

NETWORK RELIABILITY STEERING COMMITTEE NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("AGREEMENT") is made and entered into by and among the Parties identified who have executed this Agreement ("PARTIES") for the purpose of maintaining the confidentiality of any commercial, proprietary, financial or confidential information or trade secrets shared among themselves for the purpose of assessing and making recommendations to the Alliance for Telecommunications Industry Solutions' Network Reliability Steering Committee ("NRSC"). The NRSC shall maintain a list of all Parties that have executed this Agreement on the NRSC website at www.atis.org/nrsc.

WHEREAS, the PARTIES are members of the NRSC and desire to analyze and discuss amongst themselves certain information solely for the purpose of making recommendations to the NRSC;

WHEREAS, in pursuing these aims, the PARTIES expect from time to time to disclose to each other certain CONFIDENTIAL INFORMATION and that such disclosures will assist the NRSC in performing its duties;

WHEREAS, without assurances that such CONFIDENTIAL INFORMATION will not be disclosed except as expressly authorized herein, the PARTIES would not share or disclose such CONFIDENTIAL INFORMATION; and

WHEREAS, any disclosure of such CONFIDENTIAL INFORMATION in violation of the terms of this AGREEMENT will cause the DISCLOSING PARTY substantial competitive injury;

NOW THEREFORE, for and in consideration of the above premises and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the PARTIES, intending to be legally bound, hereby agree as follows:

1. Definitions.

- (a) **"RECEIVING PARTY"** shall mean a PARTY that has received access to CONFIDENTIAL INFORMATION by any of the other PARTIES.
- (b) **"DISCLOSING PARTY"** shall mean a PARTY that has disclosed CONFIDENTIAL INFORMATION to any of the other PARTIES.
- (c) **"CONFIDENTIAL INFORMATION"** shall mean information, provided by the DISCLOSING PARTY in written, oral, visual or electronic form related to emergency services, homeland security, communications networks and Broadband and/or any information otherwise designated as confidential or which should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure by the DISCLOSING PARTY as part of the NRSC analysis. CONFIDENTIAL INFORMATION that is marked or otherwise identified as specified in this Subsection may include, without limitation, any information relating to or concerning trade secrets and commercial, proprietary or financial information of any sort, and any information related to or concerning a Party's affiliates or subsidiaries. CONFIDENTIAL INFORMATION shall not include information that (i) is otherwise in the public domain, unless such information is wrongfully in the public domain due to RECEIVING PARTY's action or RECEIVING PARTY is informed, in writing, by the DISCLOSING PARTY, that such information is wrongfully in the public domain; (ii) can be shown by documentation to have been lawfully obtained or developed independently of any disclosure made by the DISCLOSING PARTY pursuant to this AGREEMENT and is not subject to any obligation of nondisclosure owing to any PARTY; (iii) is clearly identified by the DISCLOSING PARTY in a written statement authorizing disclosure notwithstanding this AGREEMENT and any prior designation as confidential, or (iv) is in the possession of the RECEIVING PARTY, without restrictions on use or disclosure, prior to its receipt from the DISCLOSING PARTY.
- (d) **"ENTITY"** shall mean any person, partnership, joint venture, government, agency, department, government official, governmental subdivision, association, firm, corporation,, or advisory committee of any kind.

2. Consideration. The consideration for the covenants and agreements of each PARTY contained in this AGREEMENT shall be that PARTY's right to receive access to CONFIDENTIAL INFORMATION as part of NRSC analysis, and that PARTY's right to protect such CONFIDENTIAL INFORMATION as it deems appropriate to disclose pursuant to this AGREEMENT, which the PARTIES acknowledge and agree shall constitute sufficient and adequate consideration.

3. Nondisclosure; Ownership of Proprietary Property.

- (a) Each PARTY hereby acknowledges that it is in the best interests of the other PARTIES to insist on the confidentiality of any and all CONFIDENTIAL INFORMATION disclosed pursuant to this AGREEMENT.
- (b) Each PARTY reserves the right to decide not to disclose any CONFIDENTIAL INFORMATION, and nothing herein shall require the disclosure of any CONFIDENTIAL INFORMATION by any PARTY. It is understood that any disclosures undertaken pursuant to the AGREEMENT are voluntary and do not constitute a waiver of any rights or privileges with respect to future or other disclosures.
- (c) The PARTIES hereby agree that the DISCLOSING PARTY shall retain ownership and control over any CONFIDENTIAL INFORMATION disclosed pursuant to this AGREEMENT. The RECEIVING PARTIES shall not by reason of any disclosure made pursuant to this AGREEMENT thereby obtain any rights with respect to such CONFIDENTIAL INFORMATION other than the right of the PARTY, or an ENTITY that the PARTY assigns its rights to under this Agreement in compliance with Section 5 herein, to use the CONFIDENTIAL INFORMATION for the purposes of NRSC analysis only, and agree that they will not: (i) use such CONFIDENTIAL INFORMATION for any reason other than NRSC analysis only as expressly authorized by this Agreement; or (ii) sell, lend, lease, distribute, license, give, transfer, assign, show, disclose, disseminate, appropriate, or otherwise communicate any such CONFIDENTIAL INFORMATION to any person or ENTITY outside the RECEIVING PARTY or its assignee under this Agreement, except as expressly authorized under this AGREEMENT.

- (d) The RECEIVING PARTIES agree that they will not disclose any CONFIDENTIAL INFORMATION to any contractor or consultant who is not bound by a non-disclosure agreement with the RECEIVING PARTY. CONFIDENTIAL INFORMATION may only be disclosed to those employees, subcontractors and officers of a PARTY and a Party's subsidiaries and affiliates with a direct need to know the information for purposes of NRSC analysis and to counsel for purposes of obtaining advice regarding that PARTY's rights and responsibilities under this AGREEMENT. The RECEIVING PARTY agrees to be responsible for their employees, subcontractors and officers' compliance with this AGREEMENT.
- (e) Each PARTY shall exercise its reasonable commercial efforts to ensure the continued confidentiality of all CONFIDENTIAL INFORMATION delivered or disclosed pursuant to this AGREEMENT and, in any event, shall protect such information with at least the same degree of care it uses to protect its own confidential, commercial, proprietary, and financial information of a similar nature. If any CONFIDENTIAL INFORMATION is, intentionally or unintentionally, disclosed to a third party without authorization, any PARTY with knowledge or information relating to such disclosure shall immediately notify the DISCLOSING PARTY and shall take all reasonable steps to assist the DISCLOSING PARTY in limiting the unauthorized disclosure.
- (f) Except as specified in this Subsection, nothing herein shall preclude a PARTY who becomes legally obligated by any governmental ENTITY with jurisdiction over it from complying with a court order or other valid legal process compelling disclosure of CONFIDENTIAL INFORMATION. If a PARTY receives a court order, subpoena, document demand, or other order or process compelling or seeking disclosure of CONFIDENTIAL INFORMATION, such PARTY shall provide the DISCLOSING PARTY with prompt written notice of such demand or request, and, in any event, before any CONFIDENTIAL INFORMATION is disclosed. The PARTY served with such demand, order or process shall resist disclosure on grounds of this AGREEMENT, and shall take all reasonable steps to provide the DISCLOSING PARTY a full and fair opportunity, prior to disclosure, to resist, oppose or otherwise limit any disclosure of such CONFIDENTIAL INFORMATION. The PARTY will disclose only such information as is legally required and will use commercially reasonable efforts to obtain confidential treatment for any CONFIDENTIAL INFORMATION that is so disclosed.
- (g) Upon the written request of a DISCLOSING PARTY, a PARTY shall return, or destroy, at DISCLOSING PARTY's option, within seven (7) business days, any and all CONFIDENTIAL INFORMATION disclosed or provided to that PARTY by the DISCLOSING PARTY.
- (h) It is expressly understood and agreed by the PARTIES that no right, title, interest, license, or ownership or other right in any copyright, patent, trademark or other intellectual property or proprietary right of any DISCLOSING PARTY or any third party shall be granted or transferred to any RECEIVING PARTY or any ENTITY or other third party pursuant to, or as a result of, this AGREEMENT.
- (i) It is further expressly understood and agreed by the PARTIES that nothing contained in this AGREEMENT, and nothing contained in any information disclosed pursuant to this AGREEMENT, shall constitute any representation or warranty by the DISCLOSING PARTY with respect to the non-infringing ownership of the CONFIDENTIAL INFORMATION or the accuracy, completeness or usefulness of any CONFIDENTIAL INFORMATION.
- (j) It is expressly acknowledged and agreed that any CONFIDENTIAL INFORMATION disclosed to any governmental ENTITY, officer or employee pursuant to this AGREEMENT (i) will not become an "agency record" by virtue of such disclosure; (ii) is exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552(b)(4) ("Exemption 4"); (iii) shall not be disclosed pursuant to any other governmental authority; and (iv), is protected from disclosure under 18 U.S.C. § 1905, and thus may not be published, divulged, disclosed or otherwise made known in any manner. The PARTIES to this AGREEMENT that are governmental ENTITIES further agree that neither they nor their officers or employees will take custody or control of any CONFIDENTIAL INFORMATION disclosed pursuant to this AGREEMENT. To that end, among other things, such governmental ENTITIES and their officers and employees agree immediately to return all CONFIDENTIAL INFORMATION to the DISCLOSING PARTY at the conclusion of any meeting at which such information is disclosed or, if such information is disclosed at any other time, to return such CONFIDENTIAL INFORMATION immediately after reviewing it. In addition, any PARTY to this AGREEMENT that is a governmental ENTITY agrees to refrain from making copies of, taking notes or sending e-mail regarding, or otherwise creating or retaining any written or electronic material containing such CONFIDENTIAL INFORMATION.

4. Remedies: Damages, Injunctions and Specific Performance. The PARTIES expressly understand and agree that the covenants and agreements to be rendered and performed by the PARTIES pursuant to this AGREEMENT are special, unique, and of an extraordinary character, and in the event of any default, or breach by any PARTY of this AGREEMENT, the affected PARTY shall have no adequate remedy at law and shall be entitled to seek such relief as may be available to it pursuant hereto, at law or in equity, including, without limiting the generality of the foregoing, any proceedings to: (i) obtain direct damages for any breach of this AGREEMENT; (ii) order the specific performance thereof; or (iii) enjoin the breach of such provisions. This AGREEMENT shall be governed by the laws of the State of New York without regard to its choice of law principles. With respect to the participation of any governmental ENTITY, employee or officer in this AGREEMENT, federal law shall apply.

5. Binding Effect and Assignability. The rights and obligations of each PARTY under this AGREEMENT shall inure to the benefit of and shall be binding upon any subsidiary, affiliate, successor or permitted assign of or to the business of such PARTY, to the extent provided below. Neither this AGREEMENT nor any rights or obligations of a PARTY under this AGREEMENT shall be transferable or assignable by that PARTY without the prior written consent of all other PARTIES, and any attempted transfer or assignment of this AGREEMENT by a PARTY not in accordance herewith shall be null and void. Notwithstanding the foregoing provisions of this Section, a PARTY may assign this AGREEMENT immediately, without the prior written consent of all other PARTIES, (a) to any ENTITY that controls, is controlled by, or is in common control with the assigning PARTY, (b) to any successor in interest to the assigning PARTY, or (c) if necessary to satisfy the rules, regulations and/or orders of any federal, state or local governmental agency or body. The confidentiality obligations and remedies set forth in this AGREEMENT, including without limitation, those set for in Sections 3, 4, 5, 6 and 7 shall bind any successor to any PARTY. Notwithstanding the foregoing, each PARTY that receives or obtains CONFIDENTIAL INFORMATION pursuant to the terms of this AGREEMENT shall remain bound by all confidentiality obligations, and subject to all

remedies, under this AGREEMENT after making an assignment or transfer, including, without limitation, the obligations set forth in Sections 3, 6, 7 and 8 and the remedies specified in Section 4.

6. Critical Infrastructure Analysis and Report. It is contemplated that the PARTIES will use CONFIDENTIAL INFORMATION delivered pursuant to this AGREEMENT for the purpose of preparing reports or otherwise advising NRSC, which may then report on the same subjects to the Federal Communications Commission, and others regarding homeland security and network reliability. The PARTIES further contemplate that any report or advice provided to NRSC or any other person or ENTITY will contain general analysis that does not disclose any CONFIDENTIAL INFORMATION. In any event, the PARTIES agree that, except as otherwise expressly authorized herein, no CONFIDENTIAL INFORMATION will be disclosed in any report or other advice provided to NRSC or any other person or ENTITY, and will not otherwise be disclosed, without the express written consent of the DISCLOSING PARTY. The PARTIES agree that each PARTY will be provided an opportunity to review any report or other advice or information to be provided to NRSC or any other person or ENTITY prior to its delivery to permit each PARTY the opportunity to object on the ground that the report, advice or information contains CONFIDENTIAL INFORMATION provided by the objecting PARTY. The PARTIES further agree that, except as expressly authorized herein, no CONFIDENTIAL INFORMATION will be disclosed to any governmental ENTITY, officer or employee without first obtaining the express written consent of the DISCLOSING PARTY.

7. Termination. This AGREEMENT shall expire on December 31, 2020. Notwithstanding the foregoing, each PARTY that receives or obtains CONFIDENTIAL INFORMATION pursuant to the terms of this AGREEMENT shall remain bound for five (5) years from the date of disclosure by all confidentiality obligations, and subject to all remedies, under this AGREEMENT after termination, including, without limitation, the obligations set forth in Sections 3, 6 and 7 and the remedies specified in Section 4. Upon written request, all CONFIDENTIAL INFORMATION shall be returned to the DISCLOSING PARTY or destroyed at the request of the DISCLOSING PARTY. Similarly, if at any time prior to December 31, 2020, a PARTY withdraws from the NRSC, any DISCLOSING PARTY may request that the withdrawing PARTY, and the withdrawing PARTY may request that the RECEIVING PARTY either return all CONFIDENTIAL INFORMATION to the DISCLOSING PARTY or destroy such information. Within seven (7) days of receipt of a written notice requesting return or destruction of any CONFIDENTIAL INFORMATION, the RECEIVING PARTY shall, as requested, either return or destroy all designated CONFIDENTIAL INFORMATION and all copies of such CONFIDENTIAL INFORMATION, whether in written or electronic form.

8. Severability. All sections and subsections of this AGREEMENT are severable, and the unenforceability or invalidity of any of the sections or subsections of this AGREEMENT shall not affect the validity or enforceability of the remaining sections or subsections of this AGREEMENT, but such remaining sections or subsections shall be interpreted and construed in such a manner as to carry out fully the intention of the PARTIES.

9. Waiver. The waiver by a PARTY of a default or breach of any provision of this AGREEMENT shall not operate or be construed as a waiver of any subsequent default or breach of the same or of a different provision by that PARTY. No waiver or modification of this AGREEMENT or of any covenant, condition, or limitation contained in this AGREEMENT shall be valid unless in writing and duly executed by the PARTY or PARTIES to be charged therewith.

10. Miscellaneous. This AGREEMENT contains the complete agreement concerning the arrangement among the PARTIES, as of the date hereof, and supersedes all other similar agreements or understandings among the PARTIES, whether oral or written, consistent or inconsistent, with this AGREEMENT. This AGREEMENT may not be amended by the PARTIES except by a writing executed by all PARTIES.

11. Execution and Delivery. Execution and delivery of this instrument via facsimile shall be effective and binding upon the PARTIES. This instrument may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument. This AGREEMENT shall become effective as to a PARTY upon signature of such PARTY.

IN WITNESS WHEREOF, the PARTIES have duly executed and delivered this AGREEMENT by the signatures of the PARTIES on the dates indicated herein.

Party's (Company's) Name

Signature

Name (Printed or Typed)

Title

Date