

OIT Broadband Data Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (“Agreement”) is entered into by and between State of Colorado (“State”) acting by and through Governor’s Office of Information Technology (“OIT”) and [Insert Legal Name of Company], having its offices at [INSERT ADDRESS] (“Company”), each of which will be referred to hereinafter as a “Party” or “Parties” collectively.

Whereas, the Parties seek to share certain information in order to support OIT’s broadband mapping efforts, and to help OIT better understand citizens’ access to broadband services (the “Purpose”);

Whereas, specifically, Company is unwilling to share certain information without an agreement by OIT not to disclose such information except for under certain limited circumstances;

Whereas, OIT believes access to the information is important for enabling it to carry out its duties and functions on behalf of the State of Colorado, and that access to such information will otherwise promote the public interest by enabling OIT to carry out its duties;

Whereas, this Agreement seeks to balance the need for OIT to obtain the information while ensuring such information remains protected to the extent allowed by open records law.

In consideration of the promises contained herein, this sufficiency of which is hereby acknowledged, the State and the Company hereby agree as follows:

1. **Confidential Information.** “Confidential Information” means any information, in oral or written form, that is either labeled as confidential if delivered in written form, or is designated as confidential if delivered verbally, by the disclosing Party. Confidential Information may include, but is not limited to a Party’s (a) business plans, methods, and practices; (b) personnel, customers, and suppliers; (c) inventions, processes, methods, unreleased products, and systems; (d) specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information.

2. **Exceptions.** Notwithstanding Section 1 above, Confidential Information does not include information that: (a) was in the receiving Party’s possession before receipt from the disclosing Party; (b) is or becomes a matter of public knowledge through no fault of the receiving Party; (c) was rightfully disclosed to the receiving Party by a third party without restriction on disclosure; or (d) is developed by the receiving Party without use of the Confidential Information as can be shown by documentary evidence.

3. **Conditions of Use.** The receiving Party shall only use the disclosing Party’s Confidential Information for the Purpose, and shall protect the other Party’s Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the receiving party uses to protect its own proprietary and confidential information, but in no case less than reasonable care. Notwithstanding the preceding sentence, the receiving Party may share the other Party’s Confidential Information with its employees, officers, directors, third-party consultants and agents who are supporting the receiving Party in achieving the purpose. The receiving Party shall ensure that each of its employees,

officers, directors, consultants and agents who have access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement. Except as otherwise authorized in this Agreement, the Receiving party will not disclose the other Party's Confidential Information with out the disclosing Party's prior written consent.

4. **Ownership and Destruction.** All Confidential Information disclosed under this Agreement is and shall remain the property of the disclosing Party and, except for the rights granted in this Agreement, nothing contained in this Agreement shall be construed as granting or conferring any licenses or proprietary rights in and to such Confidential Information to other Party. The receiving Party will promptly return or destroy all copies of Confidential Information disclosed under this Agreement upon the disclosing Party's request.

5. **Independent Development and Reports.** The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. The disclosing party acknowledges that the receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit the receiving Party from developing or having developed for it products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information provided that the receiving Party does not violate any of its obligations under this Agreement in connection with such development. Nothing in this Agreement shall prevent the Receiving party from including aggregated, deidentified information derived from the Confidential Information in reports that may be made publicly available.

6. **Notices:** The receiving Party shall promptly notify the disclosing Party in writing (including email) of any disclosure of the Confidential Information in violation of this Agreement to the addresses set forth below:

Governor's Office of Information Technology
601 East 18th Avenue, Suite 180
Denver, Colorado 80203
Phone: (303) 764-7700
E-mail: OIT_Contracts@state.co.us
With subject line: "Unauthorized use or disclosure"

Insert Legal Name of Company
Insert Name of Company Party Responsible, & Title
Company Address 2
Company City, State, ZIP
Company Phone #
Responsible Party's Company Email Address

7. **Legal Requests.** Notwithstanding anything to contrary in this Agreement, the receiving Party may share the other Party's Confidential Information to respond to a

subpoena, court order or other legal process or request (each a “Legal Request”). To the extent permitted by law, the receiving Party shall promptly notify the disclosing Party of any disclosure of the disclosing Party’s Confidential Information in response to any Legal Request so that the disclosing Party may seek a protective order at its own cost.

8. **CORA Disclosure.** Company understands and agrees that OIT is a public entity that is subject to the Colorado Open Records Act, § 24-72-200.1, *et seq.*, C.R.S. (“CORA”), which imposes a legal duty to disclose records in its possession unless an exception to disclosure exists in the statute, and, even then, only to the extent specific aspects of the information may be withheld under an exception. If OIT receives a CORA request for information that may include Company Confidential Information, OIT will: (a) notify Company of the request in writing; (b) review the information requested to determine whether or not the information may be withheld under an exception or exemption under CORA; (c) only disclose such information that OIT’s legal counsel reasonably believes is necessary to disclose pursuant to applicable law; and (d) cooperate with Company if Company chooses to seek a protective order at Company’s cost. To the extent not prohibited by federal law, this Agreement and the performance measures and standards required as set forth in § 24-106-107, C.R.S., if any, are subject to public release through CORA.

9. **Injunctive Relief.** Each Party acknowledges that any breach of this Agreement may cause irreparable harm for which monetary damages are an insufficient remedy. In addition to whatever remedies it may have at law, each Party may seek equitable relief for any threatened or actual breaches of this Agreement without the posting of a bond.

10. **Relationship of the Parties.** Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture, or other similar relationship between the Parties.

11. **Choice of Law/Venue.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed, and proceedings held, in the State of Colorado District Court with venue in the City and County of Denver.

12. **Third Party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any third party any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement. Neither Party may assign this Agreement to any third party without the prior written approval of the other Party, which may not be unreasonably withheld.

13. **Integration.** This Agreement contains the entire agreement between the Parties and in no way creates an obligation for either Party to disclose information to the other Party or to enter into any other agreement.

14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and shall be deemed to be one and the same agreement. Faxed and PDF counterpart signatures are sufficient to make this Agreement effective.

15. **Term and Termination.** This Agreement shall become effective as of the date any Confidential Information is first made available to the receiving Party (“Effective Date”) and shall terminate five (5) years after its Effective Date.

By signing below, each Party certifies that it has read this Agreement and that it has been advised of the confidentiality requirements and agrees to will comply therewith.

<p>Insert Company's Full Legal Name, including "Inc.", "LLC", etc...</p> <p>Signed: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>STATE OF COLORADO Jared S. Polis, GOVERNOR Governor's Office of Information Technology Anthony Neal-Graves, Chief Information Officer and Executive Director</p> <p>Signed: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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