



Project Name	Delaware Broadband, Equity, Access, and Deployment (BEAD) Infrastructure Grant Program Construction – Grant Area [X]
Task Duration	
Begin Date	
End Date	
DTI Project Manager	

## Background

The Department of Technology and Information (DTI), on behalf of the State of Delaware, released a grant solicitation to qualified entities, seeking bids to extend broadband service to unserved and underserved locations in Delaware. DTI identified specific locations within the state for prospective subgrantees to extend broadband serviceability to, in exchange for State financial support. The funds secured for this Statement of Work (SOW) originate from the US Dept of Commerce, under the Bipartisan Infrastructure Law

[COMPANY] (“Subgrantee”) has been awarded this contract as a subgrantee pursuant to to deploy broadband service to specific unserved and underserved Broadband Serviceable Locations in Grant Area [X] (“Awarded Locations”). This SOW includes and is subject to the provisions, terms, and conditions set forth in Appendices A, B and C.

DTI and Subgrantee may be referred to as the Parties to this SOW, and individually, as a Party.

## Project Scope

### Description of Awarded Locations

DTI has awarded to Subgrantee a grant to provide broadband service to [NUMBER] Awarded Locations in Grant Area [X], identified by DTI as unserved, underserved, or otherwise eligible for federal and state financial assistance for the deployment of broadband service. The list of Awarded Locations has been confirmed between Subgrantee and DTI through the exchange of an Excel file that lists each location (“Master Address File”). Details of the contents of that file are set forth in Appendix C (Breakdown of Awarded Locations).

### Scope of Subgrantee’s Obligation for the Awarded Locations

1. Subgrantee shall construct the Proposed Network to a point in the public right of way from which existing dwelling units (if any) including individual units/apartments within multiple dwelling units (where applicable) at each of the Awarded Locations, as the same may be adjusted overtime, could be served without application of additional construction charges over and above a normal service installation charge.
  - a. Subgrantee shall be excused from meeting this obligation with respect to Awarded Locations for which Subgrantee is unable to obtain timely consent for network



deployment, as determined by Subgrantee, (for example, Awarded Locations on a military base, in a trailer park or other private community, in a multi-tenant building, or in a residential subdivision where the developer denies entry or refuses to provide an open trench and other normal and customary accommodations (e.g., easements, open trench, access, etc.) for placement of utility facilities in accordance with Subgrantee's standard practice) or which are not in existence as of the completion of construction. It is the obligation of the Subgrantee to take all reasonable measures to obtain permission from the property owner, including the owner of a multi-tenant building or trailer park, of the construction and then to complete internal wiring to all internal apartment units or trailers if the property manager permits access, without additional charge to the state or property manager. Subgrantee shall keep DTI informed of the status of Subgrantee's efforts to obtain all necessary consents for network deployment to Awarded Locations, and shall promptly report to DTI upon making the determination that Subgrantee has been unable to obtain timely consent for network deployment to an Awarded Location.

2. Subgrantee will be responsible for all required activities associated with the construction, including engineering, permitting, and compliance with construction-related codes and regulations.
  - a. The Proposed Network shall be based on a fiber-to-the-premise architecture and equipped with passive-optical networking technology capable of supporting at least of not less than 100 Mbps for downloads and 20 Mbps for uploads with 95 percent of latency measurements during testing windows falling at or below 100 milliseconds round-trip time. The Proposed Network components are the optical line terminal (OLT) in the central office and all fiber cabling, connections and supporting infrastructure to bring fiber from the OLT to public right of way serving the Awarded Locations as described in Section 1.
  - b. At time of project closeout, grant-funded connections to proposed Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads with 95 percent of latency measurements during testing windows falling at or below 100 milliseconds round-trip time. Additionally, the Subgrantee acknowledges that these grant-funded connections can be used to provide business data services, which refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.
  - c. Subgrantee acknowledges that the project will rely entirely on fiber-optic technology to each end-user premises and will ensure that the network built by the project can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services. *See* Infrastructure Act § 60102(a)(2)(I).
3. Subgrantee will produce reports, as outlined below, to communicate progress, location completions, subscriber activations, and adherence to the projected timeline. Subgrantees will also comply with and support any federally mandated audit activities, if relevant.
4. Subgrantee shall offer:



- a. broadband service and pricing plans for broadband service to the Awarded Locations largely consistent with those offered in more densely populated areas of Delaware including broadband Internet access with symmetrical upload and download speeds of 100Mbps/100Mbps at a minimum;
- b. a discounted rate plan of no more than \$30/month inclusive of all fees to qualifying low-income customers at Awarded Locations, regardless of changes to federal or state program offerings, unless Subgrantee has received a specific waiver (see Initial Proposal Volume 2, pages 83-85 for definition of qualifying individuals and more information, incorporated here by reference);
- 5. Subgrantee shall provide notice to residents at the Awarded Locations of the availability of broadband service, as applicable, using its then-current normal business practices.
- 6. Task Duration shall be extended to reflect delays beyond Subgrantee’s reasonable control. Any Task Duration extension shall be within the sole discretion of DTI.

**Work Schedule with Deliverable Dates**

The Parties shall collaborate to prepare such work schedules, with deliverable dates, as may be useful or necessary for the purposes of managing the deployment and any related report reporting. The Parties may use tables such as the one below, or other mutually-agreed-upon formats.

Key Activity	Due Date	Comment
Engineering & Permitting		
X% of in-scope locations completion report		
X% of in-scope locations completion report		
X% of in-scope locations completion report		
X% of in-scope locations completion report		
X% of in-scope locations completion report		
100% of in-scope locations completion report		
As-built and GIS documentation		
Final activated locations, random sample speed test, etc.		

Within ninety (90) days of the Effective Date, Subgrantee shall update the Master Address File to add a column indicating the forecasted broadband availability timeframe for each address in general terms (e.g. second half of 2022; first half of 2023; first half of 2024). Subgrantee shall update these timeframes, as appropriate, as the project progresses.

**Project Contacts**

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Subgrantee’s project contact will participate in all scheduled meetings. Should Subgrantee’s contact not be available due to sickness or vacation, Subgrantee will provide an alternate contact fully able to provide required status reporting and coordination.

Subgrantee Name Here	
Name:	
Title:	
Address1:	
Address2:	
Phone:	
Email:	

Department of Technology and Information	
Name:	
Title:	Broadband Program Manager
Address1:	801 Silver Lake Boulevard, Dover, DE, 19904

**2 CFR 200 Requirements**

Subgrantee acknowledges that this subgrant is under the requirements of 2 CFR § 200 and all related federal regulations apply, including audit requirements. Subgrantee acknowledges it is a “subrecipient” under the definition of 2 CFR § 200.201. Subgrantee acknowledges it bears the responsibility of familiarizing itself with 2 CFR § 200 and ensuring compliance with the requirements contained in § 200.



Address2:	Dover, Delaware
Phone:	
Email:	

### Project Guidelines

#### DTI Responsibilities

- Facilitate meetings and support for expedited permitting based on Subgrantee request.
- Propose templates for testing and reporting.
- Provide a single point of contact for project engagement.
- Notify Subgrantee in advance of any additional reporting requested.
- Serve as the single point of contact for all other Federal and State governmental entities.
- Review and accept reports and disburse funds to Subgrantee as agreed in a timely manner.
- Respond promptly to Subgrantee requests for reviews, approvals, information, direction, confirmation or other project-related direction and support.
- Provide a liaison to assist Subgrantee with implementing an optimal strategy for obtaining permits from all relevant governmental entities. Engage in outreach to governmental permitting agencies and work with such agencies and Subgrantee to devise and implement a strategy to streamline permitting requirements and shorten approval times to the maximum extent possible.
- Provide a liaison to help facilitate discussions with electric utilities to educate them on BEAD, the project timeframes and deadlines for completion under applicable federal and state funding programs, and Subgrantee's role and involvement in deploying the Proposed Network. Encourage electric utilities to adopt streamlined processes for permit approval and make-ready work.

#### Mutual responsibilities

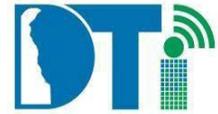
- Participate in regularly scheduled project status meetings.
- Review progress and project timeline.
- Participate in risk mitigation planning to ensure timely completion.
- Coordinate any change order to SOW.
- Participate in quarterly or as needed mutually coordinated joint field inspections.

#### Subgrantee's Additional Responsibilities

Subgrantee agrees to comply with the Build America, Buy America Act (BABA) requirements as outlined in the Department of Commerce Final Waiver dated February 2024 (<https://www.commerce.gov/sites/default/files/2024-02/BABA%20Waiver%20Signed.pdf>) and the BEAD NOFO including 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>):

- All iron, steel, and manufactured products (including but not limited to fiber-optic communications facilities) (with exceptions as outlined in the Final Waiver) and
- Construction materials used in the project must be produced in the United States (with exceptions as outlined in the Final Waiver)

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- Section 70912 of BABA and the Final Waiver outlines the definition of “produced in the United States” with respect to manufactured products

Subgrantee is prohibited from using BEAD funding to purchase or support fiber optic cable and optical transmission equipment manufactured in the People’s Republic of China unless a waiver is received from the Assistant Secretary of Commerce.

#### Change in Scope

As this is a fixed-amount subgrant, Subgrantee acknowledges that DTI cannot entertain changes in the scope of the project except in extraordinary circumstances, including:

- Removal of Awarded Locations that are already served with Subgrantee’s broadband service;
- Removal of Awarded Locations that had incorrect geographic location information and thus are outside the intended general service area for Subgrantee’s Proposed Network.

Should DTI determine that Subgrantee is not able to meet project timelines and, after the parties have discussed the determination in good faith for at least sixty (60) days, DTI reasonably determines that mutual agreement on modification is not attainable, DTI may process a change order removing addresses at risk of not being completed within the scoped timeline, and updating the scope and payment amounts and schedule as appropriate, and Subgrantee’s costs incurred in network deployment for addresses removed by DTI as a result of such a determination are not eligible for reimbursement.

Likewise, DTI may request that Subgrantee add new address locations migrated from a different Subgrantee that is unable to complete its obligations. The acceptance of such a request is optional and fully within the Subgrantee’s discretion.

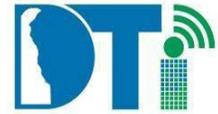
#### **Project Default**

The Subgrantee’s bid as to cost and timeline of completion, as well as all other terms of the Subgrantee’s bid, are incorporated by reference as material terms of this SOW. DTI is unable to increase the fixed-amount subaward for any reason without rebidding the project. Cost overruns must be borne by the Subgrantee.

Similarly, DTI is unable to approve any timeline adjustment without rebidding the project.

Should the Subgrantee not be able to meet the commitments they themselves proposed in their bid, the Subgrantee will be in default of the subgrant, and DTI will be required to rebid the project. The Subgrantee may still receive a percent of their award equal to the percent of addresses completed, assuming DTI finds the default to be in good faith.

Should DTI have reason to believe the Subgrantee purposefully “underbid” the project for the purposes of obtaining the award, DTI will refer the matter to the Delaware Department of Justice Fraud Division for investigation. DTI reserves the right to pursue all criminal and civil penalties



against a Subgrantee who acts in bad faith to obtain taxpayer funding for a BEAD project.

**Progress Reports**

Due to requirements to manage project risks and timelines, weekly status meetings will be mandatory. The reporting for these meetings need not be written unless it is a formal notification of risk that may require a change order.

Reporting requirements and intervals are attached as Appendix A.

**Acceptance of Deliverables**

Final deliverables are outlined in Appendix A. In addition, DTI may schedule joint field inspections and will provide at least five (5) business days notification prior to any inspection.

**Work Hours and Time Off**

Subgrantee is responsible for managing work hours and time off for its own staff and contractors in accordance with applicable laws. Any required meetings between Subgrantee and DTI will be performed during regular business hours and government workdays, unless otherwise mutually agreed.

**Fees and Invoicing**

Payment will be according to milestone completion as verified per reporting requirements in Appendix A.

**Payment Milestones**

Key Activity	Due Date	Payment
Engineering & Permitting		X%
X% of in-scope locations completion report		X%
X% of in-scope locations completion report		X%
X% of in-scope locations completion report		X%
X% of in-scope locations completion report		X%
X% of in-scope locations completion report		X%
100% of in-scope locations completion report		X%
As-built and GIS documentation		X%
Final activated locations, random sample speed test, etc.		X%

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The total fixed-amount subaward is [X]. All costs incurred by Subgrantee towards providing broadband service to Awarded Locations shall be eligible for reimbursement from the fixed-amount subaward, including without limitation third-party pole attachment “make-ready” costs and pole replacement costs for third-party-owned poles.

No payments for services will not be made in advance of work performed. Payment Milestones shall be based on the deliverable schedule and the number of locations verified as complete. Payments shall be made subject to true-up in any subsequent audit that is commenced within three (3) years from the date of payment. Payment shall be made promptly upon Subgrantee’s submission of verified completion certifications and DTI’s initial administrative review thereof, but shall be subject to adjustment or true-up as a result of any subsequent audit. Payments shall not be withheld pending completion of any audit or any governmental review other than the initial administrative review by DTI.

For purposes of the Payment Milestones:

- for existing Awarded Locations, “verified completion” means that Subgrantee has provided a certification to DTI listing the Awarded Locations that are open for sale in Subgrantee’s systems (eligible to order broadband service). DTI may, but is not required to, validate Subgrantee’s certification prior to payment through random address checks on Subgrantee’s public-facing consumer broadband availability look-up tool, which must be completed within ten (10) business days of Subgrantee’s certification;
- for Awarded Locations for which Subgrantee has not been granted timely access, “verified completion” means that Subgrantee has completed fiber deployment of the Proposed Network to a reasonable point in the public right of way in proximity of such Awarded Locations. DTI may, but is not required to, validate Subgrantee’s certification prior to payment through random field inspection for fiber continuity on the completed segments, which must be completed within thirty (30) calendar days of Subgrantee’s certification;

### **Acceptance and Authorization**

All parties hereby acknowledge that they have read and do understand this SOW and all Appendices hereto, and agree to all terms and conditions stated herein. The parties to this SOW shall preserve in strict confidence any information, reports or documents obtained, assembled, or prepared in connection with the performance of this SOW, to the extent permissible under 29 Del. C § 10001, et seq. and any other applicable law.

This SOW shall be governed by and construed in accordance with Delaware law, without regard to conflict of laws principles. Subgrantee consents to jurisdiction and venue in this State for all legal actions related to the Delaware Broadband Infrastructure Grant Program.

IN WITNESS WHEREOF, the parties hereto each acting with proper authority have executed this Statement of Work.

[SIGNATURE BLOCKS]

Delaware BEAD Grant Area [X]  
Subgrantee [COMPANY]  
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SAMPLE



**Appendix A – Project Description**

Item	Requirement	Data
1	Subrecipient name <sup>1</sup>	☐
2	Subrecipient's unique entity identifier	☐
3	Federal Award Identification Number (FAIN);	10-20-B136
4	Federal Award Date	☐
5	Subaward Period of Performance Start and End Date	☐
6	Subaward Budget Period Start and End Date	☐
7	Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	☐
8	Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation	☐
9	Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	☐
10	Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	Delaware BEAD
11	Name of Federal awarding agency	United States Department of Commerce
	Name of pass-through entity	Delaware Department of Technology & Information
	Contact information for awarding official of the Pass-through entity	Roddy Flynn Executive Director Delaware Broadband Office Delaware Department of Technology & Information roddy.flynn@delaware.gov
12	Assistance Listings number and Title <sup>2</sup>	11.035 - Broadband Equity, Access, and Deployment Program

<sup>1</sup> Must match the name associated with its unique entity identifier.

<sup>2</sup> If other federal awards are implicated, ConnectLA must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement.

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13	Identification of whether the award is R&D	Award is not R&D
14	Indirect cost rate for the Federal award (including if the de minimis rate is charged) per 2 CFR <a href="#">§ 200.414</a> .	<input type="checkbox"/>

SAMPLE



## **Appendix B: Project Reporting**

Grants issued by the Delaware Department of Technology and Information are conditioned upon Subgrantee's compliance with deployment and service reporting requirements. Subgrantee must validate that it has constructed and operates a network that matches or exceeds the details set forth in the SOW. These reporting rules have also been developed to satisfy federal reporting requirements related to certain state broadband funding sources. There are no reporting requirements other than those set forth in this SOW.

### **Project Period Reporting**

#### Project Timeline reporting

- Project schedule at project kickoff and updated on quarterly basis that outlines
- Which addresses/locations targeted for next 12 months
- Requested adjustments in timeline schedule and number of addresses projected for buildout

#### Monthly regularly scheduled project status meetings

- General progress and milestone updates
- Updates in project schedule as required
- Challenges/issues in regard to supply chain, permitting, resources, or deployment
- Address locations at risk of not meeting timeline
- Address locations at risk of not meeting timeline for which in-scope mitigation measures are not available and for which a change order is required
- Invalid address locations

#### Quarterly

- Routes completed in GIS format
- Addresses passed that can receive service within a reasonable time upon request
- Address/street/subdivision locations where coil/vault is placed at entrance of subdivision in anticipation of future extensions, drops, and activations
- Addresses activated for services
- ACP participation for activated addresses

#### Annually

- As-built deployment data
- Statement that at time of deployment, any locations only capable of receiving at least 100/20 but less than 100/100 is scalable to 100/100 Mbps
- Serviceable address locations that have been activated
- Random performance measures testing of speed and latency of activated addresses

### **Ongoing Reporting**

Building on its existing broadband funding and grantmaking experience, DTI will require subgrantees to complete timely reports on their awards to identify and mitigate risks to ensure



both the State's and subgrantees' compliance with statutory and BEAD requirements. These reports include:

- Weekly project meetings with DTI to:
  - Provide project progress by address and provide milestone updates.
  - Review project log which will list every awarded address.
  - Review project schedule and milestone commitments.
  - Provide fiber miles, construction miles, and Affordable Connectivity Plan (ACP) activations and carriers' low-cost plan activations. (Monthly).
  - Discuss challenges/issues regarding specific location, supply chain, permitting, resources, deployment, and any other project related topics.
  - Discuss any location at risk of not meeting the timeline.
  - Review invalid address locations.
  - Discuss any known fiscal matters needing attention.
  - Review topics, questions, and requests from any project team member and /or constituent not covered by the above.
  
- Biannual reporting and meeting with DTI include:
  - Project-to-date status: Number of locations by status, schedule forecast, and fiscal impacts.
  - Routes completed in GIS format.
  - Map of completed and uncompleted addresses.
  - Address/street/subdivision locations where coil/vault is placed at entrance of subdivision in anticipation of future extensions, drops, and activations.
  - All BEAD bi-annual required data reporting. Known elements include: Pre-investment speed by address, Maximum Download Speed Offered at each Address Post-Investment, Maximum Download Speed Delivered at each Address Post-Investment, Maximum Upload Speed Offered at each Address Post-Investment, Maximum Upload Speed Delivered at each Address Post-Investment, Latency Delivered at each Address Post-Investment, Location Type (Residential, Business, or Community Anchor) by address, Number of Housing Units at each Address, Review questions and requests from any project team member not covered by the above.
  - Quantity of Affordable Connectivity Plan (ACP) activations and carriers' low-cost plan activations.
  - Overview of marketing efforts including Affordable Connectivity Plan (ACP) efforts.
  - Project Closeout.
  - Final As-builts and GIS documentation, including verification of the deployed infrastructure and equipment (1) match those in the proposal's technical evaluation and (2) are capable of delivering the minimum proposed speeds consistently to all potential customers in the project area. To the extent that there are differences between the proposal's technical evaluation and the network "as built," the Vendor must explain why and validate their performance characteristics.
  - Final quantities of: Fiber miles built, Construction miles built, Affordable Connectivity Plan (ACP) activations, Addresses served, Addresses activated.
  - Final list of addresses served.



- Annual Inspections (Virtual or On-site):
  - Project Team inspection of a project site.

### **Project Closeout Reporting**

Upon project completion, the following three types of documentation are required:

- **“As built” technical and GIS documentation** that verifies the deployed infrastructure and equipment (1) match those in the proposal’s technical evaluation and (2) are capable of delivering the minimum proposed speeds consistently to all potential customers in the project area:
  - The Proposed Network shall be based on a fiber-to-the-premise architecture and equipped with passive-optical networking technology capable of supporting at least of not less than 100 Mbps for downloads and 20 Mbps for uploads with 95 percent of latency measurements during testing windows falling at or below 100 milliseconds round-trip time. The Proposed Network components are the optical line terminal (OLT) in the central office and all fiber cabling, connections and supporting infrastructure to bring fiber from the OLT to public right of way serving the Awarded Locations as described in Section 1.
  - At time of project closeout, grant-funded connections to proposed Eligible Community Anchor Institutions shall be capable of delivering service at speeds not less than 1 Gigabit per second for downloads and 1 Gigabit per second for uploads with 95 percent of latency measurements during testing windows falling at or below 100 milliseconds round-trip time. Additionally, the Subgrantee acknowledges that these grant-funded connections can be used to provide business data services, which refers to the dedicated point-to-point transmission of data at certain guaranteed speeds and service levels using high-capacity connections.
  - Subgrantee acknowledges that the project will rely entirely on fiber-optic technology to each end-user premises and will ensure that the network built by the project can easily scale speeds over time to meet the evolving connectivity needs of households and businesses and support the deployment of 5G, successor wireless technologies, and other advanced services. *See Infrastructure Act § 60102(a)(2)(I).*
- Consumer Information Report, identifying:
  - The number of previously unserved households, businesses, and community anchors connected by the program,
  - The addresses, including census block information, and location coordinates (longitude and latitude) of each connected location,
  - The service tiers offered to each type of consumer (residential, business, and any other distinct consumer groups with their own service tier offerings), by offered download and upload speeds, data caps, and other service details and the non-promotional pricing offered in each tier, and
  - The locations that have signed up for and/or activated service at the time of



- reporting and which speed tier each has adopted,
- The number of locations activated that receive ACP funding.
- **Operational Testing.** DTI may select either two random locations per census block currently receiving service or ten random locations currently receiving service across the entire service area for speed and latency testing and request testing at those locations. Both a speed and latency test will then be conducted by the grant recipient. DTI will designate the testing data in advance and require testing to be performed in the period between 6:00 PM and 12:00 AM.
  - The recipient must perform continual tests every hour from 6:00 PM and 12:00 AM for a total of six tests per location. In addition, the tests must be conducted from the premises of active subscribers to a remote test server located at, or reached by passing through, an approved internet exchange point (IXP) in accordance with the FCC's Performance Measures Testing protocols, which means any building, facility, or location housing a public internet gateway that has an active interface to a qualifying Internet Autonomous System (ASN). Qualifying ASNs are listed in the Appendix A of *Measuring CAF Recipient's Broadband Performance Order on Reconsideration – WC Docket No. 10-90.[1]*, which can be found at <https://docs.fcc.gov/public/attachments/DOC-360069A1.pdf>. More information about acceptable test paths and remote server locations is available here: <https://www.usac.org/wp-content/uploads/high-cost/documents/Tools/PMM-Test-Paths-and-Remote-Server-Locations-1.pdf>.
  - The test results will then be recorded on the reporting template. The reporting template must be completed and submitted within ten (10) business days of the last day of the testing period.
  - Test Performance Requirements:
    - At least 80 percent of its speed tests in the state are at or above 80 percent of the nominal speeds for the applicable performance tier.
    - The latency must be equal or less than 100 milliseconds (ms).

### **Post-Project Reporting**

On an annual basis for three years after completing the project, Subgrantee must provide a report providing the following information:

- Serviceable address locations have been activated.
- Random performance measures testing of speed and latency of activated addresses. Subgrantee may synch this reporting cycle to its quarterly reporting cycle for the FCC's CAF II program.
- Subdivisions for which service has been extended from subdivision entrance to completed roads and houses.



## Appendix C: Mandatory Terms & Conditions

1) *Notice and Acknowledgement; Eligibility.* Subgrantee acknowledges that payment for Subgrantee's services provided under this SOW is the result of the State's effort to stimulate the State of Delaware economy and assist the State in recovering from the unprecedented global reaction to the coronavirus pandemic. By entering into the SOW, Subgrantee expressly acknowledges that it is receiving Federal, State, or County funds in each instance it accepts the payments required by the SOW. As a subgrantee, Subgrantee's obligations in such respect are strictly limited to those set forth in this SOW.

2) Audit and Inspection.

DTI, NTIA, the DOC Office of Inspector General, or another authorized Federal agency may conduct an audit of an award at any time.

a) Non-Federal Entities

If Subgrantee is subject to the provisions of Subpart F of 2 C.F.R. Part 200 and expends \$750,000 or more in a year in Federal awards during its fiscal year, Subgrantee must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200.

Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>).

In accordance with 2 C.F.R. § 200.425 (Audit services), Subgrantee may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of DTI and NTIA.

b) Other Entities, including For-Profit Entities

If Subgrantee is not subject to the provisions of Subpart F of 2 C.F.R. Part 200, it must submit to DTI/NTIA either:

- (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or
- (ii) a Project specific audit in accordance with the requirements contained in 2 C.F.R. § 200.507.

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

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Officer.

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

- c) *Government Auditing Rights.* Subgrantee shall hold the Subgrantee's, and any applicable agent, subcontractor, or subconsultant's work and records open at all times for the inspection and/or audit by DTI or any other government agency with authority to conduct such an audit, any applicable State or federal agency, NTIA, the U.S. Inspector General, the Comptroller General of the United States, the State of Delaware Department of Justice, or any of their duly authorized representatives, including, any private firm of certified public accountants engaged by the entity, to any books, documents, papers, financial and accounting reports, schedules and records, and any other material of the Subgrantee and any applicable agent, subcontractor, or subconsultant which relate to this SOW. Any private firm involved in this activity must be reasonably acceptable to Subgrantee and enter into a non-disclosure agreement with Subgrantee. The location of the inspection and/or audit will be at DTI's discretion and the inspection may be preceded by DTI's demand at least sixty (60) days in advance for the production of documents to facilitate the performance of preliminary planning, analytic and examination procedures by DTI. Any and all records provided by Subgrantee or its agents in support of audit activity shall be afforded confidential treatment by all recipients to the maximum extent allowed by applicable law. Such access for an on-site inspection and/or audit shall be granted by Subgrantee during its normal business hours; provided, however, that this notice provision shall not apply to the execution of any search warrants or subpoenas. The provisions of this section shall survive termination or cancellation of this SOW. Unannounced site visits, if any, must comply with all applicant facility and security rules and procedures including without limitation rules related to COVID-19.
- d) *Mandatory Record Retention.* Subgrantee, and any applicable agent, subcontractor, or subconsultant retained by Subgrantee, must retain all books, documents, papers, financial and accounting reports, schedules and records, and any other material pertaining to costs incurred under this SOW for not less than six (6) years after DTI makes final payment and all other pending matters are closed and shall make the material available upon request for inspection and/or audit by DTI. The entire SOW includes all tasks regardless of individual task completion date. Subgrantee, or any applicable agent, subcontractor, or subconsultant, shall not be liable for the costs of DTI, any governmental entity involved or participating in

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any such audit, or any private firm contracted by DTI or any governmental entity for such audit. Notwithstanding the foregoing, there are no particular requirements for the method or manner by which Subgrantee keeps such materials, and Subgrantee is entitled to retain such records in accordance with its standard practices in the ordinary course of business. Federal cost accounting standards (see 2 CFR 200.401(b)) are not applicable to Subgrantee or the work under this SOW.

- e) *Cross-Government Sharing of Records.* Subgrantee specifically agrees to allow the sharing or exchange of any information or documents which relates to this SOW among the Government and its political subdivisions, as well as the Federal Government.
  - f) *Locations and Timing.* Subgrantee shall not be obligated to store documents, books, or records or make them available for inspection or audit at any Subgrantee location other than those at which such items are kept by Subgrantee in the ordinary course of business. Audits requiring support or involvement of Subgrantee shall take place no more frequently than once every year. No more than one audit activity may be ongoing at any time (simultaneous or overlapping audit activity is prohibited). Subgrantee shall not be liable for government costs incurred in connection with any audit.
- 3) *Subcontracting and Assignments.* Subgrantee agrees that each of its reporting, auditing, invoicing, and certification requirements shall be expressly required of any Subgrantee subcontractor or assignee.
- 4) *Public Access to Audit Materials.* While confidential business information as defined by the State of Delaware Freedom of Information Act shall remain entitled to protection and shall not be disclosed to members of the public by the government unless required by law or court order, Subgrantee, and its approved subcontractors and assignees, shall expect that invoices, reports, certifications, and any DTI-generated audit report regarding Subgrantee's performance may be made available to the public.
- 5) *Customized Reporting Obligations.* Subgrantee shall issue certified reports regarding compliance with all terms and conditions of the SOW as required by the SOW and Appendix A.
- 6) *Certifications Required.* All of Subgrantee's invoices and reports shall be deemed to contain the following certification, even if not expressly set forth therein:

Subgrantee acknowledges that each of its requests for payment under this SOW constitutes an express true and correct certification that the goods or services for which payment is sought comply with all contractual requirements related to this SOW, and that Subgrantee is not billing or otherwise requesting any funds other than those to which Subgrantee is entitled.

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- 7) *Misrepresentation Illegal.* In connection with this SOW, each Party agrees not to engage in any deception, fraud, false pretense, false promise, misrepresentation, or the concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission whether or not any person has in fact been misled, deceived or damaged thereby (collectively, the ‘misrepresentation’), and agrees that any such misrepresentation shall be treated as an unlawful practice under § 2513 of Title 6 of the Delaware Code.
- 8) *Price Gouging Illegal.* Subgrantee agrees not to engage in price gouging as herein defined, and understands and agrees that any price gouging shall be treated as an unlawful practice under § 2513 of Title 6 of the Delaware Code and a violation of Subchapter II of Chapter 25 of Title 6. ‘Price gouging’ shall have the meaning set forth in paragraph 9 of Governor John C. Carney's Declaration of a State of Emergency dated March 12, 2020, as clarified by paragraph 4 of Governor Carney’s 29th Modification of the Declaration of a State of Emergency dated May 18, 2021. Compliance with pricing-related provisions in this SOW relating to broadband service shall not be deemed to be price gouging, nor shall requests for reimbursement that do not exceed the total value of the SOW.
- 9) *Non-Compliance is a Material Breach of Contract.* Each Party acknowledges that any material failure to comply with the terms and conditions of this SOW that remains uncured thirty (30) days after notice thereof shall have been communicated in writing by the non-breaching Party to the Party alleged to be in breach shall constitute a material breach of this SOW. DTI’s good faith efforts to validate Subgrantee’s certification that extend beyond thirty (30) days will not be considered a material breach.
- 10) *Non-Compliance in Reporting Tolls Government Payment Obligation.* Any payment obligation by DTI for services rendered or materials provided during a period of time in which a Subgrantee’s report was not timely delivered, or during which a defective report was delivered, shall be tolled until Subgrantee has fully complied with all of its outstanding and overdue reporting obligations.
- 11) *Non-Waiver.* The delay or failure by either Party to exercise or enforce any of its rights under this SOW shall not constitute or be deemed a waiver of such Party’s right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.
- 12) *Severability.* If any term or provision included herein is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms, conditions or provisions hereof, but such term, condition, or provision shall be deemed modified to the extent necessary in the court's opinion to render such term, condition, or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent of the Parties, and the Parties shall negotiate in good faith such modifications as may be necessary to preserve to the fullest

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extent possible the initial intent of the Parties.

13) *No Third Party Beneficiary Rights.* This SOW is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) with respect to or in connection with any SOW or provision contained herein or contemplated hereby, even if indirectly benefited by it.

14) *Jurisdiction and Venue.* Subgrantee and DTI irrevocably consent and submit to the exclusive jurisdiction of the State courts of the State of Delaware located in New Castle County, Delaware and the United States District Court for the District of Delaware and waives any objection based on venue or *forum non conveniens* with respect to any action instituted therein arising under this SOW or the transactions related hereto or thereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise, and agree that any dispute with respect to any such matters shall be heard only in the courts and geographic locations described above.

15) *Governing Law.* This SOW, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this SOW, or the negotiation, execution or performance of this SOW (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this SOW, or as an inducement to enter into same), shall be governed by, and enforced in accordance with, the internal laws of Delaware, including its statutes of limitations without regard to its rules of conflict of laws.

16) *Force Majeure; Applicability.* Neither the Subgrantee nor DTI shall be held liable for non-performance under the terms and conditions of this SOW due, but not limited to:

- a) Acts of God; wars, revolution, civil commotion, acts of public enemy, embargo; acts of government in its sovereign capacity; labor disturbances including without limitation, strikes, slowdowns, picketing or boycotts; fiber cuts not caused by Subgrantee or its contractors; storms, weather, or other natural disturbances; accidents; failure of a governmental entity to issue a permit or approval required for performance when the contractor has filed proper and timely application with the appropriate government entity; civil disorders; acts of aggression; changes in any law or regulation adopted or issued by a governmental entity after the date of this SOW; a court order; explosions; failure of utilities; material or supply-chain shortages;
- b) Diseases, plagues, quarantine, epidemics, pandemics, variants thereof, or widespread illness;
- c) Federal, state, or local work or travel restrictions to control, mitigate, or reduce transmission of diseases, plagues, epidemics or pandemics; or
- d) The State's need to occupy, utilize, or repurpose an active or prospective work area due for

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any reason.

The foregoing shall include, without limitation, any delay or failure by the State, any agency thereof, or any third-party to issue, grant, or approve permits; perform inspections; provide any certification, review, or approval; perform any make-ready work or relocation, or; mark or locate underground facilities. If any delay of the nature described in this section occurs, Subgrantee agrees to notify DTI within twenty (20) days of the date on which Subgrantee determines a force majeure event has occurred or is ongoing. If Subgrantee does not report the need for excusal, Subgrantee will be held liable for any delays.

Subgrantee shall also be excused from meeting all timing requirements and deadlines to the extent caused by or attributable to any action by the State or any agency thereof or any other governmental entity to initiate or sustain competing or conflicting projects in the area of Subgrantee's construction activity; enforce or maintain any construction or right-of-way moratoria; or otherwise take any action or inaction that impairs or impedes Subgrantee's prompt and timely progress in the construction of the network and the provision of service. Any excusals of timing requirements or delays are only applicable to portions of work impacted by the State or agency action. If any delay of the nature described in this section occurs, Subgrantee agrees to notify DTI within twenty (20) days of the date on which Subgrantee determines a force majeure event has occurred or is ongoing. If Subgrantee does not report the need for excusal, Subgrantee will be held liable for any delays.

Each Party shall notify the other in writing of any situation that may prevent performance under the terms and conditions of this contract within ten (10) business days of the Party's knowledge of significant non-performance risk provided that the failure to provide such notice shall not affect a Party's rights under this section. The Task Duration shall be extended to reflect such events, provided that the Task Duration may not be extended beyond December 31, 2026, without the mutual consent of both Parties.

17) *Representations and Warranties.* Subgrantee hereby warrants that all services and deliverables provided hereunder will be performed in a good and workmanlike manner, technically sound and in conformance with all applicable federal, state and local statutes, Executive Orders and Declarations, codes, ordinances, resolutions and other regulations applicable to the services. Subgrantee agrees to correct or re-perform any services not in compliance with this warranty. EXCEPT AS EXPRESSLY STATED IN THIS SOW, SUBGRANTEE MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED UNDER THIS SOW AND DISCLAIMS ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR

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OTHERWISE.

18) Indemnification.

a) Subgrantee shall indemnify and hold harmless DTI, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees), arising out of:

- i. the negligence or other wrongful conduct of Subgrantee, its agents or employees; or
- ii. Subgrantee's breach of any material provision of this SOW that is not cured thirty (30) days after notice and opportunity to cure.

b) Subject to the exceptions stated in subparagraph (c) below, if DTI promptly notifies Subgrantee in writing of a third party claim against DTI that any deliverable infringes a copyright or a trade secret of any third party, Subgrantee shall (i) defend such claim at its expense and (ii) pay any costs or damages that may be finally awarded against DTI.

c) Subgrantee shall not be required to indemnify DTI, however, to the extent the claim of infringement stems from:

- i. Government's misuse or modification of the deliverable;
- ii. Government's failure to use corrections or enhancements explicitly made available to Government by Subgrantee;
- iii. Government's use of the deliverable in combination with any product or information not owned or developed by Subgrantee;
- iv. Government's distribution, marketing or use for the benefit of third parties of the deliverable; or
- v. Information, direction, specification or materials provided by DTI.

d) In addition to remedies stated in subparagraph (b) above, if any deliverable is, or in Subgrantee's opinion is likely to be, held to be infringing, Subgrantee shall at its expense and option either:

- i. Procure the right for DTI to continue using it;
- ii. Replace it with a non-infringing equivalent; or

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iii. Modify it to make it non-infringing.

19) *Insurance.* Subgrantee must obtain at its own cost and expense, and keep in force and effect during the term of this SOW (including during the term of all extensions), an insurance policy with the coverage limits specified below. Subgrantee must carry one or more of the following insurance policies depending on the type of service or product being delivered:

a) Worker's Compensation in compliance with the statutory requirements of the state(s) of operation and Employer's Liability Insurance with limits of \$1,000,000 each accident/disease/policy limit.

b) Commercial General Liability in the following amounts:  
\$1,000,000 per occurrence for bodily injury and property damage and \$3,000,000 General Aggregate including contractual liability (other than Products/Completed Operations)  
\$3,000,000 Aggregate Products/Completed Operations  
\$1,000,000 Personal and Advertising injury  
\$100,000 Fire Damage Legal Liability

c) Automobile Liability Insurance covering all owned, non-owned and hired vehicles used by Subgrantee in connection with the work required by this SOW to include but not limited to transporting Government clients or staff, providing the following types of coverage on a primary non-contributory basis, with limits as determined by DTI:

i) \$1,000,000 combined single limit each accident, for bodily injury and property damage.

d) In addition to the insurance coverages listed in the previous section, Subgrantee shall obtain at its own cost and expense, and keep in force and effect during the term of this SOW (including during the term of all extensions) Telecommunications, Media & Technology Errors & Omissions insurance including Network Security and Cyber Liability with a limit of \$2,000,000 per claim and aggregate covering the negligent acts, errors and/or omissions of Subgrantee in the performance of professional services under this Agreement.

e) Upon receipt of notice from its insurer(s) Subgrantee shall provide the Government with thirty (30) days' prior written notice of cancellation of any required coverage.

f) Before any work is done pursuant to this SOW, the Certificate of Insurance referencing the contract number stated herein, shall be filed with DTI. The certificate holder shall be as follows:

Department of Technology & Information

Contract No: Emergency Procurement Waiver – Broadband Service

Providers and Subsidy Programs

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Unit of Government 801  
Silver Lake Blvd.  
Dover, DE 19904

g) Nothing contained herein shall restrict or limit Subgrantee's right to procure insurance coverage in amounts higher than those required by this SOW. To the extent that Subgrantee procures insurance coverage in amounts higher than the amounts required by this SOW, all said additionally procured coverages will be applicable to any loss suffered by, and claim made by, the Government pursuant to this SOW.

h) To the extent that Subgrantee has complied with the terms of this SOW and has procured insurance coverage for all vehicles Leased and/or operated by Subgrantee as part of this SOW, the Government's self-insured insurance program shall not provide any coverage, regardless whether coverage is sought as primary, co-primary, excess or umbrella insurer or coverage for any loss of any nature.

i) In no event shall the Government be named as an additional insured on any policy required under this SOW.

20) *Limitation of Liability.* Except for specifically identified fees and expenses that may be due and owing under the SOW, and notwithstanding anything to the contrary in this SOW, neither DTI nor any officers, members, employees or attorneys of the foregoing, shall have any liability to Subgrantee or any other party for fees (including attorneys' fees), expenses, suits, actions, claims or damages, whether direct or indirect, compensatory or punitive, actual or consequential, in or for actions, claims, causes of action or rights, including indemnification rights, arising out of or related in any way to this SOW.

a) Notwithstanding anything to the contrary herein, no provision of this SOW shall constitute a waiver or limitation of any right held by the Government or United States of America that may exist under applicable statutory or common law.

b) Notwithstanding anything to the contrary herein, to the extent available under applicable law, Government and their respective officers, members, employees and attorneys, expressly reserve all rights, claims, arguments, defenses and immunities, including, without limitation, claims or defenses based on sovereign immunity, qualified immunity and other statutory or common law rights, claims, defenses or immunities; provided, however, that Subgrantee shall have the right to seek to enforce this SOW in the courts of this State.

IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS SOW, EVEN IF THAT PARTY HAS BEEN INFORMED IN

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ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE. THE PARTIES AGREE THAT THE SOLE REMEDY FOR ANY BREACH OR CAUSE OF ACTION ARISING FROM OR RELATED TO THIS SOW IS TERMINATION OF THE SOW, PROVIDED THAT NOTHING IN THIS SECTION SHALL LIMIT OR RESTRICT A PARTY'S OBLIGATION TO COMPLY WITH THE PAYMENT OR REIMBURSEMENT PROVISIONS OF THIS SOW AND PROVIDED FURTHER THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR RESTRICT A PARTY'S RIGHT TO SEEK EQUITABLE RELIEF. SUBGRANTEE'S LIABILITY UNDER THIS SOW SHALL NOT EXCEED, INDIVIDUALLY OR IN THE AGGREGATE AND IN TOTAL FOR ANY AND ALL CLAIMS, AMOUNTS ACTUALLY PAID BY THE GOVERNMENT TO SUBGRANTEE UNDER THIS AGREEMENT AS REIMBURSEMENT FOR THE COSTS OF DEPLOYING BROADBAND SERVICE.

21) *Confidentiality.* Nothing in this SOW shall be deemed to constitute consent by Subgrantee to the disclosure of Subgrantee confidential or proprietary information otherwise eligible for protection under the federal or state Freedom of Information Act or other applicable law.

22) *Termination of Broadband Service Offering.* Subgrantee shall sustain broadband service to the Awarded Locations for a term of twenty (20) years from the date of this Agreement, provided that Subgrantee's offer of broadband service may be terminated by Subgrantee if changes in technology render it infeasible or impracticable for Subgrantee to provide services to the Awarded Locations over the Proposed Network.

23) *Terms and Conditions for Broadband Service.* Subgrantee's broadband service is subject to terms and conditions and reasonable network management. Pricing, terms and conditions as well as Subgrantee's network management practices are subject to change.

24) *Impact of Duplicative Funding.* Subgrantee shall not be obligated to construct facilities or provide service to any location for which government money has already been granted or provided (in any manner, including loans, loan guarantees, tax breaks or any other direct or indirect forms of subsidy or assistance), or for which government money is granted or provided at any point in the future (in any manner, including loans, loan guarantees, tax breaks or any other direct or indirect forms of subsidy or assistance), for the construction or provision of equivalent or competing networks, products, or services.

25) Network and Service Provisions.

a. There is no condition that broadband service prices be fixed over the term of the agreement. Subgrantee is free to offer promotional pricing in sub-geographies.

b. Subgrantee's low-income broadband adoption program is permitted to evolve over time.

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c. None of Subgrantee's activity under this SOW shall be deemed to be the purchasing of third-party products for the government.

d. No governmental entity shall take, obtain, possess, hold or acquire any right, title, or interest in any property, plant or equipment, real or personal, tangible or intangible, purchased, obtained, designed, modified, adapted, invented, created, or otherwise produced or placed in service by Subgrantee, with or without use of government funds, under this SOW.

26) *Miscellaneous.* The headings inserted in this SOW are for convenience only and shall not constitute a part hereof. This SOW may not be modified, supplemented or amended, unless any such modification, supplement or amendment is incorporated into the SOW by a valid amendment signed by the authorized representatives of each party. This SOW represents the joint work product of both Parties and shall not be construed in any respect against either party based solely on that Party's having been the drafter of any part hereof. No action taken by either Party to enforce its rights under this SOW shall be deemed to be an election of remedies, and each Party expressly reserves all rights under this SOW, applicable law, or otherwise.

27) *Entire Agreement; Counterparts.* This SOW constitutes the entire agreement between the parties and cancels all contemporaneous or prior agreements, exchanges, discussions, understandings or other arrangements between the parties, whether written or oral, with respect to the subject matter of this SOW, with the exception of the federally required provisions noted in Appendix D. This SOW may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. Execution and exchange of signatures via facsimile or Adobe Acrobat portable document file (.PDF file extension) shall have the same force and effect as execution and exchange of originals.

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**Appendix D: [Company] Bid Application Details**

Detail of Awarded Locations as of SOW Execution Date Total Awarded Locations: [X]

Estimated Budget Financial Details

[BUDGET FROM SUBGRANTEE'S APPLICATION]

Estimated Timeline for Completion

[TIMELINE FROM SUBGRANTEE'S APPLICATION]

Fair Labor Practices Commitments

[FAIR LABOR PRACTICES BID TEXT FROM SUBGRANTEE'S APPLICATION]

Affordability Commitments

[AFFORDABILITY TEXT FROM SUBGRANTEE'S APPLICATION]

Subgrantee acknowledges all certifications it made during the Prequalification and Scoring Phases of the application and agrees to maintain compliance with these certifications.



## Appendix E: Environmental and Historic Preservation Review

### I. General Environmental and Historic Preservation Review Requirements

Subgrantee shall not initiate or allow any grant funded implementation activities—except for the limited permissible activities identified in the “Uses Prior to Implementation” subsection below—prior to the following:

- The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (NEPA), and issuance, as required, of a Categorical Exclusion (Cat Ex) determination, Record of Environmental Consideration (REC), Finding of No Significant Impact (FONSI), Record of Decision (ROD) (hereinafter “decision documents”) that meets the requirements of NEPA;
- The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.) (NHPA), including any consultations required by Federal law, to include consultations with the State Historic Preservation Office and Federally recognized Native American tribes;
- 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
- Demonstration of compliance with all other applicable Federal, state, and local environmental laws and regulations.

### II. NEPA Compliance

The Parties agree that

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

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Subgrantee shall, as directed by DTI:

- Submit all decision documents—including any supporting environmental documentation required or requested by NTIA—to NTIA for review.

At all times, both parties will follow all NTIA rules, regulations, and guidance with submission of NEPA review materials.

### III. NHPA Compliance

To ensure the timely completion of historic preservation review for all BEAD-funded activities, Subgrantee shall provide all such information as the Office requires to:

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

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

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

- How DTI should evaluate the sufficiency, applicability and accuracy of the relevant FirstNet PEIS sections;
- How DTI and/or Subgrantee should evaluate what level of environmental review is appropriate and determine what type of decision document is required for a grant funded activity to proceed;
- NTIA's criteria for determining whether each type of decision document meets the requirements of NEPA;
- How DTI and/or Subgrantee should format decision documents;
- How DTI should submit decision documents and any other required environmental

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- documentation to NTIA;
- How DTI will work with cooperating agencies;
- How to develop an appropriate milestone schedule and NEPA timeline for meeting NEPA's timing requirements; and
- NTIA's process for notifying the Grantee that a decision document meets the requirements of NEPA.

Subgrantee shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of the above activities. Subgrantee must comply with all conditions placed on the grant funded activities as the result of NEPA or consultation processes—e.g., best management practices or other measures necessary to reduce environmental impacts. Subgrantee shall provide any related information requested by the Office or by NTIA (directly or through the Office) to ensure both initial and ongoing compliance with all requirements described above.

#### V. Uses of Award Funds Prior to Implementation

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

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

Grant funded activities with significant impacts to environmental or historic resources may face deobligation of funding if impacts cannot be avoided, minimized, or mitigated. Subgrantee shall notify DTI within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.

The Parties acknowledge that any change to the approved scope of grant funded activities proposed

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

The Parties acknowledge that while funds may be expended prior to implementation, as described in this section, reimbursement for those expenses will not occur except according to the payment schedule described above in the “Payment Milestones” section.

#### VI. Archaeological Resources

Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Subgrantee must notify DTI of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. Subgrantees should have an archaeologist who meets the Secretary of the Interior’s Professional Qualification Standards monitor ground disturbance for grant funded activities proposed in the vicinity of National Register eligible archaeological sites and suspected or known burials. If any potential archeological resources or buried human remains are discovered during construction, Subgrantee must immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to notify DTI, NTIA, and potentially affected Tribes. Such construction activities may then only continue with the written approval of DTI and NTIA.



## Appendix F – Property Standards

1. Subgrantee is not required to comply with the Procurement Standards set forth in 2 CFR 200.318-320 and 200.324-326. All other Procurement Standards, i.e., 2 CFR 200.317, 200.321-200.323, and 200.327, remain as requirements.

2. Subgrantee must follow its existing commercial practices for managing equipment in the normal course of business, and must use inventory controls indicating the applicable Federal interest and loss prevention procedures. This requirement is in lieu of the requirements contained in 2 CFR 200.313(d), pursuant to an exception from OMB.

If Subgrantee does not have existing commercial practices for managing equipment in the normal course of business, it must comply with 2 CFR 200.313(d).

3. Subgrantee must comply with the use and equipment disposition requirements of 2 CFR § 200.313(c)(4) and 313(e) as follows:

- a) If Subgrantee acquires replacement equipment under 2 C.F.R. § 200.313(c)(4), Subgrantee may treat the equipment to be replaced as “trade-in” even if Subgrantee elects to retain full ownership and use over equipment. As with trade-ins that involve a third party, Subgrantee will have to record the fair market value of the equipment being replaced in its Tangible Personal Property Status Reports (as specified in the DOC ST&Cs § A.01) to the DOC to ensure adequate tracking of the Federal percentage of participation in the cost of the grant funded activities. Subgrantee will also be responsible for tracking the value of the replacement equipment, including both the Federal and non-Federal share.
- b) Subgrantee may sell, lease, or transfer Project Property only after (a) securing the agreement of the successor or transferee to comply with these requirements and the acknowledgement of the successor or transferee of the Federal Interest in the subject Project Property, and (b) obtaining consent to the sale or transfer from NTIA. NTIA will provide additional information concerning the review and approval process for transactions involving Project Property in subsequent guidance.
- c) Subgrantee must notify the Office and NTIA upon the filing of a petition under the U.S. Bankruptcy Code, whether voluntary or involuntary, with respect to Subgrantee or any affiliate that would impact Subgrantee’s ability to perform in accordance with its subgrant.

4. Subgrantees must record liens or other appropriate notices of record, acceptable in form and substance to the Federal Grant Officer, to indicate that Project Property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

5. Subgrantee may encumber Project Property only after provision of notice to NTIA and to the Federal

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Grant Officer, and subject to a requirement that the DOC receives either a first priority security interest (preferred) or a shared first priority security interest in the Project Property such that, if the Project Property were foreclosed upon and liquidated, the DOC would be entitled to receive, on a pari-passu basis with other first position creditors, the portion of the current fair market value of the property that is equal to the DOC's percentage of contribution to the project costs. For example, if the DOC had contributed 50% of the project costs, the DOC would receive, on a pari-passu basis, 50% of the current fair market value of the Project Property when liquidated. NTIA will address the notice requirement for encumbrances in future guidance.

6. Pursuant to exceptions approved by the United States Office of Management and Budget as described in the UGPN, the property standards set forth in 2 CFR 200.314 -315 for supplies and intangible property, respectively, shall not apply to this Agreement.

7. Subgrantee must comply with 2 CFR 200.316. Pursuant to this section and in recognition that the BEAD Program is being executed for the benefit of the public being served by the broadband infrastructure projects, for the duration of the Federal Interest Period, Subgrantee must hold Project Property in trust for the beneficiaries of the BEAD broadband infrastructure project.

8. Subgrantee must comply with the insurance requirements of 2 CFR 200.310.

9. Subgrantee must comply with 2 CFR 200.312 to the extent any Federally owned real property or equipment is used by Subgrantee.

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## **Appendix E: Incorporation of Federal Requirements**

Incorporated by reference are all federal requirements contained in the BEAD Notice of Funding Opportunity (NOFO) published by the National Telecommunications and Information Administration (NTIA), available at <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>.

Incorporated by reference are all requirements outlined in Delaware's BEAD Initial Proposal Volume 2 (IP2), as approved by NTIA, available at <https://broadband.delaware.gov/pages/contentFolder/pdfs/BEAD%20Delaware%20IP2.pdf?cache=1721757830245>.

In the event of any conflict between this SOW and the documents incorporated in this appendix is inadvertent, and—under federal law—the requirements of the NOFO and IP2 must control.

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