

**MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS AGREEMENT** is made the \_\_\_ day of \_\_\_\_\_ in the year 2016 by and between **Switchdigital (London) Limited** (with Registration Number 03729042) whose registered office is at 18 Hatfields, London SE1 8DJ ("Switchdigital") and

**COMPANY NAME** \_\_\_\_\_ ("Applicant")

**REGISTRATION NUMBER** \_\_\_\_\_

**REGISTERED OFFICE** is at \_\_\_\_\_  
\_\_\_\_\_

**WHEREAS:**

- (A) The parties, for their mutual benefit, may have exchanged and wish further to exchange certain information (including but not limited to trade secrets and proprietary know-how) in order that each of them may evaluate such information for the purpose of determining their respective interest in establishing a business relationship between them.
- (B) The parties wish to define their rights with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.

**NOW IT IS HEREBY AGREED AS FOLLOWS:**

**1 Definitions**

In this Agreement the following expressions shall have the following meanings:

- (a) 'Purpose' shall mean any discussions, negotiations and development work undertaken between or within the parties concerning or in connection with Switchdigital and the Applicant entering into a carriage agreement for carriage of the Applicant's radio service on the DAB multiplex operated by Switchdigital;
- (b) 'Confidential Information' shall mean all information or data disclosed (whether in writing, orally or by any other means) to one party by the other party or by a third party on behalf of the other party and shall include but not be limited to (A) any information ascertainable by the inspection or analysis of samples, (B) the information described in the Schedule 1 hereto as having been disclosed prior to the date hereof and (C) any information relating to that party's business, operations, prices, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs, but shall exclude any part of such disclosed information or data which:
  - (i) is or becomes in the public domain in any way without breach of this Agreement by the receiving party; or

- (ii) the receiving party can show (A) was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the disclosing party and was not previously acquired by the receiving party from the disclosing party under an obligation of confidence; or (B) to have been developed by or for the receiving party at any time independently of the information disclosed to it by the disclosing party; or
- (iii) is hereafter disclosed or made available to the receiving party from a source other than the disclosing party without breach by the receiving party or such source of any obligation of confidentiality or non-use towards the disclosing party; or
- (iv) is hereafter made generally available by the disclosing party or a third party or is disclosed by the disclosing party to a third party without restriction on disclosure or use, including, without limitation, by way of the publication of a patent specification; or
- (v) is disclosed by the receiving party with the prior written approval of the disclosing party;

provided however that the foregoing exceptions shall not apply to information relating to any combination of features or any combination of items of information merely because information relating to one or more of the relevant individual features or one or more of the relevant items (but not the combination itself) falls within any one or more of such exceptions.

## **2 Handling of confidential information**

In consideration of the mutual exchange and disclosure of Confidential Information, each party undertakes in relation to the other party's Confidential Information:

- (a) to maintain the same in confidence and to use it only for the Purpose and for no other purpose and in particular, but without prejudice to the generality of the foregoing, (i) not to make any commercial use thereof (ii) not to use the same for the benefit of itself or of any third party other than pursuant to a further agreement with the other party and (iii) not to use the same for the purpose of guiding or conducting a search of any information, materials or sources, whether or not available to the public, for any purpose whatsoever, including, without limitation, for the purpose of demonstrating that any information falls within one of the exceptions in clause 1;
- (b) not to copy reproduce or reduce to writing any part thereof except as may be reasonably necessary for the Purpose and that any copies reproductions or reductions to writing so made shall be the property of the disclosing party;
- (c) not to disclose the same whether to its employees or to third parties except in confidence to such of its employees, directors or contractors who need to know the same for the Purpose

and that (i) such employees, directors and contractors are obliged by their contracts of employment or services not to disclose the same, (ii) the receiving party shall enforce such obligations at its expense and at the request of the disclosing party in so far as breach thereof relates to the disclosing party's Confidential Information;

- (d) to be responsible for the performance of sub-clause (a), (b) and (c) above on the part of its employees or directors to whom the same is disclosed pursuant to sub-clause (c) above; and
- (e) to apply thereto no lesser security measures and degree of care than those which the receiving party applies to its own confidential or proprietary information and which the receiving party warrants as providing adequate protection of such information from unauthorised disclosure, copying or use.

Notwithstanding the foregoing, the receiving party shall be entitled to make any disclosure required by law of the other party's Confidential Information, but shall give the other party not less than two business days' notice of such disclosure and shall consult with the disclosing party prior to such disclosure with a view to avoiding such disclosure if legally possible.

### **3 Return of confidential information**

Each party shall:

- (a) within one month of completion of the Purpose or receipt of a written request from the other party, return to the other party all documents and materials (and all copies thereof) containing the other party's Confidential Information and certify in writing to the other party that it has complied with the requirements of this sub-clause; and
- (b) notwithstanding completion of the Purpose or return of documents and materials as aforesaid, continue to be bound by the undertakings set out in clause 2.

### **4 Disclaimer and warranty**

- (a) Each party reserves all rights in its Confidential Information and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other industrial property right now or in the future held, made, obtained or licensable by either party.
- (b) Each party warrants its right to disclose its Confidential Information to the other party and to authorise the other party to use the same for the Purpose.

### **5 Confidentiality**

Each party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other party (or of any other company in the Group of Companies of which the other party forms part) in any publicity, advertisement or other disclosure with regard to this Agreement without the prior written consent of the other party.

## **6 Notices**

All notices under this Agreement shall be in writing and shall be sent by first-class registered or recorded delivery post to the party being served at its address specified above or at such other address of which such party shall have given notice as aforesaid, and marked for the attention of that party's signatory of this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.

## **7 Term and Termination**

This Agreement shall become effective from the date hereof and continue in force for a period of one year. The provisions of clauses 1, 2 and 3 shall survive any such termination.

## **8 Non-assignment**

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

## **9 Severability**

If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement which shall remain in full force and effect. Where relevant, the parties shall use their reasonable endeavours to find a new stipulation resembling the invalid one in its commercial consequence as much as possible.

## **10 Equitable Relief**

Both parties to this Agreement acknowledge that the Confidential Information belonging to each party is a unique and valuable asset of such party. Disclosure in breach of this Agreement will result in irreparable injury to the disclosing party for which monetary damages alone will not be an adequate remedy.

Therefore, the parties agree that in the event of a breach or threatened breach of the terms of this Agreement, the disclosing party will be entitled to specific performance, injunctive relief or other equitable relief prohibiting any breach of this Agreement without giving an undertaking as to damages. Any such equitable remedy shall be in addition to and not in lieu of, other appropriate relief at law to which the disclosing party may be entitled.

## **11 Counterparts**

This Agreement may be signed in any number of counterparts and/or via email through the exchange of scanned pdf copies with the same effect as if the signature to each were upon the same Agreement.

### 12 No Partnership

This Agreement is neither intended to nor will it be construed as creating a joint venture, partnership or other form of business association between the parties, nor an obligation to buy or sell products using or incorporating the Confidential Information.

### 13 No Waiver

The failure of either party to enforce any rights resulting from any breach of any term or provision of this Agreement by the other party will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.

### 14 Entire agreement, governing law and jurisdiction

This Agreement constitutes the entire Agreement and understanding between the parties in respect of Confidential Information and supersedes all previous agreements, understandings and undertakings in such respect and all obligations implied by law to the extent that they conflict with the express provisions of this Agreement. This Agreement cannot be changed except by written agreement between the parties. The interpretation construction and effect of this Agreement shall be governed and construed in all respects in accordance with English Law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.

**AS WITNESS** this Agreement has been signed on behalf of each party by its duly authorized representative the day and year first above written.

SIGNED for & on behalf of:

**Switchdigital (London) Limited**

Authorised Signatory:

  
\_\_\_\_\_

Name:

Piers Collins

Title:

Director

SIGNED for & on behalf of:

Authorised Signatory:

\_\_\_\_\_

Name:

Title:



**SCHEDULE 1**

**INFORMATION DISCLOSED PRIOR TO THE DATE OF THIS AGREEMENT**