

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”), is made and entered into this _th day of _____ 2023, (the “Effective Date”) by and between _____, a _____ corporation with a principal place of business at ____ (“_____”) and NEK Community Broadband with a principal place of business at PO Box 4012, Saint Johnsbury, VT 05819 (“NEK Broadband”), a body politic and corporate formed under Title 30 V.S.A. Chapter 82 as a Communications Union District for the purpose of delivering communications services and the operation of a communications plant (each a “Party” and collectively the “Parties”).

WHEREAS, the Parties anticipate the need for either Party to disclose to the other Party information and materials concerning the disclosing party and its business activities in connection with a possible business arrangement between the Parties (the “Proposed Transaction”).

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties acknowledge and agree as follows:

1. Certain Definitions.

1. “**Confidential Information**” means any proprietary information, data, information or materials (whether in oral, written, electronic or any other form) of Disclosing Party disclosed to the Recipient or its Representatives in connection with the Proposed Transaction (including, without limitation, that relating to Disclosing Party’s business, finances, products, intellectual property, services, technology, business plans, proprietary promotional and marketing activities, business affairs, clients, customers and prospects, third-party information the Disclosing Party is required by law or by a third party to keep confidential) which is marked as “confidential”, “proprietary” or with a similar legend, or, which, based on their nature and the circumstances of disclosure, should reasonably be considered confidential. In addition, the term “Confidential Information” shall be deemed to include any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to the Recipient or its Representatives pursuant hereto.
2. “**Definitive Agreement**” has the meaning ascribed thereto in Section 4 below.
3. “**Disclosing Party**” shall mean the Party disclosing Confidential Information to the Recipient or its Representatives.
4. “**Party**” means either party to the agreement, and “**Parties**” means both parties.
5. “**Proposed Transaction**” has the meaning ascribed thereto in the Preamble above.

6. “**Recipient**” shall mean the Party receiving the Confidential Information from the Disclosing Party.
7. “**Representatives**” has the meaning ascribed thereto in Section 2 below.

2. Access to Confidential Information. Recipient may share Confidential Information with those of its personnel, agents and authorized representatives, including directors, officers, consultants, employees, agents, members, attorneys, and advisors who have a need to know such Confidential Information (its “Representatives”) for the purpose of evaluating the Proposed Transaction, so long as each such Representative has been informed of the confidential nature of the Confidential Information and agrees to comply with the requirements of this Agreement, whether by way of an express confidentiality agreement or implied by his or her professional duties. Recipient may also share Confidential Information with Recipient or personnel for purposes beyond a need-to-know basis for purposes of marketing to Disclosing Party other products and services, so long as such personnel meet the requirements of the preceding sentence.

3. Obligation of Confidentiality. The Recipient of the Confidential Information recognizes and acknowledges the competitive value and confidential and proprietary nature of the Confidential Information and the damage that could result to the Disclosing Party if information contained therein were disclosed to any third party. Each Party shall protect the Confidential Information furnished to it by or on behalf of the other Party or its Representatives and all analyses, compilations, forecasts, studies and other material prepared by the other Party or its Representatives containing or based in whole or in part on any such Confidential Information furnished by or on behalf of either Party or any of its Representatives by using the same degree of care, but not less than a reasonable degree of care, to prevent the unauthorized use, dissemination, publication of, or access to, the Confidential Information as it uses to protect its own confidential information.

4. Use of Confidential Information. The Party receiving the Confidential Information agrees that it shall be used solely for the purpose of evaluating the Proposed Transaction and agrees that it shall not exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the other Party, which consent may be withheld in the Disclosing Party’s sole discretion. However, if the Parties proceed with the Proposed Transaction and execute a definitive agreement relating thereto (the “Definitive Agreement”), then Recipient may additionally copy and use the Confidential Information for the purpose of and to the extent necessary to exercise its rights and/or fulfill its obligations under the Definitive Agreement. The Recipient also agrees that it shall not disclose any of the Confidential Information, in whole or in part, to any third party without the prior written consent of the other Party in each instance, which consent may be withheld in the Disclosing Party's sole discretion; provided, however, that any such information may be disclosed to Representatives of the Recipient who need to know such information for the purpose of evaluating the Proposed Transaction and who agree to be bound by the non-disclosure terms of this Agreement. Each agrees to be legally responsible for any improper disclosure or use of such information by any of its Representatives and to identify to the other Party promptly upon request the identities of any Representatives to whom such information has been disclosed.

5. Additional Measures. In addition, if the Disclosing Party requests that the Recipient employ particularized or specific reasonable measures against disclosure with respect to the specified Confidential Information, the Recipient shall, by accepting the Confidential Information, be bound by such measures, provided that the Disclosing Party makes such request in writing on or before the date the Confidential Information is provided and identifies with specificity the Confidential Information that is to be subject to such specific reasonable measures, so long as such measures do not conflict with Section 7 Public Agency.

6. Ownership of Confidential Information. Confidential Information shall remain the property of the Disclosing Party notwithstanding disclosure hereunder. Disclosure of Confidential Information hereunder shall not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information or in any patents or patent applications.

7. Public Agency and Vermont Open Meeting Law. The parties acknowledge and agree to the following:

1. NEK Broadband is a “public agency” and subject to the Vermont Open Meeting law, 1 V.S.A. §§ 310-314, and the Access to Public Records law, 1 V.S.A. §§ 315-320. As a public agency, its board’s and committees’ meetings are open to the public unless there is statutory justification for entering into an executive session, 1 V.S.A. § 313. Any records in their possession must be disclosed to the public upon request unless the document is exempt from the disclosure requirement. Such exemptions include, but are not limited to, protections for “trade secrets . . . which gives its user or owner an opportunity to obtain business advantage over competitors” and records related to the “negotiation of contracts”. 1 V.S.A. § 317. Should a request be made for disclosure of Confidential Information from a Party (the “Responding Party”), the Responding Party shall provide notice of such request to the other Party (the “Non-Responding Party”). If the Non-Responding Party claims or asserts that a particular document falls under any of the exemptions, that Non-Responding Party shall provide the Responding Party with sufficient information to demonstrate its compliance therewith within two (2) days’ of notice of the request.

2. As a joint action entity on behalf of its municipal members created under statute by the Vermont Legislature, 30 V.S.A § 3053, NEK Broadband exists for the benefit of its municipal members and the residents of those communities. Because they are public agencies, the Parties may need to communicate essential information about the project to a member, a member’s governing body or a member’s voters. In the case Confidential Information is provided to a member’s staff, that Party shall require that those entities use the same level of care that the Party must use with regard to the Confidential Information. In the case that essential project information needs to be provided to a member’s governing body or a member’s voters, and such information includes Confidential Information, that Party shall use reasonable commercial efforts to remove identifying

references to the other Party when providing the essential project information or shall only discuss such information in an executive session.

3. The project that is being contemplated by this Agreement may require that NEK Broadband and/or their members obtain regulatory approval for its implementation. If such approval is necessary, a Party and its members must provide sufficient information to regulators and parties intervening in the regulatory proceedings to allow the regulators to make positive findings on the project and issue any necessary approvals. If the information provided to regulators or intervenors contains Confidential Information, the Party and its members shall use reasonable commercial efforts to obtain a protective order to prevent the public disclosure of the Confidential Information. The Non-Responding Party agree to provide the Responding Party and its members with sufficient supporting information to justify the issuance of a protective order.

8. Compelled Disclosure. In the event that the Party receiving Confidential Information and/or its Representatives are requested in any proceeding or required by law, court order or regulation (including any rule of a stock exchange on which the stock of a Party is listed) to disclose any Confidential Information, other than those situations described in Section 5 above, the Party receiving the request shall provide the Disclosing Party prompt notice of such request or requirement so that the Disclosing Party may seek an appropriate protective order. If, in the absence of a protective order, the Recipient or its Representatives are nonetheless compelled to disclose such Confidential Information, the Recipient or its Representatives, as the case may be, may disclose such portion of the Confidential Information which it is advised by counsel is legally required in such proceeding; provided, however, that the Recipient provide the Disclosing Party written notice of the information to be disclosed as far in advance of disclosure as is practicable and uses its best efforts to obtain assurances that confidential treatment shall be accorded to such information.

9. Non-Circumvention. The Parties agree that they shall use the Confidential Information only as it relates directly to the Proposed Transaction, and that neither a Party nor its Representatives shall knowingly, as a result of knowledge or information obtained from the Confidential Information or otherwise in connection with the Proposed Transaction, divert or attempt to divert any business, customer, supplier, licensee or opportunity of the other Party or encourage any person to cease doing business with the other Party. In consideration of Disclosing Party's disclosure of its Confidential Information, the Recipient shall not attempt in any manner to commercially exploit Disclosing Party's Confidential Information.

10. Return or Destruction. Each Party shall, upon the written request of a Disclosing Party, (a) promptly return to the Disclosing Party or destroy all Confidential Information received or developed pursuant to this Agreement (and all copies and reproductions thereof, including those in the custody and control of Representatives), and (b) provide Disclosing Party with a written confirmation of such return and destruction, signed by an authorized officer of the Recipient.

11. Retention of Copies. Recipient may retain copies of Confidential Information as reasonably required to comply with legal, regulatory or audit requirements or its internal records retention policies and procedures. Such retained Confidential Information shall remain subject to this Agreement.

12. Term. This Agreement shall be effective from the Effective Date and shall continue until written notice of termination is provided by either party or after five (5) years, whichever is earlier. All provisions of this Agreement relating to Confidential Information disclosed pursuant to this Agreement prior to termination shall survive the termination of this Agreement or the return or destruction of the Confidential Information.

13. Exceptions. Neither Party nor its Representatives shall have any obligation hereunder with respect to any information in the Confidential Information to the extent that the Recipient can demonstrate that such information (a) has been made public other than by acts by itself or its Representatives in violation of this Agreement, (b) becomes available to the Recipient on a non-confidential basis from a source that is not prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation, or (c) was not clearly identified by the Disclosing Party as “Confidential Information.” For (a) and (b), this exception shall only apply if the entire piece of information satisfies the standard described in (a) or (b), respectively.

14. No Representations or Warranties. Neither party makes any representation or warranty as to the accuracy or completeness of the Confidential Information. Only the representations and warranties, if any, set forth in a Definitive Agreement, when, as and if it is executed and delivered (and subject to the restrictions and conditions specified therein) shall have any legal effect. No license under any patents, copyrights, mask work rights, trademarks or other proprietary rights is granted by the disclosure of or access to Confidential Information under this Agreement. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS”, WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO A WARRANTY THAT IT IS ACCURATE OR COMPLETE OR A WARRANTY AGAINST INFRINGEMENT.

15. Equitable Relief. The Parties agree that financial damages would not be a sufficient remedy for any breach of this Agreement by the other Party or its Representatives, and that, in addition to all other remedies, the Disclosing Party shall be entitled, as a matter of right and without the need to prove irreparable injury, to specific performance and injunctive or other equitable relief as a remedy for any such breach, and further waives, and agrees to use its best efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy. The Parties agree to be legally responsible for any breach of this Agreement by any of their Representatives. Each Party further agrees to pay the costs and expenses, including attorney fees, of the other Party if a court of competent jurisdiction determines that a Party or its Representatives has breached this Agreement.

16. Amendment; Waiver; Assignment. No failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof nor shall any

single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder. No provision of this Agreement may be waived or amended or any consent given except by a writing signed by a duly authorized representative of the Party, which specifically refers to this Agreement and the provision so amended or for which such waiver or consent is given. No request or proposal to amend, modify or waive any provisions of this Agreement shall be made or solicited except in a non-public and confidential manner. This Agreement may not be assigned by either Party without the written consent of the other Party, and any attempt to assign or transfer this Agreement or any interest herein (including, without limitation, rights and duties of performance) without such consent is void and without effect. Subject to the foregoing, this Agreement and each and every provision hereof shall be binding upon and shall inure to the benefit of the Parties and their permitted successors and assigns.

17. Independent Development. Nothing in this Agreement will be construed to preclude Recipient from developing, using, marketing, licensing and/or selling any independently developed product, service, technology, software or data processing information and/or material that is similar to the Confidential Information disclosed under this Agreement, provided Recipient has not done so in breach of this Agreement.

18. Notices. All notices required or permitted by this Agreement shall be deemed to have been given when actually delivered (i) by hand, (ii) by a national overnight courier service (e.g., FedEx) or (iii) by certified mail, return receipt requested, postage prepaid and addressed as below. All notices shall also be immediately provided through email to the addresses listed below.

If to NEK Broadband
PO Box 4012
St. Johnsbury, VT
Attn: Christa Shute
Email: director@nekbroadband.org
Attn: Legal Email:

with a copy (which shall not constitute notice) to:

Montroll, Oettinger & Barquist, P.C.
126 College Street, Suite 400
P.O. Box 1045
Burlington, VT 05402
Attn: Andrew Montroll
Email: amontroll@mblawoffice.com

If to {{CONTRACTOR}}

19. Severability. In case any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

20. Governing Law; Venue. This Agreement shall be construed according to the laws (other than the laws on conflicts of laws) of the State of Vermont. Each Party agrees to accept the non-exclusive jurisdiction of the courts of the State of Vermont, and those of the United States of America situated in the State of Vermont, for the adjudication of any dispute arising out of this Agreement. Each Party irrevocably: (1) agrees that any suit, action, or other legal proceeding arising out of this Agreement may be brought in any Vermont or United States federal court located in the State of Vermont; (2) consents to the jurisdiction of each such court in any such suit, action, or legal proceeding; (3) waives any objection which it may have to the laying of venue of any such suit, action, or legal proceeding in any of such courts; and (4) agrees that Vermont is the most convenient forum for litigation of any such suit, action, or legal proceeding.

21. Counterparts. This Agreement may be executed in any number of counterparts and by different Parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic transmission in portable document format (.pdf) shall be equally as effective as delivery of an original executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective the day and year first above written.

NEK Community Broadband

Company:

By:___

By:___

Name: Christa Shute
Title: Executive Director

Name:
Title: