

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (herein "Agreement") is dated and effective as of _____, 20__ ("Effective Date"), by and between _____ a corporation with an address for notice and located at _____

_____ ("BBP") and **Connected Nation, Inc.** a not-for-profit corporation with an address for notice and located at 1020 College Street, Bowling Green, KY 42101 and its Affiliates at the same address ("Connected Nation"). BBP and Connected Nation may singularly or collectively be referred to as a "Party" or "Parties" to this Agreement.

WHEREAS:

- I. The United States Federal Government by and through the National Telecommunications and Information Administration ("NTIA") has made available a grant program to fund broadband mapping known as the State Broadband Data and Development ("SBDD") grant program, the same being governed by that certain Notice of Funds Availability ("NOFA") inclusive of all appendices, attachments, exhibits and revisions or amendments thereto, first published in volume 74, number 129, at page 32545 of the Federal Register and subsequently clarified in volume 74, number 154, at page 40569 of the Federal Register ("Clarification") both hereby incorporated collectively by reference as if fully restated verbatim herein; and,
- II. State Governments ("States") have partnered with Connected Nation to work together toward implementation, expansion and leveraging of SBDD grant program and other such similarly focused programs for the benefit of the states ("State Programs"); and,
- III. The BBP desires to assist the States and Connected Nation in their successful implementation of the SBDD and State Programs ("Project"); and,
- IV. The Parties are in possession of certain confidential and proprietary information which may be helpful in advancing these mutually beneficial goals, and both acknowledge that they desire to share and may receive, from or on behalf of the other Party or its Affiliates, certain information considered to be confidential, valuable and proprietary trade secret information by the providing Party. "Affiliates" means any company owned in whole or in part, now or in the future, by a Party or by one or more direct or indirect subsidiaries controlled by the Party; and,
- V. When a Party ("Provider") shares confidential and proprietary trade secret information with the other Party ("Recipient"), the confidential and limited use conditions of this Agreement shall apply.

NOW THEREFORE, IN FULL CONSIDERATION of the mutual promises, covenants and obligations contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged by the Parties, the Parties agree as follows:

TERMS

- a) "Confidential Information" shall be defined in identical terms to the SBDD NOFA and any subsequent SBDD NOFA Clarification(s) in effect at the time of execution of this Agreement. To memorialize each Party's understanding and their material reliance upon the binding intent of the NTIA by and through its Clarification and supporting materials revising and clarifying the term "Confidential Information," and NTIA's public assurances and acceptance of a duty to preserve the confidentiality of such information as outlined in the SBDD NOFA and Clarification, both of the same being material inducements for the Parties to enter into this Agreement, the Parties acknowledge that information supplied by Provider to Recipient and properly designated as Confidential Information pursuant to the terms of this Agreement shall include but not be limited to those data sets, network and/or facilities information, and any other information supplied by Provider to Recipient which would directly reveal or could otherwise be reasonably used to derive to a greater degree of clarity and specificity than the census block level, the geographic representation of BBP's broadband service availability.

- b) All Confidential Information received by Connected Nation from BBP or its Affiliates may be used by Connected Nation and the same is hereby granted a worldwide, perpetual, royalty-free, revocable license for the use of BBP's information, including Confidential Information, as follows:
- i) That Connected Nation may use BBP's information including Confidential Information to derive maps, interactive websites and tabular data representations of BBP's broadband coverage area, network information, coverage attributes and other such representations as may be required by a Project (collectively "Works"); and,
 - ii) That Connected Nation may provide the NTIA with any such Works as may be required by the Project terms and conditions as outlined in any applicable NOFA. BBP acknowledges that such provision of Works may likely result in the disclosure of Confidential Information to governmental authorities and that, once such disclosures are made by Connected Nation as required by a Project, Connected Nation is fully released from any liability for the actions of the third party governmental authority regarding the disclosure, sharing or use of Confidential Information; and,
 - iii) That, in addition to use for any purpose which does not result in Connected Nation disclosing BBP's Confidential Information except as provided for herein to NTIA, Connected Nation may, at a pinpoint, address level, identify all broadband providers known to Connected Nation at a given location; and,
 - iv) That Connected Nation may provide Works to any U.S. State or Territory for whom a State Program involving Connected Nation has been commenced, provided that no Confidential Information is disclosed to any state government or other third party. BBP acknowledges that such provision of Works may result in those Works being placed into the public domain for public use; and,
 - v) That BBP waives any claims of ownership to the Works created, derived or produced by Connected Nation as may be helpful or required for a Project; and,
 - vi) That no use of Confidential Information by Connected Nation consistent with the terms provided for herein shall constitute a disclosure of Confidential Information pursuant to the terms of this Agreement.
- c) Recipient will protect Confidential Information provided to Recipient from any use, distribution or disclosure except as permitted herein. Recipient will use the same standard of care to protect Confidential Information as Recipient uses to protect its own highly confidential and proprietary information, but not less than a reasonable standard of care.
- d) Recipient may provide Confidential Information only to its employees, corporate Affiliates, consultants, independent contractors and agents who:
- i) Have a substantive need to know such Confidential Information in connection with the Project;
 - ii) Have been advised of the confidential and proprietary nature of such Confidential Information; and
 - iii) Have personally agreed with Recipient in writing to protect from unauthorized disclosure all confidential and proprietary information, of whatever source, to which they have access in the course of their engagement with Recipient.
- e) Confidential Information provided to Recipient in written or other tangible or electronic form will be marked with a confidential and proprietary notice, or if provided orally or visually will be designated as confidential and proprietary at the time of such disclosure or within a reasonable period thereafter. In addition, any information provided to, or received by Recipient (including information visually observed by Recipient while on Provider's premises) that is by its nature and content reasonably distinguishable as the confidential and proprietary information of Provider but is not specifically marked or orally designated as confidential and proprietary by Provider, will be treated as Confidential Information subject to the obligations of this Agreement.
- f) Provider's Confidential Information does not include:
- i) Any information Provider publicly discloses;
 - ii) Any information Provider in writing authorizes Recipient to disclose without restriction;
 - iii) Any information Recipient already lawfully knows at the time Provider disclosed it to Recipient, without an obligation to keep it confidential;
 - iv) Any information Recipient lawfully obtains from any source other than Provider, provided that such source lawfully disclosed such information.

- g) Parties acknowledge that any discrepancy between the SBDD NOFA and the terms provided for herein shall be resolved in favor of the SBDD NOFA. Nothing contained herein shall be construed to limit Connected Nation's reporting and data sharing obligations under the SBDD NOFA, including sharing of BBP's Confidential Information with NTIA pursuant to the terms of the SBDD NOFA and Clarification.
- h) If Recipient is otherwise required to provide Confidential Information to any court, government agency or third party pursuant to written court order, subpoena, regulation or process of law not otherwise provided for herein, Recipient must first provide Provider with prompt written notice of such requirement and cooperate with Provider to appropriately protect against or limit the scope of such disclosure. To the fullest extent permitted by law, Recipient will continue to protect as confidential and proprietary all information disclosed by Provider in response to a written court order, subpoena, regulation or process of law.
- i) Recipient may make tangible or electronic copies and notes of Confidential Information only as necessary for use as authorized herein. All tangible or electronic copies or notes must be marked with the same confidential and proprietary notice as appears on the original. All information provided orally or visually by Provider and reduced by Recipient to tangible or electronic notes must be marked by Recipient as Provider's confidential and proprietary information and will be considered Confidential Information for purposes of this Agreement.
- j) All Confidential Information remains at all times Provider's property. Upon Provider's request, all or any requested portion of the specific Confidential Information will be promptly returned to Provider or destroyed, and if requested, Recipient will provide Provider with written certification stating that such information has been returned or destroyed.
- k) Recipient may identify Provider, its Affiliates and any other owner of Confidential Information protected under this Agreement by trade name in reasonable advertising, promotional materials, press releases, and other public disclosure as a contributing broadband service provider, provided no specific data covered by the terms of this Agreement is revealed beyond the permissive disclosure to NTIA as provided for herein. No license for use, beyond that provided for herein, under any trademark, patent, copyright, trade secret or other intellectual property right is either granted or implied by disclosure of Confidential Information to Recipient.
- l) The term of this Agreement and Recipient's obligations hereunder commence on the Effective Date and extend with regard to all Confidential Information until five (5) years after the date of final disclosure of Confidential Information hereunder, but in no case greater than ten (10) years from the Effective Date. Thereafter, Recipient's obligations hereunder only continue in effect with respect to any Confidential Information that is a trade secret under applicable law.
- m) This Agreement is not a commitment by Provider to enter into any transaction or business relationship with Recipient, nor is it an inducement for Recipient to spend funds or resources. No such agreement will be binding unless and until stated in a writing signed by both Parties. All Confidential Information is provided to Recipient 'as is,' and Provider makes no warranties or representations with respect to its content, accuracy or completeness.
- n) Recipient acknowledges and agrees that any breach or threatened breach of this Agreement is likely to cause Provider and its Affiliates irreparable harm for which money damages may not be an appropriate or sufficient remedy. Recipient therefore agrees that Provider or its Affiliates are entitled to receive injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement. Such remedy is not the exclusive remedy for any breach or threatened breach of this Agreement, but is in addition to all other rights and remedies available at law or in equity.
- o) No forbearance, failure or delay by Provider in exercising any right, power or privilege is a waiver thereof, nor does any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power or privilege.
- p) If and to the extent any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall remain in full force and effect to the fullest extent permitted by law.

- q) This Agreement is binding upon and inures to the benefit of the Parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be.
- r) This Agreement is the entire agreement between the Parties hereunder and may not be modified or amended except by a written instrument signed by both Parties. Each Party has read this Agreement, understands it and agrees to be bound by its terms and conditions. There are no understandings or representations with respect to the subject matter hereof, express or implied, that are not stated herein. This Agreement may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective for all purposes hereunder to the same extent as original signatures.

IN WITNESS WHEREOF, the Parties have seen and agreed to this Nondisclosure Agreement as evidenced by the signatures of the Parties' authorized representatives below:

BBP:

Connected Nation, Inc.:

By: _____
(Authorized Signature)

By: _____
(Authorized Signature)

Name: _____
(Print or Type)

Name: _____
(Print or Type)

Title: _____

Title: _____

Company: _____

