**CONFIDENTIALITY AGREEMENT**

 This Confidentiality Agreement (this “Agreement”), dated and effective as of [Enter date here], (the “Effective Date”), is entered into by and between Kansas Department of Commerce Office of Broadband Development (“Commerce”) and , (“Company”). Each of Commerce and is sometimes referred to herein as “Party” and, collectively, as the “Parties.”

**WITNESSETH:**

 **WHEREAS,** Commerce and wish to enter into discussions relating to potential funding opportunities, (the “Opportunities”): and

 **WHEREAS,** in connection with the Opportunities, each Party may from time to time provide to the other Party certain Confidential Information (as defined below), and each Party when disclosing such information is the “Company” and when receiving such information is the “Commerce” with respect to such information; and

 **WHEREAS,** The Commerce agrees to keep the Company’s Confidential Information confidential in accordance with this Agreement.

 **NOW THEREFORE,** for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and intending to be legally bound hereby, the Parties agree as follows:

1. The term “Confidential Information” means any and all information furnished by the Company or its Representatives (as defined below) in connection with the finances, businesses, operations, assets and financial affairs that is non-public, confidential or proprietary in nature, furnished after the Effective Date, whether oral, written, visual or electronic, and regardless or the manner in which it is furnished. Confidential Information includes data, reports, interpretations, capital improvement plan, maps of existing or prospective service areas, forecasts and records containing or otherwise reflecting Confidential Information concerning the Company or its affiliates, as applicable, whether prepared by the Company or others, and any summaries or other documents created by a Party or its Representatives which refer to, relate to, discuss, constitute, or embody all or any portion of the Disclosing Party’s Confidential Information. Confidential Information does not include information which (a) is or becomes publicly available through no act of Commerce, its affiliates or their respective Representatives, (b) is approved for release by written authorization of Company, (c) is or becomes available to Commerce on a non-confidential basis (to the Receiving Party’s actual knowledge at the time of receipt) and from a source not known by Commerce to be bound by any obligation of confidentiality with respect to the information, prior to its disclosure by the Company or its Representatives or (d) was legally in the possession of Commerce prior to its disclosure by the Company or its Representatives. As used in this Agreement, the term “Representative” of a Party means such Party’s and its affiliates’ directors, officers, members, managers, partners, employees, contractors and advisors (including, for example, attorneys, accountants, underwriters, leaders, and consultants), who need to know the Confidential Information for purposes of evaluating, negotiating or approving the Opportunities.
2. Except as otherwise permitted by this Agreement, Commerce shall not unless otherwise permitted hereunder, (a) distribute or disclose to any third party any of the Company’s Confidential Information, (b) permit any third party to have access to such Confidential Information, or (c) use such Confidential Information for any purpose other than for the purpose of evaluating, negotiating or approving the Opportunities (“Permitted Purpose”). In addition, except as otherwise provided in this Agreement, no Party shall disclose the terms and conditions and the existence of this Agreement, any information about the Opportunities, or the terms or conditions or any other facts relating thereto, including, without limitation, the fact that discussions are taking place with respect thereto, the status thereof, or the fact that Confidential Information has been made available to Commerce or its Representatives.
3. Notwithstanding anything to the contrary in this Agreement, Commerce may disclose Confidential Information to its Representatives only to the extent necessary to assist the Commerce with the Permitted Purpose; provided, that each such Representative is directed to keep such information confidential in accordance with this Agreement. Commerce shall notify the Company promptly following discovery of any unauthorized disclosure of Confidential Information by it or its Representatives and shall cooperate in assisting Company in preventing further unauthorized use or disclosure. Commerce shall be liable for any breach or the terms of this Agreement by Commerce or any one or more of its Representatives.
4. If Commerce is required by applicable law, regulation, rule or legal process or as requested in any judicial or administrative proceeding to disclose any of the Company’s Confidential Information or other information governed by Section 2 of this Agreement, then Commerce shall use commercially reasonable efforts to avoid and, if not avoidable, to minimize disclosure of such Confidential Information or information, as applicable, to give the Company prompt written notice of such requirement or request so that the Company may seek an appropriate protective order, including any appeals, at the expense of the Company; provided that the foregoing shall not be construed to require the Commerce or its Representatives to initiate any legal action, suit or proceeding, and further provided that Commerce shall reasonably cooperate with Company in obtaining a protective order. If, in the absence of a protective order, Commerce reasonably determines that it is nonetheless required to disclose the Confidential Information or information, as applicable, then Commerce may disclose such Confidential Information or information, as applicable, without liability hereunder, provided that Commerce promptly (a) notifies the Company of any such disclosure, (b) uses reasonable efforts to ensure that all Confidential Information and other information, as applicable, that is so disclosed will be accorded confidential treatment, and (c) furnishes only that portion of the Confidential Information or other information, as applicable, which it is advised by counsel is legally required: provided that the foregoing shall not be construed to require Commerce or its Representatives to initiate any legal action, suit or proceeding. In the event Commerce receives a request for any Confidential Information under the Kansas Open Records Act or otherwise, it shall give notice to Company within two (2) business days.
5. If a Party determines that it does not wish to proceed with the Opportunities, then such Party shall promptly advise in writing the other Party of that decision. In such case, or if any Opportunity is not consummated within 24 months of the date hereof, upon the written request of the Company, Commerce will promptly, at its option, return to the Company or destroy all copies of the Company’s Confidential Information, whether in written or electronic form, which is in the possession or control of Commerce or its Representatives and will not retain any copies or other reproductions in whole or in part of such material, except to the extent required by law, regulation, rule or legal process. All other documents, memoranda, notes, summaries, analyses, extracts, compilations, studies or other material whatsoever prepared by Commerce or any of its Representatives based on the Company’s Confidential Information will also be destroyed. Commerce shall be deemed to have destroyed any Confidential Information that is provided by the Company or maintained by Commerce or its Representatives in electronic form on computers if such information is deleted from local hard drives so long as no attempt is made to recover such information from servers or back up sources, and so long as information is also deleted from other electronic or storage devices. Upon the request of the Company, Commerce shall confirm in writing to the Company that all such materials have been delivered to the Company, destroyed or otherwise managed in accordance with this Agreement.
6. Commerce acknowledges that the Company’s Confidential Information (including tangible copies and computerized or electronic versions thereof) is and at all times remains the sole and exclusive property of the Company and each Party has the exclusive right, title, and interest to its Confidential Information. No right, license, by implication or otherwise, is granted by any Party as a result of disclosure of Confidential Information under this Agreement.
7. This Agreement does not obligate any Party to enter into any further agreements and no Party is obligated under this Agreement to provide Confidential Information to the other Party. This Agreement is not intended to create, and shall not be construed to create a joint venture, partnership or other binding legal obligations between the Parties except with respect to the confidentiality of the Confidential Information as described herein.
8. The Parties agree that money damages may not be a sufficient remedy for any breach of this Agreement and that a Company shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy shall not be the exclusive remedy for any breach of this Agreement, but shall be in addition to all other rights and remedies available at law or in equity.
9. Notwithstanding the return or destruction or required retention of Confidential Information, Commerce and its Representatives shall continue to be bound by their respective obligations of confidentiality for a period of two (2) years from the Effective Date; provided that any information retained pursuant to Section 5 hereof shall continue to be subject to the provisions of this Agreement.
10. This Agreement contains the entire agreement of the Parties with respect to its subject matter. Any amendment to this Agreement must be in writing and approved by the Parties. If any provision of this Agreement is found to be unenforceable, the remaining provisions shall remain in full force and effect. Titles or captions of paragraphs or subparagraphs contained in this Agreement are inserted only as a matter of convenience.
11. No Party shall have the right to assign this Agreement, other than to a wholly owned subsidiary, without the prior written approval of the other Parties. This Agreement shall be binding on and shall inure to the benefit of all of the respective successors and permitted assigns of each Party. Nothing in this Agreement shall be deemed to create rights in or benefits for any third parties.
12. All notices with regard to this Agreement should be forward, if intended for Commerce, to:

 Kansas Department of Commerce

 1000 SW Jackson St., Suite 100

 Attn: General Counsel

 Fax: (785) 296-6809

 If intended for , to:

1. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. Any waiver shall be only effective for the particular instance for which it is granted and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.
2. This Agreement shall be governed by the laws of the State of Kansas, without giving effect to the provisions thereof relating to conflict of laws.
3. Notwithstanding anything herein to the contrary, in the event that there shall be a dispute among the parties arising out of or relating to this Agreement, the parties agree that such dispute shall be resolved by final and binding arbitration in Shawnee County, Kansas, administered by a mutually agreed upon arbitration specialist. Any award issued as a result of such arbitration shall be final and binding between the parties thereto, and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought. The fees and expenses of such arbitration (including reasonable attorneys’ fees) or any action to enforce an arbitration award shall be paid by the party that does not prevail in such arbitration.
4. Each document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically and (a) such imaged documents may be introduced as evidence in any proceeding as if such were original business records, and (b) no Party shall contest the admissibility of such imaged documents as evidence in any proceeding.
5. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument. The Parties agree that facsimile or electronic signatures of the Parties on this Agreement shall have the same force and effect as original signatures.

*[The remainder of this page intentionally left blank]*

 **IN WITNESS WHEREOF,** each Party, intending to be legally bond hereby, has caused this Agreement to be executed by its duly authorized representative as of the Effective Date.

 **KANSAS DEPARTMENT OF COMMERCE**

 By:

 Name:

 Title:

 **NAME**

 By:

 Name:

 Title: