CONFIDENTIALITY AGREEMENT

This **Confidentiality Agreement** (the "**Agreement**") is made as of [DATE], 2021

BY AND BETWEEN:

NATIONAL SPACE RESEARCH AND DEVELOPMENT AGENCY, a parastatal of the Federal Government of Nigeria, with offices located at [ADDRESS], Abuja, Nigeria ("**NASDRA**");

AND

[**FULL NAME OF BIDDER**], with offices located at [ADDRESS] (the "**Bidder**"),

each a "**Party**" and collectively the "**Parties**".

WHEREAS:

A. NASDRA has issued a Request for Proposals dated [DATE], 2021as may be amended from time to time) for the development of a cost-effective satellite system for the provision of rural broadband services (Satellite Broadband Penetration Project) in Nigeria through the PPP arrangement (the "RFP");

B. The Bidder has been pre-qualified to bid for the delivery of the project, paid the purchase fee for the RFP and intends to participate in the bidding process described therein (the "**Bidding Process**");

C. The Bidder may submit to NASDRA a Proposal, and further information relative thereto; and

D. NASDRA may conduct discussions, which may include negotiations, with the Bidder after receipt of Proposals.

NOW THEREFORE, in consideration of the Parties entering into this Agreement and the mutual promises and agreements contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**

1.1 **Definitions**. Capitalized terms used but not defined herein shall have the meanings given in the RFP.

1.2 **Confidential Information**. "**Confidential Information**" means the RFP and Bid Documents, any pre-submission or post-submission information regarding the Bidding Process, the concession described therein, or related industrial facilities or businesses of NASDRA, whether or not designated expressly as confidential, that is disclosed or expressed, whether orally, in writing, electronically or by any other media, by NASDRA to the Bidder during the course, or in furtherance, of the Bidding Process, but excluding any information that:

(a) is or becomes in the public domain, other than as a result of a breach of this Agreement by the Bidder; or

(b) is known to the Bidder before disclosure to it by NASDRA, or becomes known to the Bidder thereafter by way of disclosure to the Bidder by any other person who is not under an obligation of confidentiality with respect thereto.

1.3 **Discussions**. "**Discussions**" means the Bidder's proposal that the Bidder submits to NASDRA, or any discussions, including negotiations, between NASDRA and the Bidder occurring after submission of the Bidder's Proposal and pertaining thereto until such discussions are terminated, whether or not designated expressly as confidential, that is disclosed or expressed, whether orally, in writing, electronically or by any other media, by the Bidder to NASDRA during the course, or in furtherance, of the Bidding Process, but excluding information that:

(a) is or becomes in the public domain, other than as a result of a breach of this Agreement by NASDRA; or

(b) is known to NASDRA before disclosure to it by the Bidder, or becomes known to the NASDRA thereafter by way of disclosure to the NASDRA by any other person who is not under an obligation of confidentiality with respect thereto.

2. CONFIDENTIALITY OBLIGATION

2.1 **Confidentiality Obligation**. The Bidder shall treat as confidential, and shall not disclose to any third person, Confidential Information, and both Parties shall treat as confidential and shall not disclose to any third person, all or any part of the Discussions, provided however that the foregoing obligations, and nothing in this Agreement, prevents or restricts:

(a) disclosure of the fact that Discussions, if any, are occurring, or have occurred, and/or the fact that this Agreement exists and the general nature hereof;

(b) in the case of NASDRA, disclosure of the Discussions:

(i) to any ministers, deputy ministers, servants or employees of the Federal Government of Nigeria; and

(ii) to its directors, officers, employees, affiliates, consultants and advisors;

provided that each of the foregoing to whom Discussions are disclosed is advised of the confidential nature thereof;

(c) in the case of NASDRA, disclosure of Discussions in any regulatory proceedings, to the extent that NASDRA considers disclosure necessary or desirable to support its position in any such proceedings, provide that, to the extent reasonably practicable, NASDRA gives reasonable notice to the Bidder before making the disclosure, and, to the extent requested by the Bidder, requests the relevant tribunal to treat all or any part of the disclosure as confidential or to limit its further disclosure;

(d) in the case of NASDRA, disclosure of:

(i) the Bidder's questions in the Bidding Process under the RFP; and

(ii) the Bidder's participation in the Bidding Process;

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(e) in the case of the Bidder, disclosure of Discussions and/or Confidential Information to its directors, officers, employees and affiliates, consultants and advisors, on a need to know basis, provided that each of the foregoing to whom Discussions and/or Confidential Information are disclosed is advised of the confidential nature thereof;

(f) without limited NASDRA's disclosure rights under section 2.1(c) above, disclosures required to be made by NASDRA or the Bidder by an order of a court or tribunal or under any law, regulatory requirement or requirement of any stock exchange that is binding upon it, provided that, (i) to the extent reasonable practicable, the Party making such disclosure gives reasonable notice to the other Party before making the disclosure, and (ii) limits the disclosure to that required by the applicable order, law or regulatory or stock exchange requirement;

(g) disclosures of the Discussions and/or Confidential Information by agreement or consent of both Parties.

2.2 **Freedom of Information Act**. The Bidder acknowledges that NASDRA is subject to the Nigerian *Freedom of Information Act* and agrees that NASDRA's non-disclosure obligations under this Agreement are subject to the provisions of that legislation, as the same may be amended or replaced from time to time.

2.3 **Liability Exclusion**. In no event will either Party by liable to the other Party in connection with any breach of this Agreement for any indirect, incidental or consequential damages, including loss of profits.

2.4 **Term**. The obligations of the Parties under this section 2 expire upon the earlier of (i) full execution and delivery of a Public Private Partnership Agreement (PPPA), if any, entered into between the Parties pursuant to the Bidding Process (whereupon matters of confidentiality shall be governed exclusively by any such agreement), and (ii) three (3) years after the date hereof.

3. **MISCELLANEOUS**

3.1 **Governing Law**. This Agreement shall be interpreted, governed and construed under the Federal Republic Laws of Nigeria applicable therein as if it were executed and to be performed wholly within Nigeria.

3.2 **Equitable Relief**. Each Party agrees that in the event of a breach of this Agreement, or to prevent a breach of contemplated breach, by that Party, the other Party shall be entitled to equitable relief, including injunction and specific performance, in addition to all other remedies available at law or equity.

3.3 **Entire Agreement**. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior agreements and communications relative to such subject matter.

3.4 **Amendments**. This Agreement shall not be modified, expect by a written agreement dated after the date of this Agreement and signed by both Parties.

3.5 **Assignment**. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

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3.6 **Enurement**. This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

3.7 **Execution in Counterpart**. This Agreement may be executed in counterparts, and each counterpart shall for all purposes be an original, and all such counterparts shall together constitute one and the same Agreement.

3.8 **Relationship**. Entering into this Agreement shall in no way be construed to:

(a) preclude in any way either Party from pursuing any business opportunities;

(b) establish any relationship between NASDRA and the Bidder with respect to such business opportunities; or

(c) establish any other relationship between NASDRA and the Bidder with respect to the concession.

IN WITNESS WHEREOF, the Parties have entered into this Agreement effective as of the date first above written.

NATIONAL SPACE RESEARCH AND DEVELOPMENT AGENCY

Title: _____

Name: _____

Signature: _____

[FULL NAME OF BIDDER]

Title: _____

Name: _____

Signature: _____

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