



DATED:

NBI INFRASTRUCTURE DAC

AND

MUTUAL NON-DISCLOSURE CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is dated

(the “**Agreement**”)

BETWEEN

- (1) **NBI INFRASTRUCTURE DAC**, a company registered in Ireland, with company number 631656 having its registered office at Ten Earlsfort Terrace, Dublin 2, D02 T380 (“**NBI**” (which as described in Clauses 2.3(b) and 2.3(c) shall include its Affiliates));

(as a “**Disclosing Party**” and a “**Receiving Party**”)

And

- (2) _____, a company incorporated in Ireland with company number _____ having its registered office is at _____

(the “**Contractor**”, as a “**Disclosing Party**” and a “**Receiving Party**”)

(together the “**Parties**” and each a “**Party**”)

WHEREAS:

- A. NBI is the awarded contractor for the National Broadband Plan: State Led Intervention project (the “**Project**”), which is being led by the Department for Communications, Climate Action Environment (the “**Department**”).
- B. NBI has been awarded the contract (the “**Agreement**”) by the Department to provide the Project and deliver a broadband network (the “**Network**”) to certain defined locations within Ireland where it has been determined that it is not commercially viable to provide broadband services (the “**Intervention Area**”).
- C. As part of the delivery of the Agreement, NBI will engage with Retail Service Providers (the “**RSPs**” which shall include the Contractor) who will procure Network services from NBI and in turn sell the associated Network services to end users (the “**Customer**”).
- D. The Contractor and NBI have agreed that they shall each disclose certain information relating to their business operations, processes and products to the other in the context of evaluating potential business opportunities in connection with the Project (the “**Transaction**”).
- F. Now this agreement sets out the terms and conditions upon which the respective Information shall be kept confidential by each of the Parties.

IT IS AGREED as follows:

1. **Interpretation**

1.1 **Definitions**

For the purpose of this Agreement,

“**Affiliate**” means,

- a) in respect of NBI, a company which is a Subsidiary, a Holding Company or a company in which a Holding Company of NBI owns (directly or indirectly) 50% or more of the issued share capital but which shall not include a Competitor; and
- b) in respect of the Contractor,

“**Agreement**” means this mutual non-disclosure confidentiality agreement;

“**Competitor**” means any company or business which competes with or proposes to compete with any business carried on by the Contractor in retail and/or wholesale markets for broadband and mobile services in Ireland;

“**Data Room**” means the information and documents set out in any data room or shared storage space or by any communication means (electronic or otherwise) made available by or on behalf of the Department or either of the Parties relating to the Project;

“**Holding Company**” has the meaning given to “holding company” in section 8 of the Companies Act 2014 (and, notwithstanding any to the contrary stated in this Agreement, this definition does not change in the event of a change to the definition of “holding company” in the Companies Act 2014);

“**Information**” may include:

- (a) information used in or otherwise relating to the business and affairs of the Disclosing Party or the Department;
- (b) information relating to the Transaction or the Project;
- (c) information relating to any assets, products or services of the Disclosing Party or the Department (including for the avoidance of doubt all information obtained via any communication or during visits to the Data Room or Inspection Locations);
- (d) information relating to intellectual property rights (whether or not registered or otherwise protected and whether or not capable of being so registered or protected) of the Disclosing Party or the Department;
- (e) information relating to the suppliers, service providers, agents, professional advisors, officers, directors or employees of the Disclosing Party or the Department;
- (f) any other information which may from time to time be identified by the Disclosing Party as being of a confidential nature and as being subject to the terms of this Agreement; and
- (g) any information requested by a third party concerning the Permitted Purpose and or Transaction, made on a reverse enquiry basis;

“**Inspection Location**” means the location to be confirmed NBI where the Contractor may, at NBI’s invitation, inspect physical copies of documentation relating to the Transaction;

“**Permitted Purpose**” shall have the meaning ascribed to it in Clause 2.1 (a) (iii); and

“**Subsidiary**” has the meaning given to “subsidiary” in section 7 of the Companies Act 2014 (and, notwithstanding any to the contrary stated in this Agreement, this definition does not change in the event of a change to the definition of “subsidiary” in the Companies Act 2014).

2. Agreement as to Confidentiality

2.1 Treatment and use of Information

- (a) In consideration of the Disclosing Party, its directors, employees, agents and advisers (on behalf of the Disclosing Party) agreeing to supply (either orally or in writing) and so supplying the Receiving Party with (and allowing, in the case of a disclosure by the Disclosing Party, the Receiving Party to obtain by observation during visits to the Data Room, Inspection Locations or otherwise) the Information relating to the Disclosing Party, the Project and / or the Transaction that is either non-public, confidential or proprietary in nature the Receiving Party, on their own behalf and on behalf of their associated companies and associates and their respective officers, employees, servants, agents and professional advisers, unconditionally and irrevocably undertake to the Disclosing Party that they will:
- (i) treat the Information as private and confidential;
 - (ii) ensure that all Information is adequately and sufficiently protected with appropriate security measures and a degree of care i) that would apply to the Receiving Party’s own confidential information; and ii) as would be reasonably expected to apply by any disclosing party, having regard to the nature and type of Information being disclosed to the recipient for the Transaction and or Permitted Purpose;
 - (iii) utilise the Information exclusively for the purpose of evaluating: i) the Transaction, and ii), with providing certain services in connection with the Project (the “**Permitted Purpose**”);
 - (iv) not use or disclose or permit the disclosure by any person of any Information for the benefit of any third party; and
 - (v) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Permitted Purpose. Any such copies, reductions to writing and records shall be deemed to be Information and shall be the property of the Disclosing Party.

2.2 Non Disclosure

- (a) The Receiving Party undertakes that it will only disclose Information in accordance with this Clause 2.2 where it is considered strictly necessary in accordance with the Permitted Purpose.
- (b) The Receiving Party further undertakes to take all necessary steps to prevent the disclosure of Information shared under this Agreement, to any person other than:
- (i) the Receiving Party’s directors or employees whose knowledge of such Information is essential for the Permitted Purpose; or

- (ii) any professional advisers or agents acting on the Receiving Party's behalf in connection with the Transaction and or the Permitted Purpose; or
- (iii) in the case where NBI is the Receiving Party, any member of the Department or any professional advisers acting on the Department's behalf in connection with the Project and who are bound to a Project specific non-disclosure agreement in respect of the Transaction and the Permitted Purpose with terms at least as protective of the Information as the terms of this Agreement; and
- (iv) any other person approved in advance by the Disclosing Party in writing,

and the Receiving Party shall procure that any of the persons referred to in this sub-Clause 2.2 (b) (Non Disclosure) (other than those individuals referred to in Clause 2.2 (b) (iii)) to whom all or any of the Information is disclosed shall confirm to the Receiving Party in writing their understanding and acknowledgment of its confidential nature, and shall treat it strictly as private and confidential and shall safeguard it accordingly and shall act or omit to act as the case may be as if he, she or it had agreed with the Disclosing Party on the same terms as this Agreement.

2.3 Disclosure of Minimum Amount Necessary

- (a) In the case of having to disclose all or any part of the Information in accordance with Clause 2.2 (Non disclosure), the Receiving Party undertakes only to disclose the minimum amount of such Information as is strictly necessary.
- (b) NBI and the Contractor are each entering into this Agreement on its own behalf and on behalf of their respective Affiliates. Any reference to NBI or the Contractor should read as a reference to their respective Affiliates such that any Affiliate of either NBI or the Contractor respectively may be a "Disclosing Party" or a "Receiving Party" hereunder PROVIDED THAT, for the avoidance of doubt, NBI undertakes that it shall not disclose Information to a Competitor.
- (c) For the purpose of this Agreement each of NBI and the Contractor shall be entitled to receive and disclose Information on its own behalf and on behalf of their respective Affiliates and may share Information received with their respective Affiliates.
- (d) All acts or omissions of either Party's Affiliate in relation to the Information shall be treated as if they were the acts or the omissions of that Party itself.

3. Return and Recording of Information

3.1 Undertaking

- (a) Whenever requested by the Disclosing Party, the Receiving Party undertakes to:
 - (i) return, and procure that there is returned to the Disclosing Party, immediately all matter in tangible form which constitutes the Information, or any part of it, together with all copies (whether supplied to or made by the Receiving Party);

- (ii) destroy and procure the destruction of any notes, analyses, compilations, studies, reports, memoranda and other documents or materials prepared by the Receiving Party or on their behalf which reflect or are prepared from or contain any of the Information;
- (iii) expunge and procure that there is expunged all Information from any computer, word processor or other similar device into which all or any part of it was entered or programmed;
- (iv) furnish and procure that any person referred to in Clause 2.2 (Non Disclosure) to whom or to which Information has been imparted furnishes the Disclosing Party with a certificate signed by them, or in the case of a company or firm, a director or manager thereof confirming compliance with this Clause 3 (Return and Recording of Information); and
- (v) maintain a list of individuals or entities to whom any Information is disclosed (to include details of the Information disclosed) and make such list available to the Disclosing Party upon request.

3.2 Notification of Proceedings or Actions

- (a) The Receiving Party may make and retain copies of Information as required by law and/or regulatory requirement, or that are automatically generated or stored by backup systems **and** which are not accessible in the normal course of business.
- (b) This Agreement does not prevent the disclosure of Information that a Party is required to disclose by law or to a regulatory authority provided that the Receiving Party undertakes to immediately notify the Disclosing Party in writing as soon as reasonably practicable if any proceedings are commenced or action taken which could result in the Receiving Party or any person referred to in Clause 2.2 (Non Disclosure) becoming compelled to disclose all or any of the Information, and to take all available steps at the Receiving Party's expense to resist or avoid such proceedings or action, including all steps that the Disclosing Party may reasonably request and to keep the Disclosing Party fully and promptly informed of all matters and developments relating to such proceedings.

3.3 Announcement of Interest

Except as contemplated by this Clause 3.3 (Announcement of Interest), NBI and the Contractor undertake not to make any announcement whatsoever or disclosure (other than as permitted by Clause 2.2 (Non Disclosure) relating to the Transaction or the Project or the Permitted Purpose (including its existence and the terms of same or the proposed transactions between the Parties hereto (if any)). Where it is reasonably determined that any such disclosure or announcement is required by law or by any regulation, rule or any governmental or quasi-governmental authority or its equivalent or any supervisor or regulatory body to which NBI and/or the Contractor or any of the persons in Clause 2.2 (Non Disclosure) are subject and with whose rules it is necessary to comply, to the maximum extent permissible at law such disclosure shall be made by the Parties hereto, only after consultation with each other after taking into account the Parties reasonable requirements as to its timing, contents and manner of making or despatch.

3.4 **Information in Public Domain**

It is accepted by the Disclosing Party that nothing contained in this Agreement shall in any way restrict the Receiving Party's right to use, disclose or otherwise deal with any of the Information if and to the extent that it was at the time (the Receiving Party having satisfied itself to be the case) it was imparted to the Receiving Party in the public domain, other than as a result of a breach (whether directly or indirectly) of this Agreement, by the Receiving Party or by any person referred to in Clause 2.2 (Non Disclosure).

3.5 **Basis of Arrangements**

- (a) The Parties further agree, warrant, acknowledge and undertake that:
- (i) all Information and the intellectual property rights therein shall remain the property of the Disclosing Party and no right or licence, including any right or licence to any intellectual property rights in the Information, is granted to the Receiving Party or its advisers in relation to the Information;
 - (ii) no contact, direct or indirect, in connection with the Receiving Party's appraisal of the Transaction, the Project and or Permitted Purpose, will be made by the Receiving Party or on its behalf with any director, officer or employee of the Disclosing Party (or any of its members), or with any customer or supplier of the same, or with any governmental body or regulatory authority or with any other person connected with the Disclosing Party (or any of its members) without in any such case the Disclosing Party's prior written consent having been obtained;
 - (iii) the Contractor is acting in respect of the Transaction and Permitted Purpose and preparing a proposal and / or providing services to NBI as principal (and not as agent or broker for or on account of any other person or company (including NBI));
 - (iv) documents, whether containing Information or otherwise, made available to the Receiving Party or their advisers prior to, or in the course of, or for the purposes of the Transaction, the Project or the Permitted Purpose, will not constitute an offer by the Disclosing Party, nor will such documents or the information contained in them form the basis of any contract (save as expressly provided for in them) nor a representation which may be relied upon by the Disclosing Party;
 - (v) neither Party nor any of their advisers, associates, agents, directors, employees or officers accepts responsibility for or makes (nor has accepted responsibility for or made) any representation or warranty, express or implied, with respect to the accuracy, completeness or otherwise of the Information or the contents of any other document or data supplied by the Disclosing Party or its agents in relation to the Transaction, and or the Project;
 - (vi) the Disclosing Party will be solely responsible for making its own decisions on the Information and any other documentation or data supplied to it or its agents in relation to its evaluation of the Transaction and the Project during the course of the Permitted Purpose and preparing and proposing and / or providing services to the

Receiving Party in respect of the Transaction and the Permitted Purpose;

- (vii) either Party may exclude from participating further in negotiations any person referred to in Clause 2.2 (Non Disclosure) who that Party believe has breached the terms of this Agreement in any respect and each Party hereby undertakes to comply forthwith with any such reasonable direction from the other Party (subject always to the terms and conditions of this Agreement);
- (viii) no single or partial exercise of, or failure or delay by a Party in exercising any right, power or privilege to which the relevant Party is entitled shall operate as a waiver of, or impair or preclude any other or further exercise; and
- (ix) any right or remedy conferred upon a Party hereunder for breach of any of the provisions of this Agreement shall be in addition and without prejudice to all other rights and remedies available to the relevant Party whether pursuant to this Agreement or provided for by law.

3.6 **Terms of Agreement**

The terms of this Agreement and each Party's obligations and acknowledgements under it may only be:

- (a) waived by another Party in writing; and
- (b) varied in writing signed by the Parties.

3.7 **Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

3.8 **Binding Obligation**

The Parties hereby acknowledge and confirm that the provisions of this Agreement are intended to impose an immediately binding legal obligation on them and will continue indefinitely unless

- (a) the Parties enter into a contract or agreement with one another, in which event the undertakings in this Agreement will lapse; or
- (b) either Party terminates this Agreement at any time for convenience with 30 days' written notice to the other Party, without such termination generating any liability. The obligations contained herein relating to the protection or use of Information disclosed to a Receiving Party during the term shall apply for 3 years after the disclosure of that Information.

3.9 Breach of Provision

The Receiving Party further acknowledges that any breach of the provisions of this Agreement (to include but not be limited to any unauthorised disclosure or use of the Information) would result in serious damage and harm being sustained by the Disclosing Party and as a result the Receiving Party hereby unconditionally agrees that damages would not be an adequate remedy for any breach of the provisions of this Agreement and the Receiving Party agrees to waive any rights it may have to oppose the granting of any equitable relief (including injunctive relief) sought by the Disclosing Party in relation to any threatened or actual breach of the provisions of this Agreement. Accordingly, the Disclosing Party shall be entitled, without proof of special damages, to seek an injunction or other interim measures.

3.10 Severability of Clauses and Provisions

The Parties agree that each provision of this Agreement (including each undertaking and each part of it) shall be construed separately and independently from each other and notwithstanding that such provision and / or undertaking (or part of it) may be held by any court or competent authority to be illegal or unenforceable the remaining provisions and undertakings of this Agreement shall continue in full force and effect.

3.11 Decline to Supply Information

For the avoidance of doubt the Parties acknowledge that nothing contained in this Agreement shall compel the Parties respectively to provide all or any information relating to the Transaction, the Project, the Department and the Parties shall be entitled at its absolute and sole discretion to decline to supply a Party hereunder, with any information (including the Information).

3.12 Counterparts

This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts (which may be scanned photocopies), but shall not take effect until each Party has executed at least one counterpart. Each counterpart shall constitute an original but all the counterparts together shall constitute a single agreement.

3.13 Governing Law

The Parties agree that the terms of this Agreement (to include but not limited to all obligations and undertakings hereunder) shall be governed by and construed in all respects in accordance with the laws of Ireland and the Parties hereby agree to submit to the exclusive jurisdiction of the Irish courts.

IN WITNESS WHEREOF this Agreement has been entered into the day and year first herein written.

Signed for and on behalf of: **NBI INFRASTRUCTURE DAC:**

SIGNATURE

NAME (BLOCK CAPITALS)

TITLE

DATE

Signed for and on behalf of:

AUTHORISED SIGNATURE

NAME (BLOCK CAPITALS)

TITLE

DATE

DATED

NBI INFRASTRUCTURE DAC

AND

MUTUAL NON-DISCLOSURE CONFIDENTIALITY AGREEMENT