

RUS Project Designation:

[RUS DESIGNATION]

BROADBAND INITIATIVES PROGRAM

GRANT AND SECURITY AGREEMENT

dated as of [date]

between

[GRANTEE'S NAME]

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

BROADBAND INITIATIVES PROGRAM GRANT AND SECURITY AGREEMENT

THIS GRANT AND SECURITY AGREEMENT (this “Agreement,”) dated as of [date] is between [GRANTEE’S NAME] (“Grantee,”) a [corporation or limited liability company] existing under the laws of [STATE], and the UNITED STATES OF AMERICA, acting through the Administrator of the Rural Utilities Service (“RUS.”)

The Grantee has applied for financial assistance (“Application”) from RUS under the Broadband Initiatives Program (“BIP”) to finance the construction of a broadband infrastructure project to serve areas described in the project submitted with the Application (the project and any approved revisions thereto, hereinafter the “Project.”)

RUS is willing to extend financial assistance, in the form of a grant to the Grantee, pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) (the “Recovery Act”), the Notice of Funds Availability published at 74 Fed. Reg. 33104 and Title VI of the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), and all applicable federal regulations, on the terms and conditions stated herein;

The Grantee is willing to secure the grant and its other obligations to RUS on the terms stated herein; and

THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties agree and bind themselves as follows:

ARTICLE I - DEFINITIONS

The terms defined herein include both the plural and the singular. Unless otherwise specifically provided, all accounting terms not otherwise defined herein shall have the meanings assigned to them, and all determinations and computations herein provided for shall be made in accordance with Accounting Requirements.

“Accounting Requirements” shall mean compliance with U.S. Generally Accepted Accounting Principles (GAAP) acceptable to RUS as well as compliance with the requirements of the following applicable regulations: 7 C.F.R. 3015 (and, by adoption, 48 C.F.R. 31.2 of the Federal Acquisition Regulations), 3016, or 3019, or the system of accounting prescribed by RUS Bulletin 1770B-1.

“Advance” or “Advances” shall mean the disbursement of Grant funds by RUS in accordance with this Agreement.

“Affiliate” or “Affiliated Company” of any specified person or entity means any other person or entity directly or indirectly controlling of, controlled by, under direct or indirect common control with, or related to, such specified person or entity, or which exists for the sole purpose of providing any service to one company or exclusively to companies which otherwise meet the definition of affiliate. This definition includes Variable Interest Entities as described in Financial Accounting Standards Board Interpretation (FIN) No. 46(R), *Consolidation of Variable Interest Entities*. For the purpose of this definition, “control” means the possession directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement with, one or more other companies, and whether such power is established through a majority or minority ownership voting of securities, common directors, officers, or stockholders, voting trust, holding trusts (other than money exchanged) for property or services.

“Application” shall have the meaning as defined in the second paragraph hereof.

“BIP” shall mean the Broadband Initiatives Program, administered by RUS, and created pursuant to the Recovery Act.

“BIP Contracting, Work Order and Advance Procedures Guide” shall mean the procedures for construction and Advances, attached hereto as Attachment 1.

“Business Day” shall mean any day that RUS and the Department of Treasury are both open for business.

“Collateral” shall mean any and all property financed with the Grant, and pledged as security for the Grant, including, without limitation, the property described in Article IX and on Schedule 2.

“Composite Economic Life” means the weighted (by dollar amount of each class of facility in the Grant) average economic life of all classes of facilities in the Grant, as determined by RUS.

“Current Ratio” shall mean the current assets divided by the current liabilities.

“Distribution” shall have the meaning as defined in Section 7.7

“Eligible Purposes” shall mean purposes and expenses which are eligible for funding under this Agreement, as enumerated in the NOFA.

“Event of Default” shall have the meaning as defined in Article VIII.

“Expiration Date” shall have the meaning as defined in Paragraph (b) of Section 3.1.

“Form 481” shall have the meaning as defined in Section 4.3(d).

“GAAP” shall mean generally accepted accounting principles in the United States.

“Grant” shall mean the grant described in Article III.

“Grant Documents” shall mean, collectively, this Agreement and Security Documents.

“Grantee” shall mean the Grant recipient named in the first paragraph hereof.

“Laws” shall have the meaning as defined in paragraph (e) of Article II.

“Material Adverse Effect” shall mean a material adverse effect on, or change in, the condition, financial or otherwise, operations, properties, business or prospects of the Grantee or on the ability of the Grantee to perform its obligations under the Grant Documents as determined by RUS.

“Net Income” or “Net Margins” shall mean the amount equal to the income that an entity has after subtracting costs and expenses from the total revenue. Costs and expenses include but are not limited to all operations and maintenance expenses, corporate operations, taxes, interest, dividends, depreciation, and gains and losses on the disposition of property.

“Net Worth (equity)” shall mean total assets less total liabilities of the entity. Net worth includes the recorded value of capital stock, additional paid-in capital, treasury stock, retained earnings and other comprehensive income.

“NOFA” shall mean the Notice of Funds Availability, published in the Federal Register at 74 Fed. Reg. 33104 on July 9, 2009.

“Permitted Encumbrances” shall mean:

- (1) liens for taxes, assessments and other governmental charges which are not delinquent;
- (2) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (3) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business and which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (4) liens in respect of judgments or awards with respect to which the Grantee shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Grantee shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Grantee shall have set aside on its books adequate reserves with respect thereto;
- (5) liens or privileges of any employees of the Grantee for salary or wages earned but not yet payable;
- (6) any obligations or duties, affecting the property of the Grantee, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;
- (7) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Grantee upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Grantee; PROVIDED, HOWEVER, that nothing in this clause 7 is intended to waive any claim or rights that RUS may otherwise have under Federal laws; and
- (8) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Grantee to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 8 is intended to waive any claim or rights that RUS may otherwise have under Federal laws.

“Pledged Deposit Account” shall have the meaning as defined in Section 5.4.

“Project” shall have the meaning as defined in Paragraph (a) of Section 3.4.

“Project Completion” shall mean that all funds budgeted for the Project, including all Grant funds, have been properly expended by the Grantee, as verified by RUS.

“RE Act” shall mean the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*)

“Security Documents” shall mean, collectively, any security agreement, financing statement, deposit account control agreement or other document providing collateral for the Grant and other obligations hereunder.

“Service Rates” shall mean the rates charged for data, video, voice or any other service proposed in the RUS approved Application.

“Subsidiaries” shall mean the subsidiaries listed in Schedule 1.

“Substantially Complete” shall mean that the Grantee has properly expended 67% of the Grant funds, as verified by RUS.

“System Design” shall mean the system as described in the RUS approved Application.

“Timeline” shall mean the detailed schedule describing the Project build out, submitted with the RUS approved Application, as may be amended from time to time with prior written RUS consent.

“Total Assets” shall mean all the property owned by the entity. Total assets include current and noncurrent assets such as cash, receivables, material and supplies, prepayments, deferred charges, and investments; fixed assets (plant) such as buildings and equipment, both in service and under construction; as well as capital leases and intangibles.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

Recognizing that RUS is relying hereon, the Grantee represents and warrants, as of the date of this Agreement, as follows:

- (a) *Organization; Power, Etc* The Grantee: (i) is the type of organization specified in the first paragraph hereof, duly organized, validly existing, and in good standing under the laws of the State identified in the first paragraph hereof; (ii) is duly qualified to do business and is in good standing in each jurisdiction in which the transaction of its business make such qualification necessary; (iii) has legal power to own and operate its assets and to carry on its business and to enter into and perform its obligations under the Grant Documents; (iv) has duly and lawfully obtained and maintained all material licenses, certificates, permits, authorizations and approvals necessary to conduct its business or required by applicable Laws; and (v) is eligible to obtain the financial assistance from RUS contemplated by this Agreement.
- (b) *Authority.* The execution, delivery and performance by the Grantee of this Agreement and the other Grant Documents and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actions and do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Grantee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Grantee is a party or by which it may be bound. The Grantee has not received any notice from any other party to any of the foregoing that a default has occurred or that any event or condition exists that with the giving of notice or lapse of time or both would constitute such a default.
- (c) *Consents.* No consent, approval, authorization, order, filing, qualification, license, or permit of any governmental authority is necessary in connection with the execution, delivery, performance or enforcement of the Grant Documents, except such as have been obtained and are in full force and effect.
- (d) *Binding Agreement.* Each of the Grant Documents is, or when executed and delivered will be, the legal, valid, and binding obligation of the Grantee, enforceable in accordance with its terms, subject only to limitations on enforceability imposed in equity or by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally.

- (e) *Compliance with Laws.* The Grantee is in compliance in all material respects with all federal, state and local laws, rules, regulations, ordinances, codes and orders (collectively, “Laws.”)
- (f) *Litigation.* There are no pending or threatened legal, arbitration or governmental actions or proceedings to which the Grantee is a party or to which any of its property is subject which, if adversely determined, could have a Material Adverse Effect.
- (g) *Information Submitted with Application.* All information, reports, and other documents and data submitted to RUS in connection with the Application were, at the time the same were furnished, complete, and correct in all material respects. Any financial statements or data submitted to RUS in connection with the Application present fairly, in all material respects, the financial position of the Grantee and the results of its operations in conformity with Accounting Requirements. Since the date thereof, there has been no material adverse change in the financial condition or operations of the Grantee.
- (h) *Principal Place of Business.* The principal place of business and chief executive office of the Grantee is at the address of the Grantee specified in Schedule 1 hereto.
- (i) *Organization Number.* The Grantee’s organization number is correctly identified in Schedule 1 hereto.
- (j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Grantee are disclosed on the attached Schedule 1.
- (k) *Defaults Under Other Agreements.* No default by the Grantee has occurred under any agreement or instrument to which the Grantee is a party or to which any of its property is subject that could have a Material Adverse Effect.

ARTICLE III – THE GRANT

Section 3.1 Grant Amounts and Expiration Date.

- (a) *Grant Amount.* RUS agrees to make and the Grantee agrees to accept, on the terms and conditions stated in this Agreement, a grant in the amount specified in Schedule 1 hereto (the “Grant”).
- (b) *Expiration Date.* The obligation of RUS to advance the Grant, or any portion thereof, shall expire on a date (“Expiration Date”) three (3) years from the date of this Agreement. No portion of the Grant will be advanced on or after the Expiration Date except in accordance with the following applicable regulations: 7 C.F.R. 3015, 3016 or 3019.

Section 3.2 Security Documents

The Grantee shall execute the Security Documents covering the Collateral, in form and substance satisfactory to RUS, and such other security instruments as requested by RUS.

Section 3.3 ACH Payments

The Grantee consents to the use of the Automated Clearing House (ACH) Payment System and to the deposit of grant funds directly into the Pledged Deposit Account.

Section 3.4 Project

- (a) *Grant Purpose.* The Grant has been made solely to finance the broadband infrastructure project specifically described in the RUS approved Application (“Project.”)
- (b) *Changes to Project.* The Grantee shall obtain the prior written approval of RUS for any material change to the system design, construction, Timeline, delivery of services, and/or objective(s) of the Project.

ARTICLE IV – CONDITIONS OF FINANCIAL ASSISTANCE

Section 4.1 Conditions Precedent to Closing

In connection with the execution and delivery of this Agreement, each of the following conditions shall be satisfied within (60) sixty days from the date hereof (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Legal Matters.* All legal matters incident to the consummation of the transactions hereby contemplated shall be satisfactory to counsel for RUS;
- (b) *Grant Documents.* RUS shall receive duly executed originals of the Grant Documents;
- (c) *Filed and Recorded Security Documents.* RUS shall have received executed, filed and indexed financing statements covering the Collateral;
- (d) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Grantees, RUS shall have received certified copies of the Grantee’s most recent articles of incorporation or charter and bylaws. With respect to limited liability companies or similar organizations, RUS shall have received certified copies of the Grantee’s most recent organization documents containing provisions reflecting the obligations of the Grantee in paragraphs (c) and (d) of Section 7.3;
- (e) *Authorizations.* RUS shall have received satisfactory evidence that all Grant Documents and proceedings of the Grantee necessary for duly authorizing the execution, delivery and performance of the Grant Documents have been obtained and are in full force and effect;
- (f) *Approvals.* RUS shall have received satisfactory evidence that the Grantee has duly registered when and where required by law with all state, Federal and other public authorities and regulatory bodies and obtained all authorizations, certificates, and approvals necessary for, or required as a condition of, the validity and enforceability of each of the Grant Documents;
- (g) *Title Evidence.* RUS shall have received satisfactory evidence that the Grantee has good and marketable title to its property, including the Project, and holds such franchises, permits, leases, easements, rights, privileges, licenses, or right-of-way instruments, reasonably adequate in form and substance, as may be required by law for the continued maintenance and operation of the existing facilities and Project;
- (h) *Management, Service, and Operating Agreements.* Except as otherwise provided in Sections 4.2 and/or 4.3 herein, RUS shall have received all management, service, and operating agreements, in form and substance acceptable to RUS, which shall be in

accordance with fees or rates presented in the *pro forma* financial statements submitted to RUS in the RUS approved Application;

- (i) *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Grantee (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Grantee operates; and
- (j) *Additional Conditions.* The Grantee has met all additional conditions specified in Schedule 1 hereto.

Section 4.2 General Conditions Precedent to RUS' Obligations to Release Funds for Advance

The obligations of RUS hereunder are subject to the satisfaction of each of the following conditions precedent (all documents, certificates and other evidence of such conditions are to be satisfactory to RUS in its discretion):

- (a) *Service Rate Evidence.* RUS shall have received satisfactory evidence that the Grantee has duly adopted Service Rates for all proposed services which are designed with a view to (i) paying and discharging all taxes, maintenance expenses, and operating expenses of the Grantee, and (ii) providing and maintaining reasonable working capital of the Grantee;
- (b) *Fidelity Bond or Theft Insurance Coverage.* RUS has received copies of the fidelity bond or theft insurance policy from the Grantee, identifying RUS as a loss payee, from a surety doing business with the United States listed in 31 C.F.R. Part 223, in the amount specified in Schedule 1, covering all officers, employees, or agents of the Grantee authorized to receive, disburse, or receive and disburse the Grant;
- (c) *Certificate of Authority.* RUS has received from the Grantee a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Grantee as the person or persons authorized to execute and submit, on behalf of the Grantee, RUS Form 481, "Financial Requirement Statement."
- (d) *Deposited Funds.* RUS has received from the Grantee evidence, satisfactory to RUS, verifying that the Grantee has maintained on deposit in an account, funds sufficient to complete the Project as specified on Schedule 1.
- (e) *Additional Conditions.* The Grantee has met all additional conditions specified in Schedule 1 hereto.

Section 4.3 Conditions to Individual Advances

The obligations of RUS to approve any Advance are subject to the satisfaction of each of the following conditions precedent on or before the date of such Advance (all documents, certificates and other evidence of such conditions precedent are to be satisfactory to RUS in its discretion):

- (a) *Continuing Representations and Warranties.* That the representations and warranties of the Grantee contained in this Agreement be true and correct on and as of the date of such Advance as though made on and as of such date;
- (b) *Material Adverse Effect.* That no event has occurred which has had or could have a Material Adverse Effect;
- (c) *Event of Default.* That no Event of Default and no event which with the passage of time or giving of notice, or both, would constitute an Event of Default shall have

occurred and be continuing, or shall have occurred after giving effect to any Advances on the books of the Grantee;

- (d) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter "Form 481,") bearing the original signature of the officer, employee, or agent of the Grantee authorized to receive, disburse, or receive and disburse the Grant, with supporting documentation from the Grantee in accordance with the BIP Contracting, Work Order and Advance Procedures Guide. Advances shall be limited to the minimum amounts required for the Grantee's immediate disbursement needs and shall be requested by the Grantee only for actual immediate cash requirements of the Grantee. Such grant advances shall be provided on a reimbursement basis, or based on unpaid third party invoices for Eligible Purposes, or contracts approved by RUS, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide.
- (e) *Flood Insurance.* That for any Advance used in whole or in part to finance the construction or acquisition of any building in any area identified by the Secretary of Housing and Urban Development pursuant to the Flood Disaster Protection Act of 1973 (the "Flood Insurance Act") or any rules, regulations or orders issued to implement the Flood Insurance Act as any area having special flood hazards, or to finance any facilities or materials to be located in any such building, or in any building owned or occupied by the Grantee and located in such a flood hazard area, the Grantee shall have submitted evidence, in form and substance satisfactory to RUS or RUS has otherwise determined, that (i) the community in which such area is located is then participating in the national flood insurance program, as required by the Flood Insurance Act and any related regulations, and (ii) the Grantee has obtained flood insurance coverage with respect to such building and contents as may then be required pursuant to the Flood Insurance Act and any related regulations.;
- (f) *Current Financial Information.* That RUS has received from the Grantee its current, updated balance sheets, income statements and statements of cash flow;
- (g) *Compliance with Timeline.* That RUS has received from the Grantee evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Timeline;
- (h) *Compliance with Grant Documents.* That the Grantee is in material compliance with the Grant Documents;
- (i) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Grantee has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;
- (j) *Additional Documents.* That the Grantee agrees to provide RUS with such additional documents as RUS may request; and
- (k) *Additional Conditions.* That the Grantee has met all additional conditions specified in Schedule 1 hereto.

Section 4.4 First Advance to Pay Off Pre-Application Expenses and Interim Financing; Restrictions on Subsequent Advances

Funds to pay off certain pre-application expenses, as defined in the NOFA, and RUS-approved interim financing for Eligible Purposes incurred after submission of the Application to RUS, if any, will be included in the first Advance. Thereafter no further Advances will be made unless and until

the Grantee has furnished evidence, in form and content satisfactory to RUS, that such interim financing has been paid in full and any associated liens have been duly discharged of record.

ARTICLE V – AFFIRMATIVE COVENANTS

Section 5.1 Generally

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the affirmative covenants contained in this Article V.

Section 5.2 Use of Advances

The Grantee shall expend Grant funds only for allowable Grant costs in accordance with the RUS approved line item Project budget and Form(s) 481 approved by RUS prior to the advance of funds.

Section 5.3 Unused and Disallowed Advances

- (a) The Grantee shall return to RUS forthwith all or any advanced portion of the Grant not disbursed by the Grantee for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.
- (b) RUS has the right to conduct compliance reviews and audits of the Grantee to assure compliance with the Grant Documents and regulations. Upon a determination by RUS that the Grantee either did not expend Grant funds for allowable Grant costs in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds or that the Grantee cannot verify expenditures in accordance with this Agreement, RUS may disallow all or a part of the expenditures and disbursements of the Grant. RUS may require the Grantee to deposit any disallowed funds into the Pledged Deposit Account to be applied toward other approved Project purposes or to reimburse the Government. The Grantee shall address any disallowances, as directed by RUS. In the event RUS demands repayment, the disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Grantee a written demand for payment. Interest shall accrue at the then current United States Treasury rate as prescribed by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletin. Closeout of the Grant will not affect the right of RUS to disallow expenditures and recover, in full, any amount on the basis of a subsequent audit or other review or the Grantee's obligation to return any disallowed expenditures.

Section 5.4 Deposit of Advances into Pledged Deposit Account

- (a) The Grantee shall open and maintain a deposit account pledged to RUS ("Pledged Deposit Account,") in a bank or depository whose deposits are insured by the Federal Deposit Insurance Corporation or other federal agency acceptable to RUS and shall be identified by RUS' designation of the Grantee followed by the words "Pledged Deposit Account." The Grantee shall promptly deposit proceeds from all Advances, including previously advanced funds whose original expenditure has been disallowed by an RUS audit into the Pledged Deposit Account. Moneys in the Pledged Deposit Account shall be used solely for the purposes for which Advances were made, or for such other purposes as may be approved in writing by RUS. Deposits and disbursements from the Pledged Deposit Account shall be made and recorded in accordance with the BIP Contracting, Work Order and Advance Procedures Guide.

- (b) *First Lien on Pledged Deposit Account.* The Grantee shall perfect and maintain a first and prior lien in the Pledged Deposit Account (pursuant to a deposit account agreement or similar agreement or mechanism for perfecting as provided by applicable law) in a form acceptable to RUS.

Section 5.5 Additional Project Funding

The Grantee shall ensure that adequate funding is in place to complete the Project and will, after obtaining the prior written approval of RUS, obtain additional loans or funds or receive binding commitments for supplemental funding in an amount needed to ensure completion of the Project.

Section 5.6 Miscellaneous Notices

The Grantee shall furnish to RUS:

- (a) *Notice of Default.* Promptly after becoming aware thereof, notice of the occurrence of any default under the Grant Documents or the receipt of any notice given pursuant to the Grant Documents with respect to the occurrence of any event which with the giving of notice or the passage of time, or both, could become an Event of Default hereunder or under the other Grant Documents.
- (b) *Notice of Litigation.* Promptly after the commencement thereof, notice of the commencement of all actions, suits or proceedings before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality affecting the Grantee or any Affiliate which, if adversely determined, could have a Material Adverse Effect.
- (c) *Regulatory and Other Notices.* Promptly after receipt thereof, copies of any notices or other communications received from any governmental authority with respect to any matter or proceeding which could have a Material Adverse Effect.
- (d) *Material Adverse Effect.* Promptly after becoming aware thereof, notice of any matter which has resulted or may result in a Material Adverse Effect.
- (e) *Corporate Document Changes.* Thirty (30) days prior to their effectiveness, any amendments, supplements or modifications to the Grantee's Articles of Incorporation, Charter, Bylaws, Operating Agreement, Members Agreements or other Organizational Documents.
- (f) *Other Information.* Such other information regarding the condition, financial or otherwise, or operations of the Grantee as RUS may, from time to time, reasonably request.

Section 5.7 Obligations with Respect to the Construction, Operation and Maintenance of the Project

- (a) *Project Management and Operation.* The Grantee shall be responsible for management of the Project and will operate the Project in an efficient and economic manner as well as maintaining the Project in good repair.
- (b) *Construction in Accordance with System Design and Timeline.* The Grantee shall cause the Project to be constructed and/or built out, and completed in accordance with the system design submitted with the RUS approved Application, as such design may be amended with prior RUS consent, and the Timeline.
- (c) *General Insurance Requirements.* The Grantee shall take out and maintain insurance on the Project and any other property acquired with the Grant in accordance with 7

C.F.R. Section 1788 as well as maintaining the fidelity bond or theft insurance coverage required in Section 4.2(b) hereof.

- (d) *Contracting.* The Grantee may, in accordance with the BIP Contracting, Work Order and Advance Procedures Guide, contract for goods and services to be funded by the Grant, using RUS form contracts or private contracts; provided that private contracts must comply with equal employment opportunity and civil rights requirements, as well as the Davis Bacon Act.
- (e) *Commencement and Completion of Construction and/or Installation.*
 - (1) Grantees are required to commence construction and/or installation of the Project within 180 days from the date hereof; and
 - (2) The Project shall be Substantially Complete within two years of the date hereof, and Project Completion shall occur within three years of the date hereof.

Section 5.8 Service Obligation

The Grantee shall provide the broadband service described in the RUS approved Application commencing from the date the Project is Substantially Complete for at least as long as the Composite Economic Life of the facilities financed by the Grant as specified on Schedule 1.

Section 5.9 Preservation of Existence and Rights

The Grantee shall take or cause to be taken all such actions as from time to time may be necessary to preserve its existence and to preserve and renew all franchises, contracts, rights of way, easements, permits, and licenses now or hereafter to be granted or conferred upon it, with respect to the Project, the loss of which would have a Material Adverse Effect.

Section 5.10 Compliance with Laws

Grantees shall comply with all applicable federal and state laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e *et seq.*, 7 C.F.R. pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 C.F.R. pt. 15b); (iii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*; 45 CFR pt. 90); (iv) Executive Order 11375, amending Executive Order 11246, Relating to Equal Employment Opportunity (3 C.F.R. pt. 102). *See* 7 C.F.R. pts. 15 and 15b and 45 C.F.R.pt. 90, RUS Bulletin 1790-1 (“Nondiscrimination among Beneficiaries of RUS Programs”), and RUS Bulletin 20-15:320-15 (“Equal Employment Opportunity in Construction Financed with RUS Loans”). The RUS Bulletins are available at <http://www.broadbandusa.gov>; (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); (vi) The Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 C.F.R. subpart 101-19.6); (vii) The Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR1794; and (viii) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*), the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996), and the Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA).

Section 5.11 Equal Opportunity Requirements

- (a) *Equal Opportunity Provisions in Construction Contracts.* The Grantee shall incorporate or cause to be incorporated into any construction contract, as defined in Executive Order 11246 of September 24, 1965 and implementing regulations, which is paid for in whole or in part with funds obtained from RUS or borrowed on the

credit of the United States pursuant to a grant, contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such grant, contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 2 hereto, entitled Equal Opportunity Contract Provisions.

- (b) *Equal Opportunity Contract Provisions Also Bind the Grantee.* The Grantee further agrees that it shall be bound by such equal opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of government.
- (c) *Sanctions and Penalties.* The Grantee agrees that it shall cooperate actively with RUS and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations and relevant orders of the Secretary of Labor, that it shall furnish RUS and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it shall otherwise assist the administering agency in the discharge of RUS' primary responsibility for securing compliance. The Grantee further agrees that it shall refrain from entering into any contract or contract modification subject to Executive Order 11246 with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part II, Subpart D of Executive Order 11246 and shall carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by RUS or the Secretary of Labor pursuant to Part II, Subpart D of Executive Order 11246. In addition, the Grantee agrees that if it fails or refuses to comply with these undertakings RUS may cancel, terminate or suspend in whole or in part this Agreement, may refrain from extending any further assistance under any of its programs subject to Executive Order 11246 until satisfactory assurance of future compliance has been received from the Grantee, or may refer the case to the Department of Justice for appropriate legal proceedings.

Section 5.12 Purchases with Grant Funds Free of Encumbrances

Except as specifically authorized in writing in advance by RUS, all facilities, equipment, materials, supplies, replacements and all other items purchased with Grant funds shall be purchased outright, and not subject to any conditional sales agreement, chattel mortgage, bailment lease or other agreement reserving to the seller any right, title or lien.

Section 5.13 Grantee to Defend Title and Remove Liens

Except as to Permitted Encumbrances, the Grantee will, so long as this Agreement is in effect, maintain and preserve the lien of this Agreement superior to all other liens affecting the Collateral, and will forever warrant and defend the title to the Collateral against any and all claims and demands whatsoever. The Grantee shall make, execute, acknowledge, deliver, file and record all such financing statements, continuation statements, security agreements, or other instruments necessary to preserve the lien of this Agreement against the Collateral superior to all other liens. Except as to Permitted Encumbrances, the Grantee will promptly pay or discharge any and all obligations for or on account of which any such lien or charge might exist or could be created and any and all lawful taxes, rates, levies, assessments, liens, claims or other charges imposed upon or accruing upon any of the Collateral, as and when the same shall become due and payable; and whenever called upon so to do by RUS will furnish to RUS adequate proof of such payment or discharge; provided, however that this provision shall not be deemed to require the payment or discharge of any tax, rate, levy, assessment or other governmental charge while the Grantee is contesting the validity thereof by appropriate proceedings in good faith and so long as it shall have set aside on its books adequate reserves with respect thereto.

Section 5.14 Buy American - General Prohibition and Waiver

For Grantees that are States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof, pursuant to § 1605 of the Recovery Act, no Grant funds may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 C.F.R. § 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States. Notwithstanding, such Grantees have been granted a general waiver by the Secretary of Agriculture with respect to certain broadband equipment, as outlined in the Federal Register at 74 Fed. Reg. 31402 (July 1, 2009). All other waivers must be requested of RUS pursuant to 2 C.F.R. § 176.60

Section 5.15 Nondiscrimination and Interconnection Obligations

The Grantee agrees to (i) adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005); (ii) not favor any lawful Internet applications and content over others; (iii) display any network management policies in a prominent location on the service provider's webpage, provide notice to customers of changes to these policies, such policies include any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources, limit usage and manage illegal or harmful content; (iv) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.

- (a) Notwithstanding the above, the Grantee may not offer interconnection to anyone that will provide services that duplicate services provided by projects funded by outstanding telecommunications loans made under the RE Act. Furthermore, interconnection may not be used for an ineligible purpose under the Recovery Act.
- (b) These obligations are subject to the needs of law enforcement as well as reasonable network management. As such, the Grantee may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities.
- (c) In the event the Grantee contracts with another entity to operate the Project, the Grantee shall require such entity to comply with the terms of this Section, expressly including this Section in their contractual arrangement.
- (d) These obligations do not apply to the Grantee's existing network.

Section 5.16 Davis-Bacon Wage Requirements

The Grantee shall comply with The Davis-Bacon Act, and the guidance found at 29 C.F.R pts. 1, 3, and 5, such that any covered contract with a contractor or subcontractor in excess of \$2,000 for construction, alteration or repair (including painting and decorating) shall contain the contract clauses found in 29 C.F.R. 5.5(a), to ensure that all laborers and mechanics employed on the Project receive payment of not less than the prevailing wage.

Section 5.17 Current Ratio

The Grantee will maintain a Current Ratio of at least one (1) for the term of this Agreement.

Section 5.18 Additional Affirmative Covenants

The Grantee shall comply with the additional affirmative covenants set forth in Schedule 1 hereto.

ARTICLE VI – ACCOUNTING AND REPORTING

Section 6.1 Financial Records

- (a) The Grantee must establish an accounting system satisfactory to RUS in compliance with Accounting Requirements. Such a system of accounts must account for all funds advanced under this Agreement separately from all other funds for the Project, as required by the Recovery Act.
- (b) The Grantee shall maintain, at its premises, such books, documents, papers, or other records and supporting documents, including, but not limited to, invoices, receipts, payroll records, and bills of sale, adequate to identify the purposes for which, and the manner in which Grant funds and other funds were expended on the Project. The Grantee shall at all times keep, and safely preserve, proper books, records and accounts in which full and true entries shall be made of all dealings, business, and affairs of the Grantee and its Subsidiaries, in accordance with its system of accounts complying with paragraph (a) immediately above. The Grantee shall maintain copies of all documents submitted to RUS in connection with the Grant for the longer of either (i) the term of this Agreement or (ii) for three (3) years subsequent to close-out of the Grant.

Section 6.2 Rights of Inspection

The Grantee shall afford RUS, the Office of the Inspector General of USDA, and the Government Accountability Office, through their representatives, reasonable opportunity, at all times during business hours and upon prior notice, to have access to and right to inspect the Project, any other property encumbered by the Security Documents, and any and all books, records, accounts, including electronic books, records, accounts and electronic mail messages, regardless of the physical form or characteristics, invoices, contracts, leases, payroll records, canceled checks, statements, and other documents, and papers of every kind in any way pertaining to its property or business, including its Subsidiaries, if any, and to make copies or extracts therefrom.

Section 6.3 Annual Audit

Effective after an Advance has been made, one hundred twenty (120) days from the end of the Grantee's current fiscal year and, thereafter, one hundred twenty (120) days from the close of each subsequent fiscal year, the Grantee must submit annual audited financial statements along with a report on compliance and on internal control over financial reporting, and a management letter in accordance with the requirements of 7 C.F.R. 1773. The CPA conducting the annual audit must be approved by RUS as set forth in 7 C.F.R. § 1773.4. However, if the Grantee is a state, local government, or non-profit organization that expends \$500,000 or more of federal funds during its fiscal year, an audit must be performed in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, located at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Grantees are also responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

Section 6.4 BIP Reporting

- (a) *Quarterly Report.* No later than thirty (30) calendar days after the end of each calendar year quarter the Grantee must submit to RUS utilizing RUS's online Broadband Collection and Analysis System (BCAS), the following information:

balance sheets, income statements, statements of cash flow, summaries of its rate packages, the number of customers taking broadband service on a per community basis, the completion status of the build-out and whether the project is Substantially Complete. In addition the Grantee must provide RUS with such other reports concerning the financial condition or operation of the Grantee, including its Subsidiaries, as RUS may request.

- (b) *Annual Report.* For the lesser of five years or as long as the Grantee is required to provide service hereunder, on each January 31st, starting the first January 31st after Project Completion, the Grantee must submit the following information to RUS utilizing BCAS:
 - (i) Number of households and businesses subscribing to broadband service;
 - (ii) Number of households and businesses subscribing to broadband service that receive improved access; and
 - (iii) Number of educational, library, healthcare, and public safety providers receiving either new or improved access to broadband service.
- (c) *Annual Compliance Certificate.* Within forty-five (45) days after the close of each calendar year, or more often if requested in writing by RUS, the Grantee shall deliver to RUS a written statement signed by its general manager, managing member, or equivalent corporate official satisfactory to RUS, stating that, during such year the Grantee has fulfilled its obligations under the Grant Documents throughout such year in all material respects or, if there has been a material default in the fulfillment of such obligations, specifying each such default known to such official and the nature and status thereof.
- (d) *Close Out Report.* The Grantee shall deliver a close out report to RUS no later than ninety (90) days after the expiration or termination of the Grant, or the completion of the Project and expenditure of all Grant funds. The close out report shall address : (i) a comparison of actual accomplishments to the objectives set forth in the RUS approved Application; (ii) a description of problems, delays, or adverse conditions that occurred, or which affected the attainment of overall Project objectives, prevented the meeting of time schedules or objectives, or precluded the attainment of particular Project work elements during established time periods; and (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application.

Section 6.5 Recovery Act Reporting

No later than ten (10) calendar days after each calendar quarter in which the Grantee receives the assistance award funded in whole or part with grant funds, the Grantee shall submit through <http://www.federalreporting.gov> the information required by 2 C.F.R. 176. The final report should summarize the Grantee's quarterly filings and state whether the project's goals have been satisfied.

ARTICLE VII – NEGATIVE COVENANTS

Section 7.1 General

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Grantee shall duly observe each of the negative covenants set forth in this Article VII.

Section 7.2 Merger, Consolidation, Transfer of Property, or Change in Control

The Grantee, or any affiliate which exercises control over or manages the Grantee, shall not, without the prior written consent of RUS, take or suffer to be taken any steps to reorganize consolidate with or merge into any other corporation, or to sell, lease or transfer (or make any agreement therefor) all or any part of its property, including, without limitation, the Project, nor take or suffer to be taken any steps which would result in a change of control.

Section 7.3 Covenants for Limited Liability Companies and Similar Grantees

Grantees which are limited liability or similar organizations agree that:

- (a) The death, retirement, resignation, expulsion, termination, bankruptcy or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the Grantee to be dissolved or its affairs to be wound up;
- (b) Prior to the date on which this Agreement terminates, the Grantee shall not be dissolved or terminated;
- (c) The organizational documents of the Grantee shall contain provisions reflecting the obligations of the Grantee in paragraphs (a) and (b) immediately above and such provisions shall not be amended without the prior written consent of RUS;
- (d) No direct or indirect addition or issuance of any membership units (or any other ownership interest) in the Grantee may be made by the Grantee or its members without the prior written consent of RUS and no transfer, whether individually or in the aggregate, of any membership units (or any other ownership interest) in the Grantee which will result in the transfer of more than 49% of the equity interests (of whatever nature, including voting and non-voting) in the Grantee may be made by the Grantee or its members without the prior written consent of RUS.

Section 7.4 Negative Pledge

The Grantee shall not create, incur or suffer any lien, mortgage, pledge, assignment, or other encumbrance on, or security interest on the Collateral other than Permitted Encumbrances.

Section 7.5 Contracts

The Grantee shall not, without the prior written consent of RUS, enter into any contract or contracts for the operation, management, or maintenance of all or any part of the Grantee's system, including, without limitation, the Project and shall not enter into any contract for the use by others of all or any part of its system, including, without limitation, the Project.

Section 7.6 Salaries

Salaries, wages, and other compensation paid by the Grantee for services, and directors', members', managers' or trustees' fees shall be reasonable and in conformity with the usual practice of entities of the size and nature of the Grantee.

Section 7.7 Distributions or Withdrawals

- (a) The Grantee shall not, without the prior written approval of RUS, make any membership withdrawals, unit redemptions, or other types of profit allocations to its members, if it is a limited liability company, nor make any dividend, stock, capital,

capital credit or other distribution in the nature of an investment, guarantee, extension of credit, loan, or advance payment on obligations if it is a corporation or cooperative (all such distributions being hereinafter collectively called "Distributions"); provided, however, the Grantee may make a Distribution after 75% of the Grant funds have been expended as approved if after such Distribution, the Grantee's Net Worth is equal to a least twenty percent (20%) of its Total Assets and the amount of all such Distributions during the calendar year does not exceed twenty-five percent (25%) of the Grantee's Net Income or Net Margins for the prior calendar year.

- (b) The Grantee shall comply with the additional negative restrictions on Distributions and Withdrawals set forth in Schedule 1.

Section 7.8 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization

The Grantee shall not change its principal place of business, place of conducting business, or type of organization without the prior written consent of RUS.

Section 7.9 Changing Name or Place of Incorporation or Organization

The Grantee shall not change its legal name or place of incorporation or organization without giving RUS sixty (60) days prior written notice.

Section 7.10 Historic Preservation

The Grantee shall not, without the prior written consent of RUS, use any Advance to construct any facility which shall involve any district, site, building, structure or object which is included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior pursuant to the Historic Sites Act of 1935 and the National Historic Preservation Act of 1966.

Section 7.11 Affiliated Transactions

With regard to the Project, the Grantee shall not enter into any transaction, contract, or dealing with an Affiliate of the Grantee or with the Grantee's or Affiliate's directors, trustees, officers, managers, members (if the Grantee is a limited liability company), or other corporate officials, without the prior written consent of RUS. RUS' consent to advance Grant funds for affiliated transactions will be limited to an amount which is the lower of cost or market rate and which is subject to verification by RUS and its representatives having access to the books and records of the Affiliate.

Section 7.12 Environmental Reports

The Grantee shall not commence any construction activities, including the clearing of land, until RUS has reviewed and approved site-specific Environmental Reports.

Section 7.13 Restrictions on Transfers of Property

Except as provided in Section 7.14 below, and excluding any property which the Grantee must sell to customers in the ordinary course of business, the Grantee shall not sell, lease or transfer any Collateral for the term hereof, to any other person or entity (including any subsidiary or affiliate of the Grantee) without the prior written consent of the RUS.

Section 7.14 Disposal of Unnecessary, Obsolete, or Damaged Collateral

So long as the Grantee is not in default hereunder, the Grantee may, without obtaining the consent of RUS, sell or otherwise dispose of, free from the lien hereof, any of its property which is neither

necessary to, nor useful for, the operation of the Grantee's business, or which has become obsolete, worn out, damaged, or otherwise unsuitable for the purposes of the Grantee; provided, however, that the Grantee shall to the extent necessary: (1) replace the same with other property of the same kind and nature, or substitute thereof, which shall be subject to the lien hereof, free and clear of all prior liens, and apply the proceeds, if any, derived from the sale or disposition of such property, which are not needed for the replacement thereof, to Project costs; or (2) deposit all or such part of the proceeds derived from the sale or disposition of said property into the Pledged Deposit Account, and shall use the same only for such additions to, or improvements in, the Collateral, on such terms and conditions as RUS shall specify.

Section 7.15 Restrictions on Changes to Line Item Budget

The Grantee agrees that the budget for the Project is a line item budget and agrees not to make any revisions to the RUS approved line item Project budget, including, without limitation, the part of the budget for construction, without the prior written approval of RUS.

Section 7.16 Additional Negative Covenants

The Grantee shall comply with the additional negative covenants set forth in Schedule 1 hereto.

ARTICLE VIII – EVENTS OF DEFAULT, GRANT TERMINATION, GRANT SUSPENSION, AND OTHER REMEDIES

Section 8.1 Events of Default

The following shall be events of default (each an “Event of Default”) under this Agreement:

- (a) Any condition precedent to closing set forth in Section 4.1 is not satisfied within sixty (60) days from the date hereof;
- (b) The Grantee materially fails to comply with the terms and conditions of this Agreement, the NOFA, and/or any regulation and statute cited herein, including, without limitation, the following:
 - (i) Build out of the Project has not commenced within 180 days from the date hereof;
 - (ii) The Project build out fails to meet or exceed milestones established in the Timeline;
 - (iii) The Project is not Substantially Complete within two years from the date hereof;
 - (iv) The Grantee does not expend Grant funds on allowable Grant costs in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;
 - (v) The Grantee fails to keep adequate records, including the failure to document Grant fund expenditures for allowable costs as required herein;
 - (vi) The Grantee or its members fail to comply with Section 7.3 hereof;
 - (vii) The Grantee fails to comply with Section 5.8 hereof; or

- (viii) The Grantee fails to comply with the accounting and reporting requirements of Article VI.
- (c) Any representation or warranty made by the Grantee in the Application, Form(s) 481, this Agreement, and any certification, or other supporting documentation associated therewith, shall be incorrect in any material respect at the time made;
- (d) The Grantee shall forfeit or otherwise be deprived of its charter, articles of organization, franchises, permits, easements, consents, or licenses required to carry on any material portion of its business, or an event occurs which can reasonably be expected to result in its dissolution or termination;
- (e) A court having proper jurisdiction shall enter a decree or order for relief with respect to the Grantee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect; (i) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official or (ii) ordering the winding up or liquidation of its affairs; or the Grantee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or consent to the appointment or taking possession by a receiver, liquidator, assignee, or custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;
- (f) Upon the dissolution or liquidation of the Grantee, or upon the filing for dissolution or liquidation by the Grantee;
- (g) The failure of the Grantee to promptly forestall or remove any execution, garnishment or attachment of such consequence as shall impair its ability to continue its business or fulfill its obligations and such execution, garnishment or attachment shall not be vacated within thirty (30) days; and/or
- (h) A final judgment in an amount of ten thousand dollars (\$10,000) or more shall be entered against the Grantee and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days.

Section 8.2 Termination of the Grant

- (a) *Termination of the Grant by RUS.*
 - (i) RUS, in its sole discretion, may terminate the Grant, in whole or in part, upon the occurrence of an Event of Default.
 - (ii) RUS shall provide the Grantee with written notice of termination of the Grant as provided in Section 10.1 hereof, setting forth the reason(s) for termination. The termination of the Grant shall be effective as of the date of receipt of such notice of termination by the Grantee.
- (b) *Termination of Grant by the Grantee.* The Grantee may terminate the Grant by written notification to RUS, setting forth the reasons for such termination, the effective date, and, in the case of a partial termination, the portion of Grant funds to be terminated. In the case of a partial termination, if RUS determines that the remaining portion of the Grant will not accomplish the Eligible Purposes, then RUS may terminate the Grant in its entirety, and request reimbursement of all advanced Grant funds.

- (c) *Mutual Termination of the Grant by RUS and the Grantee.* RUS and the Grantee may mutually agree, in writing, to terminate the Grant upon certain conditions, specifying the effective date of the termination, and in the case of a partial termination of the Grant, any unadvanced portion of the Grant to be terminated and any advanced portion of the Grant to be returned to RUS.
- (d) *Effect of Termination of the Grant.* Upon termination of the Grant pursuant to this Section: (1) the Grantee shall not incur any new obligations after the effective date of the termination with respect to the Grant; (2) the Grantee shall cancel as many outstanding obligations as possible, and seek to mitigate the costs of any outstanding obligations; and (3) any unadvanced portion of the Grant not required for approved purposes shall not be available for advance by RUS and any advanced portion of the Grant not required by the Grantee for approved purposes shall be immediately returned to RUS.

Section 8.3 Suspension of Advances

- (a) *Basis for Suspension.* RUS may, in its absolute discretion, suspend making Advances hereunder, if RUS determines that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend the Grant in whole or in part upon the occurrence of an Event of Default.
- (b) *Suspension Procedure.* RUS shall issue to the Grantee a suspension notice stating the reasons for the suspension, any corrective action which the Grantee may be required to take, and the effective date of the suspension. The suspension shall remain in effect until RUS provides written notice to the Grantee that all corrective actions which RUS may have prescribed have been taken, or until RUS provides the Grantee with written notification of the termination of the suspension or written notification that the Grant is terminated.
- (c) *Effect of Suspension.* New obligations shall not be incurred by the Grantee during the suspension, following the date of notice of suspension, unless specifically authorized by RUS, in writing. RUS will allow necessary allowable costs which the Grantee could not reasonably avoid during the suspension, if the obligations were properly incurred prior to the date of the suspension and not in anticipation of the suspension or termination. During the suspension, appropriate adjustments shall be made to the Grant by RUS in order that credit not be given to the Grantee for disbursements made in payment of unauthorized obligations incurred by the Grantee during the suspension. RUS may also make adjustments by disallowing all or part of the costs of the Project that are not in compliance with this Agreement.

Section 8.4 Other Remedies

- (a) *Generally.* Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Grant Documents in the manner, upon the conditions, and with the effect provided in the Grant Documents, and may pursue such other remedies that are generally available at law or in equity including, but not limited to, a suit for specific performance, injunctive relief or damages and enforcement of its lien against the Collateral. Nothing herein shall limit the right of RUS to pursue all rights and remedies available following the occurrence of an Event of Default. Each right, power and remedy of RUS shall be cumulative and concurrent, and recourse to one or more rights or remedies shall not constitute a waiver of any other right, power or remedy.
- (b) *Actions Against Collateral.* Upon the termination of the Grant RUS shall have the right to enter and/or remain upon the premises of the Grantee without any obligation

to pay rent to the Grantee or others, or any other place or places where any of the Collateral is located and kept and: (i) remove the Collateral therefrom in order to maintain, collect, sell, and/or liquidate the Collateral or, (ii) use such premises, together with materials, supplies, books, and records of the Grantee, to maintain possession and/or the condition of the Collateral, and to prepare the Collateral for sale, liquidation, or collection. RUS may require the Grantee to assemble the Collateral and make it available to RUS at a place to be designated by RUS. RUS may sell or liquidate the Collateral and retain the net proceeds thereof or require the Grantee to sell or liquidate the Collateral in an arm's length transaction and to remit the net proceeds of such sale or liquidation to RUS.

ARTICLE IX - GRANT OF SECURITY INTEREST

To secure the performance of the Grantee's obligations hereunder, the Grantee hereby pledges, assigns, and transfers to RUS, and grants to RUS a continuing security interest in and to all facilities, equipment, materials, supplies, replacements, fixtures, and all other personal property acquired with Grant funds, whether now owned or hereafter acquired, including the proceeds thereof, and the property described in Schedule 2 hereto.

ARTICLE X - MISCELLANEOUS

Section 10.1 Notices

All notices, requests and other communications provided for herein including, without limitation, any modifications of, or waivers, requests or consents under, this Agreement shall be given or made in writing (including, without limitation, by telecopy) and delivered to the intended recipient at the "Address for Notices" specified below; or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as provided for herein. The Addresses for Notices of the respective parties are as follows:

RUS
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1510, Room No. 5135
Washington, D.C.20250-1510
Attention: Administrator
Fax: (202) 720-1725

Grantee
See Schedule 1

With a copy to:
Rural Utilities Service
United States Department of Agriculture
1400 Independence Avenue, S.W.
Stop 1599, Room No. 2868
Washington, D.C. 20250-1599
Attention: Kenneth Kuchno
Fax: (202) 690-4389

With a copy to:
See Schedule 1

Section 10.2 Right to File Financing Statements

RUS shall have the right to file such financing statements and continuation statements on its behalf, as secured party, and on behalf of the Grantee, as debtor, as RUS deems necessary to perfect a first

lien on the Collateral and to maintain and preserve such perfected first lien as long as the Grantee's obligations with respect to the Grant remain outstanding. The Grantee shall reimburse RUS for any expense incurred in the exercise of this right.

Section 10.3 Expenses

To the extent allowed by law, the Grantee shall pay all costs and expenses of RUS, including reasonable fees of counsel, incurred in connection with the enforcement of the Grant Documents or with the preparation for such enforcement if RUS has reasonable grounds to believe that such enforcement may be necessary.

Section 10.4 Filing Fees

To the extent permitted by law, the Grantee agrees to pay all expenses of RUS (including the fees and expenses of its counsel) in connection with the filing or recordation of all financing statements and instruments as may be required by RUS in connection with this Agreement, including, without limitation, all documentary stamps, recordation and transfer taxes and other costs and taxes incident to recordation of any document or instrument in connection herewith. Grantee agrees to save harmless and indemnify RUS from and against any liability resulting from the failure to pay any required documentary stamps, recordation and transfer taxes, recording costs, or any other expenses incurred by RUS in connection with this Agreement. The provisions of this section shall survive the execution and delivery of this Agreement.

Section 10.5 No Waiver

No failure on the part of RUS to exercise, and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise by RUS of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

Section 10.6 Governing Law

This Agreement shall be governed by and construed in accordance with applicable federal law and, in the absence of controlling federal law, by the laws of the State identified in the first paragraph herein, except those that would render such choice of law ineffective.

Section 10.7 Consent to Jurisdiction

The Grantee hereby irrevocably submits to the jurisdiction of the U.S. District Court for the District of Columbia and the US Court of Appeals for the Federal Circuit (both the "DC Federal Courts") for any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably agrees that all claims in respect of such action or proceeding shall be heard and determined in such federal courts. The Grantee irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Grantee's address set forth in Schedule 1. The Grantee hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Agreement brought in the DC Federal Courts and hereby further irrevocably waives and agrees not to plead or claim in such court that any such action or proceeding brought in any such court has been brought in a forum *non conveniens*. Nothing herein shall affect the right of the Government to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Grantee in its own jurisdiction.

Section 10.8 Waiver of Jury Trial

EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON

CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, SECURED PARTY, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 10.9 Rescission

The Grantee may elect to rescind the Grant, in which event RUS shall release the Grantee from its obligations hereunder, provided the Grantee complies with such terms and conditions as RUS may impose for such release.

Section 10.10 Successors and Assigns

- (a) This Agreement shall be binding upon and inure to the benefit of the Grantee and RUS and their respective successors and assigns, except that the Grantee may not assign or transfer its rights or obligations hereunder without the prior written consent of RUS.
- (b) Pursuant to federal claims collection laws, RUS' claims hereunder may be transferred to other agencies of the United States of America; in the event of such a transfer, all rights and remedies hereby granted or conferred on RUS shall pass to and inure to the benefit of any such successor agency.

Section 10.11 Complete Agreement; Waivers and Amendments

This Agreement and the other Grant Documents are intended by the parties to be a complete and final expression of their agreement. However, RUS reserves the right to waive its rights to compliance with any provision of this Agreement and the other Grant Documents. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Grantee herefrom or therefrom, shall be effective unless approved in writing by RUS and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 10.12 Headings

The headings and sub-headings contained in the titling of this Agreement are intended to be used for convenience only and do not constitute part of this Agreement.

Section 10.13 Severability

If any term, provision, condition, or any part thereof, of this Agreement or the Security Documents shall for any reason be found or held invalid or unenforceable by any governmental agency or court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of such term, provision, or condition nor any other term, provision, or condition, and this Agreement and the Security Documents shall survive and be construed as if such invalid or unenforceable term, provision or condition had not been contained therein.

Section 10.14 Schedules and Attachments

Each Schedule and Attachment attached hereto and referred to herein is each an integral part of this Agreement.

Section 10.15 Authority of Representatives of RUS

In the case of any consent, approval or waiver from RUS that is required under this Agreement or any other Grant Document, such consent, approval or waiver must be in writing and signed by an authorized RUS representative to be effective. As used in this section, “authorized RUS representative” means the Administrator of RUS, and also means a person to whom the Administrator has officially delegated specific or general authority to take the action in question.

Section 10.16 Right of Setoff

Upon the occurrence and during the continuance of any Event of Default, RUS is hereby authorized at any time and from time to time, without prior notice to the Grantee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Grantee or for the credit or account of the Grantee against any and all of the obligations of the Grantee now or hereafter existing hereunder. RUS agrees to notify the Grantee promptly after any such setoff or recoupment and the application thereof, provided that the failure to give such notice shall not affect the validity of such setoff, recoupment or application. The rights of RUS under this section are in addition to any other rights and remedies (including other rights of setoff or recoupment) which RUS may have. Grantee waives all rights of setoff, deduction, recoupment or counterclaim.

Section 10.17 Term

This Agreement shall remain in effect until the number of years specified in Schedule 1 hereof from the date the Project is Substantially Complete, unless one of the following three events has occurred:

- (a) The Grantee and RUS replace this Agreement with another written agreement;
- (b) All of the Grantee’s obligations under this Agreement have been discharged; or
- (c) This Agreement has been terminated pursuant to the provisions of Article VIII hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[GRANTEE'S NAME]

by _____
Name:
Title:

(Seal)

Attested to by: _____
Secretary

UNITED STATES OF AMERICA

by _____
[Position]
of the Rural Utilities Service

SCHEDULE 1

Article II Representations and Warranties

1. Paragraph (h) Grantee's principal place of business:
2. Paragraph (i) Grantee's Organization Number:
3. Paragraph (j) Grantee's Subsidiaries:
4. Paragraph (j) Grantee's Parent:

Article III The Grant

1. Section 3.1(a) Grant amount:

Article IV Conditions Precedent to Closing

1. The additional conditions referred to in Section 4.1(j) are as follows:
2. Conditions Precedent to Release of Funds
3. Section 4.2(b) amount of fidelity bond coverage:
4. Section 4.2(d) funds deposited for Project completion:
5. The additional conditions referred to in Section 4.2(e) are as follows:

Conditions Precedent to Individual Advances

6. Section 4.3(i) required permits, licenses, franchise, and other approvals:
7. The additional conditions to advance referred to in Section 4.3(k) are as follow:

Article V Affirmative Covenants

1. Section 5.8 Composite Economic Life of RUS Financed Facilities:
2. The additional affirmative covenants referred to in Section 5.18 are as follows:

Article VII Negative Covenants

1. The additional negative covenants referred to in Section 7.16 are as follows:

Article X Miscellaneous

1. Section 10.1 Grantee's address for purposes of notification:
2. Section 10.1 Address for Grantee's notification copy:
3. Section 10.17 The term of this Agreement is _____ years from the date the Project is Substantially Complete.

SCHEDULE 2

COLLATERAL

1. Collateral shall include the following:

All property, assets, rights, privileges, licenses and franchises of the Grantee of every kind and description, real, personal or mixed, tangible and intangible, acquired by the Grantee with grant funds, wherever located, including without limitation, after acquired property and all or part of the following:

I

All right, title, and interest of the Grantee in and to buildings, plants, works, improvements, structures, estates, grants, franchises, easements, rights, privileges and properties, whether real, personal, or mixed, tangible or intangible, of every kind or description, now or hereafter owned, leased, constructed, or acquired by the Grantee with grant funds, wherever located, and in and to all extensions, improvements, and additions thereto, including but not limited to all buildings, plants, works, structures, towers, antennas, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, lines, wires, cables, whether underground, overhead, or otherwise, exchanges, switches, including, without limitation, host and remote switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, pay stations, protectors, instruments, connections and appliances, office furniture, equipment, and any and all other property of every kind, nature, and description, used, useful, or acquired by the Grantee with grant funds;

II

All right, title, and interest of the Grantee in, to, and under all personal property and fixtures acquired with grant funds including without limitation all goods (such as inventory, equipment and any accessions thereto), software, and proceeds (as such terms are presently and hereafter defined in the UCC);

III

All right, title, and interest of the Grantee in, to, and under any and all books, records and correspondence relating to the Pledged Property, including, but not limited to, all records, ledgers, leases, computer and automatic machinery, software, programs, databases, disc or tape files, print-outs, batches, runs, and other electronically-prepared information indicating, summarizing, evidencing, or otherwise necessary or helpful in the collection or realization on the Collateral;

2. Additionally, property pledged as Collateral shall also include the following specifically described property, if any: [REDACTED]

ATTACHMENT 1

BIP CONTRACTING, WORK ORDER AND ADVANCE PROCEDURES GUIDE

ATTACHMENT 2

EQUAL OPPORTUNITY CONTRACT PROVISIONS

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment, or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- (b) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor shall send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or worker's representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous place available to employees and applicants for employment.
- (d) The contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulation, and orders.
- (f) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or part by the Government, and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with the procedure authorized in Executive Order 11246 of September 14, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor shall include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246, dated September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The contractor shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a

subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.