable portion of the Project to determine whether the Subcontractor's Work has been completed in accordance with this Agreement. A final punch list shall be made for the Subcontractor's Work and closeout procedures shall be followed for that portion of the Work.

## 9. WARRANTY

- 9.1. Notwithstanding the acceptance of any Work, or the payment of any invoice for such Work, Subgrantee agrees that any Work provided by Subgrantee under this Agreement shall be free from material defects and shall function in material accordance with the applicable specifications. Subgrantee's warranties under this section shall apply to any defects or material nonconformities discovered within 180 days following delivery of any Work.
- 9.2. Upon notice during the warranty term of any defect or material nonconformity, Subgrantee shall submit to LEO in writing within ten (10) Business Days of the notice one or more recommendations for corrective action with sufficient documentation for LEO to ascertain the feasibility, risks, and impacts of each recommendation. LEO's remedy for such defect or material non-conformity shall be:
  - 9.2.1. Subgrantee shall re-perform, repair, or replace such Work in accordance with any recommendation chosen by LEO. Subgrantee shall deliver, at no additional cost to LEO, all documentation required under this Agreement as applicable to the corrected Work; or
  - 9.2.2. Subgrantee shall refund to LEO all amounts paid for such Work, as well as pay to LEO any additional amounts reasonably necessary for LEO to procure alternative goods or services or substantially equivalent capability, function, and performance.
- 9.3. Any Work delivered to LEO as a remedy under this section shall be subject to the same

quality assurance, acceptance, and warranty requirements as the original Work. The duration of the warranty for any replacement or corrected Work shall run from the date of the corrected or replacement Work.

## 10. SURVIVAL

10.1. For the avoidance of doubt, and in addition to PART II, Section Z.11 of this grant Agreement, Subgrantee acknowledges that the following terms are an ongoing obligation of Subgrantee notwithstanding the closeout of the Project under Part II, Section O.4. of this grant Agreement, and include, but are not limited to, the following sections of this Exhibit A:

- Service Speeds and Latency
- Network Outages
- Conduit Access Points
- Low-Cost Broadband Service Option
- Risk Management
- Cybersecurity Risk Management
- Supply Chain Risk Management (SCRM)

10.2. In addition, Federal terms that continue for the Federal Interest Period or beyond, include, but are not limited to, the following sections of Exhibit E:

- Prohibition on Use for Covered Communications Equipment or Services
- Network Capabilities
- Low-Cost Service Option
- Access to Service
- Encumbrances
- Recordation of the Federal interest in BEAD-Funded Property
- Exceptions and Clarifications to 2 CFR 200.313—Equipment

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## 11. APPENDICES

### APPENDIX 1 - SERVICE AREA MAP

[INSERT SERVICE AREA MAP HERE]

## APPENDIX 2 – LOCATIONS SERVED

[INSERT LOCATIONS SERVED HERE]

### APPENDIX 3 - PROJECT PHASES EXAMPLE

<b>Phases</b>	<b>Expected Start Date</b>	<b>Expected Completion Date</b>	<b>Responsible Party</b>
Phase 1 - Planning			
Needs Assessment			
Feasibility Study			
Approved Project			
Funding Secured			
Bidding/Contracting (including w/Professional Services)			
Preliminary Design			
Phase 2 - Design			
Regulatory Approvals, i.e. ROW, Permits/Leases			
Cable Plant			
Structures and Hardware			
Components			
Documentation			
Phase 3 - Installation			
Procurement			
Construction			
Cable Installation			
Splicing			
Testing			
Documentation/ As Built			
Phase 4 - Acceptance			
Handoff to Operations			
Project Closeout			

## **EXHIBIT B - BUDGET**

The budget for each proposed project will be incorporated into this section, reflecting information reviewed and approved during the application phase, which will be sourced from LEO's grant portal.

[INSERT BUDGET HERE]

## **EXHIBIT C - GRANT FEDERAL PROVISIONS**

### **1. APPLICABILITY OF PROVISIONS.**

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

### **2. COMPLIANCE.**

Subgrantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Grant Federal Provisions, without the necessity of either party executing any further instrument. The State of Michigan, at its discretion, may provide written notification to Subgrantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

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

#### **3.1. SAM.**

Subgrantee must obtain a UEI but is not required to fully register in Sam.gov. Subgrantee shall maintain the currency of its information in SAM until Subgrantee submits the final financial report required under the Award or receives final payment, whichever is later. Subgrantee shall review and update SAM information at least annually.



### 3.2.Unique Entity ID.

Subgrantee shall provide its Unique Entity ID to LEO, and shall update Subgrantee's information at <https://www.sam.gov> at least annually after the initial registration, and more frequently if required by changes in Subgrantee's information.

## 4. TOTAL COMPENSATION.

4.1.Subgrantee shall include Total Compensation in SAM for each of its five most highly compensated executives for the preceding fiscal year if:

4.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

4.1.2. In the preceding fiscal year, Subgrantee received:

4.1.2.1.80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

4.1.2.2.\$25,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

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

## 5. REPORTING.

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

## 6. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below

\$30,000 then no FFATA reporting is required; if more than \$30,000 then FFATA reporting is required.

- 6.1. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

## 7. SUBGRANTEE REPORTING REQUIREMENTS.

7.1. Subgrantee shall report as set forth below.

- 7.1.1. Subgrantee shall report to LEO semiannually (twice annually) on the schedule to be shared by LEO.

- 7.1.2. Subgrantee shall report the following data elements to LEO no later than five days after the end of the month following the month in which the Subaward was made.

- 7.1.2.1. Subgrantee UEI Number;

- 7.1.2.2. Subgrantee UEI Number if more than one electronic funds transfer (EFT) account;

- 7.1.2.3. Subgrantee parent's organization UEI Number;

- 7.1.2.4. Subgrantee's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

- 7.1.2.5. Subgrantee's top 5 most highly compensated Executives if the criteria in §5 of this Exhibit above are met; and

- 7.1.2.6. Subgrantee's Total Compensation of top 5 most highly compensated Executives if the criteria in §5 of this Exhibit above met.

- 7.1.3. To LEO, Subgrantee shall report, the following data elements:

- 7.1.3.1. Subgrantee's UEI Number as registered in SAM.gov

- 7.1.3.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

- 7.1.3.3. For infrastructure projects or capital expenditures, narrative identifying the projected construction start date (month/year), projected initiation of operations date (month/year), and location (for broadband, geospatial location data).

- 7.1.3.4. For projects of \$5 million or more (based on expected total cost):

- 7.1.3.4.1. Certification that all laborers and mechanics employed by contractors and Subcontractors in the performance of such 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 Agreement work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as "baby Davis-Bacon Acts"). If such certification is not provided, a Subrecipient must provide a project employment and local impact report detailing: (1) the number of employees of contractors and Subcontractors working on the project; (2) the number of employees on the project hired directly and hired through a third party; (3) the wages and benefits of workers on the project by classification; and (4) whether those wages are at rates less than those prevailing. Subrecipients must maintain sufficient records to substantiate this information upon request.

- 7.1.3.4.2. A Subgrantee may provide a certification that a project 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)). If the Subrecipient does not provide such certification, the Subrecipient must provide a project workforce continuity plan, detailing: (i) how the Subrecipient will ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality construction throughout the life of the project; (ii) how the Subrecipient will minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project; and (iii) how the Subrecipient will provide a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities; (4) whether workers on the project will receive wages and benefits that will secure an appropriately skilled workforce in the context of the local or regional labor market; and (5) whether the project has completed a project labor agreement.
- 7.1.3.4.3. Whether the project prioritizes local hires.
- 7.1.3.4.4. Whether the project has a Community Benefit Agreement, with a description of any such agreement.

7.2.Subgrantee also agrees to comply with any reporting requirements established by the Federal Awarding Agency, Governor’s Office and Office of the State Controller. LEO may need additional reporting requirements after this Agreement is executed. If there are additional reporting requirements, LEO will provide notice in writing of such additional reporting requirements.

## 8. PROCUREMENT STANDARDS.

### 8.1.Procurement Procedures.

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

### 8.2.Never contract with the enemy (2 C.F.R. § 200.215).

Federal awarding agencies and recipients are subject to the regulations implementing “Never contract with the enemy” in 2 C.F.R. Part 183. The regulations in 2 C.F.R. Part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

### 8.3.Prohibition on certain telecommunications and video surveillance equipment or services (2 C.F.R. § 200.216). Subrecipient is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 C.F.R. § 200.216.

## 9. ACCESS TO RECORDS.

9.1.A Subgrantee shall permit LEO and its auditors to have access to Subrecipient’s records and financial statements as necessary for Recipient to meet the requirements of 2 C.F.R. § 200.332 (Requirements for pass-through entities), 2 C.F.R. § 200.300 (Statutory and national policy requirements) through 2 C.F.R. § 200.309 (Modifications to period of performance), 2 C.F.R. § 200.337 (Access to Records), and Subpart F-Audit Requirements of the Uniform Guidance.

9.2.A Subrecipient must collect, transmit, and store information related to this Subaward in open and machine-readable formats (2 C.F.R. § 200.336).

## 10. SINGLE AUDIT REQUIREMENTS.

If Subgrantee, other than a for-profit entity, expends \$1,000,000 or more in Federal Awards during the Subgrantee’s fiscal year, the Subgrantee shall procure or arrange for a single or program-

specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. § 7501-7507). 2 C.F.R. § 200.501.

10.1. Election.

A Subgrantee shall have a single audit conducted in accordance with Uniform Guidance 2 C.F.R. § 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 C.F.R. § 200.507 (Program-specific audits). The Subgrantee may elect to have a program-specific audit if Subgrantee expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal Award do not require a financial statement audit of Subgrantee. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from LEO and LEO approves in advance a program-specific audit.

10.2. Exemption.

If Subgrantee expends less than \$1,000,000 in Federal Awards during its fiscal year, Subgrantee shall be exempt from Federal audit requirements for that year, except as noted in 2 C.F.R. § 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

10.3. Subgrantee Compliance Responsibility.

Subgrantee shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subgrantee shall prepare appropriate financial statements, including the schedule of expenditures of Federal Awards in accordance with 2 C.F.R. § 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

11. REQUIRED PROVISIONS FOR SUBGRANTEE WITH SUBCONTRACTORS.

In addition to other provisions required by the Federal Awarding Agency or LEO, Subgrantee shall refer to and include the applicable provisions in Appendix II to Part 200—Contract

Provisions for Non-Federal Entity Contracts Under Federal Awards for all subcontracts with non-federal entities entered into by it pursuant to this Grant:

## 12. CERTIFICATIONS

Unless prohibited by Federal statutes or regulations, LEO may require Subgrantee to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 C.F.R. § 200.415. Submission may be required more frequently if Subgrantee fails to meet a requirement of the Federal Award. Subgrantee shall certify in writing to the LEO at the end of the Award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

## 13. EXEMPTIONS.

## 14. EVENT OF DEFAULT AND TERMINATION.

Failure to comply with these Grant Federal Provisions shall constitute an event of default under the Grant and the State of Michigan may terminate the Grant upon thirty (30) days prior written notice if the default remains uncured five (5) days following the termination of the thirty-day (30-day) notice period. This remedy will be in addition to any other remedy available to LEO or the State of Michigan under the Grant, at law or in equity.

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

14.1.1. By the Federal Awarding Agency or Pass-through Entity, if a non-Federal Entity fails to comply with the terms and conditions of a Federal Award;

14.1.2. By the Federal Awarding Agency or Pass-through Entity with the consent of the non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;

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

- 14.1.4. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award, including, to the extent authorized by law, if an award no longer effectuates the program goals or agency priorities.

## 15. ADDITIONAL FEDERAL REQUIREMENTS

### 15.1. Whistle Blower Protections

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into every NTIA grant award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of Subgrantee protection from reprisal for disclosure of certain information). Generally, this law provides that an employee or Subgrantee (including Subgrantees and personal services Subgrantees) of a Subgrantee, Subgrantee, Contractor, subcontractor or personal services Subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body (described in paragraph (a)(2) of 41 U.S.C. § 4712) information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subgrant, or a contract under a Federal award or subgrant, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subgrant or contract under a Federal award or subgrant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subgrant, or contract under a Federal award or subgrant. Subgrantees and Contractors under Federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 USC § 4712, in the predominant native language of the workforce. A person that believes they have been the subject of retaliation for protected whistleblowing can contact the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Hotline.aspx>, or the U.S. Office of Special Counsel, toll free at 1-800-872-9855. See statutory requirements for whistleblower protections at 10 U.S.C. § 4701, 41 U.S.C. § 4712, 41 U.S.C. § 4304, and 10 U.S.C. § 4310.

### 15.2. Equal Employment Opportunity.

If this Grant Agreement is a “federally assisted construction contract” as defined in [41 CFR Part 60-1.3](#), and except as otherwise may be provided under [41 CFR Part 60](#), then during performance of this Grant Agreement, the Subgrantee agrees as follows:

- 15.2.1. The Subgrantee will not discriminate against any employee or applicant for employment contrary to federal or state law or based on any protected characteristic contrary to state

law. The Subgrantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to those protected characteristics. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- 15.2.2. The Subgrantee will, in all solicitations or advertisements for employees placed by or on behalf of the Subgrantee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 15.2.3. The Subgrantee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Subgrantee's legal duty to furnish information.
- 15.2.4. The Subgrantee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other Grant Agreement or understanding, a notice to be provided advising the said labor union or workers' representatives of the Subgrantee's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- 15.2.5. The Subgrantee will permit access to their books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- 15.2.6. In the event of the Subgrantee's noncompliance with the nondiscrimination clauses of this Grant Agreement or with any of the said rules, regulations, or orders, this Grant Agreement may be canceled, terminated, or suspended in whole or in part and the Subgrantee may be declared ineligible for further Government contracts or federally assisted construction contracts.



- 15.2.7. The Subgrantee will include the portion of the sentence immediately preceding paragraph 16.2.1 and the provisions of paragraphs 16.2.1 through 16.2.8 in every subcontract or purchase order so that such provisions will be binding upon each subcontractor or vendor. The Subgrantee will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- 15.2.8. Provided, however, that in the event a Subgrantee becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Subgrantee may request the United States to enter into such litigation to protect the interests of the United States.
- 15.2.9. The Subgrantee further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Grant Agreement.
- 15.2.10. The Subgrantee agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- 15.2.11. The Subgrantee further agrees that it will refrain from entering into any contract or contract modification with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.
- 15.3. Contract Work Hours and Safety Standards Act

If the Contract is **in excess of \$100,000** and **involves the employment of mechanics or laborers**, the Subgrantee must comply with [40 USC 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)), as applicable, and during performance of this Contract the Subgrantee agrees as follows:

15.3.1. Overtime requirements.

No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

15.3.2. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the clause set forth in paragraph 25.3.1. of this section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph 25.3.1. of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph 25.3.1. of this section.

15.3.3. Withholding for unpaid wages and liquidated damages.

LEO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or Subcontractor under any such Grant Agreement or any other Federal Grant Agreement with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be

necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 16.4.1.2. of this section.

#### 15.3.4. Subcontracts.

The Contractor or Subcontractor shall insert in any subcontracts the clauses set forth in paragraph 16.4.1.1. through 16.4.1.4. of this section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs 16.4.1.1. through 16.4.1.4 of this section.

#### 15.3.5. Rights to Inventions Made Under a Contract or Agreement

If the Contract is funded by a federal “funding agreement” as defined under [37 CFR §401.2 \(a\)](#) and LEO or Subgrantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” LEO or Subgrantee must comply with [37 CFR Part 401](#), “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

### 15.4. Clean Air Act and the Federal Water Pollution Control Act

If this Grant Agreement is **in excess of \$150,000**, the Subgrantee must comply with all applicable standards, orders, and regulations issued under the Clean Air Act ([42 USC 7401-7671q](#)) and the Federal Water Pollution Control Act ([33 USC 1251-1387](#)), and during performance of this Grant Agreement the Subgrantee agrees as follows:

#### 15.4.1. Clean Air Act

15.4.1.1. The Subgrantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

15.4.1.2. The Subgrantee agrees to report each violation to LEO and understands and agrees that LEO will, in turn, report each violation as required to assure notification to the National Telecommunications and Information Administration (NTIA) or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

15.4.1.3. The Subgrantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA or the applicable federal awarding agency.

15.4.2. Federal Water Pollution Control Act

15.4.2.1. The Subgrantee agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

15.4.2.2. The Subgrantee agrees to report each violation to LEO and understands and agrees that LEO will, in turn, report each violation as required to assure notification to the NTIA or the applicable federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

15.4.2.3. The Subgrantee agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by NTIA or the applicable federal awarding agency.

**15.5. Debarment and Suspension**

15.5.1. A “contract award” (see [2 CFR 180.220](#)) must not be made to parties listed on the government-wide exclusions in the [System for Award Management](#) (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement [Executive Orders 12549](#) ([51 FR 6370; February 21, 1986](#)) and 12689 ([54 FR 34131; August 18, 1989](#)), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than [Executive Order 12549](#).

15.5.1.1. This Grant Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Subgrantee is required to verify that none of the Subgrantees principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

15.5.1.2. The Subgrantee must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

15.5.1.3. Subgrantee agrees that, to the best of its knowledge and belief, its employees and its subcontractors:

15.5.1.3.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or Subgrantee;

- 15.5.1.3.2. Have not within a five-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) or private transaction or Grant Agreement under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
- 15.5.1.3.3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local);
- 15.5.1.3.4. Have not within a five-year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default; and
- 11.1.1.1.1. Have not committed an act of so serious or compelling a nature that it affects the Subgrantee's present responsibilities.
- 15.5.1.4. This certification is a material representation of fact relied upon by LEO. If it is later determined that the Subgrantee did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment
- 15.5.1.5. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any Grant Agreement that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

#### 15.6. Byrd Anti-Lobbying Amendment

- 15.6.1. Subgrantees who apply or bid for an award of **\$100,000 or more** shall file the required certification in Exhibit D – Byrd Anti-Lobbying Certification below. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal Grant Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient (i.e., LEO) who in turn will forward the certification(s) to the awarding agency.

15.7. Procurement of Recovered Materials

15.7.1. Under 2 CFR 200.323, Subgrantee must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

15.7.1.1. In the performance of this Grant Agreement, the Subgrantee shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

15.7.1.1.1. Competitively within a timeframe providing for compliance with the Grant Agreement performance schedule;

15.7.1.1.2. Meeting Grant Agreement performance requirements; or

15.7.1.1.3. At a reasonable price.

15.7.1.2. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site,

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

15.7.2. The Subgrantee also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

15.8. No Obligation by Federal Government.

15.8.1. The Federal Government is not a party to this Grant Agreement and is not subject to any obligations or liabilities to the State, Subgrantee, or any other party pertaining to any matter resulting from the Grant Agreement.

15.9. Program Fraud and False or Fraudulent Statements or Related Acts

15.9.1. The Subgrantee acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Subgrantees actions pertaining to this Grant Agreement.

## **EXHIBIT D - BYRD ANTI-LOBBYING CERTIFICATION**

Subgrantee must complete this certification if the purchase will be paid for in whole or in part with funds obtained from the federal government and the purchase is greater than \$100,000.

### **APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

#### **Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, 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 shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all Subgrantees shall certify and disclose accordingly.

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, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Subgrantee, enter Subgrantee name here, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subgrantee understands and agrees

that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

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Signature of Subgrantee's Authorized Official

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Name and Title of Subgrantee's Authorized Official

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Date



## **EXHIBIT E - BEAD SPECIAL CONDITIONS**

### **1. Award Compliance Requirements, Prioritization and Terminology.**

Subgrantees must comply with all requirements contained in 47 U.S.C. § 1702, 2 C.F.R. Part 200, the BEAD NOFO as modified by the BEAD Restructuring Policy Notice published by NTIA, the Department of Commerce Financial Assistance Standard Terms and Conditions, the General Terms and Conditions for the BEAD Program, Michigan's BEAD Initial & Final Proposal, and the Specific Award Conditions applicable to each individual award. In any case where language among two or more authorities appears inconsistent, the relevant authorities should be read and interpreted in a manner which emphasizes consistency and harmonization across all relevant authorities. Where harmonization is impossible, Subgrantees should 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 NTIA's BEAD Restructuring Policy Notice; the BEAD NOFO; the Department of Commerce Financial Assistance Standard Terms and Conditions; and Michigan's BEAD Final Proposal. The definitions in the BEAD NOFO shall apply to capitalized terms not otherwise defined herein. Additionally, as used in this Exhibit E, the term "Subgrantee" refers to the non-Federal Entity of a grant as appropriate and as aligned with the Uniform Guidance (i.e., 2 CFR Part 200). The Subgrantee assumes ultimate responsibility for compliance with the requirements of this Award.

### **2. Subgrantee and Contractor Compliance with Applicable Requirements**

The Subgrantee shall comply, and must require each Subgrantee or contractor, including lower tier Subgrantees or subcontractors, to comply with all applicable Federal, state, and local laws and regulations, and all applicable terms and conditions of this Award. The Subgrantee and its Subgrantees are responsible for ensuring that all contracts, including those necessary for design and construction of facilities, are implemented in compliance with the Terms and Conditions of this Award. See NOFO Section IX.G.4.

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

Subgrantees must monitor award activities for common fraud schemes, including but not limited to:

- false claims for materials and labor;
- bribes related to the acquisition of materials and labor;

- product substitution;
- mismarking or mislabeling on products and materials; and
- time and materials overcharging.

Should a Subgrantee detect any fraud schemes or any other suspicious activity, the Subgrantee must contact its assigned Grant Manager and the LEO Fraud Hotline at: [LEO-FraudHotline@michigan.gov](mailto:LEO-FraudHotline@michigan.gov).

Additionally, in accordance with 2 CFR 200.113, an applicant or Subgrantee must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subgrantees are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR Part 180, 31 USC 3321, and 41 USC 2313.)

#### 4. Protection of Whistleblowers

The Department of Commerce Financial Assistance Standard Terms and Conditions are incorporated into this Award. Section F.05 of these Terms and Conditions states that each award is subject to the whistleblower protections afforded by 41 USC 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information).

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

Subgrantees and contractors under Federal awards and subgrants must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.

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

#### 5. Eminent Domain

As applicable, in accordance with Executive Order 13406, “Protecting the Property Rights of the American People” (June 28, 2006), the Subgrantee agrees:

- Not to 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;
- Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the grant for the purpose of advancing the economic interests of private parties; and
- 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 the LEO and NTIA. Any use of eminent domain without prior written consent of the LEO and NTIA constitutes an unauthorized activity and/or use of funds under the award, and subjects the Subgrantee to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.

#### 6. Inspection and Testing of Materials

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

#### 7. Requirements During Construction

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

- Ensuring that it meets all deadlines in approved plans and specifications;
- Monitoring the progress of grant funded activities;
- Reporting progress;
- Providing for required construction permits and adequate construction inspection;
- Promptly paying costs incurred for grant funded activities;
- Monitoring Subgrantees' compliance with Federal, State, and local requirements; and
- Constructing and maintaining in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place indicating that the Federal Government is participating in the activities.

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

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

### 8.1.EHP Pre-Implementation and Funding Conditions

The Subgrantee must not initiate any grant funded implementation activities—except for the limited permissible activities identified in section 9.5. below—and must not disburse any BEAD funds to a Subgrantee prior to the following:

- 8.1.1. The completion of any review required under the National Environmental Policy Act of 1969 (42U.S.C. 4321, *et seq.*) (NEPA), and issuance by NTIA and the LEO, 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;
- 8.1.2. The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, *et seq.*) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office (SHPO), and Federally recognized Native American tribes;

8.1.3. The completion of consultations with the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, *et seq.*), and/or consultations with the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1251, *et seq.*), as applicable; and

8.1.4. Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

## 8.2. Subgrantee Compliance with NEPA

NEPA Compliance: To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, the Subgrantee must:

- not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NTIA has approved any necessary decision document, except for the limited permissible activities identified in section 8.5 below;
- timely prepare any required NEPA documents and obtain any required permits, and must adhere to any applicable statutory deadlines as described in 42 U.S.C. 4336a(g); and
- provide a milestone schedule identifying specific deadlines and describing how the Subgrantee proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

## 8.3. Subgrantee Compliance with NHPA Section 106

NHPA Compliance: To ensure the timely completion of historic preservation review for all BEAD-funded activities, the Subgrantee must adhere to, and ensure that all Subgrantees adhere to, the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers (THPOs), and Internet for All (IFA) grant recipients authorizing IFA grant recipients to initiate Section 106 consultation for NTIA funded projects.

## 8.4. NTIA EHP Guidance

Further Guidance: NTIA will issue further implementation guidance regarding the Subgrantee's responsibilities under this section 8.4. That guidance will include instructions on the following topics, among others:

- How the Subgrantee should evaluate what level of environmental review is appropriate and determine what type of NEPA document is required for a grant funded activity to proceed;
- NTIA's criteria for determining whether each type of NEPA document meets the requirements of NEPA; and
- How the Subgrantee should format NEPA documents.

#### 8.5.Limited Permissible Pre-Implementation Activities

The Subgrantee must ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of all EHP requirements as outlined in this section 8.5. The Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or NHPA consultation or processes under other applicable laws—e.g., mitigation requirements, best management practices, or other measures necessary to reduce environmental impacts—and ensure that Subcontractors comply with such conditions as well. The Subgrantee must also provide any information requested by NTIA or LEO to ensure both initial and ongoing compliance with all requirements described above.

8.5.1. Only if approved by LEO in writing, the Subgrantee may undertake limited permissible activities under NEPA to proceed using award funds prior to the completion of the EHP review process, including 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;
- 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).

Subgrantees that undertake unauthorized project activities in contravention of this section 8.5. proceed at their own risk and may face de-obligation of funding.

- 8.5.2. The Subgrantee shall notify LEO within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, THPO, or other consulting party or the USFWS or NMFS; or notices of noncompliance received from consulting authorities or regulatory agencies.
- 8.5.3. Any change to the approved scope of grant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of LEO and will be re-evaluated for compliance with applicable requirements.
- 8.5.4. Archaeological Resources:  
Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantees must notify LEO of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. If any potential archeological resources or buried human remains are discovered during construction, the Subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify LEO. If human remains are found, LEO will promptly notify the appropriate law enforcement authorities in addition to adhering to all other applicable legal and procedural requirements. Such construction activities may then only continue with the written approval of LEO.

## 9. Scheduling Inspection for Final Acceptance

The Subgrantee will provide notice of completion for each broadband infrastructure project and other construction activities when all construction has been completed, the professional engineer has conducted its own final inspection, and any deficiencies have been corrected. Scheduling of

the final inspection will be coordinated by a MIHI representative with consideration to the Subgrantee's schedule. Representatives of LEO and Subgrantee must attend the Subgrantee's final inspection for each project.

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

Congress passed the Build America, Buy America Act (BABA) on November 15, 2021 as part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927. BABA established domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act. The Subgrantee shall comply with BABA consistent with applicable legal authorities, such as the Infrastructure Act, Executive Order 14005, 2 CFR Part 184, OMB Memo M-24-02, and any applicable waivers issued by the Department of Commerce. All waivers applicable to BEAD will be posted on the Build America, Buy America page maintained by the Department of Commerce Office of Acquisition Management at <https://www.commerce.gov/oam/build-america-buy-america>.

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

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

#### 12. Prohibition on the Supplantation of Funds

Consistent with 47 U.S.C. § 1702(l), Grant Funds awarded to the Subgrantee under this program shall be used to supplement, and not supplant, the amounts of Federal or non-Federal funds that the Subgrantee would otherwise make available for the purposes for which the Grant Funds may be used. See NOFO V.H.2.

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

No person in the United States may, on the ground of actual or perceived race, color, national origin, sex, age, disability, or handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving federal financial assistance. Consistent with 47 U.S.C. § 1702(g)(2)(C)(ii), the Subgrantee must abide by the non-discrimination requirements set forth in the following legal authorities, to the extent applicable



and acknowledges that failure to do so may result in cancellation of any grant and/or recoupment of funds already disbursed:

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) and the Department of Commerce's implementing regulations, published at 15 C.F.R. Part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
3. 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 Eligible Entity and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and Department of Commerce implementing regulations published at 15 C.F.R. Part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), and Department of Commerce implementing regulations published at 15 C.F.R. Part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
6. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., which provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. Note in this regard that Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination based on religion "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities;" and
7. Any other applicable state non-discrimination law(s) as more fully enumerated in sections 85, Nondiscrimination, and 128, Equal Employment Opportunity, of this Agreement. Application

requirements, award terms, and conditions do not impose civil rights and nondiscrimination law compliance requirements on Indian Tribes or Native Entities beyond what would otherwise apply under federal law.

#### 14. Network Capabilities

Pursuant to 47 U.S.C. § 1702(g)(1)(A), Subgrantee shall ensure that every Funded Network meets the criteria related to speed and latency and network outages outlined in the NOFO. See NOFO IV.C.2.a.

#### 15. Deployment Deadlines and Benchmarks

Pursuant to 47 U.S.C. § 1702(h)(4)(C), the Subgrantee shall deploy its Funded Networks and begin providing broadband service to each customer that desires broadband service not later than four years after the date on which the Subgrantee receives the subgrant for the applicable network. The Subgrantee shall establish interim buildout milestones sufficient to ensure that Subgrantee is making reasonable progress toward meeting the four-year deployment deadline.

#### 16. Conduit Access Points

Pursuant to 47 U.S.C. § 1702(h)(4)(D), any Funded Network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities. Where a project proposes to lay conduit, the Subgrantee shall deploy a reasonable amount of excess conduit capacity. See NOFO IV.C.2.b.ii.

#### 17. Low-Cost Service Option

Pursuant to 47 U.S.C. § 1702(h)(4)(B), each Subgrantee receiving BEAD funding to deploy network infrastructure must offer at least one low-cost broadband service option. Pursuant to Section 1702(h)(5)(C), NTIA or LEO may take corrective action, including recoupment of funds from the Subgrantee, for noncompliance with the statutory low-cost plan requirement. The Subgrantee will ensure that the low-cost broadband service option described in its application is available to eligible subscribers, during the Federal Interest Period. Subgrantee will also provide the LEO with a URL hosting the broadband consumer label for the low-cost-service-option and will notify the LEO of any changes within a reasonable time frame.

#### 18. Access to Service

Pursuant to 47 U.S.C. § 1702(g)(2)(C)(ii), operators of Funded Networks shall provide access to broadband service to each customer served by the project that desires broadband service on terms and conditions that are reasonable and non-discriminatory. See NOFO IV.C.2.c.iii.

#### 19. Cybersecurity and Supply Chain Risk Management

Pursuant to 47 U.S.C. § 1702(g)(1)(B), a Subgrantee, in carrying out activities using amounts received from LEO, shall comply with prudent cybersecurity and supply chain risk management practices, as specified by the Assistant Secretary, in consultation with the Director of the National Institute of Standards and Technology and the Federal Communications Commission. Subgrantee shall ensure:

- A cybersecurity risk management plan (the plan) in place that is either:
  - operational, if the prospective Subgrantee is providing service prior to the award of the grant; or
  - ready to be operationalized upon providing service, if the prospective Subgrantee is not yet providing service prior to the grant award;
- The plan reflects the latest version of the 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;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to LEO within 30 days. LEO will provide the Subgrantee's plan to NTIA upon NTIA's request.

With respect to supply chain risk management (SCRM), the Subgrantee shall ensure:

- A SCRM plan is in place that is either:
  - operational, if the prospective Subgrantee is already providing service at the time of the grant; or

- ready to be operationalized, if the prospective Subgrantee is not yet providing service at the time of grant award;
- The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
- The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- If the Subgrantee makes any substantive changes to the plan, a new version will be submitted to LEO within 30 days. LEO will provide the Subgrantee's plan to NTIA upon NTIA's request.

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

#### 20. Prohibition on Profit and Fees

A profit, fee, or other incremental charge above actual cost incurred by a Subgrantee is not an allowable cost under this Program. See NOFO V.H.2.b.

#### 21. Prohibition on Use of Grant Funds to Support or Oppose Collective Bargaining

A Subgrantee may not use Grant Funds, whether directly or indirectly, to support or oppose collective bargaining. See NOFO V.H.2.c.

#### 22. Subgrantee Integrity and Performance Matters

In accordance with Section 872 of Public Law 110-417, as amended, see 41 USC 2313, if the total value of a Subgrantee's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of an award, then the Subgrantee shall be subject to the requirements specified in Appendix XII to 2 CFR Part 200, for maintaining the currency of information reported to SAM that is made available in the Federal Awardee Performance and Integrity

Information System (FAPIS) about certain civil, criminal, or administrative proceedings involving the Subgrantee. See NOFO VII.F.

### 23. Audit Requirements

2 CFR Part 200, Subpart F, adopted by the Department of Commerce through 2 CFR 1327.101, requires any non-Federal entity that expends Federal awards of \$750,000 or more in the Subgrantee's fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Subpart. Additionally, unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 CFR Part 200 (e.g., commercial entities) that expend \$750,000 or more in grant funds during their fiscal year must submit to the Grants Officer either: (i) a financial related audit of each Department of Commerce (DOC) 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. Subgrantees are reminded that LEO, NTIA, the Department of Commerce Office of Inspector General, or another authorized Federal or state agency may conduct an audit of an award at any time. See NOFO V.G.

23.1. Commercial entity Subgrantees are not subject to 2 CFR Part 200, Subpart F but are subject to the audit requirements as stipulated in the award or sub-award between a Federal awarding agency and a recipient.

### 24. Federal Funding Accountability and Transparency Act of 2006

In accordance with 2 CFR Part 170, the Subgrantees are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282). In general, all Subgrantees are responsible for reporting subgrants of \$30,000 or more. In addition, Subgrantees that meet certain criteria are responsible for reporting executive compensation. Applicants must ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding. See NOFO VII.H.

### 25. Protected and Proprietary Information

The Subgrantee is expected to support Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the Department of Commerce and external program evaluators. In accordance with the Uniform Guidance (including but not limited to, sections §200.303 and §200.338) and the Privacy Act of 1974 (5 U.S.C. § 552a), the Subgrantee is required to take reasonable measures to safeguard protected personally identifiable information and other information the

U.S. Department of Commerce or LEO and/or the State of Michigan designates as sensitive or the Subgrantee considers sensitive consistent with applicable federal, state, local, or tribal laws regarding privacy and responsibility over confidentiality. In accordance with 2 CFR 200.303(e), Subgrantees are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award. See NOFO IX.B.

#### 26. Subgrantee Reporting

Pursuant to 47 U.S.C. § 1702(j)(2)(A), the Subgrantee shall submit to LEO a report, at least semiannually, for the duration of the subgrant to track the effectiveness of the use of funds provided. Subgrantees must certify that the information in the report is accurate. Each report shall describe each type of broadband infrastructure project and/or other eligible activities carried out using the Grant and the duration of the Grant. See NOFO VII.E.2.

#### 27. Tribal Consent to Deploy on Tribal Land

Consistent with NOFO Section IV.B.7.a.ii.10 and IV.B.9.b.15, the Subgrantee may not deploy broadband to Unserved Service Projects or Underserved Service Projects that include any locations on Tribal Lands without receiving a Resolution of Consent from each Tribal Government, from the Tribal Council or other governing body, upon whose Tribal Lands the infrastructure will be deployed.

#### 28. Broadband Infrastructure Projects and the Major Purpose Test

As used in this Exhibit E, broadband infrastructure “project” carries the same meaning as the term project is used in Section IV.B.7.a.ii. of the NOFO. For the sake of clarity, broadband infrastructure projects include:

- last-mile broadband deployment projects, as that term is used in Section IV.B.7.a.ii. of the NOFO, with the exception that projects for which the major purpose is training or workforce development are not considered broadband infrastructure projects for the purposes of the exceptions addressed below;
- projects to deploy Middle Mile Infrastructure, as that term is defined in Section I.A.(o) of the NOFO; and

- projects to deploy internet and Wi-Fi infrastructure within a multi-family residential building.

The “major purpose” of a grant is a broadband infrastructure project(s) if more than 50% of the estimated total costs (e.g., labor, permitting expenses, equipment, etc.) under the grant are necessitated by the broadband infrastructure project(s) activities. NTIA and LEO retain the authority to review grant agreements and revise determinations regarding the major purpose of a grant.

## 29. Encumbrances

Subject to the exception below, Subgrantees must not encumber property without prior disclosure to and approval from LEO. Subgrantees may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of grant funded property during Federal Interest Period set forth in term 35 below.

The following exception applies to grants whose major purpose is a broadband infrastructure project. Subgrantees may encumber real property and equipment acquired or improved under such subgrants only after provision of notice to LEO, and subject to a requirement that the Department of Commerce and LEO receive either a first priority security interest (preferred) or a shared first priority security interest in the real property and equipment such that, if the real property and equipment were foreclosed upon and liquidated, the DOC and LEO would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC or LEO’s percentage of contribution to the project costs. For example, if the DOC or LEO had contributed 50% of the project costs, the DOC or State would receive, on a pari-passu basis, 50% of the current fair market value of the property when liquidated. LEO will address the notice requirement for encumbrances in future guidance.

## 30. Recordation of the Federal Interest in BEAD-Funded Property

### 30.1. Useful Life and Compliance with 2 CFR 200.311, 200.313.

For the purposes of this Award, the useful life of the real property or equipment acquired or improved using BEAD funds shall coincide with the Federal Interest Period as defined in term 36.2 below. During the useful life of the BEAD-funded property, the Subgrantee must adhere to the requirements contained in the terms and conditions of the Award, including adherence to the use, management, and disposition requirements set forth in 2 CFR 200.311 or 200.313, as applicable. NTIA will provide additional

information concerning the review and approval process for transactions involving BEAD-funded real property and equipment in subsequent guidance.

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

30.3. UCC-1 Filing & Attorney’s Certification.

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

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

*The Equipment set forth at Attachment A hereto was acquired with funding under a financial assistance award (Award Number) issued by the National Institute of Standards and Technology, U.S. Department of Commerce. As such, the U.S. Department of Commerce retains an undivided equitable reversionary interest (Federal*



*interest) in the Equipment for 10 years after the end of the year in which the award is closed out in accordance with 2 CFR 200.344.*

In addition, during the estimated useful life of the [type of equipment, e.g. robotic equipment], the Subgrantee is hereby authorized to timely file any necessary UCC-3 continuation statements (or other filings) for the subject equipment consistent with the requirements set forth in this specific award condition. Copies of all filed UCC continuation statements must be submitted to LEO within 5 calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to LEO, NTIA and the National Institute of Standards and Technology (NIST) Grants Officer.

### 31. Federal Interest Period

BEAD-Funded Broadband Infrastructure Projects: The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for ten years after the year in which that subgrant has been closed out in accordance with 2 CFR 200.344. For example, for all subgrants closed out in 2027, regardless of the month, the Federal interest will last until December 31, 2037. The Federal interest described herein applies to BEAD subgrants for which the major purpose of the subgrant, as defined in term 32 above, is a broadband infrastructure project(s).

NTIA shall determine the Federal Interest Period for real property or equipment that will be acquired or improved using BEAD funds and not captured in provision (a) of this term. NTIA will issue further implementation guidance regarding the Federal Interest Period for these BEAD assets.

### 32. Program Income

In the case of subgrants whose major purpose is a broadband infrastructure project, Subgrantees may retain program income without restriction, including retaining program income for profit. This exception does not alter the prohibition in term 25 above regarding a profit, fee, or other incremental charge above the actual cost incurred by the Subgrantee.

### 33. Uniform Guidance Exceptions, Adjustments, and Clarifications Applicable to Fixed Amount Subgrants For Which the Major Purpose of the Subgrant is a Broadband Infrastructure Project(s)

The following Uniform Guidance exceptions, adjustments, and clarifications apply to fixed amount subgrants for which the major purpose of the subgrant is a broadband infrastructure project. Throughout the below discussion on exceptions, adjustments, and clarifications, the phrase “fixed amount subgrant” is used as shorthand to refer to fixed amount subgrants as described in the preceding sentence.

33.1. Exceptions to 2 CFR Part 200 Fixed Amount Subgrant Requirements (200.333—Fixed Amount Subgrants and 200.201(b)(2)--Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts)

As authorized by NTIA, and pursuant to exceptions of 2 CFR 200.333 and 200.201(b)(2) approved by the Office of Management and Budget (“OMB”), LEO has elected to treat this Award as a fixed amount subaward and additionally, as allowed by NTIA, to require Subgrantees to submit evidence of costs and limit payments to actual documented eligible costs. Subgrantees must periodically report their expenses and Match using Generally Accepted Accounting Principles or other standard accounting practices, or monitoring the relative proportion of costs across key spending areas: professional services (e.g., engineering, environmental and historic preservation permitting, legal expenses, etc.); construction services (e.g., digging trenches, erecting towers, blowing fiber, constructing and improving buildings, etc.); outside plant, towers, and poles (e.g., fiber plan, conduit, towers, poles, emergency power generational equipment, etc.); network and access equipment (e.g., broadband routing equipment, broadband transport equipment, network broadband access equipment, wireless base stations, antennas, etc.); operating equipment (e.g., office furniture and fixtures, work equipment and vehicles, etc.); customer premise equipment; contingency funds; and all other expenses.

34. Subgrantees shall use subgrant payments only for eligible costs in connection with the last-mile broadband deployment projects for which the payment is intended. Ineligible uses of fixed amount subgrant payments include but are not limited to the following:

34.1. Personal expenses of employees, executives, board members, and Subgrantees, and family members thereof, or any other individuals affiliated with the Subgrantee, 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;

34.2. 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;
- 34.3. Expenses associated with: tangible property not logically related or necessary to the broadband infrastructure 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;
- 34.4. 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 subgrant; nonproduct-related corporate image advertising; and
- 34.5. Penalties or fines for statutory or regulatory violations; penalties or fees for any late payments on debt, loans, or other payments.
- 34.6. The remainder of 2 CFR 200.201 remains unchanged. Payments shall be made on a milestone basis in accordance with terms of the grant Agreement. See NOFO Sec. IV.C.1.b.

Pursuant to 2 CFR 200.201(b)(3), the Subgrantee must certify in writing to LEO at the end of the Federal award that the broadband infrastructure project funded under the subgrant was completed. Accordingly, a Subgrantee receiving a fixed amount subgrant must certify to LEO that the broadband infrastructure 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 Subgrantee's period of performance.

The above notwithstanding, the BEAD Program prohibition on the Subgrantee claiming profit or fees as allowable costs remains unchanged by this exemption. See NOFO Sec. V.H.2.b. Therefore, neither fees above the estimated actual cost that will be incurred by the Subgrantee nor profit shall be considered reasonable costs when determining the reasonable estimate of actual costs (i.e., neither fees nor profits may be included in the estimate of actual costs).

Subgrantees of fixed amount subgrants pursuant to the above exceptions are not required to comply with the Cost Principles set forth in 2 CFR Subpart E. However, all fixed amount subgrants must be based on a reasonable estimate of actual cost.

- 34.7. Adjustments to 2 CFR 200.318-320 and 200.324-326—Procurement Standards  
Subgrantees of fixed amount subgrants pursuant to the above exceptions are not required to comply with the Procurement Standards set forth in 2 CFR 200.318-320 and 200.324-326. All other Procurement Standards, i.e., 2 CFR 200.317, 200.321-200.323, and 200.327, remain as requirements.
- 34.8. Exceptions and Clarifications to 2 CFR 200.313—Equipment  
Title to equipment acquired or improved under the fixed amount subgrant vests in the Subgrantee upon acquisition, subject to the following conditions and clarifications that apply for the duration of the Federal Interest Period:
- 34.8.1. Subgrantee must follow their existing commercial practices for managing equipment in the normal course of business and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 CFR 200.313(d), pursuant to an exception from OMB. Subgrantees that do not have existing commercial practices for managing equipment in the normal course of business must comply with 2 CFR 200.313(d).
- 34.8.2. Subgrantee must comply with the use and equipment disposition requirements of 2 CFR 200.313(c)(4) and 313(e).
- 34.8.2.1. Subgrantees acquiring replacement equipment under 2 CFR 200.313(c)(4) may treat the equipment to be replaced as “trade-in” even if the Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, the Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports to LEO and DOC to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. The Subgrantee will also be responsible for tracking the

value of the replacement equipment, including both the Federal and non-Federal share.

34.8.2.2. Subgrantee may sell, lease, or transfer equipment only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal interest in the subject equipment, and (b) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving BEAD-funded equipment, as well as real property, in subsequent guidance.

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

34.9. Exception to 2 CFR 200.314--Supplies

Pursuant to an exception approved by OMB, the property standards set forth in 2 CFR 200.314 for supplies shall not apply to fixed amount grants.

34.10. Exception to 2 CFR 200.315--Intangible Property

Pursuant to an exception approved by OMB, the property standards set forth in 2 CFR 200.315 for intangible property shall not apply to fixed amount grants.

34.11. Exception to 2 CFR 200.500 et seq.--Audit Requirements

Pursuant to 2 CFR.200.500(i), Subgrantee, a for-profit entity, is not subject to the Subpart F Audit Requirements of the Uniform Guidance.

34.12. Internal Controls.

Pursuant to CFR 200.303 Internal Controls The non-federal entity must:

34.12.1. Establish and maintain effective internal control over the federal award that provides reasonable assurance that the non-federal entity is managing the federal award in compliance with federal statutes, regulations, and the terms and conditions of the federal award.

34.12.2. Comply with federal statutes, regulations, and the terms and conditions of the federal awards.

- 34.12.3. Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- 34.12.4. Take reasonable measures to safeguard protected personally identifiable information.

**EXHIBIT F - ASSURANCES OF COMPLIANCE WITH 2 C.F.R. § 200.216  
PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO  
SURVEILLANCE SERVICES OR EQUIPMENT**

1. As a condition of receipt of federal financial assistance from the Federal Government, any Subgrantee provides the assurances stated herein.
2. As required by 2 C.F.R. § 200.216, LEO and Subgrantees of federal funds, including borrowers, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a Grant Agreement to procure or obtain; or enter into a Grant Agreement (or extend or renew a Grant Agreement) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). LEO, Subgrantees, and borrowers also may not use federal funds 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)). :
3. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
4. Telecommunications or video surveillance services provided by such entities or using such equipment.
5. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. Consistent with 2 C.F.R. § 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- 5.1.Obligating or expending federal funds for covered telecommunications and video surveillance services or equipment or services as described in 2 C.F.R. § 200.216 to:
- 5.2.Procure or obtain, extend or renew a Grant Agreement to procure or obtain;
- 5.3.Enter into a Grant Agreement (or extend or renew a Grant Agreement) to procure; or
- 5.4.Obtain the equipment, services, or systems. Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the System for Award Management exclusion list.

Federal funds may not be used for purchases of equipment from vendors listed in Public Law 115-232. Any equipment purchased from a proscribed vendor using federal funds shall be removed and replaced by Subgrantee at Subgrantee's expense. Ineligible costs may be disallowed or recaptured by the State or Federal Government.



## **EXHIBIT G – REPORTING WASTE, FRAUD, AND ABUSE TO THE MICHIGAN OFFICE OF INSPECTOR GENERAL**

Subgrantee must publicize the telephone numbers and email addresses for the State of Michigan's Office of Inspector General for the purpose of reporting waste, fraud or abuse in the BEAD Program. This information must be shared with project team staff, contractors, and other personnel involved in deployment activities through a documented medium, such as a public posting or as part of orientation materials.

**Telephone:** 517-334-8070

**Email:** LEO-FraudHotline@michigan.gov

Subgrantee acknowledges the responsibility to produce copies of materials used for such purposes upon request of the Federal Program Officer or the LEO.