

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) entered into as of _____, 2024, by and between **Company Name** (“ISP”), whose principal place of business is located at _____ and the GEORGIA TECHNOLOGY AUTHORITY (“GTA”), whose principal place of business is located at 47 Trinity Avenue SW, Atlanta, Georgia 30334 (ISP and GTA are referred to herein individually a “Party” and collectively “Parties”) provides as follows:

RECITALS:

- A. ISP submitted a challenge (“Challenge”) on the basis of planned service for Georgia’s Broadband, Equity, Access, and Deployment (“BEAD”) Challenge Process to serve **XXXXXX** locations across the state of Georgia; and
- B. ISP submitted this Challenge under knowledge that broadband will be deployed at this location by December 31, 2025, without an enforceable commitment, or that ISP is building out broadband offering performance beyond the requirements of an enforceable commitment; and
- C. GTA has sustained these challenges through the BEAD Challenge Process; and
- D. This MOU is being entered into no later than thirty (30) days after the final determination is issued for all locations submitted by ISP for planned service statewide; and
- E. The BEAD Challenge Process and the associated MOU requirement for planned service challenges were approved by the National Telecommunications and Information Association under Georgia’s Volume 1 of its BEAD Initial Proposal; and
- F. ISP desires to enter into this MOU on the terms set forth herein.

AGREEMENT:

NOW THEREFORE, in good and sufficient consideration of the foregoing recitals and the mutual covenants hereinafter contained, and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Timely Completion of Project. ISP shall fully complete ISP’s obligation to provide broadband access in ISP’s sustained challenge area(s) under the BEAD program (the “Project”) on or before December 31, 2025, and ISP shall begin work on the Project within two (2) business days following the execution of this MOU by the Parties without the need of any other notice to proceed. ISP shall proceed to diligently prosecute the work of the Project at all times. Time shall be of the essence for as to all of the ISP’s obligations under this MOU. ISP agrees to provide GTA any and all information and documents which GTA may request, from time to time, in connection with ISP’s ability to promptly commence work on the Project and to prosecute the work of the Project diligently, including, without limitation, on the subjects of acquisition of rights, design, financing, procurement of labor, materials and equipment, permitting, and required approvals.
- 2. Extensions of Time. ISP shall not be entitled to any extensions of time.
- 3. Inspections. GTA or its designee shall have the right, but not the obligation to inspect the Project and the work performed and labor, materials and equipment supplied in the

course of the prosecution of the Project. GTA will use best efforts to provide reasonable advance notice of inspections absent a finding of need by GTA for an inspection without advance notice. GTA shall have the right to make inspections without notice should it conclude in its sole and absolute discretion that such inspections are necessary.

4. Reporting Requirements. ISP shall provide GTA quarterly updates in writing on the status of construction of the Project, with the first report being due to GTA on July 1, 2024. The updates shall include, but not be limited to the following:

- i. The number of passings for which service is available;
- ii. Specific CostQuest fabric IDs for each passing for which service is available.

An additional final report including the information outlined above must be submitted the earlier of December 31, 2025 or upon full completion of the Project. ISP agrees that by submitting the reports required by this MOU, and without more, it represents and warrants as a presently existing fact that the contents of such reports are true and accurate in all respects and that GTA may rely upon such representations.

5. Termination of MOU. GTA may terminate this MOU at any time should it determine, in its sole and absolute discretion, that there has been an event of default or that ISP is unlikely to complete the Project in a timely fashion or if ISP fails to comply or is likely to fail to comply with any one or more of ISP's obligations under this MOU. If GTA terminates this MOU, ISP agrees to interpose no objection of any kind related to the achievement of universal broadband access under the BEAD Program. Upon termination, GTA may take such other actions it deems necessary to ensure proper deployment of broadband services for the purpose of broadband deployment to these locations.

6. Event of Default. ISP shall be deemed to be in default under the terms of this MOU should any of the following occur as determined by GTA in its sole and absolute discretion:

- a. ISP undergoes a merger or transfer of its assets;
- b. A receiver is appointed for ISP;
- c. A voluntary or involuntary petition under Title 11 of the U.S. Code is filed in the United States Bankruptcy Court naming ISP as a party;
- d. ISP fails to properly or timely complete the Project;
- e. ISP, or any one or more of its subcontractors or any person or entity supplying labor, materials, work or equipment to ISP fails to timely and diligently prosecute the work of the Project;
- f. ISP fails to timely and fully pay all of its construction contractors on the Project;
- g. ISP, or any one or more of its subcontractors or any person or entity supplying labor, materials, work or equipment to ISP fails to cooperate with GTA regarding inspections;
- h. ISP fails to timely and properly comply with the reporting requirements established in this MOU;
- i. ISP violates any local, state or federal regulation, law or statute in connection with the prosecution of the Project;

- j. ISP otherwise commits a breach of this MOU and fails to cure said breach within two (2) business days following written notification of said breach from GTA;
- k. ISP fails to properly or timely make any one or more required reportings;
- l. ISP violates the terms of any permit or approval required for the prosecution of the work on the Project;
- m. ISP, or any one or more of its subcontractors or any person or entity supplying labor, materials, work or equipment to ISP, takes any action or commits any inaction that jeopardizes or causes the Project to not be properly or timely completed; and
- n. ISP fails to notify GTA of any event, action, inaction or condition on the part of ISP that would constitute an event of default under the terms of this MOU.

7. Remedies. The Parties agree that this MOU is a valid, binding and enforceable contract. ISP agrees to fully defend, indemnify and hold GTA harmless from and against any and all costs, expenses, damages, and losses suffered by GTA or the state of Georgia as a result of ISP's default under the terms of this MOU, including without limitation any and all litigation costs and fees incurred by GTA (including legal fees) in connection with said default. Without waiver or limitation of the foregoing, and upon default by ISP under the terms of this MOU, GTA shall have the right to deny the Challenge and retain these locations as BEAD eligible and terminate ISP's rights under this MOU without liability to or recourse against GTA. At no time shall any failure by GTA to invoke its rights under the terms of this MOU be deemed to be a waiver in whole or in part of such rights.

8. Amendments. The Parties may alter or change the terms of this MOU only by a written amendment executed by the Parties.

9. Miscellaneous.

- a. This MOU is made, and is intended to be performed, in the state of Georgia and shall be construed and enforced in accordance with the laws of the state of Georgia. Exclusive Jurisdiction and venue for any litigation arising out of or involving this MOU shall lie in the Superior Court of Fulton County, Georgia, and such litigation shall be brought only in such court.
- b. This MOU may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be one and the same instrument.
- c. If any provision of this MOU is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law.
- d. Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth below or to such address as one Party may have furnished to the other in writing.

Notice to GTA:
47 Trinity Avenue SW
Atlanta, Georgia 30334

Notice to ISP:



- e. No assignment of this MOU or any of ISP's obligations under the terms of this MOU shall be valid absent GTA's written consent to such assignment.
- f. ISP waives its rights to a jury trial.
- g. This MOU shall not create any rights in third-parties or otherwise constitute a third-party beneficiary contract.
- h. The failure of either Party to insist upon strict adherence to any term of this MOU on any occasion shall not be considered a waiver nor shall it deprive such party of the right thereafter to insist upon strict adherence to that term or any term of this MOU. Any waiver must be in writing signed by the waiving party.
- i. Notices and reports shall be sent to the Parties at the following email address:
 - i. GTA: broadband@gtga.gov.
- j. It is agreed by all Parties hereto that the terms of this MOU are contractual and not a mere recital.
- k. Any exhibits identified herein are hereby incorporated by reference. The introductory recitals set forth above are hereby incorporated into this MOU as an expression of the Parties' intent and understanding and are incorporated herein as if repeated in full and are true in all respects.
- l. All Parties hereto and those signing on their behalf represent and warrant that they possess the full and complete authority to covenant and release as herein provided and further represent and warrant that they have the full and complete authority to execute the releases herein contained. All Parties hereto represent and warrant that they have not assigned any of their respective claims hereby released.
- m. The Parties hereto represent and state that they have carefully read this MOU and know the contents thereof and sign the same as their own free act and deed after having the advice of their respective independent legal counsel.
- n. This MOU reflects the entire agreement by and between the Parties related to the Challenge and no statements, promises or inducements made by any of the Parties related to the Challenge which are not contained herein, shall be valid and binding.
- o. The captions and section headings contained herein are for convenience only and shall not be used in construing or enforcing any of the provisions of this MOU. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders. The singular shall include the plural and vice versa unless the context specifically requires otherwise.
- p. This MOU may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties hereto agree that this MOU may be transmitted between them by facsimile machine or email. The Parties hereto intend that faxed or emailed

signatures shall constitute original signatures and that a faxed or emailed version of this MOU containing the signatures (original or faxed or emailed) of the Parties hereto shall be binding on the Parties hereto.

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives and agents, have set their hands as of the day and year first above written.

STATE OF GEORGIA
GEORGIA TECHNOLOGY AUTHORITY

BY: _____ DATE: _____
Jessica Simmons, Executive Director, Georgia Broadband Program

ISP Name
BY: _____ DATE: _____
Name, Title