

## AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is made as of the date of the last signature affixed hereto, by and between Microsoft Infrastructure Group, LLC (“MIGL”), on the one hand, and the U.S. Department of Justice (“DOJ”) and the U.S. Department of Homeland Security (“DHS”, and with DOJ, “Government Parties”) on the other (each referred to individually as a “Party” and collectively as the “Parties”).

## RECITALS

**WHEREAS**, U.S. communications systems are essential to the ability of the U.S. Government to fulfill its responsibilities to the public to preserve the national security of the United States, to enforce the laws, and to maintain the safety of the public;

**WHEREAS**, the U.S. Government has an obligation to the public to ensure that U.S. communications and related information are secure in order to protect the privacy of U.S. persons and to enforce the laws of the United States;

**WHEREAS**, it is critical to the well-being of the Nation and its citizens to maintain the viability, integrity, and security of the communications systems of the United States (see *e.g.*, Executive Order 13231, Critical Infrastructure Protection in the Information Age, and Presidential Policy Directive/PPD-21, Critical Infrastructure Security and Resilience);

**WHEREAS**, MIGL’s affiliate Microsoft Operations Pte Ltd (“MOPL”), along with China Mobile International, Limited (“CMI”), China Telecommunications Corporation (“China Telecom”), China United Network Communications Group Company Limited (“China Unicom”), Chunghwa Telecom Co., Ltd. (“Chunghwa Telecom”), KT Corporation (“KT”), and SoftBank Mobile Corp. (“SoftBank”) (each an “NCP Party” and collectively the “NCP Parties”) seek to construct, land and operate a private, non-common carrier, fiber-optic submarine cable system with six segments between China, Korea, Taiwan, Japan and the United States, which will be called the New Cross Pacific (“NCP”) Cable System;

**WHEREAS**, each NCP Party will own all common infrastructure of the NCP Cable System in indivisible shares based on their proportionate interests in the NCP Cable System;

**WHEREAS**, MIGL and each NCP Party have agreed that MIGL has the authority to negotiate and execute that Agreement for the U.S. portions of the NCP System; to enter in contractual arrangements with third parties to operate and manage the U.S. facilities associated with the NCP Cable System, including the landing and terminal power feed equipment, terrestrial transmission facilities associated with the landing, and the operations of the U.S. Network Operations Center (“NOC”); and to direct the activities of any vendors, suppliers, or providers of services to MIGL or its designee related to the U.S. portions of the NCP Cable System;

**WHEREAS**, on November 3, 2015, the NCP Parties applied to the Federal Communications Commission (“FCC”) for a submarine cable landing license under the Cable

Landing License Act of 1921 and Executive Order No 10530, FCC File No. SCL-LIC-20151104-00029 (the “Application”);

**WHEREAS**, DHS will request that the FCC's grant of the pending Application be made subject to resolution of issues relating to national security, law enforcement, and public safety as set forth herein, and whereas MIGL has agreed to enter into this Agreement with DHS to resolve issues raised by DHS and to jointly petition the FCC to condition the requested authorization on compliance with this Agreement;

**NOW THEREFORE**, the Parties are entering into this Agreement to address national security, law enforcement and public safety concerns.

### **ARTICLE 1: DEFINITION OF TERMS**

As used in this Agreement:

- 1.1 “**Affiliate**” means any entity that Microsoft Corporation owns or controls, other than MIGL.
- 1.2 “**Asia NOC**” has the meaning set forth in Section 2.1(b) of this Agreement.
- 1.3 “**Control**” and “**Controls**” mean the power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, or by proxy voting, contractual arrangements, or other means, to determine, direct, or decide matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause decisions regarding:
  - (a) the sale, lease, mortgage, pledge, or other transfer of any or all of the principal assets of the entity, whether or not in the ordinary course of business;
  - (b) the dissolution of the entity;
  - (c) the closing and/or relocation of the facilities of the entity;
  - (d) the termination or non-fulfillment of contracts of the entity;
  - (e) the amendment of the articles of incorporation or constituent agreement of the entity with respect to the matters described in Section 1.3(a) through (d) above; or
  - (f) MIGL’s obligations under this Agreement.
- 1.4 “**De facto**” and “**de jure**” control have the meanings provided in 47 C.F.R. § 1.2110.
- 1.5 “**Domestic Communications**” means (a) Wire Communications or Electronic Communications (whether stored or not) originating at one U.S. location to another U.S.

location; and (b) the U.S. portion of a Wire Communication or Electronic Communication (whether stored or not) that originates from or terminates in the United States.

- 1.6 **“Domestic Communications Infrastructure”** means any portion of the NCP Cable System that is physically located in the United States up to the submarine line terminating equipment, including (if any) transmission, switching, bridging, and routing equipment, and any associated software (but excepting commercial off-the-shelf (“COTS”) software used for common business functions; e.g., Microsoft Office or Office365) used by or on behalf of MIGL for the NCP Cable System to provide, process, direct, control, supervise, or manage Domestic Communications, and NOC facilities that may be used to control the NCP Cable System.
- 1.7 **“Effective Date”** means the date this Agreement becomes effective, which is the date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite that Party’s signature).
- 1.8 **“Electronic Communication”** has the meaning given it in 18 U.S.C. § 2510(12).
- 1.9 **“Foreign”** where used in this Agreement, whether capitalized or lower case, means non-U.S.
- 1.10 **“Government,” “Government Authority”** or “Governmental Authorities” means any government, or any governmental, administrative, or regulatory entity, authority, commission, board, agency, instrumentality, bureau or political subdivision and any court, tribunal, judicial or arbitral body.
- 1.11 **“Management”** means the respective officers, managers (in the case of a limited-liability company), and members of the boards of directors of MIGL and its Affiliates.
- 1.12 **“Managed Network Service Provider”** means any third party using a managed-services platform to provide any of the following functions for the Domestic Communications Infrastructure: operations and management support; corrective and preventative maintenance including intrusion testing; network and service monitoring; network performance, optimization, and reporting; network audits, provisioning, and development, and the implementation of changes and upgrades.
- 1.13 **“Network Management Information”** means: the network management operations plans, processes and procedures; descriptions of the placement of NOC(s) and linkages (for service offload or administrative activities) to other domestic and international carriers, ISPs and other critical infrastructures (e.g. domestic telecommunications and content providers); descriptions of networks and operations processes and procedures for management control and relation to the backbone infrastructure(s) including other service providers; description of any unique or proprietary control mechanisms as well as operating and administrative software; network performance information; and network accessibility and procedures.

- 1.14 “**Network Operations Center**” or “**NOC**” means the locations and facilities designated as such by NCP Parties for purposes of performing network management, network performance monitoring, maintenance or other operational functions for the NCP Cable System.
- 1.15 “**Notice**” shall have the meaning set forth in Section 4.16 of this Agreement.
- 1.16 “**Points of Contact**” has the meaning set forth in Section 3.4 of this Agreement.
- 1.17 “**Principal Equipment**” means the primary electronic components of the NCP Cable System, which includes the Domestic Communications Infrastructure and Wet Infrastructure. Principal Equipment includes the cable itself, network element servers, routers, switches, repeaters, submarine line terminal equipment (SLTE), system supervisory equipment (SSE), signal modulators and amplifiers, power feed equipment (PFE), tilt and shape equalizer units (TEQ/SEQ), optical distribution frames (ODF), branching units (BU), and synchronous optical network (SONET), synchronous digital hierarchy (SDH), wave division multiplexing (WDM), dense wave division multiplexing (DWDM), coarse wave division multiplexing (CWDM) or optical carrier network (OCx) equipment, as applicable, and any non-embedded software for the proper network monitoring, administration and provisioning of the NCP Cable System (with the exception of COTS software used for common business functions; e.g., Microsoft Office or Office365).
- 1.18 “**Pro forma assignments**” or “**pro forma transfers of control**” are transfers that do not involve a substantial change in ownership or control as provided by Section 1.767(g)(7) and 63.24 of the FCC’s Rules (47 C.F.R. §§ 1.767(g)(7) and 63.24).
- 1.19 “**Screened Personnel**” means those persons, as set forth at Section 3.7, who, through appropriate screening procedures, are deemed to possess a high degree of trustworthiness.
- 1.20 “**Unauthorized Access**” means improperly physically or logically undertaking any of the following actions: (a) reading, diverting, or otherwise obtaining non-public information or technology from or about software, hardware, a system or a network; (b) adding, editing or altering information or technology stored on or by software, hardware, a system or a network; and (c) altering the physical or logical state of software, hardware, a system or a network (e.g., turning it on or off, changing configuration, removing or adding components or connections).
- 1.21 “**United States**” or “**U.S.**” means the United States of America including all of its States, districts, territories, possessions, commonwealths, and the special maritime and territorial jurisdiction of the United States.
- 1.22 “**U.S. NOC**” has the meaning set forth in Section 2.1(a) of this Agreement.

- 1.23 **“Wet Infrastructure”** means hardware components installed and residing on the undersea portion of the NCP Cable System physically located in the U.S., and includes fiber optic cables, repeaters, branching units, and routers (if any). Wet Infrastructure includes all the components used in order to define the topology of the undersea portion of the NCP Cable System.
- 1.24 **“Wire Communication”** has the meaning given it in 18 U.S.C. § 2510(1).
- 1.25 **Other Definitional Provisions.** Other capitalized terms used in this Agreement and not defined in this Article shall have the meanings assigned them elsewhere in this Agreement. The definitions in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## **ARTICLE 2: OPERATIONS, FACILITIES AND INFORMATION STORAGE**

- 2.1 **Operational Requirements.** With respect to the operation of the NCP Cable System, MIGL agrees as follows:
- (a) the primary NOC for the NCP Cable System shall be established within the United States (the **“U.S. NOC”**) to be operated by, or on behalf of, MIGL and its Affiliates, exclusively using Screened Personnel;
  - (b) the NOC to be established and operated in the Republic of Korea by KT (the **“Asia NOC”**) will perform only network performance monitoring functions—but not any other network management, maintenance, or operational functions for the NCP Cable System, even on a back-up basis—using information received exclusively from the U.S. NOC;
  - (c) MIGL shall have the ability to promptly and effectively interrupt in whole or in part traffic to and from the United States on the NCP Cable System by disabling or disconnecting circuits at the U.S. cable landing station or at other locations within the United States;
  - (d) MIGL shall have the ability to isolate the U.S. NOC, the U.S. cable landing station, or the connecting cable segment from the rest of the NCP Cable System; and
  - (e) MIGL shall ensure that the U.S. NOC will be able to view the status of the NCP Cable System, including the individual cable segments and maintain exclusive supervision and control of the NCP system.

If MIGL is required to interrupt traffic to or from the United States as the result of lawful U.S. process from a Government Authority, MIGL shall be permitted to disclose publicly

that MIGL was required to interrupt service in response to lawful U.S. process, without disclosing any of the content of such request.

**2.2 Cable System Infrastructure.** Within ninety (90) business days after the Effective Date, MIGL shall provide the Government Parties with:

- (a) a complete and current list of Principal Equipment, including each item's manufacturer and the model and/or version number of any hardware or software; any vendors, contractors, or subcontractors involved in installing, operating, managing, or maintaining the Principal Equipment; and a description of each Principal Equipment item and the functions supported;
- (b) a complete and current list of all contracts held by MIGL or its designee(s) for the maintenance and security of the NCP Cable System;
- (c) a repair and maintenance plan for the Principal Equipment and the Wet Infrastructure, and, if available, a restoration plan for traffic traversing the NCP Cable System;
- (d) a logical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the NCP Cable System, which plan shall include measures to ensure that security patches for systems and applications are kept up to date;
- (e) a physical security plan, and any associated policies or procedures, adopted or maintained to protect and promote resiliency of the NCP Cable System; and
- (f) a network map that includes a physical and logical topology, Network Management Information, network and telecommunications architecture descriptions and associated descriptions of interconnection points, controlled gateways to the DCI and the Wet Infrastructure, network operational plans, processes and procedures, locations and functions of any NOCs, and descriptions of disaster recovery and administrative functions.

MIGL shall provide at least ten (10) business days' advance Notice prior to performing any maintenance, repair, or replacement that would result in any material modification to the Principal Equipment list for the NCP Cable System. MIGL need not comply with the advance Notice requirement for any maintenance, repair, or replacement that is undertaken in response to an unforeseen or uncontrollable event and is necessary to ensure the continued operability of the NCP Cable System; however, in such circumstances MIGL shall provide advance Notice of the modification if practicable, and if impracticable, within ten (10) business days after the material modification of the Principal Equipment. MIGL shall provide at least five (5) business days' advance Notice prior to making any material modifications to their contracts for NCP Cable System maintenance and security.

MIGL agrees to meet and confer with the Government Parties and consider any concerns the Government Parties may raise about materials submitted pursuant to this provision.

- 2.3 **Compliance with Applicable Law.** Nothing in this Agreement shall excuse any Party from any obligation it may have to comply with applicable legal requirements for the retention, preservation, or production of information, records or data.

### ARTICLE 3: SECURITY

- 3.1 **Measures to Prevent Improper Use or Unauthorized Access.** MIGL shall take all reasonable measures to prevent the use of or Unauthorized Access to the Domestic Communications Infrastructure to access, obtain or disclose Domestic Communications, in violation of any U.S. federal, state, or local laws or the terms of this Agreement. Such measures shall include contractual safeguards as well as screening procedures for personnel with logical access to the Domestic Communications Infrastructure. MIGL shall submit such policies and procedures regarding these measures to the Government Parties within ninety (90) business days of the Effective Date for review, and MIGL agrees to meet and confer with the Government Parties and consider any concerns Government Parties may raise about such policies and procedures.
- 3.2 **Physical Security Measures.** MIGL shall take all reasonable measures to physically secure the Domestic Communications Infrastructure and shall require that any personnel of an NCP Party that wish to physically access the U.S. cable landing station or the U.S. NOC be escorted at all times by Screened Personnel of MIGL. MIGL shall submit such policies and procedures regarding these measures to the Government Parties within ninety (90) business days of the Effective Date for review, and MIGL agrees to meet and confer with the Government Parties and consider any concerns Government Parties may raise about such policies and procedures.
- 3.3 **Report of Unauthorized Disruption.** MIGL agrees to report to the Government Parties if it learns of information that it believes reasonably indicates unauthorized third party disruption of the NCP Cable System or any Domestic Communications being carried on the NCP Cable System. Any such reports should be provided in writing to the Government Parties within ten (10) business days of discovery of the relevant information. MIGL further agrees to confer with, and reasonably consider any recommendations by the Government Parties with respect to how to remediate such events. MIGL will provide Notice within ten (10) business days of the receipt of any such recommendation whether MIGL has adopted the recommendation. The Notice will include an explanation of why MIGL has not adopted any recommendation that it does not adopt and a description of the actions taken to implement any recommendation that it does adopt.
- 3.4 **Points of Contact.** Within sixty (60) business days after the Effective Date, MIGL shall designate points of contact within the United States for purposes of this agreement. (“Points of Contact”). A Point of Contact shall be available to engage with Government Parties regarding any national security, law enforcement or public safety concerns that may

be raised by the Government Parties with respect to the NCP Cable System. A Point of Contact shall reside within the United States and shall be available twenty-four (24) hours per day, seven (7) days per week. Promptly after designating such Points of Contact, MIGL shall provide Notice of the Points of Contact, and thereafter MIGL shall notify the Government Parties of any change in its designated Points of Contact within ten (10) business days or fewer. MIGL shall cooperate with any Notice by a U.S. Government Authority within the United States that a further background check, security clearance process or both be completed for a designated Point of Contact.

- 3.5 **Operational Control of NOCs.** Except as set forth in Section 2.1 or otherwise agreed to in writing by the Government Parties, operational control of the Domestic Communications Infrastructure will be restricted to MIGL's U.S. NOC. MIGL will provide the Government Parties with advance Notice of any proposed changes in operational or network control that affect the Domestic Communications Infrastructure. The Government Parties shall have the right to review and object to such changes.
- 3.6 **Instruction of Obligations.** MIGL and its Affiliates shall instruct appropriate officials, employees, contractors, and agents as to MIGL's obligations under this Agreement, including the individuals' duty to report any violation of this Agreement, and shall issue periodic reminders to them of such obligations. MIGL shall issue these instructions in writing within forty-five (45) business days of the Effective Date, and shall submit a copy thereof to the Government Parties at the same time.
- 3.7 **Screening of Personnel.** MIGL shall implement, either directly or through a vendor or service provider, a process to screen any existing or newly hired MIGL personnel or any personnel performing under an agreement with MIGL in at least the following circumstances:
- (a) any person whose position could involve logical access to the Domestic Communications Infrastructure; and
  - (b) all personnel charged with securing the Domestic Communications Infrastructure.

Screening procedures include background investigations, public criminal records checks, or other analogous means to ascertain a person's trustworthiness. Upon satisfactory completion of the screening process requirements set forth in this Agreement, such persons shall be considered "Screened Personnel." In addition, MIGL will cooperate with any reasonable request by a U.S. Government Authority to provide additional identifying information regarding Screened Personnel.

#### ARTICLE 4: REPORTING AND NOTICE

- 4.1 **Filings Concerning *De Facto* or *De Jure* Control of MIGL.** MIGL shall promptly provide Notice of any filing with the FCC or any other Government Authority relating to the *de facto* or *de jure* control of MIGL or the NCP Cable System, except for filings with



the FCC for assignments or transfers of control that are *pro forma*. MIGL shall promptly provide to the Government Parties Notice and copies of such filing.

4.2 **Change in Control.** If MIGL or any of its Affiliates learns of any information that reasonably indicates that any single foreign entity or individual, other than those already identified in connection in the pending FCC Application(s), has or will likely obtain an ownership interest (direct or indirect) in MIGL or the NCP Cable System above ten (10) percent, as determined in accordance with 47 C.F.R. § 63.09(b), or if any foreign entity or individual, singly or in combination with other foreign entities or individuals, has or likely will otherwise gain either: (i) Control; or (ii) *de facto* or *de jure* control of MIGL, then MIGL shall provide Notice within ten (10) business days. Notice under this Section shall, at a minimum:

- (a) identify the entity or individual(s) acquiring Control (specifying the name, addresses, and telephone numbers of the entity);
- (b) identify the beneficial owners of the increased or prospective increased interest in MIGL or the NCP Cable System by the entity or individual(s) (specifying the name, addresses, and telephone numbers of each beneficial owner); and
- (c) quantify the amount of ownership interest that the entity or individual(s) has or will likely obtain in MIGL or the NCP Cable System and, if applicable, the basis for their prospective Control of MIGL or the NCP Cable System.

4.3 **Approval of Managed Network Service and Principal Equipment Providers.** No later than 90 business days after the Effective Date, MIGL shall provide the Government Parties with a list of names of all Managed Network Service Providers and Principal Equipment providers, including entities that perform any maintenance, repair, or replacement that could result in any material modification to the Principal Equipment or systems or software used with or supporting the Principal Equipment. Such list shall not only identify the Managed Network Service Provider or Principal Equipment, but also identify the manner/type of service offered. MIGL shall seek approval from the Government Parties at least forty-five (45) business days before using any Managed Network Service Provider or Principal Equipment provider not previously identified to the Government Parties or where there will be changes in the service offerings/support from already identified Managed Network Service Providers and Principal Equipment Providers (i.e., an already identified provider will now be offering support in a previously unidentified way). The Government Parties shall approve or disapprove any such request within thirty (30) business days of receipt, unless otherwise delayed by awaiting responses to inquiries for further information from MIGL, in which event the Government Parties shall be afforded additional time to approve or disapprove any request sent under this Section 4.3. The Government Parties' additional time to approve or disapprove shall be the original thirty (30) business day window extended by the number of days the Government Parties awaited a response from MIGL. Failure by the Government Parties to respond within the required timeframe shall be deemed to constitute a non-objection to use of the relevant provider.

In the event of an emergency, such as an instance requiring immediate maintenance or repair of facilities and use of a service or equipment for which the necessary Managed Network Service Provider or Principal Equipment supplier has not already been notified to the Government Parties, MIGL may utilize the provider or supplier, provided that MIGL provide Notice as promptly as practicable, and in no event longer than three (3) business days after the initial use of the supplier or provider or the emergency situation has been stabilized, whichever is later. MIGL may continue to utilize the provider or supplier, provided that the Government Parties do not object within thirty (30) business days of notification, or within the additional time necessary for MIGL to answer Government Parties' questions, as outlined for the usual process in this Section 4.3.

4.4 **Offshoring.** MIGL shall comply with all aspects of this Agreement with respect to any personnel it may have offshore.

4.5 **Notice of Foreign Influence.** If MIGL or any of its Affiliates discovers any information that reasonably indicates that any Foreign Government, any Foreign Government-controlled entity, or any foreign entity plans to participate or has participated in any aspect of the day-to-day management of MIGL or the NCP Cable System in such a way that:

- (a) materially interferes with or impedes the performance by MIGL of its duties and obligations under the terms of this Agreement;
- (b) materially interferes with or impedes the exercise by MIGL of its rights under the Agreement; or
- (c) raises a material concern with respect to the successful fulfillment by MIGL of its obligations under this Agreement;

then an appropriate representative of MIGL or its Affiliate shall within ten (10) business days provide Notice of the timing and the nature of the Foreign Government's or entity's plans or actions.

4.6 **Change in Cable Infrastructure, Contracts and Network Management.** In addition to the obligation contained in Section 4.14, MIGL shall provide upon request from the government an updated list of Principal Equipment, physical security plan, logical security plan, repair and maintenance plan for the Principal Equipment and the Wet Infrastructure, or, if available, restoration plan . MIGL shall provide at least thirty (30) business days' advance Notice prior to making any modifications to the list of contracts submitted pursuant to Section 2.2(b) above. MIGL agrees to make its Network Management Information available to the Government Parties upon request. MIGL shall negotiate in good faith to resolve any national security, law enforcement or public safety concerns that the Government Parties may raise with respect to the NCP Cable System's Principal Equipment, physical security plan, logical security plan, repair and maintenance plan, restoration plan (if available), contracts, and Network Management Information.

4.7 **Reporting Policy.** Within forty-five (45) business days of the Effective Date, MIGL shall adopt and distribute to the Management of MIGL and its Affiliates, a written policy for the reporting by the Management of MIGL and its Affiliates of any noncompliance with this Agreement. This written policy shall also provide for the reporting by employees, agents and contractors to the Management of MIGL of information that requires Notice under Sections 4.2, 4.3, 4.5, 4.6, 4.9, and 4.10 of this Agreement. MIGL shall make such policy available to the Government Parties upon request. Any violation by MIGL of any material term of such policy shall constitute a breach of this Agreement.

By a written statement, MIGL shall notify all relevant employees, contractors and agents that the general categories of information identified in Sections 4.2, 4.3, 4.5, 4.6, 4.9, and 4.10 of this Agreement should be disclosed to the Management of MIGL and shall set forth in a clear and prominent manner the contact information for a senior manager to whom such information may be reported. The written statement informing employees, contractors, and agents of the need to report this information shall also state that MIGL shall not discriminate against, or otherwise take adverse action against, anyone who reports such information to the Management of MIGL or the United States Government. MIGL shall make such statement available to the Government Parties upon request.

4.8 **Non-Retaliation.** Within forty-five (45) business days of the Effective Date, MIGL shall adopt a policy that strictly prohibits MIGL from discriminating or taking any adverse action against any officer, director, employee, contractor, or agent because he or she has in good faith initiated or attempted to initiate a Notice or report under this Article, or has notified or attempted to notify the Management of MIGL or any of its Affiliates to report information that he or she believes in good faith requires Notice under either this Article or under MIGL's written instruction to employees on the reporting of any such information. Any violation by MIGL of any material term of such policy shall constitute a breach of this Agreement. MIGL shall make such policy available to the Government Parties upon request.

4.9 **Reporting of Incidents.** MIGL shall provide Notice if it learns of any information that reasonably indicates:

- (a) a material breach of this Agreement;
- (b) unauthorized physical access to the U.S. cable landing station or U.S. NOC;
- (c) Unauthorized Access to or disclosure of Domestic Communications in violation of federal, state, or local law or regulation; or
- (d) Unauthorized Access to or disclosure of Network Management Information in violation of federal, state, or local law or regulation;

Notice shall be promptly made by an appropriate representative of MIGL no later than ten (10) business days after MIGL learns of any information that reasonably indicates a matter described in this Section. MIGL shall lawfully cooperate in investigating the matters

described in this Section. MIGL need not give Notice where disclosure of such information would be in violation of an order of a court of competent jurisdiction within the United States.

- 4.10 **Notice of Changes to / Additional Services.** MIGL shall provide a minimum of thirty (30) business days advance Notice before it, any Affiliate, or an NCP Party changes or announces plans to change the technical or operational plans set forth in the Recitals of this Agreement such that the material representations made therein are no longer fully accurate, true and complete.
- 4.11 **Onsite Review of Information and Facilities.** The Government Parties may visit, at any time upon reasonable Notice, any part of the Domestic Communications Infrastructure to conduct onsite reviews concerning the implementation of the terms of this Agreement and may at any time require copies or review of information concerning technical, physical, management, or other security measures reasonably required by a Government Party to verify compliance with the terms of this Agreement.
- 4.12 **Interviews of Personnel.** Upon reasonable Notice from a Government Party, MIGL shall make available for interview any and all knowledgeable personnel who are in a position to provide information to verify compliance with the terms of this Agreement.
- 4.13 **Right to Third Party Audits.** The Government Parties may require MIGL to obtain a third party audit of its compliance with the terms of this Agreement and to provide the Government Parties with the resultant audit report.
- (a) If this right to third party audits is availed by the Government Parties, MIGL will, within fifteen (15) business days of receiving such request, propose the third party auditor, as well as the terms and scope for the audit.
  - (b) Once MIGL has submitted the proposed auditor and the terms and scope of the audit, the Government Parties will have thirty (30) business days to provide a response to the proposed auditor and the terms and scope of the audit. If the Government Parties do not respond to the proposed auditor and terms and scope within thirty (30) business days, the proposed auditor and terms and scope will be deemed to have been accepted.
  - (c) MIGL shall reasonably address any concerns raised by the Government Parties and shall commence the audit within ninety (90) business days of reaching agreement on the scope and terms of the audit. This ninety (90) business day time limit will be extended on a day for day basis for every day of delay caused solely by the Government Parties.
  - (d) The audit required by this Section shall be undertaken solely at MIGL expense and the Government Parties shall not be required to make any showing of cause to invoke this right to third party audit. However, if the Government Parties invoke their right to a third party audit, MIGL shall not be requested to conduct another third party audit until eighteen (18) months have passed from the conclusion of the previous audit.

4.14 **Annual Report.** On or before each anniversary of the Effective Date, a designated senior corporate officer of MIGL or its Affiliate shall submit to the Government Parties a report assessing MIGL's compliance with the terms of this Agreement for the preceding year. The report shall include:

- (a) an updated list of Principal Equipment, including but not limited to any material changes or upgrades to the system components or applications since the list was most recently provided to the Government Parties;
- (b) a copy of the then current plans, policies and procedures adopted to comply with this Agreement, including those set forth in Section 2.2 above, and a summary of the changes and reasons therefore;
- (c) a summary of any known acts of noncompliance with the terms of this Agreement, not otherwise reported under Section 4.9, whether inadvertent or intentional, with a discussion of what steps have been or will be taken to prevent such acts from occurring in the future;
- (d) a summary of any other events occurring during the reporting period that, to the knowledge of MIGL, will or reasonably could affect the effectiveness of or compliance with this Agreement; and
- (e) a detailed description and map reporting any changes to the NCP Cable System's physical and logical topology during the reporting period, including the addition of new NOCs or cable landing stations.

4.15 **Notice of Establishment of Additional NOCs.** In the event that MIGL or any NCP Party proposes to establish a new NOC, MIGL shall provide advance Notice of such establishment at least thirty (30) days prior to the commencement of such NOC operations. The Government Parties shall have the right to review and object to such an establishment.

4.16 **Notices.** Following the Effective Date, all notices and other communications required under this Agreement ("**Notice**") shall be in writing and shall be deemed given as of the date of receipt and shall be sent by electronic mail (if an email is specified below or in a subsequent notice) and one of the following methods: (a) delivered personally; (b) sent by facsimile; (c) sent by documented overnight courier service; or (d) sent by registered or certified mail, postage prepaid, addressed to the Parties' designated representatives at the addresses shown below, or to such other representatives at such addresses as the Parties may designate in accordance with this Section:

Government Parties:

Assistant Secretary for Policy  
Foreign Investment Risk Management  
Office of Policy  
U.S. Department of Homeland Security

ip-fcc@hq.dhs.gov

U.S. Department of Justice  
Assistant Attorney General for National Security  
Attn: Director, Foreign Investment Review Staff  
600 E St. NW, 10<sup>th</sup> Floor  
Washington, DC 20004  
ttelecom@usdoj.gov

Microsoft Infrastructure Group, LLC  
David Crowley  
One Microsoft Way  
Redmond, WA 98052  
davidcro@microsoft.com

with a copy to:

Kent Bressie  
Harris, Wiltshire & Grannis LLP  
1919 M Street, N.W., Suite 800  
Washington, D.C. 20036-3537  
kbressie@hwglaw.com

Courtesy electronic copies of all Notices and communications shall also be sent to the following, or those individuals identified to the Applicants by the DOJ in the future: Hunter Deeley of the DOJ (at hunter.deeley@usdoj.gov) and Richard Sofield of the DOJ (at richard.sofield2@usdoj.gov).

Notices shall be deemed received as of the date of personal delivery; the date of confirmed delivery printed on a facsimile confirmation; or the day following transmission by overnight courier or registered, certified mail. A Party may change its addresses for Notice under this Section by providing Notice of such change to each other Party in accordance with this Section.

## ARTICLE 5: FCC CONDITION

- 5.1 **FCC Approval.** Upon the execution of this Agreement by all the Parties, the Government Parties shall, on their own motion, at an appropriate time or at the request of MIGL, notify the FCC that, provided the FCC adopts a condition substantially the same as set forth in Exhibit A attached hereto (the “**Condition to FCC Authorization**”), the Government Parties have no objection to the FCC’s grant of the pending Application. This Section is effective upon the Effective Date, provided however that in the case of a material modification or withdrawal of the Application after the execution of this Agreement the effectiveness of this Section may be suspended by the Government Parties, and any such FCC filing is subject to the right to object reserved in Section 5.2.

- 5.2 **Right to Object to Future FCC Filings.** MIGL agrees that in any application or petition it makes to the FCC for licensing or other authority filed with or granted by the FCC in connection with the NCP Cable System after the execution of this Agreement, except with respect to *pro forma* assignments or *pro forma* transfers of control, MIGL shall request that the FCC condition the grant of such licensing or other authority on compliance with the terms of this Agreement. Notwithstanding Section 8.9, the Government Parties reserve the right to object, formally or informally, to the grant of any other FCC application or petition of MIGL or any other NCP Party for a license or other authorization under Titles II and III of the Communications Act of 1934, as amended, and to seek additional or different terms that would, consistent with the public interest, address any threat to the ability of the United States to enforce the laws, preserve the national security and protect the public safety raised by the services and transactions underlying any such application or petition.

## ARTICLE 6: DISPUTES

- 6.1 **Informal Resolution:** The Parties shall use their best reasonable efforts to resolve any disagreements that may arise under this Agreement. Disagreements shall be addressed, in the first instance, at the staff level by the Parties' designated representatives. The Parties shall meet in person or by phone within five (5) business days of identification of a dispute, or at such other time as they shall mutually agree. Any disagreement that has not been resolved at the staff level within ten (10) business days of such meeting may be submitted by any Party to DHS's Assistant Secretary for Policy, DOJ's Assistant Attorney General for National Security and the designated counsel for MIGL, unless the Government Parties believe that important national interests can be protected, or MIGL believes that paramount commercial interests can be resolved, only by resorting to the measures set forth in Section 6.2. The Parties shall meet in person or by phone within ten (10) business days, or at such later date as they may mutually agree, after notification of the dispute and inability to resolve it at the staff level. If, after meeting with higher authorized officials, any of the Parties determines that further negotiation would be fruitless, then that Party may resort to the remedies set forth in Section 6.2. A Party resorting to measures set forth in Section 6.2 shall give advance Notice of its intent to do so to each other Party.
- 6.2 **Enforcement of Agreement.** Subject to Section 6.1 of this Agreement, if any of the Parties believes that any other Party has breached or is about to breach this Agreement, that Party may bring an action against the other Party for appropriate judicial relief. Nothing in this Agreement shall limit or affect the right of a U.S. Government Authority to:
- (a) request that the Party or Parties believed to have breached, or about to breach, this Agreement cure such breach within thirty (30) days, or whatever shorter time period is appropriate under the circumstances, upon receiving Notice of such breach;
  - (b) request that the FCC modify, condition, revoke, cancel, or render null and void any license, permit, or other authorization granted or given by the FCC for the NCP Cable System, request that the FCC take other action, or request that the FCC

impose any other appropriate sanction, including but not limited to a forfeiture or other monetary penalty;

- (c) seek civil sanctions for any violation by MIGL of any U.S. law or regulation or term of this Agreement;
- (d) pursue criminal sanctions against MIGL or any NCP Party, or any officer, director, employee, contractor, or agent of MIGL, or against any other person or entity, for violations of the criminal laws of the United States; or
- (e) seek suspension or debarment of MIGL or any NCP Party from eligibility for contracting with the U.S. Government in accordance with applicable law and regulation.

6.3 **Irreparable Injury.** MIGL agrees that the United States would suffer irreparable injury if for any reason MIGL failed to perform any of its obligations under this Agreement, and that monetary relief would not be an adequate remedy. Accordingly, MIGL agrees that, in seeking to enforce this Agreement, the Government Parties shall be entitled, in addition to any other remedy available at law or equity, to seek specific performance and injunctive or other equitable relief.

6.4 **Waiver.** The availability of any civil remedy under this Agreement shall not prejudice the exercise of any other civil remedy under this Agreement or under any provision of law, nor shall any action taken by a Party in the exercise of any remedy be considered a waiver by that Party of any other rights or remedies. The failure of any Party to insist on strict performance of any of the provisions of this Agreement, or to exercise any right they grant, shall not be construed as a relinquishment or future waiver; rather, the provision or right shall continue in full force. No waiver by any Party of any provision or right shall be valid unless it is in writing and signed by the Party.

6.5 **Waiver of Immunity.** MIGL agrees that, to the extent that it or any of its property (including FCC licenses and authorizations and intangible property) is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise based upon a status as an agency or instrumentality of a "Foreign State" (as defined in 18 U.S.C. § 1603) from any legal action, suit or proceeding or from setoff or counterclaim relating to this Agreement, from the jurisdiction of any competent court or the FCC, from service of process, from attachment prior to judgment, from attachment in aid of execution of a judgment, from execution pursuant to a judgment or arbitral award, or from any other legal process in any jurisdiction, it, for itself and its property expressly, irrevocably and unconditionally waives, and agrees not to plead or claim, any such immunity with respect to matters arising with respect to this Agreement or the obligations herein (including any obligation for the payment of money) in any proceeding brought by a federal, state, or local U.S. Government Authority. MIGL agrees that the waiver in this provision is irrevocable and is not subject to withdrawal in any jurisdiction or under any statute, including the Foreign Sovereign Immunities Act, 28 U.S.C. § 1602 *et seq.* The foregoing waiver shall constitute a present waiver of immunity on the ground of sovereignty or otherwise based



upon a status as an agency or instrumentality of a Foreign State at any time any action is initiated by a federal, state, or local U.S. Government Authority against MIGL with respect to compliance with this Agreement.

- 6.6 **Forum Selection.** It is agreed by and between the Parties that a civil action among the Parties for judicial relief with respect to any dispute or matter whatsoever arising under, in connection with, or incident to, this Agreement shall be brought, if at all, in the United States District Court for the District of Columbia.

## ARTICLE 7: FREEDOM OF INFORMATION ACT

- 7.1 **Protection from Disclosure.** The Government Parties shall take all reasonable measures to protect from public disclosure all information submitted by MIGL (or other entities in accordance with the terms of this Agreement) to the Government Parties in connection with this Agreement and clearly marked with the legend “Business Proprietary, Exempt from Public Disclosure Under the Freedom of Information Act, 5 U.S.C. § 552(b)” or similar designation. Such markings shall signify that it is MIGL’s position that the information so marked constitutes “trade secrets” and/or “commercial or financial information obtained from a person and privileged or confidential,” or otherwise warrants protection within the meaning of 5 U.S.C. § 552(b)(4). For the purposes of 5 U.S.C. § 552(b)(4), the Parties agree that information so marked is voluntarily submitted and is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) under Exemption (b)(4). If a request is made under 5 U.S.C. § 552(a)(3) for information so marked, and disclosure of any information (including disclosure in redacted form) is contemplated, the Government Parties shall notify MIGL of the intended disclosure as provided by Executive Order 12600, 52 Fed. Reg. 23781 (June 25, 1987). If MIGL objects to the notifying Party with respect to the intended disclosure and MIGL’s objections are not satisfactorily resolved, the Government Parties shall notify MIGL of their intention to release (as provided by Section 5 of Executive Order 12600) not later than ten (10) business days prior to disclosure of the challenged information. The information provided under Sections 2.2, 3.1, 3.2, 3.6, 4.3, 4.6, 4.7, 4.8, and 4.13, any Notices provided by Microsoft under this Agreement, and any audit reports under Section 4.13, will all be deemed Business Proprietary, Exempt from Public Disclosure Under the Freedom of Information Act, 5 U.S.C. § 552(b), regardless of whether they are so marked.
- 7.2 **Use of Information for U.S. Government Purposes.** Subject to Section 7.1, nothing in this Agreement shall prevent the Government Parties from lawfully disseminating information as appropriate to seek enforcement of this Agreement, or from lawfully sharing information as appropriate with other federal, state, or local Government Authorities to protect public safety, law enforcement, or national security interests; provided further that the Government Parties shall take all reasonable measures to protect from public disclosure the information marked as described in Section 7.1. Further, subject to its obligations under Section 7.1, nothing in this Agreement shall limit the

ability of the Government Parties to disclose this Agreement or any information related to this Agreement to enforce or comply with any federal law or regulation.

## ARTICLE 8: OTHER

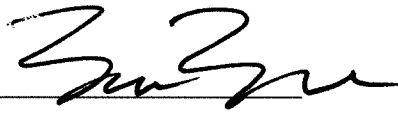
- 8.1 **Right to Make and Perform Agreement.** Each Party hereby represents that it has and shall continue to have throughout the term of this Agreement the full right to enter into this Agreement and perform its obligations hereunder and that this Agreement is a legal, valid, and binding obligation of such Party enforceable in accordance with its terms.
- 8.2 **Headings.** The Article and Section headings and numbering in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the terms of this Agreement.
- 8.3 **Other Laws.** Nothing in this Agreement is intended to limit or constitute a waiver of: (a) any obligation imposed by any U.S. federal, state, or local laws on any Party; (b) any enforcement authority available under any U.S. or state laws; (c) the sovereign immunity of the United States; or (d) any authority the U.S. Government may possess over the activities or facilities of MIGL located within or outside the United States (including authority pursuant to the International Emergency Economic Powers Act). Nothing in this Agreement is intended to or is to be interpreted to require the Parties to violate any applicable law.
- 8.4 **Statutory References.** All references in this Agreement to statutory provisions shall include any future amendments to such statutory provisions.
- 8.5 **Non-Parties.** Nothing in this Agreement is intended to confer or does confer any rights or obligations on any person other than the Parties.
- 8.6 **Entire Agreement; Modifications.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, whether oral or written, of the Parties with respect to the subject matter. This Agreement may only be modified by written agreement signed by all of the Parties. The Government Parties agree to consider promptly and in good faith possible modifications to this Agreement if MIGL believes that the obligations imposed on it under this Agreement are substantially more restrictive than those imposed on other U.S. and foreign licensed service providers in like circumstances in order to protect U.S. national security, law enforcement, and public safety concerns. Any substantial modification to this Agreement shall be reported to the FCC within thirty (30) business days after approval in writing by the Parties.
- 8.7 **Severability.** The provisions of this Agreement shall be severable and if any provision thereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction, it shall not affect any other provision of this Agreement or the application of any provision thereof.

- 8.8 **Changes in Circumstances for MIGL.** The Government Parties agree to negotiate in good faith and promptly with respect to any request by MIGL for relief from application of specific provisions of this Agreement if there is a change in circumstances such that those provisions become unduly burdensome or have a demonstrably adverse effect on MIGL's competitive position.
- 8.9 **Changes in Circumstances for the Government Parties.** If after the date that all the Parties have executed this Agreement, the Government Parties find that the terms of this Agreement are inadequate to address national security, law enforcement, or public safety concerns, then MIGL shall negotiate in good faith to modify this Agreement to address those concerns.
- 8.10 **Termination of Agreement.** This Agreement may be terminated at any time by a written agreement signed by the Parties. The Parties agree that they will reasonably consider any termination request submitted pursuant to this Agreement.
- 8.11 **Counterparts.** This Agreement may be executed in one or more counterparts, including by facsimile, each of which shall together constitute one and the same instrument.
- 8.12 **Successors and Assigns.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties, and their respective successors and assigns.
- 8.13 **Effectiveness of Agreement.** Except as otherwise specifically provided in the provisions of this Agreement, the obligations imposed and rights conferred by this Agreement shall take effect upon the Effective Date.

This Agreement is executed on behalf of the Parties:

U.S. Department of Homeland Security

Date: 1/12, 2017

By: 

Seth M.M. Stodder  
Assistant Secretary, Border, Immigration & Trade,  
PLCY  
Department of Homeland Security

U.S. Department of Justice

Date: \_\_\_\_\_, 2017

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

Richard C. Sofield  
Director, Foreign Investment Review Staff  
Department of Justice

Microsoft Infrastructure Group, LLC

Date: \_\_\_\_\_, 2017

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

Benjamin O. Orndorff  
Manager  
Microsoft Infrastructure Group, LLC  
One Microsoft Way  
Redmond, Washington 98052

U.S. Department of Homeland Security

Date: \_\_\_\_\_, 2017

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

Seth M.M. Stodder  
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Microsoft Infrastructure Group, LLC

Date: \_\_\_\_\_, 2017

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

Benjamin O. Orndorff  
Manager  
Microsoft Infrastructure Group, LLC  
One Microsoft Way  
Redmond, Washington 98052

U.S. Department of Homeland Security

Date: \_\_\_\_\_, 2017

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

Seth M.M. Stodder  
Assistant Secretary, Border, Immigration & Trade,  
PLCY  
Department of Homeland Security

U.S. Department of Justice

Date: \_\_\_\_\_, 2017

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

Richard C. Sofield  
Director, Foreign Investment Review Staff  
Department of Justice

Microsoft Infrastructure Group, LLC

Date: January 12, 2017

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

Benjamin O. Orndorff  
Manager  
Microsoft Infrastructure Group, LLC  
One Microsoft Way  
Redmond, Washington 98052

**EXHIBIT A:  
CONDITION TO FCC AUTHORIZATION**

IT IS FURTHER ORDERED, that this authorization and any licenses granted thereunder are subject to compliance with the provisions of the agreement (the “Agreement”) between Microsoft Infrastructure Group, LLC, on the one hand, and the U.S. Department of Homeland Security and the U.S. Department of Justice, on the other, dated \_\_\_\_\_, which Agreement is designed to address national security, law enforcement and public safety concerns regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligations imposed by federal law or regulation.