

**THIS SUBGRANT AGREEMENT** is a federal subaward (“Agreement”) and is entered into by [Subgrantee name] (“Subgrantee”), a [registered business type] existing under the laws of [State of Incorporation] and the **Office of Broadband Development**, a government agency and instrumentality of the Commonwealth of Kentucky (“the Office”) under the Broadband Equity, Access, and Deployment (“BEAD”) Program for the [Project Name/ID] Project.

#### **WITNESSETH**

**WHEREAS**, the Office is authorized to make Grant Funds available to qualified subgrantees under the Kentucky BEAD Grant Program, established in KRS 224A.117, and governed in accordance with the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, and the BEAD NOFO, including any additional regulations promulgated by or guidance of the Assistant Secretary of Commerce for Communications and Information and NTIA Administrator may provide;

**WHEREAS**, \_\_\_\_\_ (\$ award amount) in federal funds have been approved for the Subgrantee through the Kentucky BEAD Grant Program and the Recipient now seeks to acquire and construct the Project (“Project”) as described in the Application, as may be amended and is incorporated herein by reference, and the Office has determined that the Project meets the guidelines of the Kentucky BEAD Grant Program; and

**WHEREAS**, the Office and Subgrantee agree that this award is being provided by the Commonwealth of Kentucky to Subgrantee for Subgrantee to carry out part of the Federal BEAD award received by the Commonwealth. Specifically, Subgrantee will use award funds for the deployment of a broadband network and the provision of Qualifying Broadband Service to end users; and

**WHEREAS**, it is the intent of the Parties that this Agreement in all other respects is a “subaward” as that term is defined in 2 CFR § 200.201 and that Subgrantee is a “subrecipient” as that term is defined in 2 CFR § 200.201 and as evaluated under 2 CFR § 200.331; and

**WHEREAS**, this award is a “fixed amount subaward” as defined in 2 CFR § 200.201 where the major purpose of the subaward is a broadband infrastructure project, and will be administered by the Office pursuant to the Uniform Guidance Policy Notice published by NTIA on December 26, 2023 titled “Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program.”

**WHEREAS**, the Subgrantee and the Office desire to enter into this Agreement, which sets forth their respective duties, rights, covenants, and obligations with respect to the acquisition and construction of the Project and the use of the proceeds as administered by the Office; and

**WHEREAS**, the Term of this agreement shall begin the date this contract is fully executed and end at the conclusion of the Project, or project contractual term, whichever is earlier.

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the award hereby effected, and for other good and valuable consideration, the receipt, mutuality and sufficiency of which is hereby acknowledged by the parties hereto, the Office and the Recipient each agree as follows:

## **SECTION 1 DEFINITIONS**

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

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

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

**“BABA”** means the Build America, Buy America Act, which as part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927, establishes domestic content procurement preference requirements for Federal financial assistance projects for infrastructure, including the BEAD Program, consistent with Section 70912(2) of the Infrastructure Act.

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

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

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

**“CAI”** means a community anchor institution as identified in the post\_challenge\_cai.csv.

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

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

**“DOC ST&Cs”** means the Department of Commerce Financial Assistance Standard Terms and Conditions (Nov. 12, 2020) *available at* [https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%202012%20November%202020%20PDF\\_0.pdf](https://www.commerce.gov/sites/default/files/2020-11/DOC%20Standard%20Terms%20and%20Conditions%20-%202012%20November%202020%20PDF_0.pdf)

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

**“Federal Grant Officer”** means the NIST grant officer identified on Kentucky’s BEAD Program CD-450.

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

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

**“Grant Funds”** means the Total Amount of the BEAD Federal Award committed to Subgrantee by the eligible for the Project identified in this grant agreement.

**“Initial Proposal”** means Kentucky’s BEAD Initial Proposal, as approved by NTIA on June 17, 2024, as amended on June and as it may subsequently be amended, available at <https://broadband.ky.gov/BEAD/Pages/Initial-Proposal.aspx>.

**“LCSO”** means the Low-Cost Service Option offered by the subgrantee to eligible subscribers in the project area.

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

**“Middle Mile Infrastructure”** A) means any broadband infrastructure that does not connect directly to an end-user location, including a CAI; and (B) includes—(i) leased dark fiber, interoffice transport, backhaul, carrier-neutral internet exchange facilities, carrier-neutral submarine cable landing stations, undersea cables, transport connectivity to data centers, special access transport, and other similar services; and (ii) wired or private wireless broadband infrastructure, including microwave capacity, radio tower access, and

other services or infrastructure for a private wireless broadband network, such as towers, fiber, and microwave links (per BEAD NOFO, pgs. 13-14).

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

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

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

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

**“Office”** means the Kentucky Office of Broadband Development.

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

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

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

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

**“Project Completion Criteria”** are the minimum criteria for project completion set forth in **Attachment 3** [Subgrantee’s approved Application (and any material changes approved by the Office, if applicable)].

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

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

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

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

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

**“RPN”** means the BEAD Restructuring Policy Notice published on June 6, 2025.

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

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

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

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

## **SECTION 2 PURPOSE**

Subgrantee shall deploy Qualifying Broadband Service to End Users and CAls as described in Subgrantee’s Application as may be amended and incorporated in this Agreement as Exhibit \_\_. This Project must provide, within 10 business days of a request, Qualifying Broadband Service to all broadband serviceable locations and CAls identified herein and at the speeds and latency standards described in the application. Subgrantee shall perform a standard installation of Qualifying Broadband Service at a standard installation charge.

This award is considered a federal fixed amount subaward and federal financial assistance in relation to the Single Audit Act Amendments of 1996 (31 U.S.C. 7501 – 7507) (“Grant” or “Subaward”). As defined 2 CFR § 200.1, fixed amount award means a type of grant under which the pass-through entity “provides a specific level of support without regard to actual costs incurred under the Federal Award.”

[Alternative text for non-fixed amount awards]

This award will be a reimbursement subgrant. Grant funds will be disbursed based on approved reimbursement requests from SUBGRANTEE in an amount not to exceed] Insert Grant Amount written out long form (Number in parenthesis) (the “Award”) to provide broadband internet service to the locations specified in Exhibit A. Accordingly, requests for cost reimbursement will be submitted pursuant to Exhibit XX.

[End alternative text for non-fixed amount awards]

### SECTION 3 LIST OF EXHIBITS

This Agreement includes the following exhibits and attachments and incorporates by reference herein:

1. Subgrantee's Notice of Subaward, Requirements for Pass-Through Entities and Subgrantees, Exhibit A;
2. Subgrantee's Final Statement of Work, Exhibit B;
3. Project Timeline
4. Project Budget, Exhibit C;
5. Federal Terms & Conditions, Exhibit D;
6. BEAD Special Conditions, Exhibit E;
7. Subgrantee's complete and final [Program Application], including all amendments, certifications, and commitments made therein, Exhibit F;
8. Any Letter of Credit or Performance Bond related to the project pursuant to **Section 8** below. The current version, as of execution, is attached as Exhibit G, and;
9. Assurances of Compliance with 2 C.F.R. § 200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment, Exhibit H
10. [OPTIONAL] Parent Company Guaranty, is attached as Exhibit I.

### SECTION 4 PROGRAM REQUIREMENTS

4.1 Subgrantee shall comply with the department's program grant administration policies and procedures as set forth on [broadband.ky.gov](http://broadband.ky.gov).

4.2 The Subgrantee certifies the use of Program funds as outlined in **Section 7 (Project Scope)** is eligible under Section 60102 of IIJA and all agrees to comply with applicable U.S. DOC and Commonwealth of Kentucky regulations, including applicable sections of 2 CFR Part 200 (Uniform Guidelines), U.S. DOC Financial Assistance Standard Terms and Conditions, and all relevant federal and state waivers and guidance.

4.3 Subgrantee is registered and will maintain registration through the federal interest period with the U.S. System for Award Management (SAM). Subgrantee confirms that the Unique Entity Identifier (UEI) listed in Notice of Subaward, Exhibit A, is the correct such number for the Subgrantee.

4.4 Subgrantee may use Program funds to cover Project costs or Pre-award costs. Project costs are those that are incurred during the Primary Term (as defined in Section 6) and

identified specifically within the approved Final Statement of Work and Budget, Exhibit B, such as permitting, acquisition of real property, equipment, and materials for the Project. Allowable Pre-award costs are those incurred prior to the effective date of the federal award or subaward directly pursuant to the negotiation and in anticipation of the Federal award which are approved by the Department and NTIA.

4.5 Subject to the Department and NTIA budget approval, the Subgrantee may use Program funds to cover administrative costs up to a statutory cap of two percent (2%) in compliance with IIJA Section 60102(d)(2)(B) and applicable regulations.

4.6 The Subgrantee may not use Program funds as payment for broadband expenses that are reimbursed from any other source.

4.7 The Subgrantee agrees to repay to the Department any funds remitted under this Agreement that the Subgrantee, its subcontractors, agents, or assignees expends in noncompliance of the terms and conditions of this Agreement; the laws, rules, regulations, and guidance governing the Program; or any other applicable local, state, or federal requirements. This repayment obligation does not limit any other remedies the Department may have under this Agreement or at law. Under no circumstances will payment by the Department be deemed to waive the Department's right to reclaim those costs that are not allowable and recover the funds from Subgrantee.

4.8 Subgrantee agrees to maintain an Irrevocable Standby Letter of Credit or a Performance Bond in compliance with applicable Program rules, including but not limited to U.S. DOC Notices of Programmatic Waiver (October 2023 and July 2025).

4.8.1 Pursuant to Program rules, Subgrantee has caused an eligible financial institution prior to the effective date of this Agreement to submit a qualifying Letter of Credit or Performance Bond. Subgrantee's submitted Letter of Credit or Performance Bond is attached here as **Exhibit G**.

4.8.2 The Subgrantee shall not reduce the Letter of Credit or Performance Bond from the amounts set out in documents attached as Exhibit G, without prior approval by the Office. The Office shall not approve a request that reduces the Line of Credit or Performance Bond to less than 10% of the subaward amount prior to the Office's approval of the Closeout Report.

4.8.3 Subgrantee shall direct the financial institution issuing the new or revised instrument to submit a copy to the Office within seven days of its issuance.

4.8.4 Subgrantee shall provide an opinion letter from legal counsel clearly stating that federal bankruptcy court would not treat the Letter of Credit or proceeds from the letter of Credit as property of the Subgrantee's estate under Section 541 of the federal Bankruptcy Code. **See Exhibit G**.

4.9 At all times, Subgrantee agrees to comply with the requirements of IIJA, including but not limited to regulations adopted by the U.S. DOC pursuant to Division F, Title I of IIJA and all applicable U.S. DOC and Commonwealth of Kentucky guidance.

4.10 Subgrantee shall deploy, and shall ensure that any third-party network facility providers involved in the Project can attest to using, prudent cybersecurity risk management practices as part of the construction and operation of the Project. Subgrantee shall agree to maintain a cybersecurity risk management plan during the Primary Term that reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity, and the standards and controls set forth in Executive Order 14028. Subgrantee shall reevaluate and update this plan on a periodic basis and provide new versions of the plan to the Office within 30 days of making substantive changes. Subgrantee shall agree to provide a copy of the most recent version of the plan to NTIA upon its request.

4.11 Subgrantee shall deploy, and shall ensure that any third-party network facility providers involved in the Project can attest to using, prudent supply chain risk management practices as part of the construction and operation of the Project. Subgrantee shall agree to maintain a supply chain risk management plan during the Primary Term that reflects the latest version of the NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related guidance from NIST including NIST 800-161.



Subgrantee shall reevaluate and update this plan on a periodic basis and provide new versions of the plan within 30 days of making substantive changes. Subgrantee shall agree to provide a copy of the most recent version of the plan to NTIA upon its request.

4.12 To inform Subgrantee's employees, agents, contractors and subcontractors on how to report waste, fraud, or abuse in the BEAD Program, Subgrantee shall widely publicize the toll-free number and website for the Commonwealth of Kentucky Finance and Administration Cabinet's Office of the Inspector General Tip Line.

4.13 Any publications produced with funds from this award must display the following language:

"This project [is being]/[was] supported, in whole or in part, by the BEAD Program award number KY-BEAD-25BDPXXX allocated by the Commonwealth of Kentucky by the U.S. Department of Commerce in accordance with the Infrastructure Investment and Jobs Act for the deployment of broadband in the Commonwealth of Kentucky."

4.14 If it is determined that the use of funds outlined in **Section 7 (Project Scope)** is ineligible under IJA, the Subgrantee understands and acknowledges that the Office may terminate this Agreement or amend the terms and conditions of this Agreement if feasible and allowed under applicable law.

4.15 The Subgrantee shall be responsible for project management, construction and operation in an efficient and economic manner, including obtaining and updating all necessary federal, state, and local permits as applicable for the Project. Subgrantees must retain professional engineering and management expertise during construction. Further, the Subgrantee will operate and maintain the Project for the Federal Interest Period, unless otherwise approved by the Department and U.S. DOC.

4.16 The Office may proportionately reduce the Subgrantee's Program funds provided by this Agreement if one or both of the following occur: (1) actual Project expenses are lower than projected by the Subgrantee; or (2) the Subgrantee obtains a greater amount of grant funds from other sources than as presented in the Final Statement of Work and Budget, Exhibit B.

4.17 Subgrantee shall timely pay its employees and subcontractors for work performed related to this Agreement.

4.18 The Subgrantee's "Service Obligation" means the Project will deliver "Reliable Broadband," as defined in the BEAD NOFO and achieve the Speed and Latency as defined

in the Final Statement of Work and Budget, **Exhibit B** to the entire funded service area.

4.18.1 Within 30 days of completion, Subgrantee will submit speed test documentation for verification and submit all required certifications pursuant to 2 CFR 200.201(b)(3) as part of its Closeout Report defined in **Section 12**.

4.18.2 The Project will provide service to the Service Area as defined by the **Service Area Map** attached as **Exhibit B-1**. Service must be available to all the Service Area Addresses defined by longitude and latitude in **Exhibit B-2**. Service must meet the level of broadband service described in the Department approved Final Statement of Work and Budget, **Exhibit B**, and this Agreement, as updated by the Department or U.S. DOC.

4.18.3 Subgrantee shall satisfy the Service Obligation for the Federal Interest Period as defined in **Section 21**.

4.18.4 Subgrantee acknowledges that given the significant amount of government contribution to the Project in the form of an allocation, the Service Obligation is a significant portion of the public benefit of the Award, and that failure to satisfy the Service Obligation shall be an event of default.

4.18.5 Subgrantee shall offer at least one "low-cost broadband service option" as outlined in the NTIA-approved Initial Proposal, as amended by the RPN.

## **SECTION 5 PERIOD OF PERFORMANCE**

5.1 The period of performance for this award is four years. The period of performance begins on the Effective Date.

5.2 The effective date of this Agreement is the date of last signature.

5.3 All expenses for which Subgrantee seeks reimbursement must be (1) Pre-award costs approved by the Office or (2) project costs incurred by Subgrantee after the Effective Date of the award for meeting milestones as determined by the Office. Project costs incurred by Subgrantee after [deadline to be determined], will not be reimbursed by the Office and shall be the sole responsibility of the Subgrantee. Subgrantee may not apply funds the Office reserved for retainage, (as described in Section 10 (Disbursements)), to any project costs incurred by Subgrantee after [deadline to be determined].

5.4 The Office may, in its sole discretion, extend the period of performance by up to one year if Subgrantee demonstrates to the Office that: (1) Subgrantee has a specific plan for use of the Grant Funds, with project completion expected by a specific date not more than

five years after the Grant Date; (2) construction on the Project is underway; or (3) extenuating circumstances require an extension of time to allow the Project to be completed. The Subgrantee shall notify the Office by [deadline to be determined (about 3 months from the end of four-year deadline date)] if an extension may be necessary.

5.5 The Office reserves the right to withdraw a commitment of any Program award of funds for projects if a Subgrantee is not ready to proceed with the obligations in the Final Statement of Work and Budget, Exhibit B, within one year after the notice of award letter from the Office.

5.6 Performance of the scope of work and all reporting, and all requests for reimbursement and the Closeout Report must be submitted to the Office no later than XXX, 202X.

5.7 Closeout will be conducted on the timelines and in the manner set forth in 2 CFR 200.344. Closeout does not affect (a) any of the rights, requirements and obligations set forth in 2 CFR 200.345, or (b) any of Subgrantee's obligations that survive closeout and remain in force during the Federal Interest Period as described in section X below.

## **SECTION 6 PROJECT SCOPE**

6.1 The scope of work for this project is described in the Final Statement of Work, Exhibit B, all supporting documents and any written modifications or reports resulting from the review of the application by the Office (collectively "Project"), herein incorporated into this Agreement. Subgrantee shall engage in the activities as set forth in the Project, unless mutually agreed otherwise by both the Office and Subgrantee, in a Change Order or other instrument in writing, signed by all parties and attached and incorporated by reference to this Agreement.

6.2 Notwithstanding other obligations in this Agreement, including the Service Obligations, the Project is not complete and the Subgrantee has not fulfilled its obligations under this Agreement until after the Subgrantee has (1) submitted to the Office final buildout maps and data in the format requested by the Office, (2) conducted a final project monitoring indicating that all construction has been completed and (3) submitted a Closeout Report.

6.3 Under the DOC ST&C and the Uniform Guidance 2 CFR 200.308, the Subgrantee must report deviations from the Subgrantee's approved award budget, project, program scope, or objective(s) to the Office. The Subgrantee shall request prior written approval from the Office for the following program and budget-related reasons:

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

## **SECTION 7 BUDGET**

7.1 The total amount awarded to the Subgrantee under this Agreement shall not exceed [\$AWARD AMOUNT]. The Subgrantee provided a Project Budget, as Exhibit B of this Grant Agreement.

7.2 This is a fixed amount award and cost overruns beyond the awarded amount will be Subgrantee's responsibility. Notwithstanding cost overruns, Subgrantee is obligated to complete the project as stated in the Final Statement of Work and Budget, Exhibit B. The Office will not provide additional BEAD funds over the total amount awarded to the Subgrantee, stated in Section 7.1 above.

7.3 Any subsequent modifications to the Budget shall be in a form and substance satisfactory to the Office and consistent with applicable requirements of law. The Subgrantee must obtain the Office's written approval prior to changes to the Project Budget by submitting a proposed revised Project Budget with appropriate justification through the Office's Grants Management portal.

7.4 If necessary and upon request, the Office may require a more detailed or supplementary Budget breakdown, and the Subgrantee shall provide such detailed or supplementary Budget information in a timely fashion in the form and content prescribed by the Office.

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

7.6 Subgrantee is required to match funds. The Match Requirement is [MATCH%] of the total eligible project costs. The Office will reimburse [Award Amount %] of the total eligible project cost up to the Award Amount of [\$AWARD AMOUNT]. If costs are later determined to be ineligible, the Office will require repayment of funds back to the Office by Subgrantee. **See Section 5.7.**

7.7 The Office may assess penalties for a subgrantee's failure to comply with the provisions of the Subgrantee Award Agreement. All penalties are limited to 100% of the allocation to Subgrantee under the Subgrantee Award Agreement. Payments made for costs determined to be unallowable by either the Office or NTIA, must be refunded (including interest and penalties) by the Subgrantee to the Office. In addition to any other remedy allowed for breach under this Agreement, false statements or claims made in connection with this award constitute a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

7.8 The Office reserves the right to withdraw this Subaward and to terminate this Agreement if Subgrantee fails to secure necessary matching funds, as specified in the project application, as required by the IJA and this Agreement.

## **SECTION 8 PROJECT MONITORING**

8.1 The Office or any of its authorized agents may monitor and may conduct desk reviews, site visits, and inspect all phases and aspects of the Subgrantee's performance under this Agreement to determine compliance with the Project conditions, including the proper use of funds, technical and administrative requirements, and the adequacy of the Subgrantee's records, accounts and reports. The Office may advise the Subgrantee of any specific areas of concern and may impose on Subgrantee corrective action.

8.2 If the Office finds that there has been a failure by Subgrantee to make reasonable progress or that the purposes for which the funds were granted are not being fulfilled in a timely manner, the Office may take action to protect the interests of the Office, including

refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

## **SECTION 9 DISBURSEMENTS**

9.1 The Office shall withhold from any disbursement the percentage Match Requirement in accordance with Section 7.6.

9.2 The Office shall withhold 10 percent retainage from the total authorized grant amount until the Project is complete and the Subgrantee's Closeout Report is received and approved by the Office. In the event the Office has paid Subgrantee for expenses later determined to be ineligible, the Office may withhold funds from the retainage to offset the overpayment to Subgrantee for the ineligible expenses. If the Subgrantee demonstrates non-compliance and/or non-performance of any portion of this Agreement, the Office may use the retainage to offset that amount to pay for expenses caused by the Subgrantee's non-compliance and/or non-performance.

9.3 Subgrantee shall submit a request for reimbursement at a minimum of once per 90 days, but not more than once every 30 days, through the Office's online grants management platform. The Office discourages invoices older than 90 days.

9.4 The Department shall require Subgrantee to provide adequate support for each request for reimbursement as outlined in the Department's technology platform.

9.5 Eligible expenses are those expenses which are outlined in IJJA, U.S. DOC BEAD guidance, and are actually incurred on this Project, as stated in the Final Statement of Work and Budget, **Exhibit B**.

9.6 Prior to the completion of any necessary environmental review, Subgrantee reimbursement requests shall be limited to the following activities:

- Pre-construction planning, including collecting information necessary to complete environmental reviews;
- Applications for environmental permits;
- Studies including, but not limited to, Environmental Assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
- Administrative costs;
- Pre-award application costs, subject to prior Office and NTIA approval;

- 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 prior to obtaining necessary environmental review do so at the risk that those unauthorized costs may not be reimbursed.

9.7 The Office will review every request for reimbursement to verify:

- the costs are in compliance with Program requirements.
- the request is for eligible costs as per the Final Statement of Work and Budget, Exhibit B.
- the claim is adequately supported by the Subgrantee's records;
- Subgrantee has paid the costs, and;
- Subgrantee can provide any additional documentation required to demonstrate the completion of the work performed, including, but not limited to construction ready design drawings, executed copies of required permits, as-built documentation, OTDR traces or active subscriber performance test results.

9.8 If additional documentation is requested by the Office or its authorized agents, Subgrantee will have ten (10) calendar days to submit the requested information. When the Office has received sufficient information to confirm the reimbursement is in compliance with all requirements for disbursement of BEAD funds, the Office will have 30 days to pay Subgrantee an amount equal to the verified costs, less the matching funds and retainage.

9.9 Subgrantee will provide its payment information through the Kentucky Vendor Self-Service Portal. Any changes requested by the Subgrantee to its payment information must be made in the Vendor Self-Service Portal. The Office will process all reimbursements through Kentucky's eMARS system.

9.10 The Office may withhold reimbursement to Subgrantee upon the Office's determination that the request for reimbursement includes ineligible costs. In addition, the Office may suspend reimbursement to Subgrantee upon the Office's determination that Subgrantee is not timely cooperating with the Office's efforts to conduct the subgrantee accountability procedures described in the NTIA-approved Initial Proposal Volume II.

9.11 Final disbursement of funds, including release of retainage, is contingent upon approval of the Subgrantee's Closeout Report.

9.12 The Subgrantee may not use Program funds provided through this Agreement as payment for broadband expenses that are reimbursed by any other federal, tribal, state or local award. Further, if the Subgrantee determines an additional enforceable commitment exists within the Project, the Subgrantee will notify the Office and parties will work to resolve the conflict.

## **SECTION 10 PERFORMANCE AND FINANCIAL REPORTING**

10.1 Subgrantee must comply with post-award monitoring and reporting requirements to maintain continued eligibility for disbursement of grant funds.

10.2 The Subgrantee shall submit timely performance and financial reports through the Office's Broadband Grants Management Portal.

10.3 The Subgrantee must provide the Office all necessary information for the Office to meet its requirements to the U.S. DOC under the BEAD Program. This information must be submitted to the Office within fifteen (15) calendar days after the end of each quarterly, semi-annual, or annual reporting period.

10.4 The Office may require additional performance and financial reports from the Subgrantee and unless otherwise agreed, Subgrantee's response to each additional performance request will be within seven (7) additional calendar days.

10.5 Subgrantee acknowledges that information and data contained in financial, performance and other reports submitted by Subgrantee as required under the Program rules may be used by the U.S. DOC in conducting reviews and evaluations of its financial assistance programs and for statistical purposes.

10.6 During each reporting period, subgrantee must report on the construction status of each BSL in the funded project. The Office will display project progress data metrics on its public mapping platform.

10.7 Subgrantees shall file broadband availability data with the Federal Communications Communication Commission (FCC), as required in the Broadband Deployment Accuracy and Technology Availability (DATA) Act, 47 USC §§ 641-646) and the FCC's rules.

10.8 Subgrantee shall submit additional reports in compliance with Subgrantee's obligations, and as necessary for the Office to satisfy its reporting obligations under state



and federal regulations.

10.9 Before the time when Subgrantee's Closeout Report is due, the Office will finalize the criteria required by Subgrantee in the Closeout Report, to ensure the Report satisfies current state and federal requirements.

10.10 The Subgrantee shall deliver a Closeout Report to the Department no later than 30 days after the completion of Project or termination of the Award or expenditure of all awarded Program funds, whichever event occurs first, but not later than XXXX.

10.11 The Closeout Report will include, at a minimum, the requirements imposed on the Commonwealth according to NOFO VII.E.1. The Subgrantee shall also comply with any U.S. DOC or additional Department reporting requirements, which may include.

- a. A comparison of actual accomplishments to the objectives set forth in the **Final Statement of Work and Budget, Exhibit B**.
- b. A description of problems, delays, or adverse conditions that occurred, or which affected the achievement of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods, as well as how the parties resolved the problem to the Office and NTIA's satisfaction.
- c. A comparison of actual expenditures to the original budget set forth in the Final Statement of Work and Budget, Exhibit B.
- d. A final buildout map in the format requested by the Office which confirms that all construction has been completed as proposed in the application.
- e. Evidence of Maximum download and upload speeds at each location (defined by FCC location ID), and/or the state's community anchor institution identifiers as stated in **Exhibit B**. Evidence includes speed tests conducted in a manner consistent with industry best practices to account for the actual speeds delivered during peak use times in the given area.
- f. Certification from Subgrantee in writing to the Office, pursuant to 2 CFR 200.201(b)(3), that the Project was completed in compliance with this Agreement and placed into service, as defined in 47 USC 1702(h)(4)(C), for last-mile broadband deployment.
- g. Documentation of broadband packages and pricing offered in the service area, including speeds, equipment costs, data caps, surcharges and/or usage-based throttling.

## **SECTION 11 RECORDS AND AUDITS**

11.1 Subgrantee shall provide the Department, the NTIA, NIST, the U.S. DOC Office of Inspector General, General Accountability Office (GAO), other authorized state or Federal agencies, or their representatives, access to any records (electronic or otherwise) necessary to determine Agreement compliance, to conduct audits, or other investigations. The Office may terminate this Agreement, without incurring liability, for Subgrantee's refusal to allow access as required by this section.

11.2 Subgrantee shall create and retain all records, including all receipts, disbursements, and other transactions, supporting this Agreement for a period of 7 years from the date of the Office's final required BEAD Report.

11.3 Subgrantee must cooperate with any field audits that any entities listed in 11.1, the Office and authorized representatives perform to verify completeness and quality of work of the Project.

11.4 The Subgrantee is financially responsible for any audit exception or other financial loss to the Commonwealth of Kentucky which occurs due to the negligence, intentional acts, or failure by the Subgrantee and/or its agents, employees, subcontractors, or representatives to comply with the terms of this Agreement.

11.5 To the extent that the U.S. DOC or the Inspector General of the Commerce Department determines that Subgrantee has expended grant funds received under the BEAD Program in violation of the requirements set forth in Section 60102 of the Infrastructure Act, applicable provisions of 2 C.F.R. Part 200, the terms and conditions of the award, or other applicable law, the U.S. DOC and/or Commonwealth of Kentucky shall, if appropriate, recover the amount of funds that were so expended.

11.6 In each year which Subgrantee expends (as defined by 2 CFR §200.1) \$750,000 or more in U.S. DOC funds during the fiscal year, where Subgrantee is a commercial enterprise and not subject to audit requirements contained in Subpart F of 2 CFR §200, Subgrantee will provide to the Office annually either: i) a financial related audit of the Project in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) if a project-specific audit guide is available, a project specific audit in accordance with the requirements contained in 2 CFR §200.507.

Subgrantee will provide the Office a copy of the audit within 30 calendar days after receipt of the audit report or nine months after the end of the audit period.

## **SECTION 12 CONTACTS**

Contacts listed below are the current individuals with whom each party should communicate about the Program, this award, or other issues arising under this Agreement. Written notices, reports and other information required to be exchanged between the parties must be directed to the appropriate contact. A party may change its contact information listed in this section by providing notice to the other party's contact. Subgrantee must update contact information for the project in the Grants Management Portal.

For the Department

For the Subgrantee

[       ]

## **SECTION 13 ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

13.1 The Subgrantee may not assign this Agreement or otherwise subcontract or transfer any right of duty arising under this Agreement without the Office's prior written approval. Any such assignment, subcontracting, or transfer is void.

13.2 Any assignment, transfer, or subcontracting of Subgrantee's rights or duties under this Agreement does not relieve Subgrantee from compliance with its duties in this Agreement. Subgrantee is as fully responsible for the acts and omissions of any assignee or subcontractor as it is for its own acts or omissions.

## **SECTION 14 EVENTS OF DEFAULT AND REMEDIES**

14.1 Default, termination, and other remedies for non-performance will be handled consistent with the authorities set forth in this Agreement to include 2 CFR § 200.339 and KRS 224A.117. When a determination or decision regarding non-performance is to be made, the Office shall make such determination or decision by exercising good faith and reasonable discretion

14.2 Default occurs when a subgrantee fails to comply with any material requirement under the U.S. Constitutions, applicable Federal statutes (to include 47 USC § 1702) and regulations, the DOC ST&Cs, the General Terms and Conditions for the BEAD Program, the Specific Award Conditions applicable to Kentucky's BEAD award (21-20-B114), KRS 224A.117, the Kentucky BEAD Program Rules, and Kentucky's BEAD Initial Proposal.

The following will be “Events of Default” under this Agreement and the term “Event of Default”, or “Default” will mean, whenever it is used in this Agreement, any one or more of the following events, or other events of non-performance, including but not limited to:

- üÆ Any unauthorized or improper expenditure of funds by the Subgrantee, or expenditure of funds by the Subgrantee other than in accordance with the terms of this Agreement.
- †Æ Subgrantee forfeits or otherwise is deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry out any essential portion of its business or the Subgrantee files for or an event occurs which can reasonably be expected to result in its dissolution or termination.
- °Æ A default by the Subgrantee under the provisions of any agreements relating to its debt obligations.
- ¢Æ Subgrantee, its contractors, or subcontractors, fails to comply with the accounting and reporting requirements in this Agreement and/or as required by law; or fail to provide the Project Summary, Technology Type and Network Design, Service Area and Addresses, Speed, Matching Requirements, Project Budget, Project Schedule, Environmental, Historical, Cultural, Archeological Requirements.
- £Æ Failure to comply with the low-cost service option requirement set out in Section 60102(h)(4)(B) of the Infrastructure Act and LAC § 1701.
- §Æ Failure to meet other Federal or Kentucky statutory obligations.
- Æ Failure to keep adequate records, including the failure to document Program fund expenditures for eligible purposes.
- ¶Æ Wasteful, fraudulent, or abusive expenditure of Award Funds.
- ßÆ Untrue statement(s) made in its original Application, this Agreement, or in the Final Statement of Work and Budget, Exhibit B, or in any other written form, or caused another agent to submit an untrue statement to the Office, related to Subgrantee’s financial status or related to its ability to build broadband infrastructure, which caused Subgrantee to be awarded or disbursed these BEAD funds. This includes statements relating to financial, operational, managerial or technical capability of Subgrantee.
- üüÆ Failure to provide Broadband Service at the minimum advertised connection speed and cost at the advertised rate as set forth in Attachment 2.
- üüÆ Failure to timely pay its employees or subcontractors for work performed related to this Agreement or when requested by the Office, failure to provide proof of

financial capacity to demonstrate Subgrantee's ability to continue with the Project.

- ü†Æ Failure to commence build out of the Project within one year from the date that the Office notifies in writing that the environmental review process has been concluded or otherwise fails to meet or exceed milestones or deadlines established in the Final Statement of Work and Budget, Exhibit B, without prior written approval for extensions from the Office.
- ü°Æ Failure to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days.
- ü¢Æ Any other Subgrantee breach/default expressly specified in another section of this Agreement.

14.3 The parties will attempt in good faith to resolve all disputes, disagreements or claims relating to this Agreement. If the Office determines that the Subgrantee failed to satisfactorily carry out its responsibilities under this Agreement or has breached the terms of this Agreement, the Department shall exercise remedies by this Agreement and as available at law.

14.4 Upon the occurrence of a dispute, claim or default the Office shall issue a written notice of default, identifying the nature of the breach, and providing thirty (30) calendar days (or a lesser or additional time as may be agreed to by the parties) in which the Subgrantee shall have an opportunity to remedy the default.

If the default stated in the notice cannot be corrected within the applicable period, the Office will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Subgrantee within the applicable period and diligently pursued until such remedy is corrected.

14.5 Time allowed to remedy does not diminish or eliminate Subgrantee's liability for damages.

14.6 If the Office, in its sole discretion, determines that a public safety issue exists, the grant funding is terminated, or an immediate public crisis exists, the Office may immediately terminate this Agreement in whole or in part.

14.7 The Office and NTIA may enforce applicable rules and laws by imposing penalties for nonperformance, failure to meet statutory obligations, or wasteful, fraudulent, or abusive expenditure of Award Funds. Such penalties include, but are not limited to, imposition of

additional award conditions, payment suspension, award suspension, grant termination, de-obligation/clawback of funds, and debarment of organizations and/or personnel.

#### 14.7.1 Additional Conditions

Penalties for non-performance by Subgrantee may include the imposition of additional conditions, as described in 2 CFR 200.208.

#### 14.7.2 Remedies when Additional Conditions are Insufficient

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

- (a) Temporarily withhold cash payments pending correction of the deficiency by Subgrantee or more severe enforcement action by the Office or NTIA.
- (b) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- (c) Wholly or partly suspend or terminate this Agreement.
- (d) Recommend the initiation of suspension or debarment proceedings by NTIA or DOC as authorized under 2 CFR part 180 and DOC regulations.
- (e) Withhold further Kentucky BEAD Grant Program awards.
- (f) Take other remedies that may be legally available.

#### 14.7.3 Clawback

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

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

under this Agreement for the purposes of this provision] Bracketed text to be omitted for LEO Capacity Grants.

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

14.8 If termination occurs under this section, any costs incurred will be the Subgrantee's responsibility. However, at its sole discretion, the Office may approve requests by the Subgrantee for reimbursement of eligible expenses incurred. The Office's decision to authorize payment of any costs incurred or to recover expended Program funds will be based on a consideration of the extent to which the expenditure of those funds represented a good faith effort of the Subgrantee to comply with services, duties, terms, or conditions of this Agreement, and on whether the failure to comply with any of those services, duties, terms, or conditions resulted from circumstances beyond the Subgrantee's control.

#### 14.9 Force Majeure

Subgrantee is not required to forfeit the amount of a grant received if the grant recipient fails to perform due to a natural disaster, an act of God, a force majeure, a catastrophe, a pandemic, the failure to obtain access to private or public property or any government permits under reasonable terms, or such other occurrence over which the grant recipient has no control. The Office has the discretion and shall determine whether Subgrantee's failure to perform is due to an occurrence over which Subgrantee has no control.

#### 14.10 Reversion

If Subgrantee fails to perform and fails to return the full forfeited amount required pursuant to this Section, the ownership and use of the broadband infrastructure funded by the Kentucky BEAD Grant Program shall revert to the Kentucky Finance & Administration Cabinet.

#### 14.11 Make Whole

Notwithstanding any other provision of this Agreement, if Subgrantee fails to complete the Project in a material respect, Subgrantee, at the discretion of the Office, may be required to reimburse the Office the actual cost to finish the project. The actual cost to finish the project shall be determined by the Office in consultation with the Subgrantee. If the Office determines that Subgrantee has made a good faith effort to complete the Project, the Office will not require Subgrantee to reimburse the Office an amount greater than the

remaining Kentucky BEAD Grant Program cost per End User as set forth in Attachment 2 to this Agreement.

#### 14.12 No Remedy Exclusive

No remedy herein conferred upon or reserved to the Office is intended to be exclusive, and every such remedy will be cumulative and will be in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default will impair any such right or power and any such right or power may be exercised from time to time and as often as may be deemed expedient.

#### 14.13 Consent to Powers of the Office

The Subgrantee hereby acknowledges to the Office, the Subgrantee's understanding of the provisions of KRS Chapter 224A, vesting in the Office certain powers, rights and privileges in respect of the Project upon the occurrence of an Event of Default, and the Subgrantee hereby covenants and agrees that if the Office should in the future have recourse to said rights and powers, the Subgrantee shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Office in the due and prompt implementation of this Agreement.

#### 14.14 Waivers

In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver will be limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

#### 14.15 Agreement to Pay Attorneys' Fees and Expenses.

In the event that the Subgrantee defaults under any of the provisions hereof and the Office incurs legal or other expenses for the enforcement of performance or observance of any obligation or agreement, the Subgrantee agrees that it will pay on demand therefor to the Office the fees of such attorneys and such other expenses so incurred.

### **SECTION 15 COMPLIANCE WITH APPLICABLE LAWS**

15.1 The Subgrantee agrees to comply with the requirements of IJA and any guidance and



regulations adopted by the U.S. DOC regarding BEAD funds, including but not limited to BEAD Terms and Conditions, Exhibit E.

15.2 Subgrantee shall not use Program funds to purchase or support any materials and products, including covered communications equipment, for the Project for the entire Primary Term of the award as described in:

- A. 2 CFR § 200.216, including covered telecommunication and video surveillance services or equipment provided or produced by entities owned or controlled by the People's Republic of China and telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities)
- B. Section 60102(g)(1)(D)(ii) of the Infrastructure Investment and Jobs Act prohibition on using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People's Republic of China
- C. Section 9 of the Secure and Trusted Communications Networks Act of 2019 (47 U.S.C. § 1608) (see the regularly updated "List of Equipment and Services Covered By Section 2 of The Secure Networks Act," FCC, <https://www.fcc.gov/supplychain/coveredlist>)

15.3 Subgrantee shall provide a preference for the procurement or use of goods, products, or materials produced in the United States, as described in:

- A. Section 2 CFR § 200.322 (Domestic Preferences for procurements)
- B. Sections 70901-70927 of the Infrastructure Investment and Jobs Act (Build America, Buy America Act) and 2 CFR Part 184, including any updates and waivers adopted by U.S. DOC.
- C. Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Workers (January 25, 2021).

15.4 Labor Standards

15.5 **[DOES NOT APPLY TO LEO CAPACITY GRANTS]** Project Property and Equipment and Federal Interest Period. Subgrantee agrees to comply with applicable federal rules for ownership, title, use, management and disposition of property acquired or improved using Program funds (Project Property), as those guidelines are applied by the U.S. DOC to this Program, for the duration of the Federal Interest Period that will last on December 31st of the 10th year after the acceptance of the Closeout Report by the Department and NTIA. For example, if the Closeout Report is accepted in 2029, regardless of the month, the Federal

Interest Period will last until December 31, 2039, as described in Program guidance issued by the U.S. DOC and NTIA, including but not limited to,

- A. Title to real property or equipment acquired or improved using Program funds vests in the Subgrantee upon acquisition, on the condition that Subgrantee follows its existing commercial practices for managing equipment including inventory control.
- B. 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. 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).
- C. Subgrantee shall comply with 2 CFR §200.316 and shall hold Project Property in trust for the beneficiaries of the BEAD Program for the Federal Interest Period.
- D. Subgrantee shall comply with the use and equipment disposition requirements of 2 CFR §200.313(c)(4) and 313(e) as follows:
  - i. Subgrantee acquiring replacement equipment under 2 C.F.R. § 200.313(c)(4) may treat the equipment to be replaced as “trade-in” even if the 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 the U.S. 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.
  - ii. Subgrantee may sell, lease, or transfer Project Property only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (b) obtaining consent to the sale or transfer from NTIA.
  - iii. Subgrantee must notify the Department 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 subaward.
- E. Subgrantee shall prepare and properly record a Covenant of Purpose, Use and Ownership and an UCC Filing with the Secretary of State in a form acceptable to the Office in advance of any sale or lease and not later than closeout of the subgrant. In addition, within 15 calendar days following the required UCC filing(s), the Subgrantee shall provide the Office with complete and certified copies of the filed

UCC forms and attachments for the equipment acquired with BEAD funding including all subgrants, along with a certification from legal counsel, licensed by the Commonwealth of Kentucky that the UCC filing was properly executed and filed in accordance with applicable state law.

- F. Subgrantee may encumber Project Property only after providing notice to NTIA and the Office and structuring the transaction so that U.S. DOC receives either a first priority security interest or a shared first priority security interest in the Project Property.
- G. Subgrantees shall comply with 2 CFR §200.310 and 2 CFR §200.312.

15.6 The Subgrantee agrees to comply with applicable state and federal rules and regulations, including the following:

- A. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as the U.S. DOC may determine are inapplicable to this Award and subject to such exceptions as may be otherwise provided by the U.S. DOC, including but not limited to U.S. DOC Policy Notice: Tailoring the Application of the Uniform Guidance to the BEAD Program (December 26, 2023) discussing provisions that except Subgrantees with fixed amount subawards from complying with the procurement standards contained in 2 CFR §§200.318-320, 200.324-326 and property standards 2 CFR §§200.314-315,
- B. Universal Identifier and System for Award Management (SAM), 2 CFR Part 25, pursuant to which the award term set forth in Appendix A to 2 CFR Part 25 is hereby incorporated by reference.
- C. Reporting Subaward and Executive Compensation Information, 2 CFR Part 170, pursuant to applicable Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282) and the award term set forth in Appendix A to 2 CFR Part 170 is hereby incorporated by reference.
- D. OMB Guidelines to Agencies on Government-wide Debarment and Suspension (not procurement), 2 CFR Part 180, 1200, and 1326, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 CFR Part 180, subpart B) that the award is subject to 2 CFR Part 180 and certification that participant is not proposed for debarment under 48 CFR Part 9, Subpart 9.4 or debarred, suspended, ineligible or voluntarily excluded from the covered transaction.
- E. Government-wide Requirements for Drug-Free Workplace Act of 1988 (41 USC §8102), 2 CFR Part 1329.
- F. Byrd Anti-Lobbying Amendment (31 USC §1352), New Restrictions on Lobbying, 15 CFR Part 28 and 2 CFR §200.450.

- G. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
- H. Procurement of Recovered Materials (2 CFR §200.323), requiring compliance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act and the requirement to procure only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable.
- I. Generally applicable federal environmental and historic preservation laws and regulations, including but not limited to the National Environmental Policy Act (42 USC §4321 et seq.), Clean Air Act (42 U.S.C. §§ 7401–7671q.), and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251–1387), as amended, The National Historic Preservation Act, (15 U.S.C. § 54) and with all applicable standards, orders or regulations issued pursuant to these laws. Violations must be reported to the Department, U.S. DOC, and the Regional Office of the Environmental Protection Agency (EPA) or the State Historic Preservation Office, as applicable, plus additional laws as described by U.S. DOC Financial Assistance Standard Terms and Conditions G.04.
- J. All applicable federal, laws, rules, regulations, and executive orders including but not limited to: [the Equal Pay Act of 1963 (29 U.S.C. § 206(d)); the Civil Rights Act of 1964 (42 U.S.C. § 2000 et seq., 7 CFR pt. 15); the Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.; 45 CFR pt. 90); the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.; 7 CFR pt. 15b); the Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 et seq.); the Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR 1970; Title IX of the Education Amendments of 1972; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency; Executive Order 13798, Promoting Free Speech and Religious Liberty; the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq., 43 CFR Part 10.4); (ix) the Communications Act of 1934, as amended, (47 U.S.C. § 151 et seq.); the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996); and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 et seq.)
- K. All applicable state or local laws, rules, regulations and executive orders.
- L. The Subgrantee and its contractors, subcontractors and Subgrantees are the employer for the purpose of providing healthcare benefits and paying any applicable

penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

- M. Reviewed the Assurance of Compliance with Civil Rights Requirements and Assurance of Compliance with Title VI of the Civil Rights Act of 1964. See Equal Employment Opportunity Contract, Exhibit D. Subgrantee ensures it will incorporate in all contracts, subcontract, successor, transfer and/or assignment agreements the following provision:

The Subgrantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits Subgrantees of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Commerce's Title VI regulations, 15 CFR Part 8, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Commerce's Title VI regulations, 15 CFR Part 8, and herein incorporated by reference and made a part of this contract or agreement.

- N. The Subgrantee shall not, without the prior written consent of the Office, use any Program funds to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.
- O. Subgrantee shall maintain registration in good standing with the Secretary of State and obtain a certificate of authority to demonstrate good standing in Kentucky.
- P. In accordance with 41 U.S.C. § 4712, Subgrantee may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. Subgrantee shall inform its employees in writing of the rights and remedies provided under this section, in the predominate language of the workforce. The Office may request from Subgrantee copies of the information it provides its employees.

Q. The Subgrantee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from the Department pursuant to an allocation, any related contract, loan, insurance or guarantee, or undertaken pursuant to any the Department program involving such allocation, contract, loan, insurance or guarantee, the Equal Employment Opportunity Requirements and Equal Opportunity Provisions, Exhibit C. Equal Employment Opportunity Contract Provisions also bind the Subgrantee. The Subgrantee further agrees that it shall be bound by such Equal Employment Opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government. The Subgrantee agrees that it shall cooperate actively with the Department in obtaining the compliance of contractors and subcontractors with the Equal Employment Opportunity clause and the rules. In addition, the Subgrantee agrees that if it fails or refuses to comply with these undertakings the Department may terminate or suspend in whole or in part this Agreement, may withhold payment, or may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of Subgrantee's future compliance.

## **SECTION 16 ACCOUNTING, COST PRINCIPLES**

16.1 The Subgrantee shall maintain for the purposes of this Agreement an accounting system of procedures and practices that conforms to Generally Accepted Accounting Principles ("GAAP").

- A. As defined by 2 CFR Part 200.49, GAAP "has the meaning specified in accounting standards issued by the Government Accounting Standards Board (GASB) and the Financial Accounting Standards Board (FASB)."
- B. "Accounting Requirements" means compliance with GAAP acceptable to the Department and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR Part 200 ("Uniform Guidance").

## **SECTION 17 CONFLICT OF INTEREST**

The Office and Subgrantee understand and agree they must maintain a conflict-of-interest policy consistent with 2 CFR § 200.112 and that such policy is applicable to each activity funded under this Award. Subgrantee must disclose in writing to the Office, as appropriate, any potential conflict of interest affecting the awarded funds.

## **SECTION 18 FALSE STATEMENTS**

In addition to any other remedy allowed under this Agreement for breach, (such as discovery of false statements made by Subgrantee), Subgrantee understands that making false statements or claims in connection with this award is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal awards or contracts, and/or any other remedy available by law.

## **SECTION 19 DEBARMENT**

The Subgrantee certifies and agrees to comply with 2 CFR Parts 180, 1200, and 1326 and to ensure during the term of this Agreement that neither it nor its principals, contractors, subcontractors, or Subgrantee entities are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Agreement by any governmental department or agency.

## **SECTION 20 FORCE MAJEURE**

Neither party will be liable for any failure or delay in performing its duties in this Agreement due to Force Majeure Events. “Force Majeure Event” means an event or circumstance beyond a party’s reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. Force Majeure Events do not include labor unrest, price increases, or changes in general economic conditions. If a Force Majeure Event continues for 30 days, the other party may terminate this agreement or suspend payments while the event continues.

## **SECTION 21 SEVERABILITY**

A declaration by any court, or any other binding legal forum, that any provision of the Agreement is illegal, and void shall not affect the legality and enforceability of any other provision of the Agreement, unless the provisions are mutually dependent. If the provisions are mutually dependent, the parties shall attempt to negotiate changes to the Agreement consistent with the legal ruling and applicable law including but not limited to ARPA and its implementing regulations. If negotiations are unsuccessful, then either party may terminate this Agreement, and the Department shall determine how to proceed based on ARPA, its regulations, and other applicable law.

## **SECTION 22 JURISDICTION AND VENUE**

Any action against the Commonwealth shall be brought in Franklin Circuit Court, Franklin

County, Kentucky, in accordance with KRS 45A.245. Recipient irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid court; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Recipient irrevocably consents to service of process by certified or registered mail addressed to Recipient's registered agent, if applicable, or any other person authorized by statute to accept service of process on its behalf. If for any reason Recipient's agent is unable to act as such, or the address of the agent changes, Recipient shall immediately appoint a new agent and provide the Office with written notice of the change in agent or address. Any change in the appointment of the agent or address will be effective only upon actual receipt by the Office. Nothing in this provision will alter the right of the Office to serve process in any other manner permitted by law.

## **SECTION 23 WAIVER OF BREACH**

Either party's failure to enforce any Agreement provision in a specific situation is not a waiver in a future similar situation or of any other obligation or responsibility under this Agreement. Neither party may assert the defense of waiver.

## **SECTION 24 SURVIVABILITY**

The following provisions will survive the termination of the Agreement:

## **SECTION 25 GENERAL TERMS AND CONDITIONS**

(insert General Terms & Conditions)

## **SECTION 26 BEAD CERTIFICATION**

By signing this Agreement, Subgrantee agrees and certifies to the terms and conditions attached as Exhibit E, BEAD Terms and Conditions, incorporated herein by this reference.