RUS Project Designation:

[RUS DESIGNATION]

ReCONNECT PROGRAM

LOAN AGREEMENT

dated as of [date]

between

[AWARDEE’S NAME]

and

THE UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF AGRICULTURE

RURAL UTILITIES SERVICE

**ReCONNECT PROGRAM**

**LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement"), dated as of [date] is between **[AWARDEE’S NAME] ("**Awardee"), a [legal entity type]existing under the laws of [STATE] and the **UNITED STATES OF AMERICA**, acting through the Administrator of the Rural Utilities Service ("RUS").

The Awardee has applied for financial assistance ("Application") from RUS to finance the construction of a broadband infrastructure project to serve rural areas where at least 90% of the households are without sufficient access to broadband.

RUS is willing to extend financial assistance, in the form of a loan to the Awardee, pursuant to the Consolidated Appropriations Act, 2018, Pub. L. 115-141, § 779 (the “FY2018 Appropriations”), the Infrastructure Investment and Jobs Act, Pub. L. 117-58 (the “IIJA”), the Notice of Funding Opportunity published at 89 Fed. Reg. 13035 (Feb. 21, 2024), 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 Awardee is willing to secure the loan and its other obligations to RUS on the terms stated herein.

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 herein or in the FOA, 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 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. 200 and the system of accounting prescribed by RUS Bulletin 1770B-1.

"Advance" or "Advances" shall mean the disbursement of Loan funds 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.

“Approved Project Service Area” shall mean all or a portion of the Proposed Funded Service Area, as such term is defined in the FOA and detailed in the map submitted to the Agency by the Awardee, that is approved by the Agency for funding.

"Award" shall mean the Loan described in Article III.

"Awardee" shall mean the Loan recipient named in the first paragraph hereof.

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

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

"Collateral" shall mean those assets identified in Schedule 1, which have been pledged to RUS.

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

“Current ratio” shall mean the current assets divided by the current liabilities, as set forth in Section 5.8 hereof.

“Debt Service Coverage Ratio (DSCR)” shall mean the ratio of the sum of the Awardee’s total net income or margins, depreciation and amortization expense, and interest expense, minus an allowance for funds used during construction, all divided by the sum of interest on funded debt, other interest and principal payment on debt and capital leases, as set forth in Section 5.8 hereof.

"Distribution" shall have the meaning as defined in Section 7.9.

"Eligible Purposes" shall mean purposes and expenses which are specified in the FOA as being eligible award costs for funding.

"Event of Default" shall havethe meaning as defined in Article IX.

"Expiration Date" shall have the meaning as defined in Section 3.1(d).

“FOA” shall mean the Notice of Funding Opportunity, published in the Federal Register at 89 Fed. Reg. 13035 (Feb. 21, 2024).

“Financial Requirements Commencement Date" shall have the meaning as defined in Section 5.7.

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

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

"Interest Expense" shall mean the accrual of interest on all classes of indebtedness, including capital leases and securities issued by the Awardee and shall also include the amortization of debt issuance expenses, premiums, and discounts.

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

"Loan" shall mean the loan describedin Section 3.1.

"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 Awardee or on the ability of the Awardee to perform its obligations under the Loan Agreement as determined by RUS.

"Net Income" or "Net Margins" shall mean the amount equal to the income that the Awardee 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.

"Network Design" shall mean the network as described in the RUS approved Application.

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

"Note(s)" shall have the meaning as defined in Section 3.2(a).

"Obligations" shall mean any and all indebtedness, obligations and liabilities of the Awardee to RUS, of every kind and description, direct or indirect, secured or unsecured, joint or several, absolute or contingent, due or to become due, whether for payment or performance, now existing or hereafter arising, howsoever evidenced or created, including, without limitation, all loans (including any loan by renewal or extension); all indebtedness, all Notes, all undertakings to take or refrain from taking any action; and all interest, taxes, fees, charges, expenses, and attorney’s fees chargeable to Awardee or incurred by RUS under this Agreement or in any other document or instrument delivered hereunder or as a supplement hereto.

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

"Project" means all of the work, as approved by the Agency, to be performed to bring broadband service to all premises in the Approved Project Service Area under the Application, including construction, the purchase and installation of equipment, and professional services including engineering and accountant/consultant fees, whether funded by federal assistance or other funds.

"Project Completion" shall mean that all Award funds for construction of the broadband system, excluding those funds for subscriber drop connections and customer premises equipment, have been advanced to the Awardee by RUS.

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

“ReConnect Program Construction Procedures" shall mean the procedures for construction and Advances, attached hereto as Attachment 2.

“Release of Funds Date” shall mean the date funds are first made available as evidenced by the notice sent by the Agency to the Awardee.

"Security Documents" shall mean, collectively, any deposit account control agreement or other document providing collateral for the Obligations, including without limitation, repayment of the Loan.

“Service Obligation” shall mean the period in which assets purchased with federal assistance and subsidized by a federal grant to lower the interest rate, must be placed into service to carry out the purposes of the ReConnect Program.

"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.

“Tangible Equity” shall mean Net Worth minus intangible assets, goodwill and preferred stock.

“Tangible Equity to Total Assets” shall mean Tangible Equity divided by Total Assets.

"TIER" shall mean the Awardee’s total Net Income or Net Margins plus Interest Expense payable minus Allowance for Funds Used During Construction for any year divided by Interest Expense payable minus Allowance for Funds Used During Construction for such year, as set forth in Section 5.8 hereof.

"Total Assets" shall mean all property owned by the Awardee. 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 Awardee represents and warrants, as of the date of this Agreement, as follows:

(a) *Organization; Power, Etc.* The Awardee*:* (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 Loan Agreement; (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 Awardee of the Loan Agreement and the performance of the transactions contemplated hereby and thereby have been duly authorized by all necessary actionsand do not violate any provision of law or any charter, articles of incorporation, organization documents or bylaws of the Awardee or result in a breach of, or constitute a default under, any agreement, security agreement, note or other instrument to which the Awardee is a party or by which it may be bound. The Awardee 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 Loan Agreement, except such as have been obtained and are in full force and effect.

(d) *Binding Agreement.* Each part of the Loan Agreement is, or when executed and delivered will be, the legal, valid, and binding obligation of the Awardee, 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 Awardee 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 Awardee 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 Awardee 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 Awardee.

(h) *Principal Place of Business.* The principal place of business and chief executive office of the Awardee is at the address of the Awardee specified in Schedule 1 hereto.

1. *Organization Number.* The Awardee’s organization number is correctly identified in Schedule 1 hereto.

(j) *Subsidiaries and Parent.* Any subsidiaries or parent of the Awardee are disclosed on the attached Schedule 1.

(k) *Defaults Under Other Agreements.* No default by the Awardee has occurred under any agreement or instrument to which the Awardee is a party or to which any of its property is subject that could have a Material Adverse Effect.

(l) *Additional Representations and Warranties.* The Awardee further represents and warrants as set forth in Schedule 1.

**ARTICLE III – THE LOAN**

**Section 3.1** **Loan Amounts, Interest Rate, and Expiration Date.**

(a) *Loan Amounts*. RUS agrees to make and the Awardee agrees to accept, on the terms and conditions stated in this Agreement and subject to 31 U.S.C. 1551 and 1552, a loan, in the amount specified in Schedule 1 hereto (the “Loan”).

(b) *Interest Rate.* Through the use of federal grants, the Loan specified in Schedule 1 hereto will bear interest at a subsidized rate of 2% per annum, calculated by daily accrual.

(c) *Maturity Date.* The principal advanced pursuant to this Agreement and remaining unpaid, if any, and interest thereon, shall be due and payable on the date (“Maturity Date”) specified in Schedule 1 hereto.

(d) *Expiration Date.* The obligation of RUS to advance the Award, or any portion thereof, shall expire on a date ("Expiration Date") five (5) years from the Release of Funds date.

**Section 3.2 Loan Agreement**

(a) The debt created by the Loan will be evidenced by a note(s) ("Note(s)") executed by the Awardee and payable to the United States of America. The Awardee shall repay the Loan in accordance with the Note(s) which shall be payable and bear interest in accordance with its (their) terms.

(b) The Awardee shall execute the Security Documents, in form and substance satisfactory to RUS, and such other security instruments as required by RUS.

**Section 3.3 Payment**

Except as otherwise prescribed by RUS, the Awardee shall make all payments on the Note(s) utilizing electronic fund transfer procedures as specified by RUS.

**Section 3.4 Project**

1. *Loan Purpose.* The Loan has been made solely to finance the broadband infrastructure project specifically described in the RUS approved Application ("Project").

(b) *Changes to Project*. The Awardee shall obtain the prior written approval of RUS for any material change to the network design, construction, Buildout Timeline, delivery of services, and/or objective(s) of the Project.

**Section 3.5** **ACH Payments**

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

**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 (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) *Loan Agreement.* RUS shall receive duly executed originals of the Loan Agreement;

(c) *Articles of Incorporation, Charter, Bylaws and Organizational Documents.* With respect to corporate and cooperative Awardees, RUS shall have received certified copies of the Awardee’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 Awardee’s most recent organization documents containing provisions reflecting the obligations of the Awardee in paragraphs (c) and (d) of Section 7.3;

(d) *Authorizations.* RUS shall have received satisfactory evidence that all parts of the Loan Agreement and proceedings of the Awardee necessary for duly authorizing the execution, delivery and performance of the Loan Agreement have been obtained and are in full force and effect;

(e) *Approvals.* RUS shall have received satisfactory evidence that the Awardee 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 part of the Loan Agreement;

(f) *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;

1. (g) *Cybersecurity Risk Management*. RUS shall have received satisfactory evidence that the Awardee has considered and addressed cybersecurity risks consistent with the cybersecurity performance goals for critical infrastructure and control systems directed by the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems, or the current draft of these goals, found at <https://www.cisa.gov/cross-sector-cybersecurity-performance-goals>*;*

(h) *Affordable Connectivity Program*. RUS shall have received evidence that the Awardee has applied to participate in the Affordable Connectivity Program established by the IIJA;

1. *Opinion of Counsel.* RUS shall have received an opinion of counsel for the Awardee (who shall be acceptable to RUS) in form and substance acceptable to RUS for each state in which the Awardee operates; and

(j) *Additional Conditions.* The Awardee 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 Awardee 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 Awardee; (ii) making all payments in respect of principal and interest on the Note(s) when and as the same shall become due; (iii) providing and maintaining reasonable working capital of the Awardee; and (iv) producing and maintaining the financial requirements specified in Section 5.8 hereof;

(b) *Current Financial Information and Certificate of Authority.* RUS has received from the Awardee: (i) its updated balance sheet, statement of cash flow, and income statement and (ii) a duly authorized and executed certification, Form 675, "Certification of Authority," designating an officer, employee, or agent of the Awardee as the person or persons authorized to execute and submit, on behalf of the Awardee, RUS Form 481, "Financial Requirement Statement;"

(c) *Deposited Funds.* RUS has received from the Awardee evidence, satisfactory to RUS, verifying that the Awardee has on deposit in the Pledged Deposit Account, funds sufficient to complete the Project as specified on Schedule 1; and

(d) *Additional Conditions.* The Awardee 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 Awardee 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;

1. *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 Awardee;

(d) *Requisitions and Supporting Documentation.* That RUS shall have received not more frequently than once a month, unless otherwise agreed to by RUS, a completed RUS Form 481, "Financial Requirement Statement" (hereinafter "Form 481"), bearing the original signature of the officer, employee, or agent of the Awardee authorized to receive, disburse, or receive and disburse the Award, with supporting documentation from the Awardee in accordance with the ReConnect Program Construction Procedures. Advances shall be limited to the minimum amounts required for the Awardee's immediate disbursement needs and shall be requested by the Awardee only for actual immediate cash requirements of the Awardee. Such loan 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 ReConnect Program Construction Procedures;

(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 Awardee and located in such a flood hazard area, the Awardee 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 Awardee 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 Awardee: its current, updated balance sheets, income statements and statements of cash flow;

(g) *Compliance with Buildout Timeline and Reporting Requirements*. That RUS has received from the Awardee evidence, satisfactory to RUS, that the Project is being constructed in accordance with the Buildout Timeline and Reporting Requirements as required in Section 6.4;

(h) *Compliance with Loan Agreement.* That the Awardee is in material compliance with the Loan Agreement;

(i) *Permits, Licenses and Franchises.* That RUS shall have received satisfactory evidence that the Awardee has obtained the permits, licenses, franchises and other approvals identified on Schedule 1;

(j) *Deposited Funds.* That Awardee has maintained on deposit in the Pledged Deposit Account the matching funds requirement as well as other funds to complete the Project as specified on Schedule 1, unless expended and withdrawn as authorized by RUS;

(k)  *Additional Documents.* That the Awardee agrees to provide RUS with such additional documents as RUS may request; and

(l) *Additional Conditions.* That the Awardee has met all additional conditions specified in Schedule 1 hereto.

**Section 4.4 First Advance to Pay Off Pre-Application Expenses**

Funds to pay off certain pre-application expenses, as defined in the FOA, if any, must be included in the first Advance request.

**ARTICLE V – AFFIRMATIVE COVENANTS**

**Section 5.1 General**

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

**Section 5.2 Use of Advances**

The Awardee shall expend Award funds only for Eligible Purposes in accordance with the RUS approved line item Project budget and Form(s) 481 submitted to RUS prior to the advance of funds.

**Section 5.3 Unused and Disallowed Advances**

(a) The Awardee shall return to RUS forthwith all or any advanced portion of the Loan not disbursed by the Awardee for the Project or not needed to complete the Project with any interest earned thereon when deposited in the Pledged Deposit Account.

(b) The Awardee shall reimburse RUS for any advanced funds whose original expenditure has been disallowed by an RUS loan audit. Disallowances shall be satisfied, as directed by RUS, by either administrative offset against other approved purposes on Form(s) 481 or repaying the disallowed amount directly to the United States Treasury. Such disallowed amounts shall accrue interest payable to RUS from the date RUS delivers to the Awardee a written demand for payment. Interest shall accrue on disallowed Loan Advances at the lesser of the following: the interest rate of the disallowed Advance or the then current United States Treasury rate as prescribed by the Secretary of the Treasury. Closeout of the Loan 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 Awardee’s obligation to return any disallowed expenditures.

**Section 5.4 Deposit of Advances into Pledged Deposit Account**

(a) The Awardee 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 the RUS’ designation of the Awardee followed by the words "Pledged Deposit Account." The Awardee 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 ReConnect Program Construction Procedures~~.~~

(b) *First Lien on Pledged Deposit Account.* The Awardee shall perfect and maintaina 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 form acceptable to RUS.

**Section 5.5 Additional Project Funding**

The Awardee 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 Awardee shall furnish to RUS:

(a) *Notice of Other Defaults*. Promptly after becoming aware thereof, notice of the occurrence of any default on any other agreement, or receipt of any notice with respect to an event that with the passage of time, would become an Event of Default or Material Adverse Effect hereunder.

(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 Awardee 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 Awardee’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 Awardee as RUS may, from time to time, reasonably request.

**Section 5.7 Rates and Financial Performance Criteria**

The Awardee shall design, charge and maintain rates in effect which shall enable it to meet the Financial Requirements as specified in Section 5.8.

**Section 5.8 Financial Requirements**

The Awardee will meet the following requirements:

1. At least two of the three requirements on the Financial Requirements Commencement Date, as specified in Schedule 1 hereto, until the Loan is repaid in full: (i) a minimum TIER requirement of 1.2; (ii) a minimum DSCR requirement of 1.2; and (iii) a minimum Current Ratio of 1.2;

1. Tangible equity to Total Assets must be at least 20 percent at the end of the calendar year starting in the third year and ending in the fifth year of the award;
2. Positive cash flow from operations at the end of the fifth year of the award; and
3. Positive ending cash balance as reflected on the cash flow statement for each year of the forecast period.

**Section 5.9 Corrective Action**

Within thirty (30) days of: (i) sending the financial reports required by Section 6.4 hereof that show the Financial Requirements of Section 5.8 were not met for the reported fiscal period; or (ii) being notified by RUS that such requirements were not met for the period, whichever is earlier, the Awardee, in consultation with RUS, shall provide a written plan satisfactory to RUS setting forth the actions that shall be taken to achieve the specified Financial Requirements on a timely basis and shall promptly implement said plan.

**Section 5.10** **Service Obligation**

The Awardee shall provide the level of broadband service described in the RUS approved Application commencing from the date of Project Completion until the longer of: (i) the Composite Economic Life of the facilities financed by the Award as specified on Schedule 1; or (ii) as long as the Note(s) is outstanding. Awardee acknowledges that given the significant amount of government contribution to the Project in the form of a subsidized interest rate through a federal grant, the Service Obligation is a significant portion of the public benefit of the Award, and that a material breach of the Service Obligation shall be an Event of Default.

**Section 5.11 Obligations with Respect to the Construction, Operation and Maintenance of the Project**

(a) *Project Management and Operation.* The Awardee shall be responsible for the 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 Network Design and Buildout Timeline.* The Awardee shall cause the Project to be constructed and/or built out, and completed in accordance with the Network Design submitted with the RUS approved Application, as such design may be amended with prior RUS consent, and the Buildout Timeline.

(c) *General Insurance Requirements.* The Awardee shall take out and maintain insurance on the Project and any other property acquired with the Loan in accordance with 7 CFR Section 1788.

(d) *Contracting*. The Awardee may, in accordance with the ReConnect Program Construction Procedures, contract for goods and services to be funded by the Award, using RUS form contracts or private contracts; provided that private contracts must comply with equal employment opportunity and civil rights requirements,

(e) *Commencement and Completion of the Project.*

(1) Awardees are required to commence the Project within 180 days from the date that RUS notifies the Awardee in writing that funds have been made available (the “Release of Funds Date”); and

(2) Project Completion shall occur within five years from the Release of Funds Date.

(f) *National Programmatic Agreement*. If indicated on Schedule 1, Awardee shall be bound by the requirements of the National Programmatic Agreement (NPA), whose terms and conditions shall be incorporated into this Agreement. Failure to abide by the NPA, if entered into, shall be an Event of Default hereunder.

**Section 5.12 Preservation of Existence and Rights**

The Awardee 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 5.13 Compliance with Laws**

Awardees 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 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. § 794 *et seq.*; 7 CFR 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 CFR pt. 102); (v) The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq*.); (vi) The Uniform Federal Accessibility Standards (UFAS), as published by the United States Access Board; (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 CFR 1970; (viii) The Native American Graves Protection and Repatriation Act (25 USC 3001 *et seq*., 43 CFR § 10.4); (ix) The Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq*.); (x) The Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996); and (xi) The Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq*.) (CALEA).

**Section 5.14 Equal Opportunity Requirements**

(a) *Equal Opportunity Provisions in Construction Contracts*. The Awardee 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 contract, loan, insurance or guarantee, or undertaken pursuant to any RUS program involving such contract, loan, insurance or guarantee, the equal opportunity provisions set forth in Attachment 1 hereto, entitled Equal Opportunity Contract Provisions.

(b) *Equal Opportunity Contract Provisions Also Bind the Awardee*. The Awardee 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 Awardee 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 Awardee 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 Awardee 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 Awardee, or may refer the case to the Department of Justice for appropriate legal proceedings.

## Section 5.15 Buy American

1. *Funding to Non-Federal Entities.* Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the IIJA. Any requests for waiver of these requirements must be submitted pursuant to USDA’s guidance available online at https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.
2. *Funding to All Other Entities.* Awardees that are not Non-Federal Entities shall be governed by the Agency’s Buy American requirement at 7 CFR part 1787. Any requests for waiver of these requirements must be submitted pursuant to those regulations.

**Section 5.16 Other Federal Funding**

If the Awardee is a recipient of any other federal broadband funding either directly from a federal agency or as a passthrough from the state, Awardee acknowledges and certifies that neither funds under this Award nor any other federal broadband funds or passthrough funds will be used to reimburse the same expenditures. Such Awardees must also maintain separate accounts to track sources and uses of each funding source.

**Section 5.17 Additional Affirmative Covenants**

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

**ARTICLE VI – ACCOUNTING AND REPORTING**

**Section 6.1 Financial Records**

(a) Awardees 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.

(b) The Awardee 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 Loan and other funds were expended on the Project. The Awardee 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 Awardee and its Subsidiaries, in accordance with its system of accounts complying with Paragraph (a) immediately above. The Awardee shall maintain copies of all documents submitted to RUS in connection with the Award until the longer of (i) the Loan being paid in full and all audits have been completed, (ii) the term of this Agreement or (iii) three years subsequent to close-out of the Award.

**Section 6.2 Rights of Inspection**

The Awardee 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 papersof every kind belonging to or 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**

(a) Non-Federal Entities, which include Awardees that are States, local governments, Indian tribes, institutions of higher education (IHE), or nonprofit organizations, shall provide RUS with an audit pursuant to 2 C.F.R. part 200, Subpart F (Audit Requirements).  The Awardee must follow subsection .502 in determining federal awards expended.  All RUS loans impose an ongoing compliance requirement for the purpose of determining federal awards expended during a fiscal year.  In addition, the Awardee must include the value of new federal loans made along with any grant expenditures from all federal sources during the Awardee’s fiscal year. Therefore, the audit submission requirement for this program begins in the Awardee’s fiscal year that the loan is made and thereafter, based on the balance of federal loan(s) at the beginning of the audit period.   All required audits must be submitted within the earlier of: (i) 30 calendar days after receipt of the auditor’s report; or (ii) nine months after the end of the Awardee’s audit period; and

### (b) For all other entities, Awardees shall provide RUS with an audit within 120 days after the as of audit date in accordance with 7 C.F.R. part 1773, Policy on Audits of RUS Borrowers.   Note that with respect to Advances that contain loan funds, the audit is required after an Advance has been made, and, thereafter, from the close of each subsequent fiscal year until the loan is repaid in full.  With respect to Advances that only contain grant funds, the audit is required until all grants funds have been expended or rescinded.   While an audit is required, Awardees must also submit a report on compliance and internal controls over financial reporting, as well as a report on compliance with aspects of contractual agreements and regulatory requirements.

### Section 6.4 Reporting

(a) *Quarterly Report*. No later than thirty (30) calendar days after the end of each calendar year quarter, the Awardee must submit to RUS utilizing RUS’ online reporting system, the following information: balance sheets, income statements, statements of cash flow, and the number of customers taking broadband service. In addition, the Awardee must provide RUS with such other reports concerning the financial condition or operation of the Awardee, including its Subsidiaries, as RUS may request.

(b) *Annual Performance Report*. For three years starting the first January 31st after Project Completion, the Awardee must submit the following information utilizing RUS’ online reporting system:

1. existing network service improvements and facility upgrades, as well as new equipment and capacity enhancements that support high-speed broadband access for educational institutions, health care providers, and public safety service providers;
2. the estimated number of end users who are currently using or forecasted to use the new or upgraded infrastructure;
3. the progress towards fulfilling the objectives for which the assistance was granted;
4. the speed and average price of the most subscribed tier of the Awardee’s broadband service offerings in the Project’s service area; and
5. the average price of broadband service in the Project’s service area.

(c) *Annual Map Reporting*:No later than thirty (30) calendar days after the end of the Calendar Year, the Awardee shall be required to submit annually updated Approved Project Service Area(s) maps through RUS’ online mapping tool showing the areas where construction has been completed and geospatial location of residences and businesses that are receiving new broadband service until the entire Approved Project Service Area can receive the broadband service.

(d)*Close Out Report.* The Awardee shall deliver a close out report to RUS no later than ninety (90) days after the expiration or termination of the Award or expenditure of all Award funds. The close out report shall address: (i) a comparison of actual accomplishments to the objectives set forth in the 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; (iii) a comparison of how funds were spent against the original general budget submitted with the RUS approved Application, and (iv) a final buildout map on the RUS mapping tool indicating that all construction has been completed as proposed in the application.  If parts of the Approved Project Service Area have not been constructed, RUS may require a portion of the award to be rescinded or paid back.

**ARTICLE VII – NEGATIVE COVENANTS**

**Section 7.1 General**

Unless otherwise agreed to in writing by RUS, while this Agreement is in effect, the Awardee 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 Awardee 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 substantial part of the Project.

**Section 7.3 Covenants for Limited Liability Companies and Similar Awardees**

Awardees 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 Awardee to be dissolved or its affairs to be wound up;

(b) Prior to the date on which any and all obligations owed to RUS, including the Note evidencing the Loan, are discharged in full, the Awardee shall not be dissolved or terminated;

(c) The organizational documents of the Awardee shall contain provisions reflecting the obligations of the Awardee in paragraphs (a) and (b) immediately above and such provisions shall not be amended without the prior written consent of RUS; and

(d) No direct or indirect addition or issuance of any membership units (or any other ownership interest) in the Awardee may be made by the Awardee 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 Awardee which will result in the transfer of more than 49% of the equity interests (of whatever nature, including voting and non-voting) in the Awardee may be made by the Awardee or its members without the prior written consent of RUS.

**Section 7.4 Changing Principal Place of Business, Place of Conducting Business, or Type of Organization**

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

**Section 7.5 Changing Name or Place of Incorporation or Organization**

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

**Section 7.6 Historic Preservation**

The Awardee 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 7.7 Affiliated Transactions**

RUS' consent to advance loan 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 7.8 Restrictions on Changes to Line-Item Budget**

The Awardee 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 7.9 Additional Negative Covenants**

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

**ARTICLE VIII** - **LENDER’S RIGHTS**

**Section 8.1 Termination of Award Offer**

RUS, in its sole discretion, may terminate the offer to make the Loan if it does not receive the Loan Agreement, duly executed on behalf of the Awardee and all conditionsin Section 4.1 hereof are not satisfied within one hundred twenty (120) days from the date that RUS issues the closing documents.

**Section 8.2** **Audits and Compliance Reviews**

After giving prior notification to the Awardee, RUS has the right to conduct compliance reviews and audits of the Awardee to assure compliance with the Loan Agreement, FOA, and the Accounting Requirements.

**Section 8.3** **Disallowed Expenditures**

Upon a determination by RUS that the Awardee did not expend Award funds on Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds, RUS may, in its sole discretion:

(a) Disallow all or a part of the expenditures and disbursements of the Award and require the Awardee to deposit such funds in the Pledged Deposit Account to be applied toward other approved Project purposes on Form(s) 481 or to reimburse the Government, as provided in Section 5.3 hereof;

(b) Suspend future Advances; and/or

(c) Take any other action RUS determines to be necessary including, without limitation, exercising any right or remedy available under the Loan Agreement or law.

**Section 8.4 Suspension of Advances**

RUS may, in its absolute discretion, suspend making Advances on the Award upon its making a determination that an event has occurred that is likely to have a Material Adverse Effect. RUS may also suspend making advances of the Award upon the occurrence of an Event of Default.

**Section 8.5 Payment Extensions**

RUS may, at any time or times in succession without notice to or the consent of the Awardee and upon such terms as RUS may prescribe, grant to any person, firm or entity who shall have become obligated to pay all or any part of the principal of or interest on any note held by or indebtedness owed to RUS or who may be affected by the lien created by the Loan Agreement, an extension of the time for the payment of such principal or interest, and after any such extension the Awardee will remain liable for the payment of such note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

**ARTICLE IX - EVENTS OF DEFAULT**

**Section 9.1 Events of Default**

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

(a) Representations and Warranties. Any representation or warranty made by the Awardee in the Loan Agreement, Form(s) 481 or any certificate furnished to RUS under the Loan Agreement, or in the Application shall prove to have been incorrect in any material respect at the time made;

(b) Non-Payment. The nonpayment of any required and due installment of interest on, or principal of, any Note, whether by acceleration or otherwise, which continues for five (5) Business Days, as such term is herein defined;

(c) Corrective Actions. Default by the Awardee in the observance or performance of Section 5.9;

(d) Limited Liability Companies. Default by the Awardee or its members in the observance or performance of Section 7.3;

(e) Improper Expenditures. The Awardee expends Award funds on costs which are not Eligible Purposes in accordance with the RUS approved line item Project budget and the Form(s) 481 approved by RUS prior to the advance of funds;

(f) Failure to Keep Adequate Records. The Awardee fails to keep adequate records, including the failure to document Award fund expenditures for Eligible Purposes as required herein;

(g) Failure to Build in Accordance with Buildout Timeline. The Awardee fails to commence build out of the Project within 180 days from the Release of Funds Date or otherwise fails to meet or exceed milestones established in the Buildout Timeline, as it may be amended with prior written RUS consent;

(h) Failure to Comply with Accounting and Reporting Requirements. The Awardee fails to comply with the accounting and reporting requirements in Article VI;

(i) Other Covenants. Default by the Awardee in the observance or performance of any other covenant or agreement contained in any part of the Loan Agreement, which shall remain unremedied for thirty (30) calendar days after written notice thereof shall have been given to the Awardee by RUS;

(j) Adverse Effects. The Awardee 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 the Awardee files for or an event occurs which can reasonably be expected to result in its dissolution or termination;

(k) Other Obligations. Default by the Awardee in the payment of any obligation, whether direct or contingent, for borrowed money in excess of ten thousand dollars ($10,000.00) or in the performance or observance of the terms of any instrument pursuant to which such obligation was created or securing such obligation which default shall have resulted in such obligation becoming or being declared due and payable prior to the date on which it would otherwise be due and payable;

(l) Bankruptcy. A court having jurisdiction in the premises shall enter a decree or order for relief with respect to the Awardee in an involuntary case under any applicable bankruptcy, insolvency, or other similar law now or hereafter in effect: (1) appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official, or (2) ordering the winding up or liquidation of its affairs; or the Awardee shall commence a voluntary case under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect, or under any such law, or consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee, of a substantial part of its property, or make any general assignment for the benefit of creditors;

(m) Dissolution or Liquidation. Other than as provided in the immediately preceding subsection, the dissolution or liquidation of the Awardee, or the filing of such by the Awardee;

(n) Impaired Business. The Awardee fails 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;

(o) Service Obligation. As determined by RUS, the Awardee has willfully failed to provide the Service Obligation on the Project, which the Awardee acknowledges, shall give rise, should the debt be accelerated, to the government’s claim for the return of federal grant funds used to subsidize the interest rate; and/or

(p) Payment of Final Judgment. A final judgment in an amount of ten thousand dollars ($10,000.00) or more shall be entered against the Awardee and shall remain unsatisfied or without a stay in respect thereof for a period of thirty (30) days.

**ARTICLE X - REMEDIES**

**Section 10.1 General**

Upon the occurrence of an Event of Default, RUS may pursue all rights and remedies available to RUS that are contemplated by the Loan Agreement in the manner, upon the conditions, and with the effect provided in the Loan Agreement, and may pursue such other remedies that are generally available at law or in equity including, without limitation, a suit for specific performance, injunctive relief or damages. Nothing herein shall limit the right of RUS to pursue all rights and remedies available to a creditor following the occurrence of an Event of Default listed in Article IX hereof. 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.

**Section 10.2 Remedies**

In addition to the remedies referred to in Section 10.1 hereof, upon the occurrence of an Event of Default, RUS may:

(a) Refuse to make any advance or further advance on account of the Award, but any advance thereafter made by RUS shall not constitute a waiver of such default;

(b) Declare all unpaid principal of and all interest accrued on the Note(s) to be immediately due and payable and upon such declaration all such principal and interest shall become due and payable immediately;

(c) Terminate the obligation to further advance on account of the Award; and/or

(d) Take immediate possession of the Collateral;

(e) RUS shall have the right, without prior notice to the Awardee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardee or for the credit of the Awardee against any and all of the Obligations. RUS agrees to notify the Awardee 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. Awardee waives all rights of setoff, deduction, recoupment or counterclaim; and/or

**ARTICLE XI - MISCELLANEOUS**

**Section 11.1 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 email) 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 email 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 Awardee

Rural Utilities Service See Schedule 1 United States Department of Agriculture

1400 Independence Avenue, S.W.

Washington, D.C.20250-1510

Attention: Administrator

Email: reconnect@usda.gov

With a copy to: With a copy to:

Rural Utilities Service See Schedule 1

United States Department of Agriculture

1400 Independence Avenue, S.W.

Stop 1590, Room No. 4121

Washington, D.C. 20250-1590

Attention: Deputy Assistant Administrator  
 Email: TelecomPMRA@usda.gov

**Section 11.2 Application of Proceeds**

Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, and the balance, if any, shall be paid to whosoever shall be entitled thereto.

**Section 11.3 Expenses**

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

**Section 11.4 Late Payments**

If payment of any amount due hereunder is not received at the United States Treasury in Washington, DC, or such other location as RUS may designate to the Awardee within five (5) Business Days after the due date thereof or such other time period as RUS may prescribe from time to time in its policies of general application in connection with any late payment charge (such unpaid amount being herein called the "delinquent amount", and the period beginning after such due date until payment of the delinquent amount being herein called the "late-payment period"), the Awardee shall pay to RUS, in addition to all other amounts due under the terms of the Notes and this Agreement, any late payment charge as may be fixed from time to time on the delinquent amount for the late-payment period by regulations adopted by RUS.

**Section 11.5 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 11.6 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 11.7 Consent to Jurisdiction**

The Awardee 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 Awardee 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 Awardee's address set forth in Schedule 1. The Awardee 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 Awardee in its own jurisdiction.

**Section 11.8 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 11.9 Holiday Payments**

If any payment to be made by the Awardee hereunder shall become due on a day that is not a Business Day, such payment shall be made on the next succeeding Business Day and such extension of time shall be included in computing any interest in respect of such payment.

**Section 11.10 Rescission**

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

**Section 11.11 Successors and Assigns**

(a) This Agreement shall be binding upon and inure to the benefit of the Awardee and RUS and their respective successors and assigns, except that the Awardee 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 11.12 Complete Agreement; Waivers and Amendments**

Subject to RUS Regulations, this Agreement and all parts of the Loan Agreement 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 any other part of the Loan Agreement. No amendment, modification, or waiver of any provision hereof or thereof, and no consent to any departure of the Awardee herefrom or therefrom, shall be effective unless approved in writing by RUS in the form of either a RUS Regulation or other writing signed by or on behalf of RUS, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

**Section 11.13 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.

1. **Section 11.14 Severability**

If any term, provision, condition, or any part thereof, of this Agreement, Note(s) 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, the Note(s), 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 11.15 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 Awardee, to exercise rights of setoff or recoupment and apply any and all amounts held or hereafter held, by RUS or owed to the Awardee or for the credit or account of the Awardee against any and all of the obligations of the Awardee now or hereafter existing hereunder or under the Note(s). RUS agrees to notify the Awardee 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. Awardee waives all rights of setoff, deduction, recoupment or counterclaim.

**Section 11.16 Schedules and Attachments**

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

**Section 11.17 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 part of the Loan Agreement, 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 11.18 Term**

This Agreement shall remain in effect until one of the following two events has occurred:

(a) The Awardee and RUS replace this Agreement with another written agreement; or

(b) All of the Awardee's obligations under this Agreement, including the Service Obligation, have been discharged and paid.

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

**[AWARDEE NAME]**

**by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Name:**

**Title:**

**(Seal)**

**Attested to by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Secretary**

**UNITED STATES OF AMERICA**

**by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Administrator**

**of the Rural Utilities Service**

**SCHEDULE 1**

**Article I Definitions**

1. “Collateral” for the Loan shall be one or both of the following, a copy of which shall be attached hereto:

[ ] certificate(s) of deposit with the RUS named as the beneficiary on the certificate(s).

[ ] bond(s) with a AAA rating from an accredited rating agency.

**Article II Representations and Warranties**

1. Paragraph (h) Awardee’s Principal Place of Business:

2. Paragraph (i) Awardee’s Organization Number:

3. Paragraph (j) Awardee’s Subsidiaries:

4. Paragraph (j) Awardee’s Parent:

5. Paragraph (m) Additional Representations and Warranties:

[If entity is a telecom company]:

**The Awardee represents and warrants that it is primarily engaged in the business of transmitting communications electrically, electromagnetically, or by light.**

[If entity is an electric coop]:

**The Awardee represents and warrants that it is a transmitting utility.**

[If entity is a muni or other non-transmitting entity]:

**The Awardee represents and warrants that it is not a transmitting utility.**

**Article III The Loan**

1. Section 3.1(a) Loan amount:

2. Section 3.1(c) Maturity Date:

**Article IV Conditions Precedent to Loan Closing**

1. The additional conditions referred to in Section 4.1(j) are as follows:

**Pursuant to 7 CFR 1970.11(b), the Agency has determined that assurance of funding for this Project is necessary for economic rural development.   As a result, this Agreement is subject to the completion of all necessary environmental procedures required by Federal law, and funds may not be disbursed until successful completion of such procedures.   The Awardee acknowledges that it may not engage in any work on the Project until Awardee has received written notice from the Agency, except for work required to finalize the environmental reviews.  Such environmental work, however, shall be done at the Awardee’s own risk and may not be reimbursed if the environmental reviews cannot be completed as required by 7 CFR 1970.11(b).  Awardee understands and acknowledges that unauthorized work will result in the termination of this Agreement.  Awardee also acknowledges that any findings in the environmental reviews requiring significant changes to the Project will constitute an immediate deobligation of funding and termination of this Agreement, and will not result in an amended agreement until revised terms are agreed upon and funding is determined to be still available.**

**Conditions Precedent to Release of Funds**

2. Section 4.2(c) funds deposited for Project completion:

3. The additional conditions referred to in Section 4.2(d) are as follows:

**Conditions Precedent to Individual Advances**

4. Section 4.3(i) Required permits, licenses, franchise, and other approvals:

5. The additional conditions to advance referred to in Section 4.3(l) are as follows:

**Article V Affirmative Covenants**

1. Section 5.8(a) Financial Requirements Commencement Date:

2. Section 5.10 Composite Economic Life of RUS financed facilities:

3. Section 5.11(f) Awardee is subject to the following National Programmatic Agreement (NPA):

[If one exists, list agreement: **title, parties, and date**

If no agreement is necessary, put: **N/A**, or

If it is not known at time of Agreement, state: **The requirement to enter into an NPA has not yet been determined. Notwithstanding,** **Grantee acknowledges that if an NPA is entered into after the date hereof, it shall be incorporated into this Agreement without further action.]**

4. The additional affirmative covenants referred to in Section 5.17 are as follows:

**Article VII Negative Covenants**

1. The additional negative covenants referred to in Section 7.9 are as follows:

**Article XI Miscellaneous**

1. Section 11.1 Awardee’s address for purposes of notification:
2. Section 11.1 Address for Awardee’s notification copy:

#### ATTACHMENT 1

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.

#### ATTACHMENT 2

ReConnect Program Construction Procedures

#### ATTACHMENT 3

RECONNECT PROGRAM GUARANTEE AGREEMENT

#### ATTACHMENT 4

MORTGAGE, SECURITY AGREEMENT AND FINANCING STATEMENT

**THE RESTATED MORTGAGE WILL BE PROVIDED IN THE FINAL CLOSING PACKAGE**