



NORTH DAKOTA

BEAD Subgrantee Agreement Template



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NORTH DAKOTA GRANT AGREEMENT

hereinafter referred to as “Agreement”

between the

State of North Dakota, acting through its Information Technology Department

hereinafter referred to as “Department,” “Grantor,” or “Recipient” and

[Subrecipient Name]

hereinafter referred to as “Grantee” or “Subrecipient”

[Subrecipient Name]	[Award #]
----------------------------	------------------

[Subrecipient Address]

Award Amount [\$XX.XX]	Match Amount [\$XX.XX]	Project Total [\$XX.XX]
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[Award Title]

Special Conditions:

This contract is authorized with funds allocated by the Broadband Equity, Access, and Deployment (BEAD) Program, established by the Infrastructure Investment and Jobs Act (IIJA), administered by the National Telecommunications and Information Administration (NTIA). Therefore, as a Grantee or Subrecipient of these funds, **[Subrecipient Name]** also agrees to be bound by the rules, regulations, and requirements found in IIJA specific to the BEAD Program and will comply with the NTIA's guidance for this project, along with any additional conditions outlined by the State of North Dakota. Additional detail regarding federal and state program requirements can be found at:

- [Infrastructure Investment and Jobs Act of 2021, Division F, Title I, Section 60101, Public Law 117-58, 135 Stat. 429](#) (November 15, 2021) (codified at [47 U.S.C. § 1701](#) et seq.).
- [2 C.F.R. Part 200](#) (Uniform Guidance for Federal Awards)
- [BEAD Notice of Funding Opportunity \(NOFO\)](#)
- [BEAD Program Restructuring Policy Notice](#)
- [General Terms and Conditions for the BEAD Program](#)
- [The Department of Commerce Financial Assistance Standard Terms and Conditions](#)
- [North Dakota BEAD Initial Proposal and Final Proposals](#)
- [North Dakota BEAD Program Monitoring Plan](#)

Grant Performance Period

This Agreement establishes the eligible expenses and reporting requirements for the performance period beginning on **[Start Date]**, with an anticipated completion date of **[Expected End Date]**. The conclusion date may be extended, if necessary, with the mutual consent of both parties. However, in accordance with 2 C.F.R. 200.344, all project activities must be completed no later than March 2, 2032 (i.e., at least 120 days prior to the conclusion of the State's Period of Performance on June 30, 2032).

Additionally, as established in [47 U.S.C. § 1702(h)(4)(C)], Grantee must deploy the planned broadband network and begin providing services to each customer that desires broadband service within the project area not later than four years after the start of the performance period.

GRANT AGREEMENT CONDITIONS AND REQUIREMENTS

I. Definitions

- **BEAD:** The Broadband Equity, Access, and Deployment program
- **Program:** The Broadband Equity, Access, and Deployment (BEAD) program
- **State:** State of North Dakota
- **NDIT:** North Dakota Information Technology Department
- **SBPO:** North Dakota State Broadband Program Office; located within NDIT and responsible for administering State BEAD funds
- **Recipient:** State of North Dakota, acting through its Information Technology Department, herein referred to as “Department,” “Grantor,” or “Recipient”
- **Subrecipient:** Grant awardee, herein referred to as “Grantee” or “Subrecipient”
- **OMB:** Office of Management and Budget
- **Last Mile Infrastructure:** Broadband infrastructure that serves as the final leg connecting the broadband service provider’s network to the end-use customer’s on-premise telecommunications equipment
- **Middle Mile Infrastructure:** Broadband infrastructure that links a broadband service provider’s core network infrastructure to last-mile infrastructure
- **PSA:** Proposed Service Area in which the infrastructure shall be established and made operational by Grantee
- **RFT:** Ready for Traffic means the construction and provisioning of the infrastructure for a PSA is completed for the network and the service provider is now able to begin selling services to the PSA communities.
- **Federal Interest Period:** The Federal interest in all real property or equipment acquired or improved as part of a subgrant for which the major purpose is a broadband infrastructure project will continue for ten years after the year in which that subgrant has been closed out in accordance with 2 CFR 200.344. For example, for all subgrants closed out in 2027, regardless of the month, the Federal interest will last until December 31, 2037.

II. Program Review and Summary

The Broadband Equity, Access, and Deployment (BEAD) program (“the Program”) is a federal initiative aimed at closing the digital divide and expanding universal access to high-speed internet. In North Dakota (“the State”), the Program is administered by the North Dakota State Broadband Program Office (SBPO) within the North Dakota Information Technology Department (NDIT) department.

a. Grantee’s Understanding of the Term of Funding

- i. Grantee understands that this Grant Agreement (“Grant Agreement” or “Agreement”) is a reimbursement grant. There are no assurances that this Agreement may be extended for periods beyond its termination date.
- ii. Should no activity occur within three (3) months of the disbursement of funds to Grantee under this Agreement, the Agreement may be terminated with all distributed grant funds returning to Grantor to be made available to other applicants.

b. Requirements of Grantee

- i. Grantee must ensure the project funded with this Grant meets all the following criteria:
 1. The project is designed to address a critical need of the community to be served by it.
 2. The Broadband Infrastructure established with this Grant must be in place and maintained by Grantee for the duration of the Federal Interest Period, or a minimum

of ten (10) years after the year in which the subgrant has been closed out. In the event Grantee does not maintain this infrastructure for the minimum ten (10) year requirement, Grantee shall reimburse Grantor in an amount equal to the grant funds distributed to Grantee.

- ii. Grantee is required to provide proof of the required insurance that is consistent with this Agreement prior to the receipt of any program funds.
- iii. Grantee shall comply with all information reporting requirements as determined necessary or as requested by Grantor.
- iv. If hiring contractors to complete approved project activities, the contractors must be licensed through the State of North Dakota pursuant to N.D.C.C. § 43-07-02. Grantor will only reimburse payments made by Grantee to licensed contractors.
- v. To request payment of grant funds under this Agreement, Grantee must submit a reimbursement request to Grantor with copies of paid invoices, receipts, or other documentation showing that the approved activity has been completed, as well as donation agreements or other proof of matching funds, as deemed sufficient by Grantor for the approved grant period. Grantor will approve payment of grant funds, based on dollar-for-dollar matching funds from private or other nonstate sources, including in-kind payments for labor and materials, up to the amount of this award, with additional expenses being the sole responsibility of Grantee. Grantee must present proof of a fully executed donation agreement and of deposit of the matching funds into an account prior to disbursement of the grant funds.
- vi. Grantor reserves the right to request additional documentation to confirm the completion of the project and the receipt and deposit of the matching funds. If additional documentation is requested, payment of grant funds will be held by Grantor until such additional documentation is received and any questions have been addressed.
- vii. Grantee must timely submit all reimbursement no later than March 2, 2032.

c. Other Obligations of the Grant Agreement

- i. Grantee shall be the sole owner of equipment and other approved purchases under this Agreement and accepts sole responsibility of any further costs or liabilities associated with such equipment and purchases.
- ii. Grantee shall adhere to all applicable state and federal laws, including, but not limited to, the applicable grant requirements set forth in 2 C.F.R. Part 200.
- iii. Grantor shall not be liable to or indemnify any third party with respect to any claim, debt, damage, or demand arising during the implementation of this Agreement and which may be made against Grantor.
- iv. Grantor shall not accept liability for compensation for the death, disability, or other hazards which may be suffered by the employees, contractors, subcontractors, or other agent of Grantee as a result of their activities associated with the subject matter of this Agreement.
- v. Grantor shall not be liable for any expenditure incurred in excess of the Grant Award as specified in this Agreement.
- vi. Grantee shall notify Grantor promptly upon discovery of any financial or operational irregularities in connection with this grant award, and submit a written report as directed by Grantor of the known details of the irregularities.

III. Period of Agreement

- a. This Agreement is effective on ("Effective Date") and unless earlier terminated, expires on the earlier of March 2, 2032, or the last day of the Reporting Term, as defined below, (the "Term").
- b. Grantee agrees all project activity, as set forth in the Project Description (see Section IV Statement of Work), must be completed on or before March 2, 2032. No extensions will be granted.
- c. Grantee agrees that all reporting requirements, as set forth in the Project Description, will continue for 1 year post Project Completion Date or 1 year after the last payment is made, whichever is later. ("Reporting Term").

IV. Statement of Work

- a. Grantee agrees to undertake, perform, and complete the services as described in this Section.
- b. Any change to the Statement of Work, by either Grantee or Department, requires a formal Amendment.
- c. Project Description:

[Project Description]

V. Project Timeline

- a. Grantee agrees to undertake, perform, and complete the services within the timeline as described in this Section.
- b. Any change to the Project Timeline, by either Grantee or Department, requires a formal Amendment to this Agreement, executed in writing by both Parties.

Project Timeline

Key Tasks	Expected Completion Date
Award Start Date	[Date]
Construction Start Date	[Date]
Construction End Date	[Date]
Project Final Completion (RFT)	[Date]

VI. Funding Source and Agreement Amount

- A. Under the guidelines of the BEAD program, Department agrees to provide Grantee with grant funding subject to the terms and conditions, and limitations set forth herein.
- B. Including State funds and required Grantee match funds, the total amount of this Agreement is **[Project Total]**.
 1. Department, under the terms of this Agreement, will provide funding not to exceed **[Award Amount]**.
 2. Grantee, under the terms of this Agreement, shall provide a cost share of **[XX%]**, applied proportionately to the total actual project cost. If the final project cost is less than the amount set forth in this Agreement, the Grantee's required match will be reduced accordingly. If the final project cost exceeds the amount established in this Agreement, all excess costs shall be the sole responsibility of the Grantee.

- C. The grant award is valid contingent upon the availability of funds. If Department's funds are reduced for any reason this grant may be reduced or canceled.

VII. Program Budget

- A. Any single or cumulative change in the budget of 20% or more of the grant amount, by either Grantee or Department, requires a formal Amendment to this Agreement, executed in writing by both Parties.
- B. Department reserves all rights to reallocate or reprogram funds based on budget savings.
- C. Match is required to be used proportionally during the grant performance period and reported as such, unless a match waiver is approved by Department.

Description	Grant Amount	Match Amount	Total
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
[Budget Category]	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]
	[\$XX.XX]	[\$XX.XX]	[\$XX.XX]

VIII. Release of Funds

Funding under this Agreement will be provided to the Grantee as a fixed-amount subaward and disbursed on a reimbursement basis, consistent with [NTIA guidance](#). Reimbursements will be issued only for authorized expenditures that have been incurred in a completed reporting period and are supported by required documentation.

The submission and approval of each semi-annual report constitutes the programmatic objective for the fixed-amount subaward structure. However, the Grantee is not required to submit a reimbursement request after each individual semi-annual report. Instead, the Grantee may batch reimbursement requests to cover multiple completed reporting periods at once, provided that each request includes all necessary documentation for the periods covered.

Reimbursement requests will be reviewed and processed within approximately four weeks of submission, contingent on compliance with all programmatic and contractual requirements. Payments may be delayed or withheld if the Grantee fails to provide sufficient documentation or otherwise fails to comply with the conditions of this Agreement.

For each reporting period covered by a request, the Grantee may seek reimbursement for allowable expenditures provided that, in total across all reimbursement requests, no more than 90% of the total BEAD grant award is disbursed prior to closeout. Each request must also demonstrate that the Grantee has expended a proportional share of its required matching funds. For example, if the Grantee cumulatively

requests 50% of its total grant award, it must also show that approximately 50% of its required match has been spent.

The final 10% of the grant award will be retained and disbursed only upon project closeout and acceptance of the final report confirming that all grant activities and matching requirements have been met.

No payment will be made for requests received after June 30, 2032.

IX. Eligible Expenditures

- A. Grantee understands that only the items expressly approved within the approved award budget, Section VII of this Agreement, are eligible for purchase using grant funds. Grant funds shall not be used for any other purpose, including payroll or regular monthly expenses.
- B. Eligible project costs for direct reimbursement or for match may include, but are not limited to, expenses related to the following budget categories:
- Project planning
 - Obtaining construction permits
 - Construction of facilities, including construction of both “middle mile” and “last mile” infrastructure
 - Customer premise equipment
 - Installation and testing of the broadband service
- C. Ineligible project costs for direct reimbursement or for match may include, but are not limited to:
- Any expenses incurred prior to the project period identified in this Agreement, including costs in applying for this grant (consultants, grant writers, engineering plans, etc.).
 - Indirect or operational expenses
 - Middle-mile infrastructure that is not directly connected to last-mile infrastructure serving the approved service area
 - Expenses related to the provision of telephone or video services which are not necessary for the delivery of broadband services
 - Fines and penalties
 - Lobbying or advocacy for particular legislative or administrative reform
 - Losses from uncollectible bad debts.
 - Personnel not connected to the project.
- D. In the event Grantee is not in compliance, Grantor shall conduct one or more of the following, as applicable:
- Temporarily withhold cash payments pending correction of the deficiency.
 - Disallow all or part of the cost of the activity or action not in compliance.
 - Withhold authority to proceed to the next phase until receipt of evidence of acceptable compliance.
 - Require the return of grant funds disbursed, plus interest, until/unless compliance is achieved within the period of performance.
 - Conduct additional reviews, such as site visits, emails, and phone calls to ensure future compliance with grant requirements.
- E. In the event Grantee is considered high-risk for non-compliance, Grantor shall conduct one or more

of the following, as applicable:

- Review additional documentation to verify that compliance requirements are being met.
- Conduct additional reviews such as site visits, emails, and phone calls to ensure compliance.

X. Match Requirement

- Grantee must provide matching funds for the project in the amount of [XX%] of the total project cost.
- Match requirements can be met with cash, in-kind contributions, or a combination thereof and can include any eligible project expense incurred between the Effective Date and the end of the project.

XI. Reporting Responsibilities

A. The grant number must be included on all correspondence addressed to the Department.

B. Failure to comply with any reporting responsibilities identified in this Agreement may result in withholding grant payment(s) or the cancelation of grant award. Grantee's lack of compliance will also be taken into account when considering future grant awards from Department.

C. General Reporting Guidelines:

- i. Federal guidance and updates for BEAD subgrantee reporting requirements can be found in reporting guidance can be found on the [NTIA's BEAD program website](#).
- ii. Should Grantee discover an error in a previous reimbursement request, Grantee shall immediately notify Department and refund to Department any funds not authorized for use under this Agreement.
- iii. Grantee must document paid expenditures when submitting a reimbursement request to Department. Documentation includes invoices, canceled checks, payroll data, direct voucher payment documentation, etc.

D. Semiannual Reporting: Subgrantees must submit semi-annual progress reports in accordance with [Section VII.E.2](#) of the BEAD NOFO. These reports must describe activities conducted with subgrant funds and demonstrate alignment with applicable requirements. More detail on the specifics of the requirements is included below:

1. Include a list of addresses or location identifications (including the Broadband Serviceable Location Fabric established under 47 U.S.C. 642(b)(1)(B)) that constitute the service locations that will be served by the broadband infrastructure to be constructed and the status of each project;
2. Identify new locations served within each project area at the relevant reporting intervals, and service taken (if applicable);
3. Identify whether each address or location is residential, commercial, or a community anchor institution;
4. Describe the types of facilities that have been constructed and installed;
5. Describe the peak and off-peak actual speeds of the broadband service being offered;
6. Describe the maximum advertised speed of the broadband service being offered;
7. Describe the non-promotional prices, including any associated fees, charged for different tiers of broadband service being offered;
8. List all interconnection agreements that were requested, and their current status;
9. Report the number and amount of contracts and subcontracts awarded by the subgrantee

- disaggregated by recipients of each such contract or subcontracts that are MBEs or WBEs;
10. Include any other data that would be required to comply with the data and mapping collection standards of the Commission under Section 1.7004 of title 47, Code of Federal Regulations, or any successor regulation, for broadband infrastructure projects;
 11. Include an SF-425, Federal Financial Report and meet the requirements described in the [Department of Commerce Financial Assistance Standard Terms and Conditions](#) (dated November 12, 2020), Section A.01 for Financial Reports;
 12. For projects over \$5,000,000 (based on expected total cost):
 - a. A subgrantee may provide a certification that, for the relevant Project, all laborers and mechanics employed by contractors and subcontractors in the performance of such Project are paid wages at rates not less than those prevailing, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code (commonly known as the “Davis-Bacon Act”), for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State (or the District of Columbia) in which the work is to be performed, or by the appropriate State entity pursuant to a corollary State prevailing-wage-in-construction law (commonly known as “baby Davis-Bacon Acts”). If such certification is not provided, a Recipient must provide a project employment and local impact report detailing:
 - i. The number of contractors and subcontractors working on the Project;
 - ii. The number of workers on the Project hired directly and hired through a third party;
 - iii. The wages and benefits of workers on the Project by classification; and
 - iv. Whether those wages are at rates less than those prevailing.
 - b. If a subgrantee has not provided a certification that a Project either will use a unionized project workforce or includes a project labor agreement, meaning a pre-hire collective bargaining agreement consistent with section 8(f) of the National Labor Relations Act (29 U.S.C. 158(f)), then the subgrantee must provide a project workforce continuity plan, detailing:
 - i. Steps taken and to be taken to ensure the project has ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure construction is completed in a competent manner throughout the life of the project (as required in Section IV.C.1.e), including a description of any required professional certifications and/or in-house training, Registered Apprenticeships or labor-management partnership training programs, and partnerships with entities like unions, community colleges, or community based groups;
 - ii. Steps taken and to be taken to minimize risks of labor disputes and disruptions that would jeopardize timeliness and cost-effectiveness of the project;
 - iii. Steps taken and to be taken to ensure a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30, confined space, traffic control, or other training required of workers employed by contractors), including issues raised by workplace safety committees and their resolution;
 - iv. The name of any subcontracted entity performing work on the project, and

the total number of workers employed by each such entity, disaggregated by job title; and

- v. Steps taken and to be taken to ensure that workers on the project receive wages and benefits sufficient to secure an appropriately skilled workforce in the context of the local or regional labor market.

- 13. Comply with any other reasonable reporting requirements determined by the Eligible Entity to meet the reporting requirements established by the Assistant Secretary; and certify that the information in the report is accurate.

Subgrantees must maintain sufficient records to substantiate all information above upon request.

E. Final Program Reporting Requirements:

- 1. Grant closeout will require certification from a Professional Engineer with a certificate of registration in North Dakota that: (a) the build has been completed; (b) the design and installation conforms to all applicable federal, state, and local requirements and standard engineering practice; and (c) the installed infrastructure will provide the service levels stated in the application.

F. Post-Performance Reporting Requirements

Post-Performance Reports (PPR)s must be prepared and submitted to the Department annually, on January 30th of each year through the term of the grant period, or three years following the completion of the project, whichever is earlier.

- a. PPRs must provide the status of the grant program objective by providing the following information: (a) the number and location of residences and businesses that will receive the broadband service; (b) the speed of broadband service; (c) the average price of broadband service; (d) the broadband service adoption rates within each census block or the delineated area within a census block; (e) digital literacy activities; and (f) adoption activities.

XII. Unobligated Funds

Any unobligated balance of funds held by Grantee at the end of the Agreement period shall be returned to Department or treated in accordance with written instructions provided by Department.

XIII. Audits

This Section applies to Grantee and any subcontractors that perform services in connection with this Agreement. Grantee agrees to allow Grantor access to Grantee's records and financial statements as necessary for Grantor to meet the requirements of 2 CFR 200.332(a)(5). Financial records and other relevant documentation must be maintained for at least five (5) years from the close of this Grant Agreement.

A. Statutory Records Maintenance, Inspection, Examination, and Audit

- 1. The State or its designee may audit Grantee to verify compliance with this Agreement. Grantee, including any of its subcontractors, must retain, and provide to the State or its designee and the auditor general upon request, all financial and accounting records related to the Agreement through the Term and any extension thereof and for 3 years after the latter of termination, expiration, or final payment under this Agreement ("Audit Period"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Grantee must retain the records until all issues are resolved.

2. Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Grantee's premises or any other places where activities under the Agreement are being performed, and examine, copy, and audit all records related to this Agreement. Grantee must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent requests for reimbursement until the amount is paid or refunded.

B. Department Monitoring Reviews

1. Department may conduct on-site monitoring visit(s) and/or audit(s) of Grantee, including any of its subcontractors, any time during the Term with limited, but reasonable, notification, to determine if Grantee is complying with the requirements of this Agreement. All records and personnel related to the Agreement must be made available during any visit, including subcontractors, if requested. Department may request that a funded program be evaluated by an outside evaluation team contracted by Department at its sole expense. Grantee and its subcontractors shall work cooperatively with the evaluation team and in such a manner that enables the program to be fully reviewed and assessed, and produce all records and documentation requested to verify compliance with the grant requirements. Department may require the completion of an audit before final payment.

XIV. Record Maintenance/Retention

Grantee and its subcontractors shall retain all records and detailed documentation regarding this Agreement, including but not limited to all financial records, supporting documents, statistical records, and all other pertinent records, for a period of not less than three (3) years from the date of termination of this Agreement, or until any litigation and audit findings have been resolved, whichever is later.

XV. Subcontracts

Grantee is responsible for all work assigned to Grantee under this Agreement, whether the work is actually performed by Grantee or a subcontractor. Grantee must: (a) be the sole point of contact regarding all Agreement matters, including payment and charges for all grant activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor. Grantee remains responsible for the completion of the grant activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. Further, Grantee shall assure for any subcontracted service, activity, or product:

- A. That a written subcontract is executed by all affected parties prior to the initiation of any new subcontract activity.
- B. That any billing or request for reimbursement for subcontract costs is supported by a valid subcontract and adequate source documentation on costs and services. Grantee will require all subcontractors to submit requests for reimbursement to Grantee in a timely manner such that Grantee can include these expenses in their regular reimbursement requests to the State.
- C. Grantee must pay its subcontractors within 30 days of receipt of reimbursement by Grantee.

XVI. Notification of Modifications

Grantee must obtain prior written approval for program changes from the Grant Administrator; however, no program changes will be effective until the parties have executed an Amendment. Grant changes include:

- A. Changes in substance in the program activities.
- B. Additions or deletions in the project work plan or location.
- C. Any single or cumulative change in the budget of 20% or more of the grant amount.

XVII. Department Contract Manager / Grant Administrator of the Agreement

The individual acting on behalf of Department in administering this Agreement as the Contract Manager is:

Brian D. Newby
Broadband Program Director NDIT
4201 Normandy Street
Bismarck, ND 58503

The individual acting on behalf of Department in administering this Agreement as the Grant Administrator is:

Brian D. Newby
Broadband Program Director NDIT
4201 Normandy Street
Bismarck, ND 58503

XVIII. Grantee Contract Manager / Grant Administrator of the Agreement

The individual acting on behalf of Grantee in administering this Agreement as the Contract Manager is:

[Grantee Name]
[Grantee Address]

The individual acting on behalf of Grantee in administering this Agreement as the Grant Administrator is:

[Grantee Name]
[Grantee Address]

XIX. Notices

Any notice to any other party required by this Agreement shall be submitted in writing and will be deemed effectively given: (a) when received, if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission), if sent during normal business hours of the recipient, and on the next business day, if sent after normal business hours of the recipient; or (d) when received, if mailed by certified or registered mail, return receipt requested, postage. Unless either party notifies the other in writing of a different mailing address, notice to the parties shall be transmitted as indicated below:

To Department:

itprocurement@nd.gov and broadband@nd.gov

To Grantee:

[Grantee Email]

XX. Agreement Termination

- A. Termination for Cause. Department may immediately terminate this Agreement for cause, in whole or in part, by giving written notice of termination to Grantee, if Grantee, as determined by Department, (1) fails to comply with the provisions of this Agreement; (2) fails to make satisfactory progress toward the goals, objectives, or strategies set forth in the Agreement; (3) has not fulfilled, or will not fulfill, the purposes for which the funds were granted; (4) proposes or implements substantial plan changes to the extent that, if originally submitted, the application would not have been selected for funding; or (5) files a false certification in this Agreement or other report or document. Department may take actions as required to protect the interests of the State, including but not limited to (1) refusing to disburse additional funds; (2) disallowing all or part of the cost of an activity or action not in compliance with this Agreement; (3) requiring the return of all or part of the funds already disbursed; or (4) taking any other remedies that may be legally available. If Department determines the cause of the breach can reasonably be remedied, Department may provide Grantee with a sixty (60) day cure period to resolve such breach. If Grantee fails to satisfactorily resolve the breach within the cure period, Department may immediately terminate the Agreement.
- B. Termination in the Public Interest. Department may terminate this Agreement without cause, in whole or in part, without penalty, if Department determines that such a termination is in the State's or the public's interest, by giving Grantee written notice at least thirty (30) days prior to the date of termination. Upon such termination, Department will make payments to Grantee for allowable reimbursable costs not covered by previous payments or other state or federal programs. If Department chooses to terminate this Agreement in part, the budget will be adjusted to reflect those reductions.
- C. Termination for Insufficient Funding. Grantee acknowledges that continuation of this Agreement is subject to appropriation or availability of funds for this Agreement. If funds to enable Department to effect continued payment under this Agreement are not appropriated or otherwise made available, Department may immediately terminate this Agreement, in whole or in part, without penalty, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Grantee. In the event of a termination under this section, Grantee must, unless otherwise directed by Department in writing, immediately take all reasonable steps to terminate its operations and to avoid and/or minimize further expenditures under the Agreement and Department will only pay for amounts due Grantee for expenditures approved by Department on or before the date of termination to the extent funds are available.

XXI. Final Reporting Upon Termination

Upon termination or expiration of this Agreement for any reason, Grantee shall provide Department with all financial, performance, and other reports required as a condition of this Agreement within 30 days of the termination date. Grantee shall immediately refund to Department any funds received from Department but not expended as of the date of termination. In the event of termination or partial termination of this Agreement, Grantee remains responsible for compliance with the requirements in § 2 CFR 200.344 and 2 CFR 200.345.

XXII. Publication Rights

Grantee will, in accordance with the general purposes and objectives of this Agreement, give recognition to Department in any and all publications, papers, and presentations arising from the program (including from subcontractors) herein by placing the following statement on any and all publications, papers, and presentations:

This project is supported by the Broadband Equity, Access, and Deployment (BEAD) Program, awarded by the State of North Dakota, and administered by the State Broadband Program Office within its Information Technology Department.

XXIII. Compliance with Public Records Laws

This is a grant from public funds and records associated with it are subject to disclosure under North Dakota Century Code.

Under the North Dakota public records law, certain records may be open to the public upon request.

Public records may include: (a) records Department receives from Grantee under this Agreement, (b) records obtained by either Party under this Agreement, and (c) records generated by either Party under this Agreement.

Grantee agrees to contact Department immediately upon receiving a request for information under the public records law and to comply with Department's instructions on how to respond to such request.

XXIV. Permits and Approvals

Grantee and Grantee's agents and subcontractors shall obtain all federal, state and local permits, licenses and authorizations necessary to implement and operate the project.

XXV. Insurance

Grantee will maintain sufficient insurance coverage including general liability and other coverage, as applicable to address the risks, activities and/or omissions applicable to the work under this Agreement.

XXVI. Limitation of Liability and Indemnification

Grantee agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by Grantee to State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for State is necessary.

Any attorney appointed to represent State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C.

§ 54-12-08. Grantee also agrees to reimburse State for all costs, expenses and attorneys' fees incurred if State prevails in an action against Grantee in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

XXVII. Confidential Information

Grantee shall not use or disclose any information it receives from Department under this Agreement that Department has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by Department. Department shall not disclose any information it receives from Grantee that Grantee has previously identified as confidential and that Department determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of Department and Grantee to maintain confidentiality of information under this section continues beyond the Term of this Agreement.

XXVIII. Injunctive Relief

Grantee shall immediately report to Department any and all unauthorized disclosures or uses of Department's Confidential Information or Proprietary Information of which Grantee or its staff is aware or has knowledge. Grantee acknowledges that any unauthorized publication or disclosure of Department's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Department. If Grantee should publish or disclose such Confidential Information or Proprietary Information without authorization, Department shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. Grantee shall indemnify, defend, and hold harmless Department from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from Grantee's unauthorized use or disclosure of Grantee's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, Department will provide Grantee with prompt notice of any claim of which Department is aware and for which indemnification shall be sought under this Agreement and shall cooperate in all reasonable respects with Grantee in connection with any such claim.

XXIX. No State Employees or Legislators

No member of the Legislature, Judiciary of the State of North Dakota, or any individual employed by the State shall be permitted to receive benefits as a Grantee or as a subcontractor under this Agreement.

XXX. Duty to Publish Office of Management and Budget Contact Information

Grantee is required to publicize the telephone number and e-mail address for the U.S. Department of Commerce Office of Inspector General for the purpose of reporting waste, fraud or abuse in the Program.

[U.S. Department of Commerce Office of Inspector General](#)

Telephone: 1.800.424.5197

Hotline Form: <https://www.oig.doc.gov/doc-oig-hotline-intro/>

Grantee acknowledges that it may be required to produce copies of material used to publicize U.S. Department of Commerce Office of Inspector General contact information.

XXXI. Whistleblower Protection

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

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

Grantee must inform their employees in writing of the rights and remedies provided under 41 USC 4712, in the predominant native language of the workforce.

XXXII. Nondiscrimination

Grantee agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women).

Grantee agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

Grantee shall have and keep current all licenses and permits required by law during the Term of this Agreement.

Grantee's failure to comply with this section may be deemed a material breach by Grantee entitling Department to terminate in accordance with the Termination for Cause section of this Agreement.

XXXIII. Governing Law

This Agreement is governed, construed, and enforced in accordance with North Dakota Law and all claims relating to or arising out of this Agreement are governed by North Dakota law. Any dispute arising from this Agreement must be resolved in North Dakota Court of Claims. Grantee consents to venue in Burleigh County, and waives any objections, such as lack of personal jurisdiction and *forum non conveniens*.

XXXIV. Assignment

Grantee will not have the right to assign the Agreement, or to assign any of its duties or obligations under the Agreement, to any other party (whether by operation of law or otherwise), without the prior written consent of Department, provided, however, that Grantee may assign the Agreement to the acquirer, whether by merger, operation of law, or otherwise, of all or substantially all of the assets of, or the equity interest of Missouri Valley Communications Inc. Any assignment of rights and obligations under this Agreement by Grantee to another entity, including a subsidiary, through acquisition, merger, corporate restructuring, bankruptcy, or any other method of assignment shall bind the assignee to the terms, conditions, and obligations of Grantee as agreed in this Agreement. In all cases of assignment, both the Grantee and Department shall execute a brief assignment agreement to acknowledge the transaction.

XXXV. Adherence to Terms

The failure of a party to insist upon strict adherence to any term of this Agreement will not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term, or any other term of the Agreement.

XXXVI. Severability

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

XXXVII. Survival

The provisions of this Agreement that impose continuing obligations will survive the expiration or termination of this Agreement.

XXXVIII. Media Releases

Grantee will not make any media releases pertaining to the Agreement without prior written authorization from Department, and then only in accordance with the explicit written instructions of Department.

XXXIX. Amendments

This Agreement may not be amended, modified, or changed unless such change is in writing and signed by authorized representative of both parties (an “Amendment”). Grantee will, upon request of the Department and receipt of a proposed Amendment, amend this Agreement, if and when required in the opinion of the Department due to the revision of federal or state laws or regulations.

XL. Entire Agreement

This Agreement, including all Attachments which are expressly incorporated herein, constitutes the sole and entire agreement of the parties and supersedes all prior and contemporaneous agreements, whether written or oral, concerning its subject matter. If there is a conflict between documents, the order of precedence is: (a) first, the Agreement, excluding all Attachments; and (b) second, the Attachments expressly incorporated into this Agreement.

XLI. Signatures

Grantor	Grantee
[Name of Authorized Individual]	[Name of Authorized Individual]
[Title of Authorized Individual]	[Title of Authorized Individual]
[Signature]	[Signature]
[Date]	[Date]