

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “*Agreement*”) is entered into between INVEST NEWARK, A NJ NONPROFIT CORPORATION, a New Jersey nonprofit corporation (the “*Company*”) and \_\_\_\_\_, a \_\_\_\_\_ (the “*Recipient*”) as of \_\_\_\_\_, 2023 (the “*Effective Date*”), to protect the confidentiality of certain confidential information of the Company to be disclosed to the Recipient solely for use in connection with the following (collectively, the “*Permitted Use*”): (i) that certain *Newark Fiber Now Request for Collaboration* issued by the Company on \_\_\_\_\_ (the “*RFC*”) to identify collaborative partnerships to leverage the City of Newark’s physical assets, including portions of the City-owned fiberoptic network (“*Newark Fiber*”), to increase broadband access citywide, particularly in historically underinvested communities with low rates of internet connection and (ii) one or more agreements between the parties hereto entered into pursuant to the RFC (each, a “*Subsequent ISP Agreement*”).

1. **Confidential Information.** As used herein, “*Confidential Information*” will mean any and all information provided by the Company to the Recipient, which may include without limitation proprietary and confidential information, ideas, techniques, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, marketing plans and information the Company provides regarding third parties (including potential personal identifying information), and all other information that the Recipient knew, or reasonably should have known, was the Confidential Information of the Company. The term “*Confidential Information*” includes any and all map or maps indicating the location of the Newark Fiber network.

2. **No Disclosure of Confidential Information.** Subject to Section 3, the Recipient agrees that at all times, and notwithstanding any termination or expiration of the RFC or any Subsequent ISP Agreement, Recipient will hold in strict confidence and not disclose to any third party any Confidential Information, except as approved in writing by the Company, and will use the Confidential Information for no purpose other than the Permitted Use. The Recipient will also protect such Confidential Information with at least the same degree of care that the Recipient uses to protect its own Confidential Information, but in no case, less than reasonable care. The Recipient will limit access to the Confidential Information to only those employees or authorized representatives of the Recipient or any company it controls having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.

3. **Exception for Legally Required Disclosure.** Notwithstanding the above, the Recipient may disclose certain Confidential Information, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Recipient provides the Company with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Company in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

4. **Notice of Disclosure.** The Recipient will immediately notify the Company in the event of any loss or unauthorized disclosure of any Confidential Information.

5. **Return or Deletion After Termination.** Upon termination or expiration of all Subsequent ISP Agreements between the parties hereto, or upon written request of the Company, the Recipient will promptly return to the Company all documents and other tangible materials representing any Confidential Information and all copies thereof and the Recipient will permanently delete or destroy any intangible materials, electronic files, links, or correspondence transmitted during the term(s) of all Subsequent ISP Agreements, including any copies that may be stored in file server back-ups.

6. **No Rights Conveyed.** Confidential Information is and shall remain the sole property of the Company. The Recipient recognizes and agrees that nothing contained in this Agreement, the RFC, or any Subsequent ISP Agreement(s) will be construed as granting any property rights, by license or otherwise, to any Confidential Information disclosed under this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. The Recipient will not make, have made, use or sell for any purpose any product or information or other item using, incorporating or derived from any Confidential Information. Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of either party to enter into any further agreement with the other, license any products or services to the other, or to require the Company to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the parties.

7. **No Reproduction.** Confidential Information will not be reproduced in any form except as required to accomplish the intent of the RFC or a Subsequent ISP Agreement, as applicable. Any reproduction of any Confidential Information will remain the property of the Company and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Company.

8. **Term; Survival.** This Agreement will terminate upon termination or expiration of all Subsequent ISP Agreements between the parties hereto. The Recipient's obligations under this Agreement will survive termination of this Agreement and will be binding upon the Recipient's heirs, successors, and assigns. The Recipient's obligations with respect to all Confidential Information will terminate only pursuant to Section 3.

9. **No Assignment.** The Recipient will not assign or transfer any rights or obligations under this Agreement without the prior written consent of the Company and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

10. **Miscellaneous Provisions.**

(a) This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of New Jersey, without giving effect to any conflicts of laws principles. Any disputes under this Agreement may be brought in state courts located in Essex County, New Jersey, and the parties hereby consent to the personal jurisdiction

and exclusive venue of such courts. This Agreement may not be amended except by a writing signed by both parties.

(b) The Recipient hereby agrees that its breach of this Agreement will cause irreparable damage to the Company for which recovery of damages would be inadequate, and that the Company will be entitled to obtain timely injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

(c) If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(d) All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

(e) Each party hereto promises that it has the authority to enter into this Agreement and to perform all of its obligations hereunder and that no consents are required that have not already been obtained, and the undersigned signatory signing on behalf of such party has full authority to bind it to perform all of its obligations hereunder and to bind such other interested parties, if and to the extent applicable.

(f) This Agreement and any amendments, waivers, consents or supplements hereto may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties with respect to the subject matter hereof and supersedes all previous agreements and understandings, oral or written, with respect thereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or in electronic (i.e., PDF or .tif) format shall be effective as delivery of a manually executed counterpart of this Agreement.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties have executed this Confidentiality and Non-Disclosure Agreement as of the Effective Date.

**COMPANY**

**INVEST NEWARK, A NJ NONPROFIT CORPORATION**

By: \_\_\_\_\_  
Marcus Randolph  
President and CEO

Address: 111 Mulberry Street  
Lower Level  
Newark, NJ 08520

**RECIPIENT**

By: \_\_\_\_\_

Address: