

**ADDENDUM A: NEBRASKA BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (NBEAD)  
GENERAL TERMS & CONDITIONS - SUBGRANTS**

**Definitions:** For the purposes of this Addendum, “federal funding agency” means the US federal agency providing funding for this Subgrant. Unless otherwise specified herein, the definitions in [2 CFR §§ 200 Subpart A](#) or [45 CFR § 75.2](#) shall apply to all terms used herein.

1. ACCESS TO RECORDS.

- 1.1. Subgrantee shall provide access for the Nebraska Broadband Office (NBO), or its authorized representative, to any documents, papers, or other records pertinent to Subgrant, to make audits, examinations, risk assessments, excerpts, and transcripts. The Subgrantee shall provide the same access to the federal funding agency, the Inspectors General, the Comptroller General of the United States, or any of their authorized representatives. These rights also include timely and reasonable access to Subgrantee’s personnel for the purpose of interview and discussion related to such documents, papers, or other records. These rights are not limited to the retention periods included herein but continue as long as the records are retained by Subgrantee.
- 1.2. Subgrantee shall maintain all financial records, supporting documents, statistical records, and all other records pertinent to Subgrant, for three (3) years from the date of submission of the final expenditure report.
- 1.3. In addition to the foregoing retention periods, all records must be retained as specified in 2 CFR §§ 200.334(a) through (f) or 45 CFR §§ 75.361 (a) through (f), as applicable. This includes, but is not limited to: if any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

Source: 2 CFR §§ 200.334 through 200.338; 24 CFR § 576.500. Other statutes and regulations may apply.

2. ACKNOWLEDGEMENT OF FUNDING.

- 2.1. Subgrantee must acknowledge federal and NBO funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal and NBO funds. Subgrantee is required to state: (1) the percentage and dollar amounts of the total program or project costs financed with federal and NBO funds; and (2) the percentage and dollar amount of the total costs financed by nongovernmental sources.
- 2.2. Subgrantee shall construct and maintain in good condition throughout the construction period a sign or signs, at the site of grant funded activities in a conspicuous place, indicating that NBO and the Federal Government is participating in the activities.
- 2.3. When Subgrantee is ready to announce completion of a NBEAD project, they must do so in consultation and collaboration with NBO and NTIA.
- 2.4. Subgrantee is encouraged to use the official Investing in America emblem in accordance with the guidelines and design specifications found in the *Building a Better America Brand Guide* available at <https://www.whitehouse.gov/wp-content/uploads/2022/08/Building-A-Better-America-Brand-Guide.pdf>. Costs associated with signage and public acknowledgements must be reasonable and limited. Signs or public acknowledgements should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or Subgrantee burden. Subgrantee should use best effort to use recycled or

recovered materials when procuring signs.

- 2.5. Subgrantee shall comply with any other requirement regarding publications contained herein, with the applicable Federal Notice of Award, and with law.

*Source:* Departments of Labor and Education and Related Agencies Appropriations Bill; 2 CFR § 415.2; Infrastructure Investment and Jobs Act, Public Law No: 117-58, 135 Stat. 429, 70901-70927.

3. AUDIT AND ACCOUNTING RESPONSIBILITIES.

- 3.1. The Subgrantee shall comply with all applicable federal audit requirements, including but not limited to those in 2 CFR § 200 Subpart F or 45 CFR § 75 Subpart F; an audit required by these regulations must be prepared and issued by an independent auditor in accordance with generally accepted government auditing standards. A copy of the audit is to be made electronically available or sent to: Nebraska Broadband Office, 700 South 16<sup>th</sup> Street, Lincoln, NE 68508.
- 3.2. Subgrantee shall comply with 2 CFR §§ 200.508 through 200.512 or 45 CFR §§ 75.508 through 75.512, as applicable, including but not limited to: (a) procure or otherwise arrange for the audit required by this part in accordance with § 200.509 (§ 75.509), and ensure it is properly performed and submitted when due in accordance with § 200.512 (§ 75.512); (b) prepare appropriate financial statements, including the schedule of expenditures of federal awards in accordance with § 200.510 (§ 75.510); (b) promptly follow up and take corrective action on audit findings, including preparation of a summary schedule of prior audit findings and a corrective action plan in accordance with § 200.511 (§ 75.511); (c) provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by law.
- 3.3. In addition to, and in no way in limitation of any obligation in this Subgrant, Subgrantee shall be liable for audit exceptions, and shall return to NBO all payments made under this Subgrant for which an exception has been taken or that has been disallowed because of such an exception, upon demand from NBO.
- 3.4. The Subgrantee shall maintain its accounting records in accordance with generally accepted accounting principles. NBO reserves the right to require Subgrantee to submit required financial reports on the accrual basis of accounting. If Subgrantee's records are not normally kept on the accrual basis, Subgrantee is not required to convert its accounting system but shall develop and submit in a timely manner such accrual information through an analysis of the documentation on hand (such as accounts payable).
- 3.5. Unless otherwise specified in the terms and conditions of the subgrant, entities that are not subject to Subpart F of 2 CFR Part 200 (e.g., commercial entities) that expend \$1,000,000 or more in grant funds during their fiscal year must submit to NBO either: (i) a financial related audit of each Department of Commerce (DOC) grant or subgrant in accordance with Generally Accepted Government Auditing Standards; or (ii) a program-specific audit for each grant or subgrant in accordance with the requirements contained in 2 CFR § 200.507.

*Source:* 31 USC §§ 7501 et seq.; 2 CFR §§ 200 Subpart F; 45 CFR §§ 75 Subpart F.

4. AMENDMENT. This Subgrant may be modified only by written amendment executed by both parties. No alteration or variation of the terms of Subgrant shall be valid unless made in writing and signed by the parties. Notwithstanding the above, NBO may update this Addendum without the written consent or signature of Subgrantee in response to and in-order-to comply with any additional guidance, regulation, law or mandate promulgated by NTIA or any other government

entity regarding and affecting the NBEAD Program by providing written notice to Subgrantee. In addition, NBO may add additional funding as specifically set forth in the paragraph entitled “Award of Additional Funding” in the Subgrant.

5. **ASSIGNMENT.** The Subgrantee shall not assign or transfer any interest, rights, or duties under this Subgrant to any person, firm, or corporation without prior written consent of NBO. In the absence of such written consent, any assignment or attempt to assign shall constitute material noncompliance with Subgrant.
6. **BUILD AMERICA BUY AMERICA ACT.** The Subgrantee shall comply with the provisions of the Build America, Buy America Act, which is part of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, 135 Stat. 429, 70901-70927.
  - 6.1. Subgrantees shall gather Certification Letters from manufacturers building NBEAD-funded projects and submit them to NBO upon request.
  - 6.2. Subgrantee shall include this BABA compliance language in all subcontracts and procurement agreements and shall ensure that subcontractors and suppliers comply with the BABA provisions.
  - 6.3. *Limited Waivers.* The Department of Commerce (DOC) issued limited waivers of some BABA provisions, detailed in *Limited General Applicability Nonavailability Waiver of the Buy America Domestic Content Procurement Preference as Applied to Recipients of Broadband Equity, Access, and Deployment Program*. For the period February 22, 2024 through February 22, 2029, Subgrantee may take advantage of these BEAD waivers as applicable to their BEAD-funded project.
7. **BUILDOUT MILESTONES.** The Subgrantee shall meet the following interim buildout milestones:

<b>Deadline</b>	<b>Milestone</b>
	Detailed Engineering plan: NBO approval of detailed project budget, engineering plan, and schedule as an addendum to the executed subgrant agreements.
	Permitting/Make Ready: Proof that necessary permits have been requested filed with the NBO. Fully executed contracts by all required parties must be submitted to NBO to consider this milestone achieved.
	Material & Equipment Procurement: Proof of binding agreement to acquire BABA-compliant equipment prior to start of construction.
	Network Deployment:
	1. 10% of Project BSLs
	2. 35% of Project BSLs
	3. 60% of Project BSLs
	4. 85% of Project BSLs
	5. 100% of Project BSLs
	BSL Subscriptions: Provider certification and NBO completion of a technical and compliance audit that the provider has reached the following subscription milestones:
	1. 10% of Project BSLs subscribing to the applicant’s service
	2. 35% of Project BSLs subscribing to the applicant’s service
	3. 60% of Project BSLs subscribing to the applicant’s service
	4. 85% of Project BSLs subscribing to the applicant’s service
	5. 100% of Project BSLs subscribing to the applicant’s service and NBO’s

**Commented [DL1]:** Subgrantees to set these dates in their PAs, which will be incorporated here

	approval of Subgrantee's completion report
	<i>In the event that an applicant is unable to secure a subscription from a covered BSLs, the applicant will submit documentation showing good faith attempts to encourage the resident to subscribe. Such documentation will count towards the % of BSLs served</i>
	Program closeout Submission: Confirmation of all completed construction and activation based on testing data, as-builts, and NBO field verification.
	Note: NBO reserves the right to add additional milestones based on assessed level of risk for each applicant.

- 7.1. Deadlines for each milestone may be extended only with written approval of NBO and agreement of NTIA and the Assistant Secretary if NBO is able to reasonably determine that (i) the Subgrantee has a specific plan for use of the grant funds, with project completion expected by a specific date not more than one year after the four-year deadline; (ii) the construction project is underway; or (iii) extenuating circumstances require an extension of time to allow the project to be completed.
- 7.2. Subgrantee is required to adhere to specific deployment schedules, ensuring the network is operational within the stipulated time, which will be tracked and assessed against the Buildout Milestones.

8. CLOSEOUT AND POST-CLOSEOUT.

- 8.1. *Closeout.* The following closeout procedures apply to this Subgrant at the end of each Period of Performance:
  - 8.1.1. Subgrantee shall follow all invoicing and liquidation requirements contained in the Subgrant. Subgrant funds shall be disbursed upon determination by NBO that all required reports have been submitted and are accurate and complete, including tracking and reporting of progress toward meeting project milestones.
  - 8.1.2. The final payment shall not be made until NBO receives and approves a Completion Report, which will indicate that (1) all construction is complete and has been subjected to a final inspection and approval by Subgrantee's engineer or architect, (2) all project completion criteria have been met, and (3) certification that the service delivery to the affected Broadband Serviceable Locations (BSLs) has commenced, as defined at 47 USC 172(h)(4)(C).
  - 8.1.3. NBO will have thirty (30) business days from receipt of the Completion Report to request data to verify completion of the project and schedule a final inspection to be attended by NBO, Subgrantee's architect or engineer, and Subgrantee. Other interested parties, including subcontractors and representatives of the National Telecommunications Information Administration (NTIA), may also be invited.
  - 8.1.4. A project shall be accepted as completed unless, within the thirty (30) business days of the final inspection, NBO notifies the Subgrantee in writing (1) that the project is rejected, (2) specifies the requirements to move the project toward acceptance, and (3) sets a deadline for resubmission of the Completion Report. Subgrantee shall promptly remedy any defect which prevents the work performed on the project from satisfying the project completion criteria or meeting any material obligation under this Subgrant.
  - 8.1.5. NBO shall provide to the Subgrantee notice of acceptance of project completion within thirty (30) business days of acceptance of completion.

- 8.1.6. Consistent with the terms of the federal award, and after all reports are received, NBO shall make any necessary adjustments upward or downward in the federal share of costs.
- 8.1.7. NBO shall make prompt payments, as consistent with the terms set forth herein, for all actual and allowable costs under the terms of this Subgrant.
- 8.2. *Post-Closeout Adjustments and Continuing Responsibilities.* The closeout of the Subgrant does not affect any of the following:
  - 8.2.1. The right of NBO to disallow costs and recover funds on the basis of a later audit or other review. NBO shall make any cost disallowance determination and notify Subgrantee within the record retention period.
  - 8.2.2. The obligation of Subgrantee to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
  - 8.2.3. Audit requirements in 2 CFR § 200 Subpart F or 45 CFR § 75 Subpart F.
  - 8.2.4. As applicable, property management and disposition requirements in 2 CFR §§ 200.310 through 200.316 or 45 CFR §§ 75.317 through 75.323.
  - 8.2.5. Records retention as required Section 1 of this Addendum.
- 8.3. After closeout of the federal award, a relationship created under the federal award may be modified or ended in whole or in part with the consent of NBO and the Subgrantee, provided the responsibilities of the Subgrantee referred to above, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the Subgrantee, as appropriate.
- 8.4. At the end of the latest running Period of Performance identified in Attachment 1, Subgrantee shall assist and cooperate in the orderly transition and transfer of Subgrant activities and operations with the objective of preventing disruption of services, if necessary.

*Source:* 2 CFR § 200.332 or 45 CFR § 75.352(a)(6); 2 CFR § 200.344 or 45 CFR § 75.386; 45 CFR § 75.309; 2 CFR § 200.345 or 45 CFR § 75.386.

9. **COMPLIANCE WITH CIVIL RIGHTS AND EQUAL OPPORTUNITY EMPLOYMENT LAW.**

- 9.1. The Subgrantee shall comply with all applicable local, state, and federal law regarding civil rights, including but not limited to: Title VI of the Civil Rights Act of 1964, 42 USC §§ 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, 29 USC §§ 794 et seq.; the Americans with Disabilities Act of 1990, 42 USC §§ 12101 et seq.; the Age Discrimination in Employment Act, 29 USC §§ 621 et seq.; the Age Discrimination Act of 1975, 42 USC §§ 6101 et seq.; Title IX of the Education Amendments of 1972, 20 USC §§ 1681 et seq.; and Department of Commerce implementing regulations published at 15 CFR Part 8b; The Age Discrimination Act of 1975, as amended, 42 USC § 6101 et seq; Title VII of the Civil Rights Act of 1964, 42 USC §§ 2000e et seq.; Parts II and III of Executive Order 11246, Equal Employment Opportunity; Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency; Executive Order 13798, Promoting Free Speech and Religious Liberty; and the Nebraska Fair Employment Practice Act, Neb. Rev. Stat. §§ 48-1101 to 48-1125.
- 9.2. Subgrantee, by execution of Subgrant, also understands and acknowledges this Subgrant is subject to the following regulations regarding nondiscrimination: 45 CFR §§ 84 et seq. (nondiscrimination on the basis of handicap in programs and activities receiving or benefitting from federal financial assistance); and 45 CFR §§ 86 et seq. (nondiscrimination on the basis of sex in education programs and activities receiving or benefitting from federal financial assistance).

- 9.3. Violation of the above statutes and regulations will constitute material non-compliance with the terms of this Subgrant and may result in any of the Remedies for Noncompliance listed herein, or any other remedy available under law.
- 9.4. To comply with law, including but not limited to Neb. Rev. Stat. § 48-1122, Subgrantee shall insert a similar provision to 9.1, above, into all subgrants and contracts under this Subgrant.

*Source:* Statutes and regulations cited above.

10. CONFLICTS OF INTEREST.

- 10.1. In the performance of this Subgrant, Subgrantee shall avoid all conflicts of interest and all appearances of conflicts of interest. Subgrantee shall not acquire an interest either directly or indirectly that will conflict in any manner or degree with performance and shall immediately notify NBO in writing of any such instances encountered.

*Source:* 2 CFR § 200.112 or 45 CFR § 75.112; 2 CFR § 400.2.

11. COSTS.

- 11.1. Under this Subgrant, NBO shall only pay for actual and allowable costs (as defined in this section) incurred during the Period of Performance.
  - 11.1.1. To be allowable, all costs must be:
    - Necessary for the performance of the subgrant activities;
    - Reasonable, as provided in 2 CFR § 200.404 or 45 CFR § 75.404;
    - Allocable to the federal award, as provided in 2 CFR § 200.405 or 45 CFR § 75.405;
    - Consistent with all other requirements of the Cost Principles; and
    - Consistent with all other law, regulation, policy, or other requirements applicable to the state or federal funds involved.
  - 11.1.2. To be actual, all costs must be finalized and spent by the appropriate dates set forth in Close and Post Close-Out, Attachments, and as otherwise set forth herein.
- 11.2. If anything in any budget attached to this Subgrant conflicts with the regulations cited herein, or with any applicable law or the federal Notice of Award, the regulations, and law and federal Notice of Award, shall govern.

*Source:* Regulations cited in this section.

12. DATA OWNERSHIP AND INTELLECTUAL PROPERTY.

- 12.1. *Data.* Except as may be otherwise provided in the Federal Notice of Award, NBO shall own all rights in data resulting from this Subgrant. The federal funding agency reserves the right to obtain, reproduce, publish, or otherwise use the data produced under this Subgrant, and to authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.
- 12.2. *Copyright.* As consistent with federal law, Subgrantee may copyright any of the copyrightable material and may patent any of the patentable products produced in conjunction with the Project Plan under this Subgrant without written consent from NBO. NBO and any federal funding agency hereby reserve a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the copyrightable material for federal or state government purposes.

- 12.3. *Patent.* All patent rights under this Subgrant shall be as set forth in the clause contained in 37 CFR § 401.14, and consistent with all other applicable federal law.
- 12.4. This section shall survive termination or expiration of this Subgrant.

*Source:* Various statutes depending on information; 2 CFR § 200.315 or 45 CFR § 75.322; 37 CFR §§ 401 et seq.; Federal Notices of Award (as applicable).

13. DEBARMENT, SUSPENSION, OR DECLARED INELIGIBLE. The Subgrantee certifies that neither it nor its principals are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any state or federal department or agency. The Subgrantee certifies that it is registered with the System of Award Management (SAM) (<https://www.sam.gov>), in good standing, and that the entity will maintain annual certification in accordance with Federal Acquisition Regulations. Failure to comply with this section, including maintaining an active registration and/or good standing with SAM, may result in withholding of payments or immediate termination of the Subgrant.

*Source:* 2 CFR § 200.214 or 45 CFR § 75.213; 2 CFR §§ 180 et seq.; 2 CFR §§ 25 et seq.

14. DOCUMENTS INCORPORATED BY REFERENCE. All references in this Subgrant to laws, rules, regulations, guidelines, directives, addenda, and attachments, which set forth standards or procedures to be followed by Subgrantee in discharging its obligations under the Subgrant, shall be deemed incorporated by reference and made a part of Subgrant with the same force and effect as if set forth in full text herein.

14.1. Documents specifically incorporated include the following:

- 14.1.1. Department of Commerce Financial Assistance Terms and Conditions;
- 14.1.2. 2 CFR 200;
- 14.1.3. BEAD General Terms and Conditions; and
- 14.1.4. Specific Award Conditions of NBO's BEAD award.

15. DRUG-FREE WORKPLACE. Subgrantee certifies that it maintains a drug-free workplace environment to ensure worker safety and workplace integrity. Subgrantee shall provide a copy of its drug-free workplace policy at any time upon request by NBO.

*Source:* State of Nebraska Drug-Free Workplace Policy.

16. ELECTRONIC SIGNING PROCESS.

16.1. The Parties agree to execute agreements, including this agreement, by electronic means, when applicable. Subgrantee has and will continue to designate, notify, and update State of Subgrantee's employees who have been given proper authorization to execute agreements with State. Subgrantee has provided State with an active and secure email account for the designated employee(s) by which to send agreements. Subgrantee has and will make its best efforts to safeguard the email account passwords and DocuSign PIN codes. Subgrantee shall promptly notify State when a designated employee is no longer authorized to sign agreements on behalf of Subgrantee.

16.2. Subgrantee shall promptly notify State of any delay or defect in the electronic signing process, including in receiving, reviewing, or transmitting the agreement to State, difficulty signing the agreement, or discovery of an unauthorized signature. Subgrantee agrees to be responsible for its own negligence or actions related to the electronic signing process used by

Subgrantee for agreements with State.

17. ENVIRONMENTAL AND HISTORIC PRESERVATION REVIEW.

- 17.1. *General Requirements.* Subgrantee shall not initiate or allow any subgrant-funded implementation activities, except for the activities identified in the “Limited Permissible Pre-implementation Activities” subsection below, prior to the following:
- 17.1.1. The completion of any review required under the National Environmental Policy Act of 1969 (42 USC 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;
  - 17.1.2. The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (16 USC 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;
  - 17.1.3. The completion of consultations with the US Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS), as applicable, under Section 7 of the Endangered Species Act (16 USC 1531, et seq.), and/or consultations with the US Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 USC 1251, et seq.), as applicable; and
  - 17.1.4. Demonstration of compliance with all other applicable federal, state, tribal, and local environmental laws and regulations.
- 17.2. *NEPA Compliance.* To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, Subgrantee agrees that:
- 17.2.1. Subgrantee will not commence implementation and funds will not be disbursed until any necessary environmental review is complete and NBO and NTIA have approved any necessary decision document, except for the limited permissible activities identified below;
  - 17.2.2. 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 USC 4336g(g); and
  - 17.2.3. 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).
  - 17.2.4. Subgrantee shall, as directed by NBO, submit all decision documents, including any supporting environmental documentation required or requested by NTIA, to NBO for review.
- 17.3. *NHPA Compliance.* To ensure the timely completion of historic preservation review for all NBEAD-funded activities, Subgrantee shall provide all such information as NBO requires to:
- 17.3.1. At the earliest possible time, provide NBO and the NTIA-assigned Environmental Program Officer sufficient information to initiate Tribal notification via the FCC’s Tower Construction Notification System (TCNS) when required for subgrant-funded activities;
  - 17.3.2. Provide notified Tribes with information regarding subgrant-funded activities via their preferred communication means, as identified in TCNS;
  - 17.3.3. Apply the Advisory on Historic Preservation (ACHP) 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;
- 17.3.4. Notify NBO and 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
  - 17.3.5. Provide all consulting parties with the statutorily required time to respond to its determination of a subgrant-funded activity's effect on historic properties.
- 17.4. *Limited Permissible Pre-implementation Activities.* The allowable use of Subgrant funds prior to beginning implementation includes, but is not limited to, activities necessary for the completion of the following:
- 17.4.1. Pre-construction planning, including collecting information necessary to complete environmental reviews;
  - 17.4.2. Applications for environmental permits;
  - 17.4.3. Studies including, but not limited to, environmental assessments (EA), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
  - 17.4.4. Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
  - 17.4.5. 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).
    - 17.4.5.1. Preliminary procurement as described in Section 18.4.5 is allowable prior to completion of the NEPA/NHPA review process only with written approval of NBO, NTIA, and the National Institutes of Standards and Technology (NIST) Grants Officer and only if the Department of Commerce receives a first priority interest or a shared first priority interest in the real property and/or equipment that is to be acquired.
- 17.5. Subgrant 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 NBO within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the State Historical Preservation Officer (SHPO), Tribal Historic Preservation Office (THPO), or other consulting party or the USFWS; or notices of noncompliance received from consulting authorities or regulatory agencies.
- 17.6. Subgrantee acknowledges that any change to the approved scope of subgrant funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts must be brought to the attention of NBO and NTIA and will be re-evaluated for compliance with applicable requirements.
- 17.7. *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 NBO 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 subgrant 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 NBO, NTIA, and the interested SHPO, THPO, and potentially affected Tribes. Such construction activities may then only continue with the written approval of NBO and NTIA.

18. **FORCE MAJEURE.** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under Subgrant due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute noncompliance with Subgrant. The party so affected shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under Subgrant which are reasonably related to the Force Majeure Event shall be suspended, and the affected party shall do everything reasonably necessary to resume the work described in the Project Description as soon as possible. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend any requirements under Subgrant.
19. **FUNDING AVAILABILITY.** NBO may terminate the Subgrant, in whole or in part, in the event funding is no longer available. Should funds not be appropriated, NBO may terminate the award with respect to those payments for the fiscal years for which such funds are not appropriated. NBO shall give Subgrantee written notice thirty (30) days prior to the effective date of any termination under this section. NBO shall give full credit to Subgrantee for noncancelable obligations properly incurred by Subgrantee prior to termination, and costs incurred on, or prior to, the termination date. If the amount contained in any attached budget is greater than the amount contained in Attachment 1, that additional amount does not represent a guarantee of additional funding. Budgets attached to this Subgrant may be based on total amount of expected funding, not actually available funding awarded to NBO from the federal funding agency. Any attached budget only represents a guarantee of the amount of funding included in Attachment 1.
20. **GOVERNING LAW.**
- 20.1. Notwithstanding any other provision of Subgrant, or any amendment or addendum(s) entered into contemporaneously or at a later time, the parties understand and agree that, (1) the State of Nebraska is a sovereign state and NBO's authority to subgrant is therefore subject to limitation by the State's Constitution, statutes, common law, and regulation; (2) Subgrant will be interpreted and enforced under the laws of the State of Nebraska, except where preempted by federal law; (3) any action to enforce the provisions of Subgrant must be consistent with federal and state law; (4) the person signing Subgrant on behalf of NBO does not have the authority to waive the State's sovereign immunity, statutes, common law, or regulations; (5) the indemnity, limitation of liability, remedy, and other similar provisions of the final agreement, if any, are entered into subject to the State of Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity; and, (6) all terms of the final Subgrant, including but not limited to any clauses concerning third party use, licenses, warranties, limitations of liability, governing law and venue, usage verification, indemnity, liability, remedy, or other similar provisions of the final agreement are entered into specifically subject to the State of Nebraska's Constitution, statutes, common law, regulations, and sovereign immunity.
- 20.2. The parties shall comply with all applicable federal, state, and local law in the performance

of Subgrant, and with all terms and conditions established by the federal funding agency in the applicable Terms and Conditions or Federal Notice of Award. Legal obligations required hereunder include but are not limited to: 2 CFR §§ 200 et seq. or 45 CFR §§ 75 et seq., all statutes and regulations specific to the funds involved, and all applicable confidentiality and privacy statutes and regulations, current and as amended.

21. **HUMAN TRAFFICKING PROVISIONS.** Subgrantee shall comply with and be subject to the requirements of the Trafficking Victims Protection Act of 2000, 22 USC §§ 7101 et seq.
- 21.1. The Subgrantee, its employees, any Subgrantees the Subgrantee may award under this award, and Subgrantees' employees may not—
- 21.1.1. Engage in severe forms of trafficking in persons during the period of time that the subgrant is in effect;
  - 21.1.2. Procure a commercial sex act during the period of time that the subgrant is in effect; or
  - 21.1.3. Use forced labor in the performance of the Subgrant.

Source: 22 USC §§ 7101 et seq.

22. **INDEMNIFICATION.**

- 22.1. The Subgrantee shall defend, indemnify, hold, and save harmless NBO and its employees, volunteers, agents, and its elected and appointed officials (“the indemnified parties”) from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses (“the claims”), sustained or asserted against NBO, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of Subgrantee, its employees, consultants, representatives, and agents, except to the extent such Subgrantee’s liability is attenuated by any action of NBO that directly and proximately contributed to the claims.
- 22.2. NBO’s liability is limited to the extent provided by the Nebraska Tort Claims Act, the Nebraska Contract Claims Act, the Nebraska Miscellaneous Claims Act, and any other applicable provisions of law. NBO does not assume liability for the action of its Subgrantees.
- 22.3. Notwithstanding the above, if Subgrantee is a local governmental agency or political subdivision of the State of Nebraska, nothing in Subgrant shall be construed as an indemnification by one party of the other for liabilities of a party or third parties for property loss or damage or death or personal injury arising out of and during the performance of Subgrant. Any liabilities or claims for property loss or damages or for death or personal injury by a party or its agents, employees, contractors or assigns or by third persons shall be determined according to applicable law.

23. **INDEPENDENT ENTITY.** Subgrantee is an independent entity and neither it nor any of its employees shall, for any purpose, be deemed employees of NBO. The Subgrantee shall employ and direct such personnel as it requires to perform the project activities under the Subgrant, exercise full authority over its personnel, and comply with all workers’ compensation, employer’s liability and other federal, state, county, and municipal laws, ordinances, rules, and regulations required of an employer completing work as contemplated by this Subgrant.

24. **INSPECTION AND TESTING OF MATERIALS.** Subgrantee shall ensure that all materials and equipment used in the completion of the work shall be subject to adequate inspection and testing

in accordance with accepted standards. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses. Subgrantee shall ensure that documentation of same is cataloged, retained, and available for submission to NBO or NTIA upon request.

25. INTEGRATION. This written Subgrant represents the entire agreement between the parties, and any prior or contemporaneous representations, promises, or statements by the parties, that are not incorporated herein, shall not serve to vary or contradict the terms set forth in this Subgrant.

26. LOBBYING.

26.1. No federal or state funds paid under this Subgrant shall be paid for any lobbying costs as set forth herein.

26.2. *Lobbying Prohibited by 31 USC § 1352 and 45 CFR §§ 93 et seq., and Required Disclosures.*

26.2.1. Subgrantee certifies that no federal or state appropriated funds shall be paid, by or on behalf of Subgrantee, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this award for: (a) the awarding of any federal agreement; (b) the making of any federal grant; (c) the entering into of any cooperative agreement; and (d) the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

26.2.2. If any funds, other than federal appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence: an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with Subgrant, Subgrantee shall complete and submit Federal Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

26.3. *Lobbying Activities Prohibited under Federal Appropriations Bills.*

26.3.1. No funds under Subgrant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, electronic communication, radio, television, or video presentation designed to support or defeat the enactment of legislation before the Congress or any State or local legislature or legislative body, except in presentation of the Congress or any State or local legislature itself, or designed to support or defeat any proposed or pending regulation, administrative action, or order issued by the executive branch of any state or local government itself.

26.3.2. No funds under this Subgrant shall be used to pay the salary or expenses of any grant or subgrant recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before the Congress or any State government, State legislature or local legislature or legislative body, other than normal and recognized executive legislative relationships or participation by an agency or officer of an State, local or tribal government in policymaking and administrative processes within the executive branch of that government.

26.3.3. The prohibitions in the two sections immediately above shall include any activity to advocate or promote any proposed, pending or future federal, state, or local tax

increase, or any proposed, pending, or future requirement or restriction on any legal consumer product, including its sale or marketing, including but not limited to the advocacy or promotion of gun control.

26.4. *Lobbying Costs Unallowable Under the Cost Principles.* In addition to the above, no funds shall be paid for executive lobbying costs as set forth in 2 CFR § 200.450(b) or 45 CFR § 75.450(b). If Subgrantee is a nonprofit organization or an Institute of Higher Education, other costs of lobbying are also unallowable as set forth in 2 CFR § 200.450(c) or 45 CFR § 75.450(c).

Source: 31 USC § 1352; 45 CFR §§ 93 et seq.; Appropriations bills; 2 CFR § 200.450 or 45 CFR § 75.450.

27. LOW-EARTH ORBIT PROJECTS.

27.1. Low-Earth Orbit (LEO) Subgrants are those under which the subgrantee plans to use NBEAD funds for the reservation of capacity on LEO networks to deliver last-mile service in connection with a broadband deployment project. The period of performance for such a LEO Subgrant will conclude ten (10) years after the date upon which the subgrantee certifies to NBO that it began providing broadband service to each customer in the project area that desires broadband service.

27.2. Subgrantees who receive LEO Subgrants agree that they will begin providing broadband service to each customer who desires such service no later than four (4) years from the date the subgrant is executed and will continue to offer access to broadband service to each BSL served by the project throughout the period of performance. Broadband service must be made available to each location throughout the period of performance and federal interest period.

27.3. NBO will ensure the reasonableness of the costs of the capacity on a per-BSL basis.

27.4. NBO will reimburse LEO subgrantees only for the amount of capacity actually used in a reporting period.

27.5. If the LEO subgrantee selects a draw down irrevocable letter of credit (ILOC) option, the schedule of drawdowns will be tied to specific subscriber milestones.

27.6. NBO has estimated the amount of BEAD funding that will be needed during the period of performance to reimburse LEO subgrantees at 50% of the covered locations within a project area subscribing to broadband service from the date on which service is available and continuing until the conclusion of the period of performance.

28. LOWER TIER PARTICIPANT CERTIFICATION.

28.1. By submitting this proposal and accepting federal funding, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR Parts 180, 1200, and 1326.

28.2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

28.3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by

reason of changed circumstances.

- 28.4. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded*, as used in this clause, are defined in 2 CFR Parts 180, 1200, and 1326. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- 28.5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
- 28.6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR Parts 180 and 1200.
- 28.6.1. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR Part 9, Subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).
- 28.6.2. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- 28.6.3. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR Part 9, Subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

29. **MANDATORY DISCLOSURES.** The Subgrantee must disclose to NBO, in a timely manner and in writing, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Subgrant in accordance with 2 CFR § 200.113 or 45 CFR § 75.113, as applicable. Failure to make required disclosures can result in any of the remedies described in 2 CFR § 200.339 or 45 CFR § 75.371, as applicable, including suspension or debarment. (See also 2 CFR § 180 et seq. and 31 USC § 3321).

Source: 2 CFR § 200.113 or 45 CFR § 75.113.

30. MERGERS, ACQUISITIONS, AND ORGANIZATIONAL CHANGES. Subgrantee shall inform NBO within 30 days of any changes to key personnel, organization, or publicly disclosed merger activity. This requirement applies from submission of the Organizational Application through subgrant closeout.
31. MINORITY BUSINESS ENTERPRISES (MBE) AND WOMEN BUSINESS ENTERPRISES (WBE). In accordance with 2 CFR 200.321, the Subgrantee shall take the following affirmative steps to ensure the use of MBE/WBE firms when possible:
- Place qualified MBE/WBE businesses on solicitation lists.
  - Assure that MBE/WBE businesses are solicited whenever they are potential sources.
  - Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by MBE/WBE businesses.
  - Establish delivery schedules, where requirements permit, which encourage participation by MBE/WBE businesses.
  - Use the services and assistance of organizations such as the Small Business Administration and the Minority Business Development Agency.
  - The Subgrantee shall maintain records documenting its efforts to engage MBE/WBE firms and shall provide such documentation upon request to NBO.
32. NBEAD-SPECIFIC OBLIGATIONS.
- 32.1. *Middle Mile Interconnection.* If Subgrantees project includes activities and funds to deploy Middle Mile Infrastructure, Subgrantee shall permit other broadband service providers to interconnect with its funded Middle Mile Infrastructure network facilities on a just, reasonable, and nondiscriminatory basis. Subgrantee shall allow such interconnection at any technically feasible point on the Middle Mile Infrastructure network (without exceeding current or reasonably anticipated capacity limitations). This duty includes, at a minimum, the physical interconnection of Subgrantee's Middle Mile Infrastructure to a requesting party's facilities for the exchange of traffic. In addition, Subgrantee shall connect to the public internet directly or indirectly and provide requesting parties with an ability to connect to the internet. Rates and terms for interconnection shall be reasonable and nondiscriminatory. Subgrantee shall negotiate in good faith with any requesting party making a bona fide request for interconnection.
- 32.2. *Conduit Access Points.* Pursuant to 47 USC § 1702(h)(4)(D), any funded network deployment project that involves laying fiber-optic cables or conduit underground or along a roadway must include interspersed conduit access points at regular and short intervals for interconnection by unaffiliated entities.
- 32.3. *Public Awareness Campaign.* Subgrantee shall, during the period of performance, carry out public awareness campaigns in the areas served by the project, designed to highlight the value and benefits of broadband service and to increase the adoption of broadband service by consumers. Subgrantee's public awareness campaign must, at minimum:
- 32.3.1. Include information about low-cost service plans and any federal subsidies for low-income households such as the Lifeline Program, the Affordable Connectivity Program, and any successor programs;
- 32.3.2. Be conducted in an equitable and nondiscriminatory manner; and
- 32.3.3. Utilize a variety of communications media (e.g., online, print, radio) and provide information in languages other than English when warranted based on the demographics of the community.
- 32.3.4. Upon completion of the NBEAD project, Subgrantee shall provide public notice,

online and through other means, of that fact to individuals residing in the locations to which broadband service has been provided and share the public notice with NBO.

32.4. *Obligations during the Federal Interest Period.* Subgrantee acknowledges that the obligations described in this section survive beyond the period of performance and the closeout of this subgrant and remain in effect during the entirety of the federal interest period.

32.4.1. Property Standards. For the purposes of this Subgrant, the useful life of project property shall coincide with the federal interest period. Title to project property vests in Subgrantee upon acquisition.

32.4.1.1. Except as set out herein, Subgrantee must not encumber property without prior disclosure to and approval from NTIA and NIST. Subgrantee may not enter into any encumbrances that interfere with the construction, intended use, operation, or maintenance of grant funded property during Federal Interest Period. Subgrantee may encumber real property and equipment acquired or improved under such NBEAD financial assistance only after provision of notice to NTIA and to the NIST Grants Officer, and subject to a requirement that the DOC receives either a first priority security interest or a shared first priority security interest in the real property and equipment such that, if the real property and equipment were foreclosed upon and liquidated, the DOC 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.

32.4.1.2. Covenant of Purpose, Use, and Ownership. To document the federal interest in NBEAD-funded real property, Subgrantee must prepare and properly record a "Covenant of Purpose, Use, and Ownership" (Covenant) within 30 days of the acquisition of such NBEAD-funded real property. Pursuant to the Covenant, Subgrantee acknowledges that it holds title to the NBEAD-funded property in trust for the public purposes of the NBEAD financial assistance award and agrees, among other commitments, that it will repay the federal interest if it disposes of or alienates an interest in the NBEAD-funded property, or uses it in a manner inconsistent with the public purposes of the NBEAD subgrant, during the useful life of the NBEAD-funded property. The Covenant must be properly recorded in the real property records in the jurisdiction in which the real property is located to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the NBEAD-funded property during its useful life and that NTIA retains an undivided equitable reversionary interest in the NBEAD-funded property during the federal interest period.

32.4.1.3. UCC-1 Filing and Attorney's Certification. Pursuant to 2 CFR § 200.316, after acquiring all or any portion of the equipment under this subgrant, Subgrantee shall properly file a UCC-1 with the appropriate State office where the equipment will be located in accordance with the State's Uniform Commercial Code (UCC). A clear and accurate inventory of the subject equipment must be attached to and filed with the UCC-1. This security interest shall be executed in advance of any sale or lease and not later than closeout of the subgrant, as applicable.

32.4.1.4. In addition, within 15 calendar days following the required UCC filing(s),



Subgrantee shall provide NBO complete and certified copies of the filed UCC forms and attachments for the equipment acquired with Subgrant funds, along with a certification from legal counsel, licensed by the State within which the filings were made (Attorney's Certification), that the UCC filing was properly executed and filed in accordance with applicable state law.

32.4.1.5. In addition, during the estimated useful life of the project property, Subgrantee shall timely file any necessary UCC-3 continuation statements (or other filings) for the equipment. Copies of all filed UCC continuation statements, together with an Attorney's Certification, must be submitted to NBO within 15 calendar days following each such filing. The UCC filing(s) and the accompanying Attorney's Certification(s) must be acceptable in form and in substance to NBO and NTIA.

32.4.2. Wholesale Obligation on Default. If, at any time during the federal interest period, Subgrantee is no longer able to provide broadband service to the end users on a retail basis, remedial action will be taken to ensure continuity of service. Subgrantee shall, after consultation with and as approved by NBO, either (a) sell project network capacity at a reasonable, wholesale rate on a nondiscriminatory basis to one or more other broadband service providers or public-sector entities or (b) sell the network in its entirety to a new provider who commits to providing services under the terms of the NBEAD program. NBO may require Subgrantee to take either remedial action so long as such action results in continued retail service to end users in the subgrant area.

33. **NEBRASKA NONRESIDENT INCOME TAX WITHHOLDING.** Subgrantee acknowledges that Nebraska law requires NBO to withhold Nebraska income tax if payments for personal services are made in excess of six hundred dollars (\$600) to any Subgrantee who is not domiciled in Nebraska or has not maintained a permanent place of business or residence in Nebraska for a period of at least six months. This provision applies to: individuals; to a corporation, if 80% or more of the voting stock of the corporation is held by the shareholders who are performing personal services, and to a partnership or limited liability company, if 80% or more of the capital interest or profits interest of the partnership or limited liability company is held by the partners or members who are performing personal services. The parties agree, when applicable, to properly complete the Nebraska Department of Revenue Nebraska Withholding Certificate for Nonresident Individuals Form W-4NA or its successor. The form is available at: [http://www.revenue.nebraska.gov/tax/current/fill-in/f\\_w4na.pdf](http://www.revenue.nebraska.gov/tax/current/fill-in/f_w4na.pdf)

34. **NEBRASKA STATUTE 86-5,105.** Subgrantee shall, within ninety (90) days of execution of the subgrant, submit to NBO copies of Broadband Facility Agreements covering all Broadband Serviceable Locations in the funded DPA.

35. **NEW EMPLOYEE WORK ELIGIBILITY STATUS.**

35.1. The Subgrantee shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing project activities within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC § 1324(a), known as the E-Verify Program, or an equivalent federal program designated by the US Department of Homeland Security or

other federal agency authorized to verify the work eligibility status of a newly hired employee.

35.2. If Subgrantee is an individual or sole proprietorship, the following applies:

- 35.2.1. The Subgrantee must complete the US Citizenship Attestation Form, available on the Department of Administrative Services website at <https://das.nebraska.gov>.
- 35.2.2. If Subgrantee indicates on such attestation form that he or she is a qualified alien, Subgrantee agrees to provide the US Citizenship and Immigration Services documentation required to verify Subgrantee's lawful presence in the US using the Systematic Alien Verification for Entitlements (SAVE) Program.
- 35.2.3. The Subgrantee understands and agrees that lawful presence in the US is required and Subgrantee may be disqualified or the Subgrant terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. § 4-108.

Source: Neb. Rev. Stat. § 4-108 et seq.

36. ORDER OF PREFERENCE.

- 36.1. Unless otherwise specifically stated in an amendment to this Subgrant, in case of any conflict between the incorporated documents, the documents shall govern in the following order of preference:
  1. Amendments to the Subgrant with the most recently dated amendment having highest priority.
  2. The Subgrant, excluding any attachments, with the following addenda in order of preference: NBEAD General Terms & Assurances – Subgrants; NBEAD Insurance Requirements.
  3. Attachment 1.
  4. All other attachments to this Subgrant.
- 36.2. These documents constitute the entirety of the Subgrant. Any ambiguity or conflict in the Subgrant discovered after its execution, not otherwise addressed herein, shall be resolved in accordance with the rules of interpretation as established in the State of Nebraska, unless other rules are set forth according to federal law.

37. PAYMENT AND PAYMENT REQUESTS.

- 37.1. *Payment.* NBO will make payment to the Subgrantee within 45 days of receipt of Subgrantee's payment request, unless the request is improper or contains deficiencies. Payments may be withheld as set forth in 2 CFR § 200.305(a)(6) or 45 CFR § 75.305(a)(6), as otherwise provided herein, or according to other applicable law.
- 37.2. *Payment Requests.* All requests for payments submitted by Subgrantee shall contain sufficient detail to support payment. Subgrantee must be able to provide source documentation or other verification of all claimed costs, either provided with its request for payment, or available to NBO.
- 37.3. *ACH.* The Subgrantee shall complete and sign the State of Nebraska Automated Clearing House (ACH) Enrollment Form and obtain the necessary information and signatures from its financial institution. The completed form must be submitted before payments to Subgrantee can be made. ACH Form: [https://das.nebraska.gov/materiel/docs/NE\\_DAS\\_Materiel\\_Purchasing-Nebraska\\_W9\\_and\\_ACH\\_Form.pdf](https://das.nebraska.gov/materiel/docs/NE_DAS_Materiel_Purchasing-Nebraska_W9_and_ACH_Form.pdf).
- 37.3.1. Subgrantee must promptly notify NBO of any changes to Subgrantee's ACH enrollment information.

Source: Neb. Rev. Stat. §§ 81-2401 through 81-2408; 2 CFR § 200.302 or 45 CFR § 75.302.

38. REMEDIES FOR NON-COMPLIANCE.

- 38.1. NBO may, if Subgrantee fails to comply with federal statutes, regulations, or with the terms of the Subgrant:
- 38.1.1. Impose any of the Specific Conditions listed in 2 CFR § 200.208 or 45 CFR § 75.207;
  - 38.1.2. Temporarily withhold any payments pending the correction of the deficiency by Subgrantee;
  - 38.1.3. Disallow all or part of the cost of the activity or action not in compliance;
  - 38.1.4. Wholly or partly suspend or terminate Subgrant (see also Termination, below);
  - 38.1.5. Recommend suspension or debarment proceedings be initiated by the federal funding agency; and
  - 38.1.6. Take any other remedies that may be legally available.
- 38.2. If NBO imposes items 39.1.3, 39.1.4, or 39.1.6, above, NBO may withhold future payments or seek repayment to recoup costs paid by NBO.
- 38.3. NBO may recoup funding from the Subgrantee during the period of performance or closeout if program obligations are not met or Subgrantee is noncompliant with BEAD Program's requirements, including but not limited to, failure to deploy network infrastructure in accordance with mandated deadlines, failure to provide required documentation, failure to meet requirements related to location enablement, speed, service pricing, and latency. NBO will assess the funds to be recouped based on non-performance triggers, up to the amount that was originally funded. Failure to return funds will result in NBO using any and all administrative and legal courses of action to recoup funds, including but not limited to, debarring the subgrantee from participating in future financial assistance programs at the state and federal level. If funds are not returned, NBO will engage with NTIA to determine the best course of action regarding assumption of the project by other provider(s) and asset treatment.
- 38.4. If, after the network is built and made operational, the network performance does not meet the minimum program speed guidelines after completing three (3) speed tests per the "Speed Test Requirements" section in [Nebraska's approved BEAD Initial Proposal Volume II](#), the subgrantee will be required to modify the network at their own expense to comply with program requirements in the most expeditious timeline possible.
- 38.5. Clawback. If NBO determines the Subgrantee has failed to comply with any material requirement under applicable law or this subgrant and Subgrantee cannot or will not remedy such failure, NBO may require Subgrantee to return up to the entire amount of the subgrant to NBO plus interest and penalties, at the discretion of NBO.
- 38.5.1. The Subgrantee acknowledges that NTIA may pursue clawback of funds directly from NBO if it fails to ensure Subgrantee accountability. To the extent NTIA successfully pursues clawback from NBO on these grounds, the Subgrantee shall reimburse NBO in an amount equal to the clawback.
- 38.6. Corrective Action Plan. If any deadline associated with a Buildout Milestone is missed, Subgrantee will submit to NBO a Corrective Action Plan, which will be used to support NBO's request to the Assistant Secretary for a deadline extension, per the BEAD NOFO:
- 38.6.1. NBO shall set a deadline for the CAP to be provided to NBO but shall provide Subgrantee reasonable notice of said deadline. In its notice, NBO shall identify each issue to be resolved.
  - 38.6.2. The CAP will include, but is not limited to, a written response noting the steps being

taken by Subgrantee to resolve each issue(s), including a date that the issue(s) will be resolved.

38.6.3. If Subgrantee fails to provide a CAP by the deadline set by NBO, fails to provide NBO with a CAP demonstrating the issues regarding performance will be remedied, or fails to meet the deadline(s) set in the CAP for resolution of the issue(s), NBO may withhold payments (for the work or deliverables) related to the issues identified by NBO, or exercise any other remedy set forth in this Subgrant or available under law.

38.7. *Breach of Subgrant.* NBO may terminate the Subgrant, in whole or in part, if Subgrantee fails to perform its obligations under the Subgrant in a timely and proper manner. NBO may, by providing a written notice to Subgrantee, allow Subgrantee to cure a breach within a period of forty-five (45) days or longer at NBO's discretion, considering the gravity and nature of the breach. Said notice shall be delivered by Certified Mail, Return Receipt Requested, or in person with proof of delivery. Allowing Subgrantee time to cure a breach does not waive NBO's right to immediately terminate the Subgrant for the same or different breach at a different time.

38.7.1. NBO's failure to make payment shall not be a breach, and the Subgrantee shall retain all available statutory remedies and protections.

38.8. Nothing in this section shall preclude the pursuit of other remedies as allowed by law.

*Source:* 2 CFR § 200.339 or 45 CFR § 75.371.

39. RESEARCH. The Subgrantee shall not engage in research utilizing the information obtained through the performance of Subgrant without the express written consent of NBO. The term "research" shall mean the investigation, analysis, or review of information, other than aggregate statistical information, which is used for purposes unconnected with this Subgrant.

*Source:* Various privacy statutes, rules, and regulations depending on information.

40. REPORTING REQUIREMENTS. Subgrantee shall comply with the reporting schedules in Attachment 5 to this subgrant, as may periodically be amended based on NTIA requirements. If such amendments are necessary, NBO will notify Subgrantee in writing about new or revised reporting requirements. Reporting requirements include mechanisms to ensure effective oversight, such as subgrantee accountability procedures and practices, financial management, compliance, and program performance at regular intervals to ensure that subgrantee performance is consistently assessed and tracked over time.

41. SERVICE OBLIGATIONS. Subgrantee agrees to the following broadband service obligations:

41.1. Subgrantee shall not impose data usage caps on any broadband service plans offered to addresses served by the project or impose unjust or unreasonable network management practices, through the end of the federal interest period.

41.2. Subgrantee shall provide access to broadband service to each customer served by the project that desires broadband service on terms and conditions that are reasonable and non-discriminatory.

41.3. Subgrantee shall offer the proposed advertised minimum download and minimum upload speeds set forth in Attachment 6, and in no event less than one hundred (100) Megabits per second (Mbps) download and twenty (20) Mbps upload with latency of less than or equal to one hundred (100) ms, measured as specified in the NBEAD FAQs.

41.4. Subgrantee shall be capable of performing a standard installation of qualifying broadband

service to an end user, at a standard installation charge, within 10 business days after the date on which a service request is submitted.

41.5. Subgrantee warrants that the project developed under this Subgrant shall be free from defects in design and implementation and shall continue to meet the specifications agreed to in this Subgrant through the federal interest period. Until the closeout date, Subgrantee shall, without additional charge to NBO or customers of the project, correct any such defects and make such additions, modifications, or adjustments to the project as may be necessary to keep the project operating as specified in its application.

41.6. Pricing.

41.6.1. Subgrantee shall offer a low-cost plan to eligible households, for the duration of the federal interest period, that meets the following criteria:

- 41.6.1.1. Allows the end user to apply the Affordable Connectivity Benefit, or any state or federal successor plan, subsidy to the service price;
  - 41.6.1.2. Provides typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps for all BSLs except for Community Anchor Institutions, which must be served with speeds of at least 1 Gigabit per second (Gbps)/1 Gbps; and provides typical latency measurements of no more than 100 milliseconds (ms);
  - 41.6.1.3. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;
  - 41.6.1.4. In the event the Subgrantee, after the establishment of its low-cost plan, offers a low-cost plan with higher speeds downstream and/or upstream, Subgrantee will permit eligible subscribers that are subscribed to a low-cost broadband service option to upgrade to the new low-cost offering at no cost;
  - 41.6.1.5. The low-cost plan will be provided to eligible households at a rate of no more than \$70 per month upon initial service installation, with increases only allowed based on annual changes in the Consumer Price Index;
  - 41.6.1.6. Eligible households are those with household income at or below 200% of the Federal Poverty Level or that meet one or more of the criteria for eligibility under the Affordable Connectivity Program, available at <https://broadband.nebraska.gov/broadband-grants/affordableconnectivityprogram/>; and
  - 41.6.1.7. Subgrantee's low-cost plan shall be promoted on Subgrantee's website and through other promotional avenues.
- 41.6.2. Subgrantee shall participate in the Affordable Connectivity Program or any successor program.
- 41.6.3. Subgrantee shall offer a middle-class plan that meets the following criteria:
- 41.6.3.1. Provides typical download speeds of at least 100 Mbps and typical upload speeds of at least 20 Mbps for all BSLs except for Community Anchor Institutions, which must be served with speeds of at least 1 Gbps/1 Gbps; and provides typical latency measurements of no more than 100 ms;
  - 41.6.3.2. Is not subject to data caps, surcharges, or usage-based throttling, and is subject only to the same acceptable use policies to which subscribers to all other broadband internet access service plans offered to home subscribers by the participating subgrantee must adhere;

- 41.6.3.3. Is offered to all potential residential users of the NBEAD-funded network; and
- 41.6.3.4. Subgrantee's middle-class plan shall be promoted on Subgrantee's website and through other promotional avenues.

42. SEVERABILITY. If any term or condition of Subgrant is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if Subgrant did not contain the particular provision held to be invalid.

43. SUBGRANTEE'S ACCOUNTABILITY FOR ITS SERVICES.

43.1. Subgrantee agrees that State will rely on the professional training, experience, performance, and ability of Subgrantee. Subgrantee agrees that examination by State or federal funders or their designees, approval, acceptance, use of, or acquiescence in Subgrantee's Services, will not be considered a full and comprehensive examination and will not be considered approval of Subgrantee's Services that would relieve Subgrantee from liability or expense connected with Subgrantee's sole responsibility for the propriety and integrity of Subgrantee's Services pursuant to this Agreement. Subgrantee agrees that State's declining to approve Subgrantee's services will not be deemed an acceptance of defective services or relieve Subgrantee of its obligations and liabilities with respect to such services.

43.2. Subgrantee agrees that acceptance or approval of any of the services of Subgrantee by State or of payment, partial or final, will not constitute a waiver of any rights of State to recover from Subgrantee damages caused by Subgrantee due to error, omission, or negligence of Subgrantee in its services.

44. SUBGRANTEES OR SUBCONTRACTORS UNDER THIS SUBGRANT.

44.1. Subgrantee shall not subgrant nor contract any portion of Subgrant without written notice to NBO (a budget attached to this Subgrant or approved, in writing, by NBO shall be considered written notice for this section). NBO reserves the right to reject a subgrantee or subcontractor.

44.2. In contracting or subgranting any portions of Subgrant, Subgrantee shall follow 2 CFR §§ 200.318 through 200.327 or 45 CFR §§ 75.327 through 75.335, as applicable. If subgranting out any portion of Subgrant, Subgrantee shall monitor the subgrant as necessary to ensure that the subgrant is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of the subgrant, and that subgrant performance goals are achieved. As applicable, Subgrantee shall follow the requirements for pass-through entities, including but not limited to 2 CFR § 200.332 or 45 CFR § 75.352.

44.3. Subgrantee shall maintain copies of all procurement contracts and documentation of its compliance with the provisions cited above.

44.4. Subgrantee shall ensure that all contractors and Subgrantees comply with all requirements of this Subgrant and applicable federal, state, county and municipal laws, ordinances, rules, and regulations.

*Source: 2 CFR §§ 200.318 through 200.327 or 45 CFR §§ 75.327 through 75.335; 2 CFR § 200.332 or 45 CFR § 75.352.*

45. SURVIVAL. All provisions hereof that by their nature are to be performed or complied with following the expiration or termination of Subgrant, including but not limited to those clauses

that specifically state survival, survive the expiration or termination of this Subgrant.

46. TERMINATION.

46.1. This Subgrant may be terminated in whole or in part as follows:

46.1.1. NBO may terminate the Subgrant if the Subgrantee fails to comply with the terms of this Subgrant; for cause; or as otherwise set forth in Addendum A, applicable law, or the Subgrant.

46.1.2. The Subgrantee may terminate the Subgrant upon sending written notification to NBO setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if NBO determines in the case of partial termination that the reduced or modified portion of the Subgrant will not accomplish the purposes for which the federal award was made, NBO may terminate the Subgrant in its entirety. In either case, the effective date shall be as provided by the Subgrantee and as consistent with the period set forth in the Subgrant.

46.1.3. NBO and the Subgrantee may agree to terminate this Subgrant; however, the two parties must agree, in writing, upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

46.2. All notices of termination must be consistent with 2 CFR § 200.340 or 45 CFR § 75.372 and shall provide a notice period and effective date as set forth in this Subgrant.

46.3. In addition to the procedures set forth in Close-Out and Post Close-Out, above (if applicable), if this Subgrant is terminated by Subgrantee, or by NBO for any reason including but not limited to Remedies for Noncompliance, the Subgrantee shall not incur new obligations after the notice of termination of the Subgrant, and shall cancel as many outstanding obligations as possible. NBO shall give full credit to Subgrantee for the federal share of noncancelable obligations properly incurred by Subgrantee prior to termination, and costs incurred on, or prior to, the termination date.

*Source: 2 CFR § 200.340 or 45 CFR § 75.372.*

47. WHISTLEBLOWER PROTECTIONS. The Subgrantee shall comply with the provisions of 41 USC § 4712, which states an employee of a contractor, subcontractor, grantee, or Subgrantee may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing." In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

47.1. The Subgrantee's employees are encouraged to report fraud, waste, and abuse. The Subgrantee shall inform their employees in writing that they are subject to federal whistleblower rights and remedies. This notification must be in the predominant native language of the workforce.

47.2. The Subgrantee shall include this requirement in any agreement made with a subcontractor or subgrantee.

47.3. The Subgrantee shall publicize contact information for the Nebraska Auditor of Public Accounts' Fraud, Waste, or Abuse reporting system, which may be accessed at 800-842-8348 or via an anonymous form at [https://auditors.nebraska.gov/SAE\\_E-Mail.html](https://auditors.nebraska.gov/SAE_E-Mail.html).

47.3.1. Copies of materials used for this purpose shall be submitted to NBO at least once per project year.

Source: 41 USC § 4712

48. **PREVENTION OF WASTE, FRAUD AND ABUSE.** Consistent with the principles in 2 CFR part 200, at any time(s) during the grant period of performance, NTIA may direct a member or members of the Subgrantee's key personnel to take a Government-provided training on preventing waste, fraud and abuse. Key personnel include those responsible for managing the Subgrantee's finances and overseeing any contractors, sub-contractors or subgrantees (for financial matters and/or general oversight related to the grant). NTIA will provide instructions on when and how to take such training(s), and costs incurred by a Subgrantee relative to the training (e.g., staff time) are eligible for reimbursement pursuant to the NTIA award.
- 48.1. Further, Subgrantees must monitor award activities for common fraud schemes, including but not limited to:
- 48.1.1. false claims for materials and labor;
  - 48.1.2. bribes related to the acquisition of materials and labor;
  - 48.1.3. product substitution;
  - 48.1.4. mismarking or mislabeling on products and materials; and
  - 48.1.5. time and materials overcharging.
- 48.2. Should a Subgrantee detect any fraud schemes or any other suspicious activity, the Subgrantee must contact its assigned NTIA Federal Program Officer and the Department of Commerce, Office of Inspector General Hotline, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible. Additionally, in accordance with 2 CFR 200.113, an applicant or Subgrantee must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Subgrantees are required to report certain civil, criminal, or administrative proceedings to SAM.gov. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339. (See also 2 CFR Part 180, 31 USC 3321, and 41 USC 2313.).
49. **EMINENT DOMAIN.** In accordance with Executive Order 13406, "*Protecting the Property Rights of the American People*" (June 28, 2006), the Subgrantee agrees:
- 49.1. Not to use any power of eminent domain available to the Subgrantee (including the commencement of eminent domain proceedings) for use in connection with the grant for the purpose of advancing the economic interests of private parties;
  - 49.2. Not to accept title to land, easements, or other interest in land acquired by the use of any power of eminent domain for use in connection with the grant for the purpose of advancing the economic interests of private parties; and
  - 49.3. Any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Subgrantee or any other entity that has the power of eminent domain, in connection with the grant requires prior written consent from NTIA. Any use of eminent domain without prior written consent of NTIA constitutes an unauthorized activity and/or use of funds under the award, and subjects the Subgrantee to appropriate enforcement action by the Grants Officer, including but not limited to the disallowance of award costs and the termination of an award.
50. **REQUIREMENTS DURING CONSTRUCTION.** During construction Subgrantee, as applicable, is responsible for:
- 50.1. Ensuring that it meets all deadlines in approved plans and specifications;



- 50.2. Monitoring the progress of grant funded activities;
- 50.3. Reporting progress;
- 50.4. Providing for required construction permits and adequate construction inspection;
- 50.5. Promptly paying costs incurred for grant funded activities; and
- 50.6. Monitoring contractors' compliance with Federal, State, and local requirements.

51. SCHEDULING INSPECTION FOR FINAL ACCEPTANCE. NBO will schedule a final inspection for each broadband infrastructure project and other construction activities when all construction has been completed, the architect/engineer has conducted its own final inspection, and any deficiencies have been corrected. Representatives of NBO, the architect/engineer, and the Subgrantee and/or contractor(s) will attend the NBO's final inspection for each project. NTIA must be given reasonable advance notice of each final inspection so that a representative of NTIA may participate.

52. PROHIBITION ON USE FOR COVERED COMMUNICATIONS EQUIPMENT OR SERVICES. Subgrantee (including contractors and subcontractors of Subgrantee) may not use NBEAD grant funds (including non-Federal cost share) to purchase or support any communications equipment or service covered by either the Secure and Trusted Communications Networks Act of 2019 (47 USC 1608) or 2 CFR 200.216 (Prohibition on certain telecommunications and video surveillance services or equipment).

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

- 53.1. It has a cybersecurity risk management plan (the plan) in place that is either:
  - 53.1.1. operational, if Subgrantee is providing service prior to the award of the grant; or
  - 53.1.2. ready to be operationalized upon providing service, if Subgrantee is not yet providing service prior to the grant award;
- 53.2. The plan reflects the latest version of the NIST Framework for Improving Critical Infrastructure Cybersecurity (currently Version 1.1) and the standards and controls set forth in Executive Order 14028 and specifies the security and privacy controls being implemented;
- 53.3. The plan will be reevaluated and updated on a periodic basis and as events warrant; and
- 53.4. The plan will be submitted to NBO prior to the allocation of funds. If Subgrantee makes any substantive changes to the plan, a new version will be submitted to NBO within 30 days. NBO must provide a Subgrantee's plan to NTIA upon NTIA's request.

With respect to supply chain risk management (SCRM), Subgrantee shall attest that:

- 53.5. Subgrantee has a SCRM plan in place that is either:
  - 53.5.1. operational, if Subgrantee is already providing service at the time of the grant; or
  - 53.5.2. ready to be operationalized, if Subgrantee is not yet providing service at the time of grant award;
- 53.6. The plan is based upon the key practices discussed in the NIST publication NISTIR 8276, Key Practices in Cyber Supply Chain Risk Management: Observations from Industry and related SCRM guidance from NIST, including NIST 800-161, Cybersecurity Supply Chain Risk Management Practices for Systems and Organizations and specifies the supply chain risk management controls being implemented;
- 53.7. The plan will be reevaluated and updated on a periodic basis and as events warrant; and

53.8. The plan will be submitted to the NBO prior to the allocation of funds. If Subgrantee makes any substantive changes to the plan, a new version will be submitted to NBO within 30 days. NBO must provide a Subgrantee's plan to NTIA upon NTIA's request.

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

54. PROTECTED AND PROPRIETARY INFORMATION. Subgrantee is expected to support NBEAD Program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperation with the Department of Commerce and external program evaluators. In accordance with 2 CFR 200.303(e), Subgrantee is reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a Department of Commerce financial assistance award.

55. TRIBAL EMPLOYMENT RIGHTS ORDINANCES. NBO and NTIA recognize Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under federal awards and NBO and NTIA require their incorporation when applicable into NBEAD Program subgrants to Native American/Alaska Native/Native Hawaiian entities. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an award, as provided under 2 CFR 200.403.