

Appendix 1 – Non Disclosure Agreement (NDA)

DATED 3 July 2023

(1) DEPARTMENT FOR THE ECONOMY

AND

(2) [MID ULSTER COUNCIL]

NON-DISCLOSURE AGREEMENT

**IN RESPECT OF INFORMATION DISCLOSED IN CONNECTION WITH DIGITAL
INFRASTRUCTURE POLICY INITIATIVES AND PROGRAMMES**

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THIS AGREEMENT is made on

2021

BETWEEN:

- (1) **DEPARTMENT FOR THE ECONOMY** of Adelaide House, 39-49 Adelaide Street, Belfast, BT2 8FD (the "**Authority**"); and
- (2) **[MID ULSTER COUNCIL]** of [insert] (the "**Council**").

WHEREAS:

- (A) The Parties may disclose Confidential Information to each other in connection with the Authority Programmes.
- (B) The terms of this Agreement apply to the treatment of Confidential Information.

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:

Agreement	means the Clauses in and the Schedules to this agreement;
Authority	has the meaning given to that term on page 1 of this Agreement;
Authority Programmes	means the digital infrastructure policy initiatives and/or programmes of the Authority from time to time (including Project Gigabit;
Confidential Information	means the relevant information described in the second column of the table in Schedule 1 to this Agreement, in whatever medium or form (including information conveyed in writing, orally, visually or electronically);
Discloser	means the Party which discloses the relevant Confidential Information;
FOI Legislation	means FOIA and the Environmental Information Regulations 2004, together with any relevant guidance and/or codes of practice issued by the Information Commissioner or any relevant central government body;
FOIA	means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time;
Information Request	means a request for information within the meaning of section 8 of FOIA;
Party	means a party to this Agreement;
Premise Level Data	has the meaning given in paragraph 1.1 of Schedule 2;

Purpose	means any purposes necessary in connection with the Authority Programmes;
Receiver	means the Party which receives the relevant Confidential Information from the Discloser;
Council	has the meaning given to that term on page 1 of this Agreement.

1.2 In this Agreement, 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 law shall include a reference to such law as amended, extended, consolidated or re-enacted from time to time, including any law as amended or repealed to deal with the UK's exit from the European Union;
- 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 and Schedules shall, unless otherwise expressly provided, mean references to clauses in, and schedules to, this Agreement.

2. **CONFIDENTIALITY UNDERTAKINGS**

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

- 2.1.1 treat all Confidential Information as 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) to any person save to the extent expressly permitted under this Agreement or otherwise authorised by the Discloser in writing;
- 2.1.3 respect any existing proprietary rights in the Confidential Information;
- 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 Receiver 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 Receiver;

- 2.2.3 is or becomes known to the Receiver 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 or governmental or regulatory authority (including the National Audit Office and in respect of any parliamentary reporting requirement), provided that Clause 4 shall apply in respect of disclosures required by the FOI Legislation.
- 2.3 Schedule 2 contains certain additional terms in relation to specific Confidential Information.

3. DISCLOSURE RIGHTS

3.1 Unless provided otherwise in Schedule 1 in respect of specific Confidential Information:

3.1.1 each Party shall be entitled to disclose Confidential Information to:

- (a) its directors, officers, employees, agents, consultants and contractors who are directly involved with the Purpose and need to know the Confidential Information for that purpose;
- (b) its professional advisers for the purpose of obtaining advice in connection with the Purpose or this Agreement;

3.1.2 the Authority shall be entitled to disclose Confidential Information disclosed by the Council:

- (a) subject to Clause 2.2.5, to any UK central government body (including their professional advisers and consultants) for the Purpose;
- (b) to other public bodies (including BDUK/DCMS) who are involved with the Purpose; and

3.1.3 the Council shall be entitled to disclose Confidential Information disclosed by the Authority to the Council's sub-contractors (including relevant sub-contractor personnel) who are directly involved with the Purpose and need to know the Confidential Information for the Purpose,

provided that for the purpose of this Clause 3.1 the Party which discloses the Confidential Information under Clause 3.1.1, 3.1.2 or 3.1.3 (as the case may be) shall remain responsible and liable for compliance with the confidentiality obligations set out in this Agreement by the persons to whom the disclosure has been made as if those persons are parties to this Agreement.

4. FREEDOM OF INFORMATION

4.1 The Council acknowledges that the Authority is subject to the FOI Legislation and agrees to assist and co-operate with the Authority to enable the Authority to comply with its obligations under the FOI Legislation.

4.2 The Council shall promptly:

4.2.1 give the Authority notice of any Information Request it receives relating to the disclosure of information relevant to the Authority and/or the relevant Authority Programme (including any relevant Confidential Information);

- 4.2.2 where requested by the Authority, provide the Authority with any information necessary to enable the Authority to respond to an Information Request received by the Authority; and
 - 4.2.3 where requested by the Authority and subject to Clause 4.3, agree with the Authority whether and what information is to be disclosed, and the basis upon which any exemptions under the FOI Legislation are to be applied.
- 4.3 The Authority may be obliged under the FOI Legislation to disclose Confidential Information provided by the Council without consulting with the Council provided that in such circumstances the Authority shall take reasonable steps, where appropriate, to give the Council advance notice of the disclosure, or failing that, to draw the disclosure to the Council's attention after the disclosure.
- 4.4 This Clause 4 shall survive the expiry or earlier termination of this Agreement.

5. **TERM**

Unless the Parties agree otherwise in Schedule 1 in respect of specific Confidential Information, this Agreement shall remain in force for so long as the relevant Confidential Information remains of a confidential nature.

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

- 6.1 Upon the Discloser's reasonable written request, the Receiver shall promptly:
- 6.1.1 return or destroy relevant Confidential Information (including any copies), including any documents or other materials which incorporate the relevant 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 the relevant Confidential Information have been retained by the Receiver.

7. **LIABILITY**

- 7.1 Neither Party shall be liable to the other Party for any indirect, special or consequential loss (of any kind).
- 7.2 Nothing in this Agreement shall limit or exclude either Party's liability which cannot be excluded or limited by law.
- 7.3 Subject to Clauses 7.1 and 7.2, the liability of each Party to the other Party for all losses under or in relation to this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed £5,000,000 (five million pounds sterling) in aggregate.

8. **EQUITABLE REMEDIES**

The Parties acknowledge that damages alone may not be an adequate remedy for breaches of this Agreement. Accordingly, the affected Party shall be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of this Agreement, and no proof of special damages will be necessary to enforce this Agreement.

9. **ASSIGNMENT**

The Council shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the Authority.

10. **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.

11. **WAIVER AND INVALIDITY**

11.1 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.

11.2 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.

12. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters relating to the treatment of Confidential Information 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.

13. **VARIATION**

This Agreement may only be amended or varied by agreement of the Parties in writing.

14. **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. Transmission of a signed counterpart of this Agreement by email in PDF format shall take effect as delivery of a signed counterpart of this Agreement. If this method of delivery is adopted, without prejudice to the validity of the agreement so made, the Parties shall provide each other with the original of such counterpart as soon as is reasonably practicable

15. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with Northern Ireland law and the Parties irrevocably submit to the exclusive jurisdiction of the Northern Ireland 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 the **DEPARTMENT FOR THE ECONOMY** by

Signature:

Name:

Position:

Date:

who is authorised in that regard

SIGNED for and on behalf of **[MID ULSTER COUNCIL]** by

Signature:

Name:

Position:

Date:

SCHEDULE 1 – SPECIFIC CONFIDENTIAL INFORMATION (OVERVIEW)

Discloser	Confidential Information	Purpose of Disclosure (see the definition of Purpose)	Disclosure Rights (see Clause 3)	Period of Confidentiality (see Clause 5)
Council	Premise Level Data	As set out in paragraph 1.2.2 of Schedule 2	As set out in Clause 3.1 and paragraph 1.2 of Schedule 2	As set out in Clause 5

SCHEDULE 2 – SPECIFIC CONFIDENTIAL INFORMATION (TERMS)

This Schedule contains certain terms that are applicable to specific Confidential Information.

1. PREMISE LEVEL DATA

- 1.1 In this Agreement, "**Premise Level Data**" means data covering England, Wales and NI, relating to current and planned coverage. This will extend three years into the future, and include data on current and future technology, speeds available, and the date of any future rollout, provided that the data shall be at UPRN level.
- 1.2 The Council acknowledges and agrees that:
 - 1.2.1 the Premise Level Data is treated as Confidential Information of the Authority under this Agreement;
 - 1.2.2 the Premise Level Data is provided for the sole purpose of enabling the Council to advise on appropriate areas for subsidy intervention which form part of the Government's UK Gigabit Programme;
 - 1.2.3 the Council shall not make any announcement (including, without limitation, any communication to the public, any clients or any representatives of the press, television, radio or other media) regarding the Premise Level Data;
- 1.3 The Council shall immediately notify the Authority upon the occurrence of any suspected or actual breach of its obligations in paragraph 1.2.2 and/or 1.2.3.