

**DATED** \_\_\_\_\_ **2010**

**(1) SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS**

**and**

**(2) [SUPPLIER NAME]**

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**CONFIDENTIALITY AGREEMENT  
IN RELATION TO USC THEORETICAL EXERCISE**

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**Broadband  
Delivery UK**

A BIS INITIATIVE

**BIS** | **Department for Business  
Innovation & Skills**

1	DEFINITIONS	3
2	CONFIDENTIALITY UNDERTAKINGS	4
3	FREEDOM OF INFORMATION	5
4	SUPPLIER COLLABORATION/TEAMING	6
5	DURATION	6
6	RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION	6
7	NO COMMITMENT	6
8	ASSIGNMENT	6
9	THIRD PARTY RIGHTS	6
10	WAIVER AND INVALIDITY	6
11	ENTIRE AGREEMENT	7
12	VARIATION	7
13	COUNTERPARTS	7
14	GOVERNING LAW AND JURISDICTION	7

THIS AGREEMENT is made on **[Date of second signature]** 2010

**BETWEEN:**

- (1) **SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS** of 1 Victoria Street, London SW1H 0ET (“**BIS**”); and
- (2) **[Supplier's name]** a company registered in England under number **[Company number]** whose registered office is at **[Registered office address of company]** (“**Supplier**”).

**WHEREAS:**

- (A) The Supplier has agreed to participate in the USC Theoretical Exercise which BDUK is conducting on behalf of BIS and wider government (as such capitalised terms are defined below).
- (B) As part of the USC Theoretical Exercise, certain information and data which includes Confidential Information (as defined below) will be exchanged, disclosed or otherwise made available.
- (C) It is a condition of participation in the USC Theoretical Exercise that the parties enter into this Agreement.

**IT IS AGREED** as follows:

**1. DEFINITIONS**

- 1.1 In this Agreement unless the context otherwise requires the following words shall have the following meanings:

**“BDUK”** means the Broadband Delivery UK team within BIS or any successor thereof;

**“Confidential Information”** means any and all of the following information in whatever medium or form (including information conveyed in writing, orally, visually or electronically):

- (a) technical, commercial, financial and other sensitive information which is not publicly available;
- (b) information specifically designated by the Discloser as confidential; and
- (c) information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value,

which is directly or indirectly disclosed to the Recipient or any of its representatives by any agent or employee of the Discloser in connection with the USC Theoretical Exercise;

**“Discloser”** means the Party which discloses the relevant Confidential Information;

**“FOIA”** means the Freedom of Information Act 2000;

**“Party” or “Parties”** means BIS and/or the Supplier;

<b>“Purpose”</b>	means:
	(a) in the case of the Supplier, the use of the Confidential Information to enable the Supplier to respond to the ‘Request for Information’ issued in connection with the USC Theoretical Exercise and otherwise participate in the USC Theoretical Exercise; and
	(b) in the case of BIS (including BDUK acting on its behalf), the use of the Confidential Information in connection with Government’s broadband policies and objectives, including informing and/or developing the commercial, delivery, implementation, sourcing and procurement approach and strategies for the USC and Superfast Broadband;
<b>“Recipient”</b>	means the Party which receives Confidential Information from the Discloser;
<b>“Superfast Broadband”</b>	means the roll-out of so-called ‘superfast’ broadband or ‘next generation’ access in remote areas of the UK at the same time as more densely populated urban areas to increase the penetration of such broadband access in the UK;
<b>“USC”</b>	means the so-called ‘Universal Service Commitment’, the provision of access to basic broadband connectivity to virtually every community in the UK; and
<b>“USC Theoretical Exercise”</b>	a voluntary paper-based exercise to help understand the likely solutions, costs, constraints and opportunities associated with meeting Government’s broadband policies and objectives, including the USC and Superfast Broadband.

1.2 In this confidentiality undertaking, unless the context otherwise requires:

- 1.2.1 the singular shall include the plural and vice versa and one gender shall include the other;
- 1.2.2 a reference to any legislation shall include a reference to such legislation as amended, extended, consolidated or re-enacted from time to time;
- 1.2.3 any phrase introduced by the words 'including', 'includes', 'in particular', 'for example' or similar shall be construed as illustrative and without limitation to the generality of the related general words; and
- 1.2.4 references to Clauses shall, unless otherwise expressly provided, mean references to clauses in this confidentiality undertaking.

## 2. **CONFIDENTIALITY UNDERTAKINGS**

2.1 In consideration of the Parties signing and agreeing to the terms of this Agreement and agreeing to disclose Confidential Information, the Recipient undertakes to the Discloser that, with respect to any and all Confidential Information disclosed to the Recipient or to any person on behalf of the Recipient by the Discloser or by any person on behalf of the Discloser, the Recipient shall:

- 2.1.1 treat all Confidential Information completely and strictly confidential and keep it in safe and secure custody (as is appropriate depending upon the form in which such information is recorded and stored and the nature of the Confidential Information);

- 2.1.2 not disclose, copy, reproduce, publish or distribute the Confidential Information (or any part thereof) to any person save to the extent expressly permitted under this Agreement or otherwise authorised by the Discloser in writing;
  - 2.1.3 respect the Discloser's proprietary rights in the Confidential Information and maintain the Confidential Information as the Discloser's property;
  - 2.1.4 use the Confidential Information solely and exclusively for the Purpose; and
  - 2.1.5 inform the other Party immediately upon becoming aware or suspecting any unauthorised access, copying, use or disclosure in any form of Confidential Information.
- 2.2 Clause 2.1 shall not, or shall cease to, apply to the extent that any Confidential Information:
- 2.2.1 is or becomes generally known or available to the public (other than as a direct or indirect result of a disclosure in breach of this Agreement or any confidentiality undertaking given by any other person);
  - 2.2.2 is already known to the Recipient prior to disclosure by the Discloser or any other person on behalf of the Discloser and such prior knowledge can be evidenced by the written records of the Recipient;
  - 2.2.3 is or becomes known to the Recipient by disclosure from a third party (other than where such disclosure is itself subject to an obligation of confidentiality);
  - 2.2.4 is not required to be treated as Confidential Information, as expressly confirmed by the Discloser in writing; or
  - 2.2.5 is required to be disclosed by any applicable law, governmental or regulatory authority, provided that the confidentiality obligations shall only be waived to the extent of the disclosure so required and provided further that where reasonably practicable and lawful, the Recipient shall:
    - (a) promptly (and where reasonably practicable, in advance) notify the Discloser of the required disclosure and upon the Discloser's request, provide such information as may be reasonably required by the Discloser to understand the basis and implications of such required disclosure; and
    - (b) upon the Discloser's request, provide such co-operation as may be reasonable in the circumstances taking into account the basis, manner, scope and timing of such required disclosure to challenge the basis or mitigate the implications of such required disclosure.
- 2.3 Each party shall be entitled to disclose Confidential Information to its professional advisors (including consultants) to the extent necessary to enable it to take advice with respect to the USC Theoretical Exercise and/or to enforce its rights or obligations under this Agreement. The Recipient shall procure that any such professional advisor to whom Confidential Information is disclosed complies with the obligations of confidentiality and the terms and conditions of this Agreement as if such professional advisor were receiving such Confidential Information as a Recipient hereunder.
- 2.4 Nothing in this Agreement shall prevent BIS from sharing and/or reporting the learning gained by, and other outputs of the USC Theoretical Exercise, provided that all information is generic, anonymised and not specifically attributable to the Supplier so that confidentiality is maintained.
- 3. FREEDOM OF INFORMATION**
- 3.1 The Supplier acknowledges that BIS is subject to FOIA and may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of FOIA ("**Code**"), be obliged to disclose Confidential Information.

3.2 BIS shall take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure of any Confidential Information pursuant to Clause 3.1 to the Supplier's attention promptly after any such disclosure.

3.3 The Supplier further acknowledges that any markings of confidentiality are of indicative value only and that BIS may be obliged to disclose it in accordance with Clause 3.1, and agrees that such disclosure shall not constitute a breach of confidence under this Agreement.

3.4 The Supplier shall provide to BIS such information and assistance as is reasonably required to support BIS in responding to a request for information received under FOIA.

#### 4. **SUPPLIER COLLABORATION/TEAMING**

In the event the Supplier intends to collaborate, team or otherwise work with any other party in connection with the USC Theoretical Exercise, then the Supplier shall not disclose any Confidential Information to such other party unless and until such other party has entered into a confidentiality undertaking with BIS on the same terms and conditions as set out in this Agreement.

#### 5. **DURATION**

5.1 The obligations of confidentiality herein shall be legally binding on the Parties and each of its representatives both during and after completion or earlier termination of the USC Theoretical Exercise.

5.2 The obligations of confidentiality herein shall survive termination of this Agreement howsoever occasioned until such time as the relevant Confidential Information ceases to be confidential.

#### 6. **RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION**

6.1 Upon the Discloser's reasonable written request, the Recipient shall promptly:

6.1.1 return or destroy Confidential Information (including any copies), including any documents or other materials which incorporate Confidential Information; and

6.1.2 provide written confirmation to the Discloser that the relevant Confidential Information has been destroyed and/or that no copies of any Confidential Information have been retained by the Recipient.

#### 7. **NO COMMITMENT**

Nothing in this Agreement shall constitute a commitment by any person to supply any Confidential Information or to enter into any transaction in connection with meeting any Government broadband policies and objectives or otherwise.

#### 8. **ASSIGNMENT**

The Supplier shall not assign or otherwise transfer any of its rights or obligations under this Agreement.

#### 9. **THIRD PARTY RIGHTS**

Nothing in this Agreement shall confer on any third party any benefits under the provisions of the Contracts (Rights of Third Parties) Act 1999. This does not affect any Party's rights or remedies, or the rights of any other person, which may exist or are available other than by virtue of that Act.

#### 10. **WAIVER AND INVALIDITY**

10.1 A waiver by any Party of any breach of, or default in, any term or condition of this Agreement shall not constitute a waiver of or any assent to any succeeding breach of, or default in, the same or any other term or condition.

10.2 If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions will continue in full force and effect as if the relevant provision had been deleted.

11. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters contained within this Agreement. Each Party acknowledges and agrees that it does not rely on and shall have not have any remedy in respect of any statement, representation, warranty or undertaking other than as expressly set out in this Agreement, provided that nothing in this Agreement shall operate to exclude any liability for fraud.

12. **VARIATION**

This Agreement may only be amended or varied in writing.

13. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, will be an original, and all the counterparts together will constitute one and the same instrument.

14. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and both Parties irrevocably submit to the exclusive jurisdiction of the English courts in relation to any matters arising out of or in connection with this Agreement.

This Agreement has been entered into on the date stated at the beginning of it.

**SIGNED** for and on behalf of the **SECRETARY** )  
**OF STATE FOR BUSINESS, INNOVATION AND** )  
**SKILLS** )

Authorised Signatory Name: **Samuel Sharps**  
Authorised Signatory Title: **Deputy Director Information Economy**

**SIGNED** for and on behalf of **[SUPPLIER]** )  
 )  
 )

Authorised Signatory Name:  
Authorised Signatory Title: