

Exhibit E - NOFA #005
Office of the Chief Information Officer of the State of Iowa ("OCIO")
Grant Agreement

This Grant Agreement ("**Agreement**" or "**Grant Agreement**") for the deployment and delivery of Broadband Infrastructure Projects as part of the Empower Rural Iowa, Emergency Broadband Expansion Program, pursuant to and in accordance with Notice of Funding Opportunity Number 005 issued on **January 19, 2021**, ("**NOFA**"), is effective as of the date of last signature below ("**Effective Date**"), by and between the State of Iowa, acting by and through the Office of the Chief Information Officer ("**Office**"), and **LTD Broadband [REDACTED]**, a [LLC] organized under the laws of the state of **Nevada [REDACTED]** ("**Grantee**"). The parties may be referred to herein individually as a "**Party**" or collectively as the "**Parties**." In consideration of the promises and mutual covenants and agreements contained herein, the Parties agree as follows:

1. Overview.

- 1.1. *Purpose.* This Agreement establishes the terms, conditions, and requirements pursuant to which Grantee must complete the Project(s) as identified, described, and defined in its Application, including, as applicable, the Project Worksheet(s), Qualitative Attributes Form(s), and, to the extent applicable, Budget Plan, in exchange for funds made available pursuant to and in accordance with the Coronavirus Relief Fund (42 U.S.C. § 801), CARES Act Requirements, 2020 Iowa Acts 1078, and the NOFA, which funds were Awarded to Grantee as stated in the NOIA issued on **- - [REDACTED]**.
- 1.2. *Funds.* The total Award made to Grantee for purposes of this Agreement is \$ **[REDACTED]**.
- 1.3. *Term.* The term of this Agreement ("**Term**") shall begin on the Effective Date and continue until the Office has made all payments to Grantee to which Grantee is entitled in accordance with the terms, conditions, and requirements of this Agreement, unless this Agreement is otherwise terminated in accordance with the terms and conditions herein.

2. Definitions. Unless otherwise specifically defined herein, capitalized terms used but not defined herein shall have the meanings ascribed to them in the NOFA. In addition to any other terms defined herein, the following terms shall be ascribed the following meanings:

- 2.1. "**Grantee Contractor(s)**" means any of Grantee's authorized subcontractors, affiliates, subsidiaries, subgrantees, subrecipients, or any other third party acting on behalf of or at the direction of Grantee, directly or indirectly, in performing or providing the Project(s) under this Agreement.
- 2.2. "**Grantee Personnel**" means employees, agents, independent contractors, or any other staff or personnel acting on behalf of or at the direction of Grantee or any Grantee Contractor performing or providing the Project(s) under this Agreement.

3. Project Completion.

- 3.1. *Performance/Certification.* Grantee must fully finish its Project(s) by the Completion Date in accordance with and consistent with any deadlines established in the NOFA. Grantee's Project(s) must be deployed and implemented in a manner that complies with all applicable terms, conditions, requirements, and limitations set forth in this Agreement, and as proposed/represented in the Application.
 - 3.1.1. *Certification.* Grantee must certify to the Office that the Project was completed as proposed/represented in the Application, including but not limited to, that:
 - 3.1.1.1. The final installation Facilitates Broadband service at or above 25/3 Broadband, 50/5 Broadband, or 100/100 Broadband, whichever is applicable, in each of the applicable Targeted Service Areas identified in the Application/forming the basis of the Project; and
 - 3.1.1.2. The final installation Facilitates Broadband service at or above 25/3 Broadband, 50/5 Broadband, or 100/100 Broadband, whichever is applicable, to the same number of Broadband Units (homes, schools, businesses) located within the Targeted Service Areas forming the basis of the Project as represented in the Application.
 - 3.1.1.3. The final Project fully complies with and satisfies any and all terms and conditions identified in this Agreement, the NOFA, and all applicable federal, state, foreign, and local laws, rules, regulations, codes, ordinances, policies, orders or any other legal requirements or limitations, including CARES Act Requirements in place at Agreement Execution as well as any and all future amendments, changes, and additions to such laws as of the effective date of such change (collectively "Applicable Laws").
 - 3.1.2. Identify the total number of Broadband Units to which Broadband service is available in each Targeted Service Area identified in the Application/forming the basis of the Project.
 - 3.1.3. Supply the Office with geographic information system ("**GIS**") data in a form mutually acceptable to both the Office and Grantee demonstrating specifically where Broadband Infrastructure for which grant funds

have been utilized, in whole or in part, has been installed, regardless of whether such Broadband Infrastructure actually serves any customers in the Targeted Service Area(s) forming the basis of the Application at the time such mapping data is supplied to the Office. Such GIS data must enable the Office to determine which specific homes, schools, and businesses within each Targeted Service Area forming the basis of the Project have access to 25/3 Broadband, 50/5 Broadband, or 100/100 Broadband, whichever is applicable, as a result of the Project

- 3.2. *Field Testing.* The Office may, in its sole discretion, conduct field tests for compliance with the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, on one or multiple occasions for up to five (5) years after Broadband service is certified as complete pursuant to Section 3.1.1 (Certification). The Office may exercise this right both before and after reimbursing a Grantee for any claimed, Allowable Expenditures; provided that if the Office elects to do so before reimbursing a Grantee for any claimed, Allowable Expenditures, it will do so within a reasonable time, not-to-exceed one (1) year after Broadband service is certified as complete pursuant to Section 3.1.1 (Certification). Such field tests may include but are not be limited to:
 - 3.2.1. Speed tests anywhere between a Grantee's central office and the demarcation at any customer's location in a Census Block in which the Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service;
 - 3.2.2. In the case of wireless installations, from any location in a Census Block in which the Project was to be deployed or to which the Project was represented as being able to Facilitate Broadband service; and/or
 - 3.2.3. In the case where a Grantee does not have a customer in a Census Block being served by the installation, certification obtained by the Grantee and supplied to the Office from an independent, third-party, properly licensed engineer that the installation Facilitates Broadband service at or above 25/3 Broadband, 50/5 Broadband, or 100/100 Broadband, as applicable, in the Census Block(s) identified in the original Application. The costs of such certification shall be borne by the Grantee.
- 3.3. *Project Completion.* For purposes of this Agreement, a Project shall be considered "complete" as of the later of the date the Office:
 - 3.3.1. Receives the certifications and GIS data required by Section 3.1.1 (Certification); and
 - 3.3.2. Verifies that a Project certified as complete complies with the requirements of this Agreement, the NOFA, and Applicable Laws, including pursuant to and in accordance with Section 3.2 (Field Testing), or affirmatively elects not to exercise this right or any other monitoring, review, or audit rights available to the Office under this Agreement.

4. **Payment Timing and Procedures.**

- 4.1. *Timing of Payments.* Payment shall be made in one disbursement upon Project Completion, and only after:
 - 4.1.1. The Office's confirmation and verification of Project Completion pursuant to and in accordance with Section 3.2 (Field Testing), or following the Office's affirmative election not to exercise this right; and
 - 4.1.2. The Office's receipt of a summary of all final, claimed, Allowable Expenditures and other sufficient or appropriate documentation to support such claimed, Allowable Expenditures in accordance with Section 4.4.
- 4.2. *Total Payment Not to Exceed thirty-five (35), fifty (50), or seventy-five (75) percent, as applicable.* Total payment of funds under this Agreement shall not exceed:
 - 4.2.1. 100/100 Broadband. For Projects resulting in the installation of Broadband Infrastructure that Facilitates 100/100 Broadband or faster, the lesser of:
 - 4.2.1.1. Seventy-five percent (75%) of Grantee's total, estimated, Allowable Expenditures as set forth in the Budget Plan; or
 - 4.2.1.2. Seventy-five percent (75%) of Grantee's total, final Allowable Expenditures, as actually incurred, upon Project completion.
 - 4.2.2. 50/5 Broadband. For Projects resulting in the installation of Broadband Infrastructure that Facilitates 50/5 Broadband or faster but slower than 50/5 Broadband, the lesser of:
 - 4.2.2.1. Fifty percent (50%) of Grantee's total, estimated, Allowable Expenditures as set forth in the Budget Plan; or
 - 4.2.2.2. Fifty percent (50%) of Grantee's total, final Allowable Expenditures, as actually incurred, upon Project completion.
 - 4.2.3. 25/3 Broadband. For Projects resulting in the installation of Broadband Infrastructure that Facilitates 25/3 Broadband or faster, but slower than 50/5 Broadband, the lesser of:
 - 4.2.3.1. Thirty-five percent (35%) of Grantee's total, estimated, Allowable Expenditures as set forth in the Budget Plan; or
 - 4.2.3.2. Thirty-five percent (35%) of Grantee's total, final Allowable Expenditures, as actually incurred, upon Project completion.
- 4.3. *Allowable Expenditures.* Grantee shall only be entitled to payment for Allowable Expenditures. The Office may order the return of any funds previously disbursed or deny a request for reimbursement for any expenditures that do not constitute Allowable Expenditures, and Grantee shall not otherwise be entitled to payment or reimbursement for any expenditures that do not constitute Allowable Expenditures.

- 4.4. *Proof of Allowable Expenditures.* Within thirty (30) days of completing a Project and prior to the disbursement of any funds Grantee must submit a final summary of all Allowable Expenditures incurred in connection with a Project on forms supplied by the Office and attest that such Allowable Expenditures are true, accurate, and in fact constitute Allowable Expenditures, actually incurred by Grantee. The Office may request, in its sole discretion, and Grantee may be required to supply, additional records to verify any Allowable Expenditures claimed by Grantee. Such records may include invoices, original itemized receipts, copies of checks, check registers, or bank statements indicating credit card invoices were paid. See Department of Administrative Services - State Accounting Enterprise, Procedure Number 204.200, available at https://das.iowa.gov/sites/default/files/acct_sae/sae_manual/204/204-200.pdf, and corresponding procedures referenced therein, for further requirements/guidance on the types of records/proof that may be required to support a claimed Allowable Expenditures. The Office may order the return of any funds previously distributed or deny a request for reimbursement for any expenditures Grantee claims that do not constitute Allowable Expenditures, that are submitted more than thirty (30) days after a Project is finished or the Completion Date, whichever is earlier, or that are not supported by sufficient or appropriate documentation, and Grantee shall not otherwise be entitled to payment or reimbursement for any such expenditures, and shall be obligated to return any applicable funds to the Office.
- 4.5. *Compensation, generally.* Notwithstanding anything in this Agreement to the contrary, in no event shall the Office be obligated to pay Grantee any fees, costs, compensation or other amounts in excess of the amount expressly set forth herein in accordance with the terms, conditions, limitations, and requirements of this Agreement, unless the Office otherwise agrees to pay such fees, costs, compensation other amounts pursuant to a written amendment to this Agreement executed by the Office. Prior to making any payment, the Office shall review any request for payment and related supporting documentation for compliance with this Agreement, the NOFA, and Applicable Laws. The Office will pay all approved amounts in arrears and in conformance with Iowa Code § 8A.514 and Iowa Admin. Code r. 11-41.1(2), and all other applicable laws, rules, regulations, policies and requirements. The Office may pay in less than sixty (60) days, as provided in Iowa Code § 8A.514. However, an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514. Notwithstanding anything herein to the contrary, the Office shall have the right to dispute any request for payment, invoice, or other supporting documentation and withhold payment of any disputed amount if the Office believes the documentation is inaccurate, incomplete, insufficient, or incorrect in any way. The Office's obligation to make payments under this Agreement is contingent upon the continued availability of funds (federal, state, or otherwise) to the Office. No payment, including final payment, shall be construed as or constitute: (1) acceptance of any Project(s) as satisfying the terms, conditions, or requirements of this Agreement, the NOFA, or Applicable Laws; or (2) a waiver by the Office of any rights or remedies it may have to enforce the terms of this Agreement, and Grantee shall remain responsible for full performance in strict compliance with the terms and conditions of this Agreement. By making any payments under this Agreement, the Office does not waive its ability to challenge any payment or reimbursement for either failing to comply with this Agreement, the NOFA, or any Applicable Laws. Grantee agrees that its acceptance of the last payment from the Office under this Agreement shall operate as a release of any and all claims related to this Agreement that Grantee may have or be capable of asserting against the Office or the State of Iowa.
- 4.6. *Set-off Against Sums Owed by Grantee.* In the event Grantee owes the Office or any other governmental entity of the State of Iowa any sum under this Agreement, or any other agreement, pursuant to a judgment, or pursuant to any law, rule, or order, the Office or its designee may set off such sum against any sum invoiced or claim for payment made to the Office or any other governmental entity to the State of Iowa issued or made by Grantee. In addition, any amounts due the Office as damages may be deducted by the Office from any money or sum payable by the Office to Grantee pursuant to this Agreement or any other agreement between Grantee and the Office.
- 4.7. *Erroneous Payments and Credits.* Grantee shall promptly pay or refund to the Office the full amount of any overpayment, erroneous payment, or unallowable expense within ten (10) business days after either discovery by the Grantee or notification by the Office of the overpayment, erroneous payment, or unallowable expense. In the event Contractor fails to timely pay or refund any amounts due the Office under this Section 4.7 (Erroneous Payments and Credits), the Office will charge interest of one percent (1%) per month compounded on the outstanding balance each month after the date the payment or refund is due, or the maximum amount allowed by law, whichever is greater. The Office may, in its sole discretion, elect to have Grantee apply any amounts due to the Office under this Section 4.7 (Erroneous Payments and Credits) against any amounts payable by the Office under this Agreement or any other agreement between the Office and Grantee.
- 4.8. *Reimbursable Expenses.* With the exception of Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, there shall be no other reimbursable expenses associated with this Agreement. Except for expenditures that constitute Allowable Expenditures or other reimbursable expenses or costs expressly contemplated hereunder, Grantee shall be solely responsible for all costs, charges and expenses incurred in connection with its performance under this Agreement, including, but not limited to, travel, mileage, meals, lodging, equipment, supplies, personnel, salaries, benefits, insurance, training, conferences, telephone, utilities, start-up costs, and all other costs and expenses of Grantee.

5. Default and Termination.

- 5.1. *Termination for Cause by the Office.* The Office may terminate this Agreement without penalty or legal liability upon written notice of Grantee's breach of any term, condition, requirement, or provision of this Agreement, if such breach

is not cured within the time period specified in the Office's notice of breach or any subsequent notice or correspondence delivered by the Office to Grantee. Whether Grantee has sufficiently cured the breach shall be determined in the sole discretion of the Office. In addition, the Office may terminate this Agreement effective immediately without penalty or legal liability and without advance notice or opportunity to cure for any of the following reasons:

- 5.1.1. Grantee, directly or indirectly, furnished any statement, representation, warranty or certification in connection with this Agreement, including as set forth in Schedule A (Federal Funding – Required Provisions), attached hereto, that is false, deceptive, or materially incorrect or incomplete;
- 5.1.2. Grantee or Grantee's Project(s) as implemented has violated or failed to comply with any Applicable Laws, including any Applicable Laws identified or referenced in Schedule A (Federal Funding – Required Provisions), attached hereto;
- 5.1.3. Grantee's officers, directors, employees, agents, subsidiaries, affiliates, contractors, subcontractors, or a Grantee Contractor has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 5.1.4. Grantee terminates or suspends its business;
- 5.1.5. Grantee's authorization to engage in business either in Iowa or where organized is suspended, terminated, revoked, or forfeited;
- 5.1.6. The Office determines or believes Grantee has engaged in conduct that has or may expose the Office or the State to material liability;
- 5.1.7. The Office determines or believes Grantee is not ultimately a **"Responsible Grantee,"** which shall be determined under the the same standards set forth in the definition of Responsible Applicant in the NOFA;
- 5.1.8. Any of the following has been engaged in by or occurred with respect to Grantee or any corporation, shareholder, or entity having or owning a controlling interest in Grantee:
 - 5.1.8.1. Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 5.1.8.2. Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 5.1.8.3. Making an assignment for the benefit of creditors;
 - 5.1.8.4. Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Grantee's performance of its obligations under this Agreement; or
 - 5.1.8.5. Taking any action to authorize any of the foregoing.

Grantee shall notify the Office in writing if any of the foregoing events occur that would authorize the Office to immediately terminate this Agreement.

- 5.2. *Termination Due to Lack of Funds or Change in Law.* Notwithstanding anything in this Agreement to the contrary, the Office shall have the right to terminate this Agreement without penalty or legal liability and without any advance notice as a result of any of the following:
 - 5.2.1. The legislature, governor, or other applicable governing body fail in the sole opinion of the Office to appropriate funds sufficient to allow the Office to either meet its obligations under this Agreement or to operate as required and to fulfill its obligations under this Agreement;
 - 5.2.2. If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Office to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Office in its sole discretion;
 - 5.2.3. If the Office's authorization to conduct its business or engage in activities or operations related to the subject matter of this Agreement is withdrawn or materially altered or modified;
 - 5.2.4. If the Office's duties, programs, or responsibilities are modified or materially altered;
 - 5.2.5. If there is a decision of any court, administrative law judge, or an arbitration panel or any law, rule, regulation, or order is enacted, promulgated, or issued that materially or adversely affects the Office's ability to fulfill any of its obligations under this Agreement; or
 - 5.2.6. In the event any audit (whether state or federal) or other review, the Office, or United States governmental entity:

- 5.2.6.1.1. Takes exception to the Project(s) provided under this Agreement for which state or federal reimbursement has been paid, or to the manner in which any related funds have been disbursed or expended;
 - 5.2.6.1.2. Concludes or orders that State or federal funds are deferred or disallowed, or have been disbursed or expended in a manner not consistent with or in violation of any Applicable Laws governing the expenditure of such funds;
 - 5.2.6.1.3. Concludes or determines that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable.
- 5.3. *Limitation of Payment Obligations.* In the event of a termination of this Agreement for any reason (except for termination pursuant to Section 5.2 (Termination Due to Lack of Funds or Change in Law)), and subject to the terms and conditions of this Agreement, the Office shall, at most, pay only those amounts, if any, to Grantee for aspects of a Project(s) the Office has verified as complete in accordance with the terms and conditions of this Agreement and for which the Office is otherwise obligated to pay pursuant to this Agreement; provided however, that the Office's obligation to pay Grantee such amounts shall be limited by, and subject to, legally available funds. Notwithstanding the foregoing, this Section in no way limits the rights or remedies available to the Office or the State of Iowa and shall not be construed to require the Office or the State of Iowa to pay any compensation or other amounts hereunder in the event of Grantee's breach of this Agreement or any amounts otherwise withheld by the Office in accordance with the terms of this Agreement. Notwithstanding anything in this Agreement or any related agreement to the contrary, the Office or the State of Iowa shall not be liable, under any circumstances, for any of the following:
- 5.3.1. The payment of unemployment compensation for Grantee or any Grantee Personnel;
 - 5.3.2. The payment of workers' compensation claims, which occur during the Agreement or extend beyond the date on which the Agreement terminates;
 - 5.3.3. Any expenditures that:
 - 5.3.3.1. Do not constitute Allowable Expenditures;
 - 5.3.3.2. Are not properly or correctly allocated in accordance with the allocation methods approved by the Office;
 - 5.3.3.3. Are not supported by sufficient and appropriate documentation; or
 - 5.3.3.4. Are not otherwise reimbursable, due, or owed under the terms or conditions of this Agreement;
 - 5.3.4. Any damages or other amounts, including amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments, or commitments made in connection with this Agreement; or
 - 5.3.5. Any taxes Grantee may owe in connection with the performance of this Agreement, including sales taxes, excise taxes, use taxes, income taxes, or property taxes.
- 5.4. *Grantee's duties upon termination.* Upon request of the Office, Grantee shall, within any time periods or deadlines specified by the Office:
- 5.4.1. Cease work under this Agreement and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Agreement and such other matters as the Office may require;
 - 5.4.2. Perform any and all remaining requirements, duties, or obligations as may be required by the federal government or State of Iowa;
 - 5.4.3. Notwithstanding any provision in this Agreement to the contrary, refund to the Office, within fifteen (15) days of the effective date of any termination of this Agreement for any reason any amounts paid by the Office that pertain to any yet to be completed aspect of any Project(s).
- 5.5. *Termination for Cause by Grantee.* Grantee may only terminate this Agreement upon written notice of the breach by the Office of any material term, condition, or provision of this Agreement, if such breach is not cured within sixty (60) days of the Office's receipt of Grantee's written notice of breach.
- 5.6. *Survival.* Expiration or termination of this Agreement will not release Grantee from any duties, liabilities, or obligations set forth in this Agreement which:
- 5.6.1. The Parties have expressly agreed in writing survive any such expiration or termination, including the following Sections:
 - 5.6.1.1. Section 3.2 (Field Testing);
 - 5.6.1.2. Section 4 (Payment Timing and Procedures);
 - 5.6.1.3. Section 5.4 (Grantee's duties upon termination);
 - 5.6.1.4. Section 6 (Indemnification);
 - 5.6.1.5. Section 7 (Representations, Warranties, and Covenants);
 - 5.6.1.6. Section 8 (Publicity);
 - 5.6.1.7. Section 9 (Confidentiality);
 - 5.6.1.8. Section 10 (General Provisions); and
 - 5.6.1.9. Schedule A (Federal Funding – Required Provisions), attached hereto.
 - 5.6.2. Remain to be performed or by their nature would be intended to be applicable following any such expiration or termination.

- 5.7. The Office's right to terminate this Agreement pursuant to this Section shall be in addition to and not exclusive of any other remedies available to the Office or the State of Iowa, and the Office or the State of Iowa shall be entitled to exercise any other rights and pursue any other remedies available under this Agreement, in law, at equity, or otherwise.

6. Indemnification.

- 6.1. *Generally.* Grantee shall indemnify and hold harmless the Office and the State of Iowa and their employees, officers, board members, agents, representatives, and officials ("**Indemnitees**") from and against any and all claims, actions, suits, liabilities, damages, losses, settlements, demands, deficiencies, judgments, fines, penalties, taxes, costs, recoupments, and any other expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by any Indemnitee) directly or indirectly related to, resulting from, or arising out of this Agreement in any way whatsoever, including any claims related to, resulting from, or arising out of:
- 6.1.1. Any violation or breach of any term or condition of this Agreement by or on behalf of Grantee, including any violation caused by Grantee, Grantee Contractors, or Grantee Personnel;
 - 6.1.2. Grantee's, Grantee Contractor's, or Grantee Personnel's performance, failed performance, or attempted performance of this Agreement;
 - 6.1.3. Any negligent acts or omissions, intentional or willful misconduct, or unlawful acts of Grantee, Grantee Contractors, or Grantee Personnel;
 - 6.1.4. The failure by Grantee, Grantee Contractors, Grantee Personnel, the Project(s), or the use any funds disbursed hereunder to comply with any Applicable Laws;
 - 6.1.5. The furnishing or making by Grantee, Grantee Contractors, or Grantee Personnel, directly or indirectly, of any statement, representation, warranty, or certification in connection with this Agreement that is false, deceptive, or misleading;
 - 6.1.6. Any failure by Grantee or Grantee Contractors to make any reports, payments, withholdings, or obtain or provide any insurance required by Applicable Laws, including with respect to Social Security, unemployment compensation, workers compensation, employee income, sales taxes, excise taxes, income taxes, property taxes, and/or other taxes, fees, or costs required by Grantee or Grantee Contractors to conduct business in the State;
 - 6.1.7. Any claim for wages, benefits, compensation, insurance, discrimination, or other similar claims asserted against the Office or the State of Iowa by any Grantee Personnel, or any claim, penalties, or fines made, levied, assessed, or imposed by another governmental entity or any Grantee Personnel against the Office or the State of Iowa in any way related to or involving the misclassification of employees as independent contractors or any allegations or findings of the existence of a joint-employment relationship involving any Grantee Personnel;
 - 6.1.8. Any claim involving any personal injury or damage to property, caused, in whole or in part, by Grantee, Grantee Contractors, or Grantee Personnel in any way related to this Agreement;
 - 6.1.9. Any claim for violation or infringement of any statutory, regulatory, or common law rights or any other rights of any person or entity, including any claims or causes of action involving torts, personal injury, defamation, or rights of publicity, privacy, security, confidentiality, misappropriation, or security;
 - 6.1.10. Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights, or personal rights of any person, including any claims related to the violation or misappropriation of any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right;
 - 6.1.11. Any claim related to the Office's failure to disclose GIS data pursuant to applicable state, federal, and/or international laws, rules, regulations, or orders, including Iowa Code ch. 22 and any corresponding implementing rules, regulations, or orders; or
 - 6.1.12. Any indemnification obligation of Grantee set forth or described in the NOFA.
- 6.2. Grantee's obligations under this Section are not limited to third-party claims, but shall also apply to any claims that either Party may assert against the other.
- 6.3. Grantee's duties as set forth in this Section shall survive termination of this Agreement and shall apply regardless of the date any potential claim is made or discovered by the Office, the State of Iowa, or any Indemnitee.

7. Representations, Warranties, and Covenants.

- 7.1. Grantee represents and warrants that it is fully aware of the terms, conditions, and requirements of this Agreement, the NOFA, and Applicable Laws, and intended outcomes of any Project(s) to be delivered hereunder, and that any such Project(s) shall satisfy such requirements in all material respects and are fit for such intended purposes and uses.
- 7.2. Grantee represents and warrants that: (i) it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Project(s) required hereunder.
- 7.3. Grantee represents, warrants, and covenants that all Projects(s) be performed or provided under this Agreement shall be performed or provided in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms of this Agreement and the highest standards of performance applicable to service providers in the industry for similar tasks and projects. In the absence of a specification for the performance of any portion of this Agreement, the Parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Office notifies Grantee of any aspects of any Project(s) performed in

violation of this standard, Grantee shall re-perform the relevant aspects of the Project(s) at no additional cost to the Office or impacted consumers, such that the Project(s) are rendered in the above-specified manner, or if the Grantee is unable to perform the Project(s) as warranted, Grantee shall reimburse the Office any fees or compensation paid to Grantee for the unsatisfactory performance.

- 7.4. Grantee represents, warrants, and covenants that it is knowledgeable about, and shall comply with, all Applicable Laws in connection with its performance of this Agreement and with all terms, conditions, requirements, and assurances, made directly or implicitly, set forth or made by Grantee in or under this Agreement, the NOFA, the Application, and Applicable Laws.
- 7.5. Grantee represents, warrants, and covenants that the Project(s) will at all times meet, conform to and comply with: (1) this Agreement; (2) any and all representations or assurance made, directly or implicitly, in the Application; and (3) Applicable Laws.
- 7.6. Grantee represents and warrants that it is not in arrears with respect to the payment of any monies due and owing the State or any department, agency, office, or any other governmental entity, unit, or subdivision thereof, including but not limited to the payment of taxes and employee benefits. Grantee represents that its accounting system is adequate to comply with this Agreement.
- 7.7. Grantee represents, warrants, covenants, and promises that Grantee, Grantee Contractors, and Grantee Personnel have complied with and will continue to comply with, that the Project(s) as implemented will comply with, and that the use or expenditure of any funds paid hereunder will comply with any and all Applicable Laws, both generally and in connection with the performance of this Agreement, including the following:
 - 7.7.1. Those prohibiting discriminatory employment practices or related to equal opportunity in employment or affirmative action under federal or state law, rules, regulations, or orders, including Iowa Code ch. 216 and section 19B.7 and the rules of the Iowa Department of Administrative Services and the Iowa Civil Rights Commission. Upon the State's written request, Grantee shall submit to the State a copy of its affirmative action plan, containing goals, time specifications, accessibility plans, and policies as required by Iowa Admin. Code ch. 11-121.
 - 7.7.2. Those pertaining to any permitting and licensure requirements in carrying out the work performed under this Agreement.
 - 7.7.3. Those relating to prevailing wages, occupational safety and health standards, payment of taxes, gift laws, and lobbying laws.
 - 7.7.4. CARES Act Requirements.

Grantee shall take such steps as necessary to ensure Grantee Contractors and Grantee Personnel are bound by the terms and conditions contained in this Section. Notwithstanding anything in this Agreement to the contrary, Grantee, Grantee Contractors, and Grantee Personnel's failure to fulfill any requirements set forth in this Section shall be regarded as a material breach of this Agreement and the Office may cancel, terminate, or suspend, in whole or in part, this Agreement without penalty or legal liability. In addition, the Office or its designee may declare Grantee ineligible for future State contracts in accordance with authorized procedures or Grantee may be subject to other sanctions as provided by law, rule, or order.
- 7.8. All representations, warranties, and covenants made by Grantee in this Agreement, whether or not this Agreement specifically denominates Grantee's promise as a warranty or whether the warranty is created only by Grantee's affirmation or promise, or is created by a description of the Project(s) or related outcomes to be provided or that will result, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties which arise through course of dealing or usage of trade. The warranties expressed in this Agreement are intended to modify the warranties implied by law only to the extent that they expand those warranties. Grantee's warranties provided in this Section 7 are in addition to and not in lieu of any other warranties provided in this Agreement. All warranties provided for in this Agreement shall be cumulative, shall be deemed consistent and not in conflict, are intended to be given full force and effect and to be interpreted expansively to give the broadest warranty protection to the Office, the State of Iowa, and any and all consumers intended to benefit from such warranties, this Agreement, or the Project(s) resulting herefrom.

8. **Publicity.** The Grantee shall, when issuing statements, press releases, or any marketing or promotional materials describing the Project(s), ensure such materials or communications clearly state: a) the percentage of the total cost of the Project(s) which was or will be financed with federal or state funds; and b) the dollar amount of federal or state funds for the Project(s). Any publication (written, visual, or sound) shall contain the following statements:

"This project was supported by federal funds made available through the CARES Act and State of Iowa, acting by and through the Office of the Chief Information Officer (OCIO). Points of view expressed herein are those of the author or speaker and do not necessarily represent the official position or policies of the United States Government or State of Iowa or endorsement of the project."

In addition, during the Term and at all times after the termination or expiration of this Agreement, Grantee, Grantee Contractors, and Grantee Personnel shall not make any media release or other public announcement related to the Project(s) without the Office's prior written notification and opportunity for participation/involvement. Except as otherwise required herein, Grantee, Grantee Contractors, and Grantee Personnel shall acquire no right to use, and shall not use, without OCIO's or the State of Iowa's prior written consent, the names, trade names, trademarks, service marks, artwork, designs, or copyrighted materials of

the Office or the State of Iowa, its related entities, employees, assigns, successors or licensees: (a) in any advertising, publicity, press release, customer list, presentation or promotion; or (b) to express or imply any endorsement of the Project(s).

9. **Confidentiality.** Subject to any and all Applicable Laws (including Iowa Code ch. 22 and any corresponding implementing rules, regulations, or orders), the Office will not intentionally disclose GIS data supplied by Grantee to the Office hereunder. Notwithstanding and in addition to the foregoing, the Office may disclose GIS data supplied by Grantee:

- 9.1. Pursuant to any legal, judicial, regulatory, or administrative proceedings, subpoena, summons, deposition, interrogatory, requests for documents, order, ruling, civil investigative demand, or other legal, administrative or regulatory processes;
- 9.2. Pursuant to any applicable laws, rules, or regulations;
- 9.3. If the Office reasonably determines such information is not a confidential record pursuant to Iowa Code § 22.7 or other applicable laws, rules, and regulations;
- 9.4. If the Office, in the Office's sole discretion, determines Grantee has not provided or is unwilling to provide facts sufficient to enable the Office to make a determination as to whether such information constitutes a confidential record under Iowa Code § 22.7 or other Applicable Laws; or
- 9.5. To the federal government or any agency thereof upon request.

In the event the Office discloses such data for any reason as permitted above, the Office shall provide reasonable notice to Grantee of the circumstances giving rise to such disclosure, and an opportunity to seek an injunction in Polk County District Court to prevent the release.

10. General Provisions.

10.1. *Monitoring, Review, and Status.*

10.1.1. **Monitoring and Review.** In addition to any other terms and conditions hereunder of or related to auditing, verifying, or ensuring Grantee's compliance with the terms, conditions, requirements, or limitations of this Agreement, the Office shall monitor and review Grantee's performance under this Agreement to ensure compliance with this Agreement, including Applicable Law(s). Such review and monitoring shall include the Office's assessment of any claims or invoices and any reports furnished by Grantee pursuant to this Agreement. The Office reserves the right to monitor Grantee performance through site visits, reports, or other means deemed necessary by the Office. The Grantee agrees that the Office may conduct during regular business hours site visits to review contract compliance, assess management controls, and assess relevant services and activities. Grantee agrees to ensure the cooperation of Grantee Personnel in such efforts and to provide to the Office all information requested by the Office in the manner determined by the Office; this includes allowing the Office to inspect Grantee or Grantee Contractor's facilities and books and records in order to monitor and evaluate performance of this Agreement. Following each site visit or review of requested information, the Office may submit a written report to the Grantee which identifies the Office's findings. A corrective action plan with a timetable to address any deficiencies or problems noted in the report may be requested. The corrective action plan shall be submitted to the Office for approval within the timelines outlined in the written report. The Grantee shall implement the plan after it is approved by the Office. Failure to do so may result in suspension or termination of the Agreement, without penalty or liability to the Office. Grantee shall not impose any charge or fee in connection with any review or monitoring conducted by the Office hereunder.

10.1.2. **Status Reports.** The Office may require Grantee to communicate with it about the status of the Project(s). Such communications may include a conference call or an in person meeting ("**Status Meeting**") or submission to the Office of a report ("**Status Report**") regarding: (a) An overview and status of the Project(s); (b) Issues encountered and being resolved; (c) Updates on the timing of Project completion; (d) Any other information that the Office may reasonably request.

10.1.3. The requirements of this Section shall apply to Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

10.1.4. Any and all of the rights granted to the Office by this Section or otherwise referred to in this Section, or duties or obligations of Grantee under this Section or otherwise referred to in this Section, may be exercised or invoked by the Office or any other entity designated by the Office, including contractors hired by the Office for such purpose or the United States government.

10.2. **Record Retention/Access to Records.** Grantee shall maintain accurate, current, and complete books, documents and records that sufficiently and properly document Grantee's performance under this Agreement, and identify the source and application of funds received or used under this Agreement. Such records must document all fees and other amounts charged under this Agreement, and all expenditures and third-party reimbursements. Grantee shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its business and the Project(s). Grantee shall maintain and make available all books, documents and records for a period of at least five (5) years following the later of the date of final payment, termination, or expiration of this Agreement, or the completion of any required audit, or for a longer period if required by Applicable Law. If any litigation, claim, negotiation, audit or other action involving Grantee's books, documents and records has commenced or is likely to commence before the expiration of the required retention period, Grantee must retain the records beyond

the required retention period until completion of the action and resolution of all issues which arise from it. Grantee shall permit the Office, the Auditor of the State of Iowa, or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, at no charge, to access and examine, audit, excerpt and transcribe any pertinent books, documents, and records, electronic or optically stored and created records or other records of Grantee relating directly or indirectly to Grantee's performance under this Agreement, wherever located. At the request of the Office, Grantee shall deliver and provide, at no charge, complete copies of such books, documents and records to the Office or its designee in such formats and within such time period as may be specified by the Office in its request. Grantee shall not impose a charge or seek payment for any fee, charge, or expense associated with any audit, examination or delivery of such books, documents and records. Based on the audit findings, the Office reserves the right to address Grantee's board or other managing entity regarding performance and expenditures. When state or federal law or the terms of this Agreement require compliance with Applicable Laws addressing proper use of government funds, Grantee shall comply with these additional records retention and access requirements:

- 10.2.1. Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Agreement require matching funds, cash contributions made by Grantee and third-party in-kind (property or service) contributions must be verifiable from Grantee's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income and third-party reimbursements.
- 10.2.2. Grantee shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 10.2.3. Grantee, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Office.

The requirements of this Section shall apply to the Grantee, Grantee Contractors, and any subgrantees or subrecipients, and Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

- 10.3. *Reimbursement of Audit Costs.* If the Auditor of the State of Iowa or a federal entity notifies the Office of an issue or finding involving the Grantee's compliance with or violation of Applicable Laws or the terms, conditions, requirements, or limitations of this Agreement governing Grantee's use of funds distributed under this Agreement, Grantee shall bear the cost of the Auditor's review or other similar review and any subsequent assistance provided by the Auditor or federal entity to determine compliance or address or remediate noncompliance. Grantee shall reimburse the Office for any costs the Office pays to the Auditor or federal entity for such review or audit.
- 10.4. *Independent Contractor Status.* Grantee, Grantee Contractors, and Grantee Personnel shall not hold themselves out as an employee or agent of the Office or the State of Iowa. Grantee or Grantee Contractors shall be responsible for maintaining and furnishing a place of work, and any tools, supplies, apparel, facilities, equipment, and appropriate communications devices and services required for Grantee Personnel to perform and complete the Project(s). Grantee Personnel are not eligible for and Grantee shall ensure Grantee Personnel never claim they are eligible for or otherwise entitled to any State employee benefits, including retirement benefits, insurance coverage, or the like. Grantee Personnel shall not be considered employees of the Office or the State of Iowa for any purpose, including for federal or state tax purposes. The Office or the State of Iowa shall not withhold taxes on behalf of Grantee or Grantee Contractors. Grantee and Grantee Contractors shall be responsible for payment of all taxes in connection with any income earned from performing this Agreement.
- 10.5. *Not a Joint Venture.* Nothing in this Agreement shall be construed as creating or constituting the relationship of a partnership, joint venture, or other association of any kind or agent/principal relationship between the Parties hereto. No Party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another Party to this Agreement.
- 10.6. *Obligations of Joint Entities.* If Grantee is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Agreement, and for any default with respect to such activities and obligations.
- 10.7. *Assignment and Delegation.* This Agreement or the rights to any funds hereunder may not be assigned, transferred, or conveyed in whole or in part without the prior written consent of the other Party, except that the Office may assign, transfer, or convey this Agreement, in whole or in part, to any governmental entity that succeeds the Office's duties hereunder or otherwise assumes responsibility for the functions or duties currently assumed by the Office. For purposes of construing this clause, a transfer of a controlling interest in Grantee, a merger, sale or consolidation of Grantee, or a sale of substantially all of Grantee's assets shall be considered an assignment. Grantee agrees that it shall provide the Office with the earliest possible advance notice of any proposed sale or transfer or any controlling interest in or substantial assets of Grantee and of any proposed merger, sale, or consolidation of Grantee. Grantee agrees that it shall not use this Agreement, or any portion thereof, for collateral or to otherwise secure any financial obligation of Grantee or any affiliate thereof without the prior written consent of the Office. Grantee further agrees that it may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to Grantee under this Agreement.

- 10.8. *Use of Third Parties.* Subject to Applicable Law, Grantee may enter into contracts or subcontracts for the provision or delivery of services related to the Project(s). Any such contract or subcontract shall be in writing and shall in no way alter the terms and conditions of this Agreement. All contracts or subcontracts shall be subject to the terms and conditions of this Agreement. No contract, subcontract, or other delegation of work shall relieve or discharge Grantee from any obligation, provision, or liability under this Agreement. Grantee shall remain responsible for such performance and shall be fully responsible and liable for all acts or omissions of any Grantee Contractors or Grantee Personnel. Any action of a Grantee Contractor or Grantee Personnel, which, if done by Grantee, would constitute a breach of this Agreement, shall be deemed a breach by Grantee and have the same legal effect. The term “Grantee” as used in this Agreement shall, unless the context clearly requires to the contrary, be deemed to include Grantee Contractors and Grantee Personnel. Grantee shall be solely responsible and liable for any and all payments that may be due Grantee Contractors and Grantee Personnel pursuant to any contract or subcontract. Grantee shall indemnify and hold harmless the State, the Office, and any officers, directors, employees, officials, and agents of either of the foregoing from and against any and all claims, demands, liabilities, suits, actions, damages, losses, taxes, penalties, costs and expenses of every kind and nature whatsoever arising out of, resulting from, or in any way related to Grantee’s breach of any contract or subcontract into which it enters, including Grantee’s failure to pay any and all amounts due to any Grantee Contractor or Grantee Personnel. If Grantee fails, neglects, or refuses to pay promptly, as due, any claim for labor or services furnished to any Grantee Contractor or Grantee Personnel in connection with the Project(s), the Office may pay such claim and charge the amount of the payment against funds due or to become due Grantee under this Agreement. The payment of a claim in such manner shall not relieve Grantee or its surety from any obligation with respect to any unpaid claims. All contracts or subcontracts shall contain provisions which allow the Office or its designee to access books, documents, and records and for inspections of work of Grantee Contractors or Grantee Personnel, as required of Grantee herein.
- 10.9. *Procurement.* Grantee shall develop and adhere to procurement procedures that comply with all Applicable Laws. Grantee shall have and maintain written policies and adhere to procurement procedures that ensure fair, open, and objective competition and that comply with all Applicable Laws. Fair, open, and objective competition, free of fraud, favoritism, or abuse, or the appearance thereof, resulting from arms-length-transactions, is required unless specific advanced approval is obtained from the Office to use a noncompetitive approach in contracting for any good or service. All contracts for goods or services, or subcontracts entered into by Grantee in the performance of this Agreement, shall be the result of a competitive process and arm’s length transactions and shall not be the result of family, business, or other personal ties or interests that are or could be perceived to be a conflict of interest or the result thereof.
- 10.10. *Third-Party Beneficiaries.* Except as otherwise expressly stated herein, there are no third-party beneficiaries to this Agreement. This Agreement is intended only to benefit the Office, the State of Iowa, the Office’s respective successors and permitted assigns, the federal government, and Grantee.
- 10.11. *Time is of the Essence.* Time is of the essence with respect to Grantee’s performance of its obligations under this Agreement.
- 10.12. *Legally Available Funds.* All payments under this Agreement are subject to the Office’s receipt of sufficient funds. Any termination, reduction or delay of available funds to the Office may, at the Office’s sole discretion, result in the termination, reduction, or delay of the distribution of funds to Grantee under this Agreement.
- 10.13. *Cumulative Rights.* The various rights, powers, options, elections, and remedies of the Office and the State provided for in this Agreement shall be construed as cumulative and no one of them is exclusive of the others or exclusive of any rights, remedies or priorities available at law, in equity, or otherwise, and shall in no way affect or impair the right of the Office or the State of Iowa to pursue any other contractual, equitable, or legal remedy to which they may be entitled. The election by the Office or the State of Iowa of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 10.14. *Choice of Law, Forum, and Dispute Resolution.* This Agreement shall be governed in all respects by, and construed in accordance with, the laws of the State of Iowa, without giving effect to the choice of law principles thereof. Any and all litigation or actions commenced, including but not limited to any proceeding for judicial review commenced pursuant to Iowa Code ch. 17A, in connection with this Agreement, including after expiration or termination of this Agreement, shall be brought in Des Moines, Iowa, in Polk County District Court for the State of Iowa, if jurisdiction is proper. However, if jurisdiction is not proper in the Iowa District Court for Polk County, but is proper only in a United States District Court, the matter shall be commenced in the United States District Court for the Southern District of Iowa, Central Division. Grantee irrevocably: (i) consents and agrees that any legal or equitable action or proceeding arising under, in connection with, or arising out of this Agreement shall be brought and maintained exclusively in the aforesaid courts; (ii) submits to and accepts, with respect to any such action or proceeding, for it and in respect of its properties and assets regardless of the physical or legal situs thereof, generally and unconditionally, the jurisdiction of the aforesaid courts; and (iii) waives any objection to such jurisdiction based on forum non conveniens or otherwise. Grantee irrevocably consents to service of process by certified or registered mail addressed to Grantee’s agent identified in Section 10.15 (Notices). If for any reason Grantee’s agent is unable to act as such or the address of the agent changes, Grantee shall immediately appoint a new agent and provide the Office with written notice of the change in agent or address. Any change in the appointment of the agent or address will be

effective only upon actual receipt by the Office. Nothing in this provision will alter the right of the Office to serve process in any other manner permitted by law.

- 10.15. *Notices.* Notices under this Agreement shall be in writing and delivered to the representative of the Party to receive notice (identified below) at the address of the Party to receive notice as it appears below or as otherwise provided for by proper notice hereunder. The effective date for any notice under this Agreement shall be the date of delivery of such notice (not the date of mailing) which may be affected by certified U.S. Mail return receipt requested with postage prepaid thereon or by recognized overnight delivery service, such as Federal Express or UPS:

If to the State:

Attn: Business Services Division Administrator

Iowa Office of the Chief Information Officer

200 E Grand Ave.

Des Moines, IA 50309

If to Grantee:

- 10.16. *Integration.* This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and neither Party is relying on any representation that may have been made which is not included or incorporated into this Agreement. Grantee acknowledges that it has thoroughly read this Agreement and all related terms and conditions, including any attached or incorporated schedules, exhibits, and other like documents, and has had the opportunity to receive competent advice and counsel necessary for it to form a complete understanding of all rights and obligations herein and to accept the same freely and without coercion of any kind. Accordingly, this Agreement shall not be construed or interpreted against the Office or the State of Iowa on the basis of draftsmanship or preparation thereof.
- 10.17. *Amendments.* This Agreement may be amended, modified, or replaced from time to time by mutual consent of the Office and Grantee. Both Parties must execute all amendments to this Agreement in writing. Notwithstanding the foregoing, the Office may unilaterally modify the Agreement in order to accommodate any change in any Applicable Laws. A copy of such unilateral modification will be provided to Grantee as an amendment to this Agreement.
- 10.18. *Severability.* If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Agreement.
- 10.19. *Headings or Captions and Terms.* The section headings or captions used in this Agreement are for identification purposes only and do not limit or construe the contents of the sections. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular, references to the singular include the plural, and the word “or” has the inclusive meaning represented by the phrase “and/or.” The words “include” and “including” shall be deemed to be followed by the phrase(s) “without limitation” or “but not limited to.” The words “thereof,” “herein,” “hereunder,” and similar terms in this Agreement refer to this Agreement, including any attachments hereto or referenced or incorporated by reference herein, as a whole and not to any particular provision of this Agreement.
- 10.20. *Counterparts.* The parties agree that this Agreement has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.
- 10.21. *Attachments.*
- 10.21.1. *Generally.* The Parties agree that if an addendum, attachment, rider, schedule, appendix, or exhibit is attached hereto by the Parties, or referred to herein, then the same shall be deemed incorporated herein by reference as if fully set forth herein, and are made contractual obligations of Grantee, including specifically the following:
- 10.21.1.1. *Federal Funding – Required Provisions.* Grantee acknowledges that certain United States governmental entities have provided or will provide funding in connection with this Agreement and any related agreements. The Parties agree that all CARES Act Requirements and the terms and provisions set forth in Schedule A (Federal Funding – Required Provisions) (collectively “**Federal Requirements**”) are incorporated herein by this reference as if fully set forth in this Agreement. Grantee acknowledges and agrees that it will be subject to and bound by all Federal Requirements and shall require and cause any

Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions. Grantee will assist the Office and State of Iowa or any other applicable governmental entities of the State of Iowa in complying with any applicable Federal Requirements of or originating with, or responding to any requests from, any United States governmental entity, including those that have provided funding in connection with this Agreement or any related agreement.

- 10.21.1.2. **NOFA and Application.** The NOFA and Grantee's Application, including the Project Worksheet(s), Qualitative Attributes Form(s), and Budget Plan, together with any clarifications, attachments, appendices, or amendments to the NOFA and Application are incorporated into this Agreement by this reference as if fully set forth herein; provided, however, that none of Grantee's exceptions, objections, or proposed modifications respecting the NOFA or any terms associated therewith, including this Agreement (collectively "**Grantee Exceptions**"), shall be incorporated into this Agreement unless expressly set forth herein. The terms and conditions of the NOFA and any representations in Grantee's Application are made contractual obligations of Grantee, except that any Grantee Exceptions shall not be deemed to limit, modify or otherwise affect any of the contractual obligations of Grantee, the Office, or the State of Iowa hereunder, unless expressly stated herein. Terms offered or stated in Grantee's Application which exceed and which do not alter or modify the requirements or limitations of the NOFA, shall not be construed as creating an inconsistency or conflict with the NOFA or this document. Notwithstanding anything herein to the contrary, the Office shall have only those obligations that are expressly stated in this document; the NOFA and/or Application shall not create any express or implied obligations on or of the Office.
- 10.21.2. **Order of Priority.** Notwithstanding anything in this Agreement to the contrary, in the case of any conflict or inconsistency between the specific provisions of this document, Federal Requirements, the NOFA, or the Application, any conflict or inconsistency shall be resolved as follows: first, by giving preference to any and all Federal Requirements; second, by giving preference to the specific provisions of this document (this Agreement) and any schedules, exhibits or other attachments hereto; third, by giving preference to the specific provisions of the NOFA; and fourth, by giving preference to the specific provisions of the Application, including the Project Worksheet(s), Qualitative Attributes Form(s), and Budget Plan, but excluding any Grantee Exceptions that are not expressly made a part of this Agreement.
- 10.22. **Material Breaches.** References in this Agreement to specific material breaches of this Agreement shall not be construed as implying that other breaches of this Agreement are not material.
- 10.23. **Taxes.** Grantee shall be responsible for paying any taxes (including sales taxes, excise taxes, use taxes, income taxes or property taxes) incurred by Grantee in the performance of this Agreement.
- 10.24. **Certification Regarding Sales and Use Tax.** By executing this Agreement, Grantee certifies it is either (a) registered with the Iowa Office of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code ch. 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code §§ 423.1(47)-(48).
- 10.25. **Tobacco-Free Environment.** Grantee agrees that it will not allow smoking or tobacco use within any portion of any indoor facility it leases, rents, or owns, and over which it has the authority to establish policy. Grantee agrees that it shall comply with Iowa's Smokefree Air Act, contained at Iowa Code ch. 142D.
- 10.26. **Exclusivity.** This Agreement is not exclusive, and the Office or the State of Iowa may enter into other Agreements with third parties for the provision of similar services.
- 10.27. **Sovereign Immunity.** Notwithstanding anything in this Agreement to the contrary, neither the Office nor the State of Iowa waives any immunity defenses (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise) or any other defenses available to either by entering into this Agreement, and specifically retains and reserves all immunity defenses (including sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise) and all other defenses available to either under State and federal laws, rules, and regulations for any claim arising out of or related to this Agreement, whether in state or federal court or any other tribunal or forum.
- 10.28. **Attorney's Fees and Expenses.** In the event Grantee defaults on any of its obligations under this Agreement, Grantee shall pay to the Office all costs and expenses (including the reasonable value of time of the Attorney General's Office and the costs, expenses and attorney fees of other counsel retained by or on behalf of the State of Iowa) incurred by the Office or the State of Iowa in enforcing this Agreement or any of its rights and remedies with respect thereto.
- 10.29. **Conflicts of Interest.** Grantee represents, warrants, and covenants that no relationship exists or will exist during the term of the Agreement between Grantee, Grantee Contractors, or Grantee Personnel and the Office or the State of Iowa that is or may constitute a conflict of interest or the appearance of impropriety. To the extent applicable, the provisions of Iowa Code ch. 68B shall apply to this Agreement, and Grantee, Grantee Contractors, and Grantee Personnel shall not engage in any conduct or permit any third party from engaging in any conduct that would violate that chapter.

- 10.30. *Brokering Certification.* Grantee certifies that no person representing the Office, nor any external entity or person, has been employed or retained to solicit and secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingency.
- 10.31. *Report Misuses of Funds.* Grantee must promptly refer to the Office any credible evidence that a principal, employee, agent, contractor, subgrantee or subrecipient, subcontractor, or other person has either: (a) submitted a false claim for grant funds as that term is used under any false claims act or other similar law, whether state or federal; or (b) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving grant funds.
- 10.32. *Restrictions and certifications regarding non-disclosure agreements and related matters.* Grantee may not require any Grantee Contractor or Grantee Personnel to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to the Office or an investigative or law enforcement representative of a federal or state department or agency authorized to receive such information. Grantee represents that it neither requires nor has required internal confidentiality agreements or statements from Grantee Contractors or Grantee Personnel that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) such Grantee Contractors or Grantee Personnel from reporting waste, fraud, or abuse as described above.
- 10.33. *Certification Regarding Iowa Code Chapter 8F.* If Grantee is or becomes subject to Iowa Code § 8F during the entire term of this Agreement, including any extensions or renewals thereof, Grantee shall comply with the following:
- 10.33.1. Grantee shall certify that it has the information required by Iowa Code § 8F.3 available for inspection by the Agency and the Legislative Services Agency.
 - 10.33.2. Grantee will provide the information described in this section to the Office or the Legislative Services Agency upon request. Grantee shall not impose a charge for making information available for inspection or providing information to the Office or the Legislative Services Agency.
 - 10.33.3. Pursuant to Iowa Code § 8F.4, Grantee shall file an annual report with the Office and the Legislative Services Agency within ten (10) months following the end of Grantee's fiscal year (unless the exceptions provided in Iowa Code § 8F.4(1)(b) apply). The annual report shall contain:
 - 10.33.3.1. Financial information relative to the expenditure of state and federal moneys for the prior year pursuant to this Agreement. The financial information shall include but is not limited to budget and actual revenue and expenditure information for the year covered.
 - 10.33.3.2. Financial information relating to all service contracts with the Office during the preceding year, including the costs by category to provide the contracted services.
 - 10.33.3.3. Reportable conditions in internal control or material noncompliance with provisions of laws, rules, regulations, or contractual agreements included in external audit reports of Grantee covering the preceding year.
 - 10.33.3.4. Corrective action taken or planned by Grantee in response to reportable conditions in internal control or material noncompliance with laws, rules, regulations, or contractual agreements included in external audit reports covering the preceding year.
 - 10.33.3.5. Any changes in the information submitted in accordance with Iowa Code § 8F.
 - 10.33.3.6. A certification signed by an officer and director, two directors, or the sole proprietor of Grantee, whichever is applicable, stating the annual report is accurate and the recipient entity is in full compliance with all laws, rules, regulations, and contractual agreements applicable to the recipient entity and the requirements of Iowa Code § 8F.
 - 10.33.4. This Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications.
- 10.34. *Final Authority.* The Office shall have the final authority to interpret, construe, and apply the terms and conditions of this Agreement. Any decision of the Office related to the interpretation, construction, or application of any terms or conditions or resolution of any disputes under or related to this Agreement shall be final and binding on Grantee, subject to Iowa Admin. Code r. 129-22.6(5) and Iowa Code ch. 17A. Failure to pursue the administrative remedies available pursuant to Iowa Admin. Code r. 129-22.6(5) and thereafter Iowa Code ch. 17A shall render any order rendered by the Office pursuant to the processes set forth in that rule final and binding on the Parties, and shall be deemed a failure to exhaust administrative remedies. Outside of this process, Grantee waives any right, title, or interest it may have to bring a breach of contract claim or any other claim originating in district court or before any other tribunal, whether state or federal, in connection with or otherwise relating to this Agreement. In addition, Grantee waives any right or ability to claim that a final decision rendered pursuant to the above-described process is neither binding nor enforceable, and waives any right, claim, or ability to challenge the Office's authority to interpret, construe, or apply the terms and conditions set forth in this Agreement. This provision shall not be understood, interpreted, or construed as an admission or concession by the Office that it has not otherwise been fully vested with such authority.
- 10.35. *Authorization.* Grantee represents and warrants that it has the right, power, and authority to enter into and perform its obligations under this Agreement and that it has taken all requisite action (corporate, statutory, or otherwise) to

- approve execution, delivery, and performance of this Agreement, and this Agreement constitutes a legal, valid, and binding obligation of Grantee, enforceable in accordance with its terms.
- 10.36. *Force Majeure.* Neither Party shall be in default under this Agreement if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a “force majeure.” The term “force majeure” as used in this Agreement includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar catastrophic events or causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the Parties. “Force majeure” does not include: financial difficulties of Grantee or Grantee Contractors; claims or court orders that restrict Grantee’s or Grantee Contractor’s ability to perform or deliver the services contemplated by this Agreement; strikes; labor unrest; Covid-19, pandemics, epidemics or any other outbreak or event causing illness or disease or resulting in a state of emergency or disaster declared by either the State of Iowa or the United States of America; any impacts to any Grantee Contractor’s, Grantee Personnel, or Grantee’s supply chain caused in whole or in part by any pandemic, epidemic or outbreak, illness or disease. If delay results from a Grantee Contractor’s conduct, negligence or failure to perform, Grantee shall not be excused from compliance with the duties and obligations of Grantee hereunder unless the Grantee Contractor is prevented from timely performance by a “force majeure” as defined in this Agreement. If a “force majeure” delays or prevents Grantee’s performance, Grantee shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Office. The Party seeking to exercise this provision and not perform or delay performance pursuant to a “force majeure” shall immediately notify the other Party of the occurrence and reason for the delay. The Parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events.
- 10.37. *Contingent Awards.* If at the time an Award is made the Office’s determination of whether any geographic area forming the basis of a proposed Project(s), in whole or in part, or any Project(s) itself, in whole or in part, is eligible to receive funding under the Program is currently subject to challenge, or the Office’s administration of the Award process resulting in the Award forming the basis of this Agreement is subject to challenge, including any subsequent judicial review or appeal from any administrative challenge process, the Office may proceed to enter into this Agreement the Grantee. Notwithstanding the foregoing or anything in this Agreement to the contrary, the aspect(s) of the Office’s Award(s) that is subject to such challenge at the time of the execution of this Agreement shall be valid and enforceable only to the extent the Office’s original determination or Award, as applicable, is ultimately upheld at the end of the entire appeals and contested case process once final, including judicial review and any subsequent appeal therefrom. If a geographic area or a Project(s) itself is ultimately determined to not be eligible, in whole or in part, or a portion of an Award is later deemed invalid, in whole or in part: the Grantee shall not be entitled to any grant funds or reimbursement to the extent of any such noneligibility or invalidity; the Office may require the Grantee to amend the Agreement to reflect such result; and the Grantee will be required to reimburse the Office for any corresponding funds previously distributed by the Office.

IN WITNESS WHEREOF, consideration of the mutual covenants set forth above and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the Parties have caused their respective duly authorized representatives to execute this Agreement, which is effective as of the date of last signature, below (**“Effective Date”**).

STATE OF IOWA, acting by and through the Office
of the Chief Information Officer
(**“State of Iowa”** or **“State”**)

LTD Broadband LLC
(**“Grantee”**)

By: _____

By: _____

Name: _____

Name: Rebecca Shields

Title: _____

Title: _____

Date: _____

Date: 02/25/21

Overview and Scope

This Schedule A is part of and incorporated into the Grant Agreement No. [REDACTED], dated [REDACTED] (“**Agreement**”), for the deployment and delivery of Broadband Infrastructure Projects as part of the Empower Rural Iowa, Emergency Broadband Expansion Program. Because CARES Act Coronavirus Relief Funds are being used, the Office will be required to ensure compliance with applicable CARES Act Requirements. This Schedule A identifies CARES Act Requirements and other federally required terms and provisions, which “**Federal Requirements**” are incorporated into the Agreement by reference as if fully set forth therein and which Federal Requirements shall be considered contractual obligations of Grantee. Capitalized terms used but not defined herein are as defined in the Agreement.

1. **Overview.** Treasury Guidance originally issued on May 28, 2020, and, as of the date of the execution of the Agreement, updated most recently on September 2, 2020, provides an overview of the CARES Act Requirements, and related terms, conditions, and limitations, associated with CARES Act Coronavirus Relief Funds made available by and through this Emergency Program. The Treasury Guidance and a related Frequently Asked Question document clarifies and provides guidance as to the applicable C.F.R. provisions relating to internal controls, subrecipient monitoring and management, and audit requirements that apply to the Office and thereby sub awardees or contractors receiving such funds through this Emergency Program. These requirements are therefore considered legally binding and enforceable under the Program. The Office reserves the right to pursue any legal remedy at its disposal including, but not limited to, disallowance of costs, withholding of funds, or recoupment as may be necessary to ensure compliance with CARES Act Requirements.
2. **CARES Act Requirements.** As more fully defined in the NOFA, which definition is incorporated by references as if fully set forth herein, CARES Act Requirements are minimally understood to include laws, rules, regulations, procedures, guidance, reporting obligations, cost principles, audit requirements, procurement requirements and procedures, management standards, or requirements, or any interpretations thereof or guidance related to the foregoing, including but not limited to:
 - 2.1. Section 601(a) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”) as codified at 42 U.S.C. § 801.
 - 2.2. The Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments, including any updates or changes thereto (“**Treasury Guidance**”), which at the time of the publication of this NOFA was last updated on September 2, 2020 and was available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Guidance-for-State-Territorial-Local-and-Tribal-Governments.pdf>.
 - 2.3. The Coronavirus Relief Fund Frequently Asked Questions, including any updates or changes thereto (“**Treasury FAQ**”), which at the time of the publication of this NOFA was updated as of October 19, 2020, and was available at <https://home.treasury.gov/system/files/136/Coronavirus-Relief-Fund-Frequently-Asked-Questions.pdf>.
 - 2.4. Applicable provisions of Federal Uniform Guidance (2 C.F.R. Part 200), including but not limited to:
 - 2.4.1. 2 C.F.R. § 200.303 regarding internal controls;
 - 2.4.2. 2 C.F.R. §§ 200.330 through 200.332 regarding subrecipient monitoring and management; and
 - 2.4.3. Subpart F regarding audit requirements, including where applicable 2 C.F.R. § 200.501(a).
 - 2.5. Any other specific grant award requirements set forth in any grant agreement or other similar document between the State of Iowa and federal government governing the use of CARES Act Coronavirus Relief Funds or applicable to Projects receiving CARES Act Coronavirus Relief Funds.

CARES ACT Requirements are incorporated by reference as if fully set forth herein and are deemed to be contractual obligations of Grantee.
3. **Necessary and Allowable Expenditures.** Grantee represents and warrants that the funds from this grant shall only be used for expenses that:
 - 3.1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19). Necessary expenditures due to the public health emergency means expenditures must be used for actions taken to respond to the public health emergency;
 - 3.2. Were incurred after the period that begins on March 1, 2020. A cost is “incurred” when the Grantee has expended funds to cover the cost or incurred the loss of revenue during the period occurring after March 1, 2020; and
 - 3.3. Comply with or are expended in accordance with applicable provisions of 2 C.F.R. Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
 - 3.4. Have not otherwise been reimbursed from other sources.
4. **Internal Controls and Single Audit Act, SubPart F.** Funds in connection with the Agreement are considered to be federal financial assistance subject to the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332. To the extent required to comply with 2 C.F.R. 200, Subpart F – Audit Requirements, Grantee shall complete an audit at the end of the Grantee’s fiscal year ending after December 30, 2021, if required.
 - 4.1. CARES Act Coronavirus Relief Funds distributed hereunder count toward the \$750,000 or more threshold applicable to federal awards spent during the fiscal year, which triggers 2 C.F.R. part 200, subpart F audit requirements for nonprofits or governmental entities. Nonprofit and local government subrecipients that expend

\$750,000 or more in a year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of the OMNI Circular, OMB Uniform Guidance: Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200. A copy of the final audit report shall be submitted to the Office if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Office. The audit report, if required, shall include a schedule of the prior year's questioned costs (to the extent applicable), along with a response to the current status of the prior year's questioned costs. Copies of all management letters written as a result of the audit shall also be forwarded to the Office within one (1) month of the time of receipt by the Grantee accompanied by an action plan, if applicable, for each. Grantee shall provide the Office with a copy of any written audit findings or reports, whether in draft or final form, required to be submitted to the Office per the criteria above within two (2) Business Days following receipt by the Grantee. If an audit report is not required to be submitted per the criteria above, the subrecipient must provide written notification to the Office that the required audit was conducted in accordance with Government Auditing Standards and that neither the schedule of findings and questioned costs nor the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Office. See the OMNI Circular, Section 200.330, Subrecipient and Contractor Determinations for a discussion of subrecipient versus contractor (vendor) relationships.

- 4.2. These audit requirements do not generally apply to for-profit business; however, the Office remains responsible for ensuring compliance with the Agreement and CARES Act Requirements through the implementation of audit and monitoring controls pursuant to 2 C.F.R. 200.501(h). These requirements are addressed in the Project certification, monitoring, review, status, and recoupment provisions in Sections 3 (Project Completion), 4 (Payment Timing and Procedures), 10.1 (Monitoring, Review, and Status), and 10.2 (Records Retention and Access).

The requirements of this Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with this Agreement to agree to and be subject to and bound by such terms and provisions.

5. **Cost Principles.** To the extent applicable, in addition to any other terms, conditions, restrictions, or limitations applicable to Allowable Expenditures or reimbursable expenses or costs under the Agreement, the costs or expenses charged, paid, or reimbursed under the Agreement shall be determined as allowable under the cost principles detailed in 2 CFR 200 Subpart E – Cost Principles. To the extent that indirect costs qualify as Allowable Expenditures under the Agreement and Grantee does not have an indirect cost rate, the de minimis rate shall apply.
6. **Restriction on Leveraging Funding.** No portion of the funds received under the Agreement may be used for the purpose of obtaining additional federal funds under any other law of the United States, except if authorized under that law.
7. **Federal Award Management System.** Unique entity identifier and System for Award Management (SAM)—Required. Grantees must normally (i) Be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in its application; and (iii) continue to maintain an active SAM registration with current information at all times during which it has an active federal award or an application or plan under consideration by a federal awarding agency. This requirement has been relaxed by OMB for grants related to CARES Act Coronavirus Relief Funds so that Grantees must only submit proof of SAMs registration and the unique entity identifier prior to their first receipt of funds. Proof of SAM registration and corresponding account information must be provided by Grantee before any payments will be made under the Agreement.
8. **Recovery of Funds.** If a State or federal audit takes exception to the Project(s) provided under the Agreement for which federal funds have been paid or reimbursed, or if federal funds are deferred and/or disallowed as a result of any audits (or expended in violation of the laws applicable to the expenditure of such funds, including CARES Act Requirements), Grantee will be liable to the Office and the State or Iowa (or any other applicable governmental entity, including the United States Department of Treasury) for the full amount of any such payment, reimbursement, or any claim disallowed (or the amount of funds expended in violation of applicable laws or requirements) and for all related penalties incurred. If the Office or any federal governmental entity concludes that Grantee has been paid for any cost that is unallowable, unallocable, or unreasonable under the Agreement, Grantee will be liable to the Office and the State of Iowa (or any other applicable governmental entity, including the United States Department of Treasury) for such cost. Grantee shall pay to the Office or State of Iowa (or any other applicable governmental entity, including the United States Department of Treasury) all amounts for which the Grantee is liable under this section within ten (10) business days of receiving a written demand or written notice. The Office may withhold any payment under the Agreement if Grantee fails to timely make any payment required by this Section. The requirements of this Section shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in connection with the Agreement to agree to and be subject to and bound by such terms and provisions.
9. **Required Certifications.** Each of the following required certifications set forth below is a material representation of fact upon which reliance is placed by the Office prior to distributing federal funds. In addition to any criminal penalties authorized by Iowa Code § 720.2 that may result from any false statements of material fact made herein or any other remedies available at law, equity, or otherwise, a Grantee that is subsequently determined to have made a statement, representation, warranty, certification, or attestation herein that is later proven untrue in any material respect shall be obligated to repay the Office the entire amount of any grant funds previously distributed by the Office to Grantee under

the Agreement. By signing the Agreement, Grantee's authorized representative who must be expressly authorized to make the below certifications on behalf of Grantee, under penalty of perjury as authorized by Iowa Code § 622.1 and pursuant to the laws of the State of Iowa, certifies and attests to Grantee's compliance with the following. The following certifications shall apply to Grantee and Grantee Contractors. Grantee shall require and cause any Grantee Contractor or subgrantee or subrecipient used by Grantee in the performance of the Agreement to certify, agree to, and be subject to and bound by each of the following certifications. Grantee may be required to provide any information identified or required in connection with the below certifications as a precondition to receiving funds under the Agreement.

- 9.1. *Drug-Free Workplace.* This certification is required by the regulations implementing Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.). These regulations require certification by Grantees (and Grantee Contractors) that they will maintain a drug-free workplace. In accordance with these Applicable Laws, Grantee certifies that it does currently and will continue to provide a drug-free workplace, including by minimally:
 - 9.1.1. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - 9.1.2. Establishing an ongoing drug-free awareness program to inform employees about:
 - 9.1.2.1. The dangers of drug abuse in the workplace;
 - 9.1.2.2. Grantee's policy of maintaining a drug-free workplace;
 - 9.1.2.3. Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 9.1.2.4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - 9.1.3. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by Section 9.1.1.
 - 9.1.4. Notifying the employee in the statement required by Section 9.1.1, as a condition of their continued employment, that the employee will:
 - 9.1.4.1. Abide by the terms of the statement; and
 - 9.1.4.2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.
 - 9.1.5. Notifying the Office in writing, within ten (10) calendar days after receiving notice under Section 9.1.4.2 from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - 9.1.6. Taking one of the following actions, within thirty (30) calendar days of receiving notice under Section 9.1.5, with respect to any employee who is so convicted:
 - 9.1.6.1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 9.1.6.2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.
 - 9.1.7. Making a good faith effort to continue to maintain a drug-free workplace consistent with Sections 9.1.1 through 9.1.6 during the Term.
- 9.2. *Lobbying.* This certification is required by the provisions of Section 319 of Public Law 101-121, Government wide Guidance for New Restrictions on Lobbying, and 31 U.S.C. 1352. These regulations require certification by Grantees (and Grantee Contractors) that they have not engaged in prohibited lobbying activities and/or have filed any required disclosures in accordance with these Applicable Laws. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code; any person who fails to file the required certification may be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure. In accordance with these Applicable Laws, Grantee certifies the following:
 - 9.2.1. No federal funds have been paid or will be paid, by or on behalf of Grantee, to any person for influencing or attempting to influence an officer or employee of the Office, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, or the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - 9.2.2. If any funds other than federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of the Office, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract,

- grant, loan, or cooperative agreement, Grantee must complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 9.3. *Suspension and Debarment.* This certification is required by the provisions of Executive Orders 12549 and 12689 and 31 C.F.R. Part 19 regarding Debarment, Suspension, and Other Responsibility. A contract award must not be made to parties listed on the governmentwide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549, and the Office reserves the right to check for SAM Exclusions prior to executing any Grant Agreement or at any time thereafter. In accordance with these Applicable Laws, Grantee certifies and agrees to the following with respect to it and its principles, as applicable:
- 9.3.1. Neither Grantee nor any of its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this contract by any federal department or governmental entity of the State of Iowa. Grantee further agrees to comply with the regulations implementing executive order 12549 and 12689 regarding debarment and suspension at 31 C.F.R. Part 19.
- 9.3.2. Neither Grantee nor any of its principles have not within a three-year (3) period preceding this grant been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or a contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- 9.3.3. Neither Grantee nor any of its principles are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with the commission of any of the offenses enumerated in Section 9.3.2.
- 9.3.4. Neither Grantee nor any of its principles have within a three-year (3) period preceding this grant, had one or more public transactions (federal, state or local) terminated for cause or default.
- 9.3.5. Grantee shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, voluntarily excluded from participation in a covered transaction, or who otherwise meets any of the circumstances identified in Sections 9.3.1 through 9.3.4, above, unless authorized by the Office. Grantee may rely upon a certification of a Grantee Contractor or subrecipient in a lower tier covered transaction that it is not debarred, suspended, ineligible, or involuntarily excluded from the covered transaction, unless it knows that the certification is erroneous.
- 9.3.6. Where Grantee is unable to unqualifiedly certify the foregoing, Grantee may provide an explanation along with the Agreement. Grantee's inability to provide an unqualified certification will not necessarily result in Grantee's ability to receive awarded funds, unless Grantee's inability and corresponding explanation reveals that Grantee would not be a Responsible Grantee. However, failure of the Grantee to furnish a certification or an explanation will disqualify Grantee from receiving federal funds.
- 9.4. *Certification Regarding Environmental Tobacco Smoke.* This certification is required by Public Law 103-227, also known as the Pro-Children Act of 1994 ("**Pro-Children Act**"). The Pro-Children Act requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, daycare, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The Pro-Children Act also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The Pro-Children Act does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity. In accordance with these Applicable Laws, Grantee certifies and agrees to the following with respect to it and its principles, as applicable. Grantee certifies the following:
- 9.4.1. Grantee will comply with the requirements of the Pro-Children Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act.
- 9.5. *Assurance of Compliance Nondiscrimination in Federally-Assisted Programs.* This certification requires Grantee to comply with any applicable federal nondiscrimination requirements or laws providing for or requiring equal opportunity in employment. As required by these Applicable Laws, Grantee certifies the following:
- 9.5.1. Grantee will comply with any applicable federal nondiscrimination requirements, which may include the following: Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3789d); Victim of Crime Act (42 U.S.C. 10604(e)); Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. 5672(b)); Civil Rights Act of 1964 (42 U.S.C. 2000d); Rehabilitation Act of 1973 (29 U.S.C. 794);

- Americans with Disabilities Act of 1990 (42 U.S.C. 12131-34); Education Amendments of 1972 (20 U.S.C. 1681, 1683, 1685-86); Age Discrimination Act of 1975 (42 U.S.C. 6101-07); 28 C.F.R. pt. 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures); Ex. Order 13279 (equal protection of the laws for faith-based and community organizations); Violence Against Women Reauthorization Act of 2013; and 28 C.F.R. pt. 38 (U.S. Department of Justice Regulations – Equal Treatment for Faith-Based Organizations).
- 9.5.2. In accordance with these laws regulations issued pursuant thereto, Grantee agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity in which the Grantee receives federal assistance.
 - 9.5.3. Where a primary objective of the federal assistance is to provide employment or where the Grantee's employment practices affect the delivery of services in programs or activities resulting from federal assistance extended by the Office, the Grantee agrees not to discriminate on the ground of race, color, national origin, sex, age, or disability, in its employment practices. Such employment practices may include, but are not limited to, recruitment, advertising, hiring, layoff or termination, promotion, demotion, transfer, rates of pay, training and participation in upward mobility programs; or other forms of compensation and use of facilities.
 - 9.5.4. In the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, Grantee will forward a copy of the finding to the Office.
 - 9.5.5. Grantee will provide an Equal Employment Opportunity Plan (EEOP) to the applicable federal governmental entity if requested or required to submit one. Otherwise, Grantee will provide a certification to the Office that it has a current EEOP on file, if required to maintain one.
 - 9.5.6. Grantee shall not retaliate against individuals for taking action or participating in action to secure rights protected by these laws.
 - 9.5.7. This certification obligates Grantee for the period during which federal assistance is extended. In the case of any transfer of such service, financial aid, equipment, property, or structure, this assurance obligates the transferee for the period during which federal assistance is extended. If any personal property is so provided, this assurance obligates the Grantee for the period during which it retains ownership or possession of the property.
 - 9.5.8. The Grantee agrees to submit requested data to the Office, the U.S. Department of Treasury, or OMB regarding programs and activities developed by the Grantee from the use of federal funds extended by the Office upon request. Facilities of the Grantee (including the physical plants, buildings, or other structures) and all records, books, accounts, and other sources of information pertinent to the Grantee's compliance with all applicable civil rights laws shall be made available for inspection during normal business hours on request of an officer or employee of the Office, the U.S. Department of Treasury, or OMB authorized to make such inspections.
 - 9.6. *Americans with Disabilities Act.* Grantee certifies that it shall comply with Subtitle A, title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12134, and Department of Justice implementing regulation, 28 CFR Part 35.
 - 9.7. *Equal Treatment for Faith-Based Organizations.* Grantee shall comply with any applicable requirements of 28 C.F.R. Part 38, governing "Equal Treatment for Faith-Based Organizations." The Equal Treatment Regulation provides in part that grant awards may not be used to fund any inherently religious activities, such as worship, religious instruction, or proselytization. Grant recipients, including contractors may still engage in inherently religious activities, but such activities must be separate in time or place from the grant funded program, and participation in such activities by individuals receiving services from the Grantee or a subgrantee must be voluntary. The Equal Treatment Regulation also makes clear that organizations participating in programs funded through grant funding are not permitted to discriminate in the provision of services on the basis of a beneficiary's religion. Notwithstanding the foregoing, faith-based organizations may, in some circumstances, consider religion as a basis for employment. See http://www.ojp.gov/about/ocr/equal_fbo.htm.
 - 9.8. *Immigration and Naturalization Service.* Grantee certifies that it keeps on file, as appropriate, Immigration and Naturalization Service Employment Eligibility Verification Form (I-9) forms for applicable Grantee Personnel. This form is to be used by recipients of federal funds to verify that persons are eligible to work in the United States.
 - 9.9. *Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).* Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). To the extent applicable, Grantee must compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in

- surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- 9.10. *Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.* Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Grantee agrees to comply with these Applicable Laws, violations of which must be reported to the Office and federal awarding agency and the regional office of the Environmental Protection Agency (EPA).
- 9.11. *Federal Funding Accountability and Transparency Compliance.* This certification is required by the Federal Funding Accountability and Transparency Act (“FFATA”). FFATA requires recipients of individual federal grants equal to or greater than \$25,000 and awarded on or after October 1, 2010, to report on data related to executive compensation and associated first-tier sub-grants of \$25,000 or more.
- 9.11.1. In accordance with 2 CFR Part 170 (Reporting Subaward and Executive Compensation Information), the Office must report the following information for any grant award subject to the FFATA reporting requirements:
- 9.11.1.1. Name of entity;
 - 9.11.1.2. Amount of award;
 - 9.11.1.3. Funding agency;
 - 9.11.1.4. NAICS code for contracts / CFDA program number for grants;
 - 9.11.1.5. Program source;
 - 9.11.1.6. Award title descriptive of the purpose of the funding action;
 - 9.11.1.7. Location of the entity;
 - 9.11.1.8. Principle place of performance;
 - 9.11.1.9. Unique identifier of the entity (DUNS #);
 - 9.11.1.10. Total compensation and names of the top five executives if:
 - 9.11.1.10.1. More than 80% of annual gross revenues are from the federal government, and those revenues are greater than \$25 million annually; and
 - 9.11.1.10.2. Compensation information is not already available through reporting to the SEC.
- 9.11.2. Grantees must submit FFATA required data by the end of the month, plus 30 days, in which the award or any subsequent award amendment is made.
- 9.11.3. Grantee certifies the following:
- 9.11.3.1. Grantee agrees to comply with the provisions of FFATA;
 - 9.11.3.2. Grantee agrees to provide needed information as outlined above to the Office within the timelines identified above, or upon request by the Office, as is necessary to facilitate the Office’s compliance with FFATA.