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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Preston Thomas, Chief Systems and Services Officer

Meeting Date August 10, 2022

Subject No-Cost Services Agreement 2021-2022 and Data Sharing Agreement with EducationSuperHighway

Ask of the Board Ratify No-Cost Services Agreement 2021-2022 and Data Sharing Agreement with EducationSuperHighway

Services EducationSuperHighway will be partnering with OUSD to support eligible OUSD families enrolling in the Affordable Connectivity Program (ACP), with priority given to unconnected families. The work will be carried out over three phases, outlined as Phase 1: Conduct General Awareness Campaign, Phase 2: Target and Prioritize Unconnected Families, and Phase 3: Support ACP Enrollment, in collaboration with #Oakland Undivided.

Term Start Date: July 1, 2022 End Date: June 30, 2024

Not-To-Exceed Amount \$0

Competitively Bid No. This no-cost agreement is under the bidding threshold.

In-Kind Contributions N/A

Funding Source(s) N/A. No-cost agreement.

Background

The Federal Government's Affordable Connectivity Program (ACP) is making affordable internet access possible for OUSD families; for some, it will make the internet completely free. Unlike previous pandemic-era home internet programs (EBB, ECF), the ACP is a long-term benefit, funded for at least 5 years from its inception in late December 2021.

Despite available funding, ACP adoption has remained low due to three major barriers: (1) trust, (2) awareness, and (3) enrollment challenges. By spreading awareness and providing families with the tools to enroll in the ACP, OUSD is in a valuable position to support this work, helping to address any barriers families may face.

Attachment(s)

- Services Agreement 2021-2022 - No Cost
- Data Sharing Agreement with Mutual Confidentiality Agreement

SERVICES AGREEMENT 2021-2022 – NO COST

This Services Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“VENDOR,” together with OUSD, “PARTIES”): **EducationSuperHighway**.

The PARTIES hereby agree as follows:

1. **Term.**
 - a. This Agreement shall start on the below date (“Start Date”): July 1, 2022
 - (i) If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.
 - b. The work shall be completed no later than the below date (“End Date”): June 30, 2024
2. **Services.** VENDOR shall provide the services (“Services”) as described in #1A and #1B of **Exhibit A**, attached hereto and incorporated herein by reference. To the extent that there may be a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, VENDOR shall describe in #1B of **Exhibit A** whether and how its services would be able to continue.
3. **Alignment.** VENDOR agrees to work and communicate with OUSD staff, both formally and informally, to ensure that the Services are aligned with OUSD’s mission and are meeting the needs of students as determined by OUSD.
4. **Inspection and Approval.** VENDOR agrees that OUSD has the right and agrees to provide OUSD with the opportunity to inspect any and all aspects of the Services performed including, but not limited to, any records or other materials (physical or electronic) produced, created, edited, modified, reviewed, or otherwise used in the preparation, performance, or evaluation of the Services. One example of such records or other materials is proof of VENDOR compliance with Section 16.b (Fingerprinting/Criminal Background Investigation). The Services performed by VENDOR must meet the approval of OUSD, and OUSD reserves the right to direct VENDOR to redo the Services, in whole or in part, if OUSD, in its sole discretion, determines that the Services were not performed in accordance with this Agreement.
5. **Data and Information Requests.** VENDOR shall timely provide OUSD with any data and information OUSD reasonably requests regarding students to whom the Services are provided. VENDOR shall register with and maintain current information within OUSD’s Community Partner database unless OUSD communicates to VENDOR in writing otherwise, based on OUSD’s determination that the Services are not related to community school outcomes. If and when VENDOR’s programs and school site(s) change (either midyear or in subsequent years), VENDOR shall promptly update the information

in the database.

6. Confidentiality and Data Privacy.

- a. OUSD may share information with VENDOR pursuant to this Agreement in order to further the purposes thereof. VENDOR and all VENDOR's agents, personnel, employee(s), and/or subcontractor(s) shall maintain the confidentiality of all information received in the course of performing the Services, provided such information is (i) marked or identified as "confidential" or "privileged," or (ii) reasonably understood to be confidential or privileged.
- b. VENDOR understands that student data is confidential. If VENDOR will access or receive identifiable student data, other than directory information, in connection with this Agreement, VENDOR agrees to do so only after VENDOR and OUSD execute a separate data sharing agreement.
 - (i) If VENDOR is a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing a California Student Data Privacy Agreement ("CSDPA") or CSDPA Exhibit E (available here).
 - (ii) If VENDOR is not a software vendor, it agrees to access or receive identifiable student data, other than directory information, only after executing the OUSD Data Sharing Agreement (available here).
 - (iii) Notwithstanding Paragraph 28 (Indemnification), should VENDOR access or receive identifiable student data, other than directory information, without first executing a separate data sharing agreement, VENDOR shall be solely liable for any and all claims or losses resulting from its access or receipt of such data.
- c. All confidentiality requirements, including those set forth in the separate data sharing agreement, extend beyond the termination of this Agreement.

- 7. Copyright/Trademark/Patent/Ownership.** VENDOR understands and agrees that all matters produced under this Agreement, excluding any intellectual property that existed prior to execution of this Agreement, shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in those works are the property of OUSD. These matters include, without limitation, drawings, plans, specifications, studies, reports, memoranda, computation sheets, the contents of computer diskettes, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, or other documents prepared by VENDOR, its employees, or its subcontractors in connection with the Services performed under this Agreement. VENDOR cannot use, reproduce, distribute, publicly display, perform, alter, remix, or build upon matters produced under this Agreement without OUSD's express written permission. OUSD shall not unreasonably withhold such consent and shall provide such consent within five (5) business days. OUSD

shall have all right, title and interest in said matters, including the right to register the copyright, trademark, and/or patent of said matter in the name of OUSD. OUSD may, with VENDOR's prior written consent, use VENDOR's name in conjunction with the sale, use, performance, and distribution of the matters, for any purpose and in any medium.

8. **Compensation.** VENDOR agrees to provide the Services at no cost to OUSD.
9. **Equipment and Materials.** VENDOR shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
10. **Termination.**
 - a. For Convenience by OUSD. OUSD may, at any time, terminate this Agreement upon thirty (30) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
 - b. Due to COVID-19. Notwithstanding Paragraph 19 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of VENDOR to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to VENDOR. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
 - c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

- d. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- 11. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 300
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

VENDOR

Name: Evan Marwell
Title: CEO
Address: 6 Presidio Terrace
City, ST Zip: San Francisco, CA 94118
Phone: (415) 425-8610
Email: evan@educationsuperhighway.org

Notice shall be effective when received if personally served, on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

- 12. **Status.**

- a. This is not an employment contract. VENDOR, in the performance of this Agreement, shall be and act as an independent contractor. VENDOR understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. VENDOR shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security, and income taxes with respect to VENDOR's employees.
- b. If VENDOR is a natural person, VENDOR verifies all of the following:

- (i) VENDOR is free from the control and direction of OUSD in connection with VENDOR's work;
 - (ii) VENDOR's work is outside the usual course of OUSD's business; and
 - (iii) VENDOR is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If VENDOR is a business entity, VENDOR verifies all of the following:
 - (i) VENDOR is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) VENDOR is providing services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and VENDOR is in writing; (iv) VENDOR has the required business license or business tax registration, if the work is performed in a jurisdiction that requires VENDOR to have a business license or business tax registration;
 - (iv) VENDOR maintains a business location that is separate from the business or work location of OUSD;
 - (v) VENDOR is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vi) VENDOR actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (vii) VENDOR advertises and holds itself out to the public as available to provide the same or similar services;
 - (viii) VENDOR provides its own tools, vehicles, and equipment to perform the services;
 - (ix) VENDOR can negotiate its own rates;
 - (x) VENDOR can set its own hours and location of work; and (xii) VENDOR is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code.

13. Qualifications and Training.

- a. VENDOR represents and warrants that VENDOR has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of OUSD. VENDOR will perform the Services in accordance with generally and currently accepted principles and practices of its profession for services to California school districts and in accordance with applicable laws, codes, rules, regulations, and/or ordinances. All VENDOR employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. VENDOR represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Services

identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if VENDOR was selected, at least in part, on such representations and warrants.

14. **Certificates/Permits/Licenses/Registration.** VENDOR's employees or agents shall secure and maintain in force such certificates, permits, licenses, and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.

15. **Insurance.**

a. **Commercial General Liability Insurance.** Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for sexual misconduct, harassment, bodily injury, and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit, or judgment made, brought, or recovered against VENDOR. The policy shall protect VENDOR and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

b. **Workers' Compensation Insurance.** VENDOR shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

16. **Testing and Screening.**

a. **Tuberculosis Screening.** Unless specifically waived by OUSD as noted in **Exhibit A**, VENDOR is required to screen employees who will be working at OUSD sites for more than six hours. VENDOR agents who work with students must submit to a tuberculosis risk assessment as required by Education Code section 49406 within the prior 60 days. If tuberculosis risk factors are identified, VENDOR agents must submit to an intradermal or other approved tuberculosis examination to determine that he/she is free of infectious tuberculosis. If the results of the

examination are positive, VENDOR shall obtain an x-ray of the lungs. VENDOR, at its discretion, may choose to submit the agent to the examination instead of the risk assessment.

- b. Fingerprinting/Criminal Background Investigation. Unless specifically waived by OUSD as noted in **Exhibit A**, for all VENDOR employees, subcontractors, volunteers, and agents providing the Services, VENDOR shall ensure completion of fingerprinting and criminal background investigation, and shall request and regularly review subsequent arrest records. VENDOR confirms that no employee, subcontractor, volunteer, or agent providing the Services has been convicted of a felony, as that term is defined in Education Code section 45122.1. VENDOR shall provide the results of the investigations and subsequent arrest notifications to OUSD. Waivers are not available for VENDORS whose employees, subcontractors, volunteers, and agents will have any contact with OUSD students.
- c. VENDOR shall use either California Department of Justice or Be A Mentor, Inc. (<http://beamentor.org/OUUSDPartner>) finger printing and subsequent arrest notification services. VENDOR agrees to immediately remove or cause the removal of any employee, representative, agent, or person under VENDOR's control person from OUSD property upon receiving notice from OUSD of such desire. OUSD is not required to provide VENDOR with a basis or explanation for the removal request.

17. Incident/Accident/Mandated Reporting.

- a. VENDOR shall notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. VENDOR shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. VENDOR shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of VENDOR is included on the list of mandated reporters found in Penal Code section 11165.7, VENDOR agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

18. Coronavirus/COVID-19.

- a. Through its execution of this Agreement, VENDOR declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in

accordance with any shelter-in place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.

- b. Consistent with the requirements of Paragraph 18 (Incident/Accident/Mandated Reporting), VENDOR agrees to notify OUSD, via email pursuant to Paragraph 12 (Legal Notices), within twelve (12) hours if VENDOR or any employee, subcontractor, agent, or representative of VENDOR tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to VENDOR possible COVID-19 exposure.
 - c. VENDOR agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to VENDOR or any employee, subcontractor, agent, or representative of VENDOR and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
 - d. VENDOR shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
19. **Assignment.** The obligations of VENDOR under this Agreement shall not be assigned by VENDOR without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
20. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, VENDOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, VENDOR agrees to require like compliance by all its subcontractor (s). VENDOR shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.
21. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, VENDORS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
22. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.

23. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
24. **Conflict of Interest.**
- a. VENDOR shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. VENDOR shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
 - b. VENDOR affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between VENDOR's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 - c. Through its execution of this Agreement, VENDOR acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event VENDOR receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, VENDOR agrees it shall notify OUSD in writing.
25. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, VENDOR certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
26. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
27. **Indemnification.**
- a. To the furthest extent permitted by California law, VENDOR shall indemnify,

defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of VENDOR’s negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of OUSD. VENDOR also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, VENDOR, or subcontractor furnishing work, services, or materials to VENDOR arising out of negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of OUSD Indemnified Parties. VENDOR shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at VENDOR’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that VENDOR proposes to defend OUSD Indemnified Parties.

- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless VENDOR, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“VENDOR Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of VENDOR. OUSD shall, to the fullest extent permitted by California law, defend VENDOR Indemnified Parties at OUSD’s own expense, including attorneys’ fees and costs.
28. **Audit.** VENDOR shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of VENDOR transacted under this Agreement. VENDOR shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. VENDOR shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all records and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to VENDOR and shall conduct audit(s) during VENDOR’S normal business hours, unless VENDOR otherwise consents.
29. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California’s principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement under California State law.
30. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this

Agreement are incorporated herein by reference. VENDOR agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.

31. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written, except that the Data Sharing Agreement between the PARTIES shall be controlling in any conflict between this Agreement and the Data Sharing Agreement. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
32. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
33. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
34. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
35. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
36. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.
37. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated

documents are public documents and will be made available by OUSD to the public online via the Internet.

38. Signature Authority.

- a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
- b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD, and only under limited circumstances, which require ratification by the OUSD Governing Board. VENDOR agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
- c. Notwithstanding Paragraph 10, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it. Upon termination, VENDOR shall provide OUSD with all materials produced, maintained, or collected by VENDOR pursuant to this Agreement, whether or not such materials are complete or incomplete or are in final or draft form.

- 39. Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to VENDOR absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

VENDOR

Name: Ellen Goldich Signature: 

Position: Program Director Date: 7/11/22

OUSD

Name: Preston Thomas Signature: 

Position: Chief Systems and Services Officer Date: 7/11/22

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: 

Position: Secretary, Board of Education Date: 8/11/2022

Approved as to form by OUSD Office of the General Counsel.

EXHIBIT A

- 1A. **General Description of Services to be Provided:** *This includes the intended outcomes, relevant information on all programs, projects, and services, and the specific the site(s) for each program, project, or service.*

Overview

The Federal Government's Affordable Connectivity Program (ACP) is making affordable internet access possible for OUSD families; for some, it will make the internet completely free. Unlike previous pandemic-era home internet programs (EBB, ECF), the ACP is a long term benefit, funded for at least 5 years from its inception in late December 2021.

The ACP provides:

1. a discount of up to \$30 a month for broadband service, as well as
2. a one-time discount of \$100 toward the purchase of a connected device, such as a laptop, desktop or tablet.

Schools are uniquely situated to support students and their families in enrolling in the ACP, as there are two main criteria where the district can provide proof of eligibility: (1) confirmation of Community Eligibility Provision (CEP) school enrollment, and (2) free and reduced-price meal eligibility letters. All families with students in OUSD's 72 CEP schools are automatically eligible for the ACP. If a student does not attend a CEP school, then there are numerous other ways for households to qualify, including if the student is eligible for free and reduced meals, or the household participates in other government assistance programs such as SNAP, Medi-Cal, or WIC.

Despite available funding, ACP adoption has remained low due to three major barriers: (1) trust, (2) awareness, and (3) enrollment challenges. By spreading awareness and providing families with the tools to enroll in the ACP, OUSD is in a valuable position to support this work, helping to address any barriers families may face.

Project

EducationSuperHighway (ESH) will be partnering with OUSD to support eligible OUSD families enrolling in the Affordable Connectivity Program, with priority given to unconnected families. The work will be carried out over three phases, outlined below:

2022-23 School Year

AWARENESS	TRUST	ENROLLMENT
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Only 10-20% of low-income households have heard about the ACP, but nearly ⅔ of eligible households are likely to apply after learning about the program	Lack of trust in government programs, worries about unexpected future costs, and concerns about sharing personal information with ISPs.	Difficult application processes, including extensive documentation requirements, long hold times, and lack of language support, reduce adoption.
Through three phases , OUSD will address the three major barriers to ACP adoption		
Phase 1 Conduct General Awareness Campaign	Phase 2 Target and Prioritize Unconnected Families	Phase 3 Support ACP Enrollment, in collaboration with #OU
OUSD has the communication infrastructure, channels, and reach to alert families that they are eligible to receive financial support in accessing home broadband and to provide proof of identification and eligibility to qualify for the program.	Families most in need of support are often the ones who are hardest to reach through broad awareness campaigns. By trusted district and school-based and community advocates contacting unconnected families about the ACP, we can address concerns, answer questions, and ensure we reach families who need us most.	The ACP enrollment process is multiple steps and requires identification and eligibility documentation. OUSD is well-positioned to support enrollment by hosting sign-up events with ESH + #OU at school-based spaces and by directing families to ESH + CBO run enrollment events throughout the city of Oakland.

****Note:** Similar work will be conducted for the 2023-2024 school year, using lessons learned during project implementation to better target unconnected students.*

In addition to the Digital Equity Data (responses from the Tech Check survey or other similar surveys; and student location, demographic, enrollment data related to hot spot distribution), ESH will leverage the K-12 Bridge to Broadband data exchange to further target unconnected families, creating a priority list for outreach. ESH will work closely with OUSD leadership and Central Office on a process for building administrators to share this information with their families. The intention will be for priority OUSD schools to receive ready-made resources that require minimal effort on the part of school based-staff.

There will be a pilot phase to test distribution tactics with three OUSD 2022 Summer Learning sites (one at each grade band). This pilot will provide insight into successes, challenges, and lessons learned. OUSD Summer Learning provides the opportunity to spread awareness of the ACP with OUSD families, host enrollment events, and set students up with internet access for the fall.

In consultation with OUSD, #OaklandUndivided (#OU) may be invited to support some of these efforts in line with the OUSD-OU/Oakland Public Education Fund data sharing agreement.

Outcomes

- Eligible OUSD families receive information about and are aware of the Affordable Connectivity Program.
- Eligible OUSD families are provided with documentation needed to enroll in ACP.
- Eligible OUSD families are supported, if needed, in ACP enrollment, with priority given to unconnected families.
- Interested families are directed to where they can receive enrollment assistance.

Services

The following are examples of the services that ESH will provide (no cost):

Examples of ESH Services

EducationSuperHighway will provide:

- Guidance, oversight, and support regarding project implementation
- Trainings and professional learning about the ACP
- Customized templates, flyers, eligibility letters, FAQs and other resources
- Messaging and presentation templates to spread awareness of the initiative
- Tools, templates and resources regarding texts, robocalls, scripts
- In-person and virtual ACP Enrollment support
- K-12 Bridge to Broadband Dashboard, CSV, and map
- Support regarding dissemination of materials
- Support regarding targeted outreach and communications through print flyers, newsletters, social media, etc.

Sites:

District-wide; ESH will work with OUSD leadership to identify priority schools in the district. We intend to start with CEP schools and schools with high numbers of students eligible for free and reduced meals.

1B. **Description of Services to be Provided During School Closure or Similar Event:** *If there is a school closure (e.g., due to poor air quality, planned loss of power, COVID-19) or similar event in which school sites and/or District offices may be closed or otherwise inaccessible, would services be able to continue?*

- No, services would not be able to continue.
- Yes, services would be able to continue as described in 1A.
- Yes, but services would be different than described in 1A. Please briefly describe how the services would be different.

ACP Enrollment support would only be available via virtual methods such as over the phone or Zoom/other video conferencing platforms. This will be part of the initial set of services outlined in 1A, so no additional services will be required.

2. **Waivers (Completed by OUSD Only):** *OUSD has waived the following. Confirmation of the waiver is attached herewith:*

- Commercial General Liability Insurance. (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person ***or virtual***) with OUSD students, and the compensation not-to-exceed amount is \$25,000 or less.)
- Workers' Compensation Insurance (Waiver only available, at OUSD's sole discretion, if VENDOR has no employees.)
- Tuberculosis Screening (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no in-person contact with OUSD students.)
- Fingerprinting/Criminal Background Investigation (Waiver only available, at OUSD's sole discretion, if VENDOR's employees, subcontractors, volunteers, and agents will have no contact (in-person ***or virtual***) with OUSD students.)

DATA SHARING AGREEMENT

This Data Sharing Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity(ies) or individual(s) (“RECIPIENT,” together with OUSD, “PARTIES,” and each, a “PARTY”):

The PARTIES hereby agree as follows:

1. **Limited Purpose of Agreement.** This Agreement pertains only to OUSD’s transmission of data to RECIPIENT, and RECIPIENT’s protection of such data. To the extent that OUSD seeks to impose any other legal obligations on RECIPIENT (e.g., RECIPIENT’s provision of services to OUSD), or RECIPIENT seeks to impose any other legal obligations on OUSD (e.g., OUSD payment of compensation to RECIPIENT), such obligations shall be set forth in a separate agreement. If such an agreement exists at the time of execution of this Agreement, the Parties shall identify it in **Exhibit A**.

The “Purpose” of this Agreement shall be for OUSD and RECIPIENT to share certain information that is non-public, confidential, or proprietary in nature in connection with the implementation of a program that provides or helps individuals enroll in broadband services (“Services”) through various broadband providers (each a “Broadband Provider” and, collectively the “Broadband Providers”) to certain eligible households (“End Users”) to support remote working and learning solutions within OUSD (the “Covered Territory”). The RECIPIENT will receive information from both OUSD and each Broadband Provider and facilitate an exchange of information between such parties in furtherance of the Purpose. Related reciprocal data privacy and confidentiality duties and obligations are set forth in the Mutual Confidentiality Agreement, attached hereto as **Exhibit C**, and incorporated into this Agreement.

2. **Data to be Provided.** The Parties shall list the categories of data to be provided in the Schedule of Data, attached hereto as **Exhibit B**. The data categories listed in **Exhibit B**, and any portion thereof (including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in that data), shall be referred to hereinafter as OUSD Data.
3. **Term.**
 - a. This Agreement shall start on the below date (“Start Date”): July 1, 2022
If no Start Date is entered, then the Start Date shall be the latest of the dates on which each of the PARTIES signed this Agreement.
 - b. The work shall be completed no later than the below date (“End Date”): June 30, 2024.

4. **Family Educational Rights and Privacy Act.** OUSD data limited to student directory information, as defined in 34 C.F.R. § 99.31(a)(11) and OUSD Administrative Regulation 5125.1), or de-identified student information, as defined in 34 C.F.R. § 99.31(b), does not require completion of a data sharing agreement. For other student data, check any of the following that apply:

OUSD Data includes personally identifiable information from a student record other than directory information. RECIPIENT is responsible for obtaining parental consent, as defined in 34 C.F.R. § 99.30, and presenting evidence thereof to OUSD.

OUSD Data includes personally identifiable information from a student record, and:

RECIPIENT is a contractor, consultant, volunteer, or other party to whom OUSD has outsourced institutional services or functions, and RECIPIENT performs an institutional service or function for which the agency or institution would otherwise use employees; is under the direct control of the agency or institution with respect to the use and maintenance of education records; and is subject to the requirements of § 99.31(a) governing the use and redisclosure of personally identifiable information from education records. (See 34 C.F.R. § 99.31(a)(1)(i)(B).)

RECIPIENT is another school, school system, or institution of postsecondary education where an OUSD student seeks or intends to enroll, or where the student is already enrolled, and the disclosure is for purposes related to the student's enrollment or transfer. (See 34 C.F.R. § 99.31(a)(2).)

RECIPIENT is an authorized representatives of the Comptroller General of the United States; the Attorney General of the United States; the Secretary of Education; or State and local educational authorities. (See 34 C.F.R. § 99.31(a)(3).)

RECIPIENT requires the data in order to determine an OUSD student's eligibility for financial aid; amount of aid; conditions for aid; or to enforce the terms and conditions of the aid. (See 34 C.F.R. § 99.31(a)(4).)

X RECIPIENT is an organization conducting studies for, or on behalf of, educational agencies or institutions to develop, validate, or administer predictive tests; administer student aid programs; or improve instruction. (See 34 C.F.R. § 99.31(a)(6).)

The disclosure is in connection with a health or safety emergency. (See 34 C.F.R. §§ 99.31(a)(10) & 99.36.)

5. **Privacy Compliance.** RECIPIENT shall comply with all applicable local, state, and federal laws and regulations pertaining to data privacy and security, including but not limited to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99); the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.); the Protection of Pupil Rights Amendment (“PPRA”), 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.); the Health Insurance Portability and Accountability Act, Pub. L. 104-191, and its implementing regulations (45 CFR part 160 and 164); the Individuals with Disabilities Education Act, and its implementing regulations (34 C.F.R. §§ 300.610 - 300.626 and 34 C.F.R. §§ 303.400 – 303.417); the Student Online Personal Information Protection Act, AB 1584; and all other California privacy statutes.
6. **Authorized Use.** OUSD Data, including persistent unique identifiers, shall be used for no purpose other than as agreed herein and/or otherwise legally authorized. OUSD authorizes RECIPIENT to re-disclose the following data elements listed in Exhibit B to Broadband Providers where RECIPIENT has entered into an agreement that subjects such Broadband Provider to confidentiality duties or obligations that are no less restrictive than the terms and conditions of this Agreement: Student Contact Information-Address, Local Identifiers-Dummy Identifiers. OUSD authorizes RECIPIENT to re-disclose the following data elements listed in Exhibit B to third parties, such as a non-profit organization, government agency, or a calling or texting outreach platform, where RECIPIENT has entered into an agreement that subjects such third party to confidentiality duties or obligations that are no less restrictive than the terms and conditions of this Agreement: Student Contact Information-Address; Local Identifiers-Dummy Identifiers; Demographics-Home Language; Parent/Guardian Contact Information-Name, Email, Phone; and Digital Equity Data-Responses from Tech Check survey or other similar surveys, Student location, demographic, enrollment data related to hotspot distribution (collectively, the “Adoption Data”).
7. **Advertising Prohibition.** RECIPIENT is prohibited from using or selling OUSD Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by RECIPIENT; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than providing the Service to OUSD; or (d) use the OUSD Data for the development of commercial products or services.
8. **OUSD Data Property of OUSD.** All OUSD Data transmitted to the RECIPIENT pursuant to this Agreement is and will continue to be the property of and under the control of OUSD. RECIPIENT acknowledges and agrees that all copies of such OUSD Data transmitted to the RECIPIENT, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this Agreement in the same manner as the original

OUSD Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to OUSD Data shall remain the exclusive property of OUSD.

9. **Correction of Records.** OUSD shall establish reasonable procedures by which a parent, guardian, or eligible student may review OUSD Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. RECIPIENT shall respond in a timely manner to OUSD's request for OUSD Data in a pupil's records held by RECIPIENT to view or correct as necessary.
10. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact RECIPIENT with a request for data held by RECIPIENT pursuant to the Services, RECIPIENT shall redirect the Third Party to request the data directly from OUSD. RECIPIENT shall notify OUSD in advance of a compelled disclosure to a Third Party.
11. **Employee Obligation.** RECIPIENT shall require all employees and agents who have access to OUSD Data to comply with all applicable provisions of this Agreement with respect to the data shared under the Agreement.
12. **Subprocessors.** RECIPIENT shall enter into written agreements with all Subprocessors performing functions pursuant to this Agreement or any other Agreement identified in **Exhibit A**, whereby the Subprocessors agree to protect OUSD Data in manner consistent with the terms of this Agreement.
13. **No Re-Identification or Re-Disclosure.** RECIPIENT agrees not to attempt to re-identify de-identified OUSD Data and not to transfer de-identified OUSD Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to OUSD who has provided prior written consent for such transfer. RECIPIENT shall not copy, reproduce, or transmit any data obtained except as necessary to fulfill the Agreement. For the avoidance of doubt, this shall not prohibit OUSD and RECIPIENT from exchanging the Adoption Data with each other in order to determine eligibility and facilitate OUSD's outreach to End Users to procure Services for End Users or to promote End Users to enroll directly in Services.
14. **Disposition of Data.** Within sixty (60) days after the earlier of the termination of this Agreement or the date on which the Purpose has been entirely satisfied, or reasonably promptly after the Disclosing Party's written request, the Recipient Party and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information (as defined in Exhibit C), or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Disposition shall include (1) the shredding of any hard copies of any Confidential Information ; (2) erasing; or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in this Agreement

authorizes the Recipient Party to maintain the Confidential Information beyond the time period reasonably needed to complete the disposition. The Recipient Party shall provide written notification to the Disclosing Party when the Confidential Information has been disposed. Notwithstanding the foregoing, the Recipient Party may retain copies of Confidential Information that are stored on the Recipient's IT backup and disaster recovery systems until the ordinary course deletion thereof. The Recipient Party shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

15. **Data Security.** The Parties agree to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect the Confidential Information from unauthorized disclosure or acquisition by an unauthorized person.

16. **Data Breach.** In the event that the Confidential Information is accessed or obtained by an unauthorized individual, the Recipient Party shall provide notification to the Disclosing Party within a reasonable amount of time of the incident, and not exceeding two (2) business days . The Recipient Party shall follow the following process:
 - a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.

 - b. The security breach notification described above shall include, at a minimum, the following information:
 - (i) A list of the types of personal information and Confidential Information that were or are reasonably believed to have been the subject of a breach.
 - (ii) If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - (iii) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.
 - (iv) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

 - c. The Parties agree to adhere to all requirements in applicable State and federal law with respect to a data breach related to the Confidential Information, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.

- d. The Parties further acknowledge and agree to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of the Confidential Information or any portion thereof, including personally identifiable information and agrees to provide the incident response plan to the other Party , upon request, with a copy of said written incident response plan.
 - e. RECIPIENT is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by OUSD. If OUSD requests RECIPIENT's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to RECIPIENT, RECIPIENT shall notify the affected parent, legal guardian, or eligible pupil of the unauthorized access via email, which shall include the information listed above. If requested by OUSD, RECIPIENT shall reimburse OUSD for costs incurred to notify parents/families via email of a breach not originating from OUSD's use of the Service.
17. **Equipment and Materials.** RECIPIENT shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
18. **Termination.**
- a. For Convenience by OUSD. OUSD may at any time terminate this Agreement upon thirty (30) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or thirty (30) days after the notice was provided, whichever is later.
 - b. Due to COVID-19. Notwithstanding any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of RECIPIENT to perform the Services, OUSD may terminate this Agreement upon seven (7) days prior written notice to RECIPIENT. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.
 - c. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall

contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

d. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement and the Parties shall be bound by such obligations after the termination hereof, even after the return or destruction of Confidential Information by the Recipient Party.

19. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

OUSD

Name: Joshua R. Daniels
Site/Dept: Office of General Counsel
Address: 1000 Broadway, Suite 300
City, ST Zip: Oakland, CA 94607
Phone: 510-879-8535
Email: ousdlegal@ousd.org

RECIPIENT

Name: Evan Marwell
Title: CEO
Address: 6 Presidio Terrace
City, ST Zip: San Francisco, CA 94118
Phone: (415) 425-8610
Email: evan@educationsuperhighway.org

Notice shall be effective when received if personally served, on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient, or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

20. **Status.**

- a. This is not an employment contract. RECIPIENT, in the performance of this Agreement, shall be and act as an independent contractor. RECIPIENT understands and agrees that it and any and all of its employees shall not be considered employees of OUSD, and are not entitled to benefits of any kind or nature normally provided employees of OUSD and/or to which OUSD's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Worker's Compensation. RECIPIENT shall assume full responsibility for payment of all Federal, State, and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to RECIPIENT's employees.
- b. If RECIPIENT is a natural person, RECIPIENT verifies all of the following:
 - (i) RECIPIENT is free from the control and direction of OUSD in connection with RECIPIENT's work;
 - (ii) RECIPIENT's work is outside the usual course of OUSD's business; and
 - (iii) RECIPIENT is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed for OUSD.
- c. If RECIPIENT is a business entity, RECIPIENT verifies all of the following:
 - (i) RECIPIENT is free from the control and direction of OUSD in connection with the performance of the work;
 - (ii) RECIPIENT is providing services directly to OUSD rather than to customers of OUSD;
 - (iii) the contract between OUSD and RECIPIENT is in writing;
 - (iv) RECIPIENT has the required business license or business tax registration, if the work is performed in a jurisdiction that requires RECIPIENT to have a business license or business tax registration;
 - (v) RECIPIENT maintains a business location that is separate from the business or work location of OUSD;
 - (vi) RECIPIENT is customarily engaged in an independently established business of the same nature as that involved in the work performed;
 - (vii) RECIPIENT actually contracts with other businesses to provide the same or similar services and maintains a clientele without restrictions from OUSD;
 - (viii) RECIPIENT advertises and holds itself out to the public as available to provide the same or similar services;
 - (ix) RECIPIENT provides its own tools, vehicles, and equipment to perform the services;
 - (x) RECIPIENT can negotiate its own rates;
 - (xi) RECIPIENT can set its own hours and location of work; and
 - (xii) RECIPIENT is not performing the type of work for which a license from the Contractor's State License Board is required, pursuant to Chapter 9

(commencing with section 7000) of Division 3 of the Business and Professions Code.

21. **Certificates/ Permits/ Licenses/ Registration.** RECIPIENT's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Services pursuant to this Agreement.
22. **Coronavirus/COVID-19.**
 - a. Through its execution of this Agreement, RECIPIENT declares that it is able to meet its obligations and perform the Services required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order ("Orders") issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
 - b. Consistent with the requirements of the paragraph titled Incident/Accident/Mandated Reporting, RECIPIENT agrees to notify OUSD, via email pursuant to the paragraph titled Legal Notices, within twelve (12) hours if RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to RECIPIENT possible COVID-19 exposure.
 - c. RECIPIENT agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to RECIPIENT or any employee, subcontractor, agent, or representative of RECIPIENT and information necessary to perform contact tracing, as well as complying with any OUSD testing and vaccination requirements.
 - d. RECIPIENT shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.
23. **Assignment.** The obligations of RECIPIENT under this Agreement shall not be assigned by RECIPIENT without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.
24. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, RECIPIENT agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, RECIPIENT agrees to require like compliance by all its subcontractor (s). RECIPIENT shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

25. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, RECIPIENTS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
26. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a subsequent act from constituting a violation of this Agreement.
27. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
28. **Conflict of Interest.**
 - a. RECIPIENT shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. RECIPIENT shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
 - b. RECIPIENT affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between RECIPIENT's family, business or financial interest and the services provided under this Agreement, and in the event of change in either private interest or services under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
 - c. Through its execution of this Agreement, RECIPIENT acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event RECIPIENT receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, RECIPIENT agrees it shall notify OUSD in writing.
29. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, RECIPIENT certifies to the best of its knowledge and belief, that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this vendor does not appear on the Excluded Parties List (<https://www.sam.gov/>).
30. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in

connection with, this Agreement for the Services performed in connection with this Agreement.

31. **Indemnification.**

- a. To the furthest extent permitted by California law, RECIPIENT shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of RECIPIENT’s negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of OUSD. RECIPIENT also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, RECIPIENT, or subcontractor furnishing work, services, or materials to RECIPIENT arising out of negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of OUSD Indemnified Parties. RECIPIENT shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at RECIPIENT’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that RECIPIENT proposes to defend OUSD Indemnified Parties.
- b. To the furthest extent permitted by California law, OUSD shall indemnify, defend, and hold harmless RECIPIENT, its Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“RECIPIENT Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of OUSD’s negligent acts or omissions during the performance of this Agreement, except to the extent resulting from the negligent acts or omissions of RECIPIENT. OUSD shall, to the fullest extent permitted by California law, defend RECIPIENT Indemnified Parties at OUSD’s own expense, including attorneys’ fees and costs.

32. **Audit.** RECIPIENT shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of RECIPIENT transacted under this Agreement. RECIPIENT shall retain these books, records, and systems of account during the term of this Agreement and for three (3) years after the End Date. RECIPIENT shall permit OUSD, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all records and other data related to Services covered by this Agreement. Audit(s) may be performed at any time, provided that OUSD shall give reasonable prior notice to RECIPIENT and shall conduct audit(s) during RECIPIENT’S normal business hours, unless RECIPIENT otherwise consents.

33. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California’s principles

and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement under California State law.

34. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement and the duties and obligations set forth in such exhibits are incorporated herein by reference. RECIPIENT agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
35. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
36. **Severability.** If any term, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
37. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
38. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
39. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
40. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic

signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

41. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
42. **Signature Authority.**
 - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
 - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel have been delegated the authority to sign contracts for OUSD and only under limited circumstances, which require ratification by the OUSD Governing Board. RECIPIENT agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.
 - c. Notwithstanding Paragraph 18, if this Agreement is executed by the signature of the Superintendent, Chiefs, Deputy Chiefs, or General Counsel under their delegated authority, and the Board thereafter declines to ratify the Agreement, the Agreement shall automatically terminate on the date that the Board declines to ratify it.
43. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD's Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to RECIPIENT absent such formal approval or valid and proper execution.

REST OF PAGE IS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

RECIPIENT

Name: Ellen Goldich Signature: Ellen Goldich

Position: Program Director Date: 7/11/22

OUSD

Name: Preston Thomas Signature: 

Position: Chief Systems and Services Officer Date: 7/11/22

- Board President
- Superintendent
- Chief/Deputy Chief/Executive Director

Name: Kyla Johnson-Trammell Signature: _____

Position: Secretary, Board of Education Date: _____

Approved as to form by OUSD Office of the General Counsel.

EXHIBIT A

1) Anticipated Use of Data: *Describe the purpose for which the Recipient seeks access to the OUSD Data identified in Exhibit B.*

EducationSuperHighway's K-12 Bridge to Broadband program is a partnership between EducationSuperHighway, OUSD, and local Internet Service Providers (ISPs) that enables OUSD to identify unconnected students and the ISPs that can connect them. To facilitate the data exchange, EducationSuperHighway also enters into data privacy agreements with the ISPs that comply with FERPA. With that data in hand, EducationSuperHighway, OUSD, and #OaklandUndivided can work together to launch adoption programs to help households sign-up for the federal government subsidy - Affordable Connectivity Program (ACP).

EducationSuperHighway's Adoption program relies on three phases:

- Phase One (AWARENESS): Many families do not know that the ACP exists. OUSD has the communication infrastructure, marketing channels, and reach to alert families that they are eligible to receive financial support in accessing home broadband and to provide proof of eligibility to qualify for the program.
- Phase Two (TRUST): Families most in need of support are often the ones who are hardest to reach through broad awareness campaigns. By contacting families directly through trusted district and school-based advocates, we can address concerns, answer questions, and ensure we reach families who need us most.
- Phase Three (ENROLLMENT): ACP enrollment can be incredibly challenging. OUSD is well-positioned to support enrollment by hosting sign-up events with EducationSuperHighway + #OaklandUndivided at school-based spaces and by directing families to EducationSuperHighway + community based organization run enrollment events throughout the city of Oakland.

2) Description of Existing Agreements between OUSD and Recipient: *To the extent that OUSD and Recipient have entered separate agreements imposing legal obligations in addition to data sharing, list their date, Enactment Number (if applicable), and a brief summary below. Include research applications in this list.*

Services Agreement between OUSD and EducationSuperHighway with the same Effective Date as this DSA

Exhibit C to this DSA: Mutual Confidentiality Agreement between OUSD and EducationSuperHighway

EXHIBIT B

Please indicate each data element requested below.

Category	Elements	Check if Requested
Application Technology Metadata	IP Addresses of users, use of cookies, etc.	<input type="checkbox"/>
Application Use Statistics	Metadata on user interaction with application	<input type="checkbox"/>
Assessment	SBAC results	<input type="checkbox"/>
	ELPAC results	<input type="checkbox"/>
	IAB Results	<input type="checkbox"/>
	Local benchmark assessment results	<input type="checkbox"/>
Attendance	Attendance rate	<input type="checkbox"/>
	Number of absences	<input type="checkbox"/>
Communications	Online communications that are captured (emails, blog entries)	<input type="checkbox"/>
Conduct	Number of Suspensions	<input type="checkbox"/>
	Days suspended	<input type="checkbox"/>
Demographics	Gender	<input type="checkbox"/>
	Race/Ethnicity	<input type="checkbox"/>
	Special ed. flag	<input type="checkbox"/>
	Home language	X (Adoption Program)

	Language proficiency	<input type="checkbox"/>
	Birth country	<input type="checkbox"/>
Digital Equity Data	Responses from Tech Check survey or other similar surveys	X (Adoption Program)
	Student location, demographic, enrollment data related to hotspot distribution	X (Adoption Program)
Enrollment	School	<input type="checkbox"/>
	Grade level	<input type="checkbox"/>

Parent/Guardian Contact Information	Name	X (Adoption Program)
	Address	<input type="checkbox"/>
	Email	X (Adoption Program)
	Phone	X (Adoption Program)
Schedule	Student scheduled courses	<input type="checkbox"/>
	Teacher names	<input type="checkbox"/>
Special Indicator	English language learner	<input type="checkbox"/>
	Title 1 flag (schoolwide)	<input type="checkbox"/>
Student Contact Information	Name	<input type="checkbox"/>
	Address	X (K12 Bridge to Broadband Program; Adoption Program)

	Email	<input type="checkbox"/>
	Phone	<input type="checkbox"/>
Local Identifiers	Local student ID number	<input type="checkbox"/>
	Teacher ID number	<input type="checkbox"/>
	State student ID number	<input type="checkbox"/>
	Provider/App assigned student ID number	<input type="checkbox"/>
	Student app username	<input type="checkbox"/>
	Student app password(s)	<input type="checkbox"/>
	Dummy identifiers	X (K12 Bridge to Broadband Program; Adoption Program)

Student Work	Student generated content; writing, pictures etc.	<input type="checkbox"/>
Transcript	Student course grades	<input type="checkbox"/>
	Current year GPA	<input type="checkbox"/>
	Cumulative GPA	<input type="checkbox"/>
Transportation	Student bus assignment	<input type="checkbox"/>
	Student pick up and/or drop off location	<input type="checkbox"/>
	Student bus card ID number	<input type="checkbox"/>

Exhibit C
Mutual Confidentiality Agreement

Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (the “**Agreement**”), effective as of July 1, 2022 (the “**Effective Date**”), is entered into by and between EducationSuperHighway, a California nonprofit public benefit corporation having its principal place of business at 6 Presidio Terrace, San Francisco CA 94118 (“**ESH**”) and Oakland Unified School District having its principal office at 1000 Broadway, Oakland, CA 94607 (the “**District**” and together with ESH, the “**Parties,**” and each, a “**Party**”).

WHEREAS, in connection with the implementation of a program that provides or helps End Users enroll in broadband services (“**Services**”) through various broadband providers (each a “**Broadband Provider**” and, collectively the “**Broadband Providers**”) to certain eligible households (“**End Users**”) to support remote working and learning solutions within the Oakland Unified School District (the “**Covered Territory**”) (the “**Purpose**”), the Parties desire to share certain information that is non-public, confidential or proprietary in nature.

WHEREAS, ESH will receive information from both the District, and each Broadband Provider and facilitate an exchange of information between such parties in furtherance of the Purpose.

NOW, THEREFORE, in consideration of the mutual covenants, terms, and conditions set out herein, the Parties agree as follows:

1. Confidential Information. Except as set out in Section 2 below, “**Confidential Information**” means all non-public, confidential, or proprietary information disclosed before, on or after, the Effective Date, by either Party (a “**Disclosing Party**”) to the other Party (a “**Recipient**”) or its affiliates, or to any of such Recipient’s or its affiliates’ employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”) regardless of the form or media in which it was disclosed, and whether or not marked, designated, or otherwise identified as “confidential,” including, without limitation:

(a) the names, addresses, e-mail addresses and telephone numbers of all subscribers or End Users and prospective subscribers or end users to any product or service offered by any Broadband Provider;

(b) the (i) Student Contact Information: Address; (ii) other information that, alone or in combination, is linked or linkable to an individual that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the individual with reasonable certainty; or (iii) information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates (sub-clauses (i) through (iii) of this subsection being collectively referred to as “**Personally Identifiable Information**”, and the Personally Identifiable Information of a student or the student’s parent or other family member that is: (A) contained in the student’s education records and (B) provided by the District either directly or through the District or ESH, to any Broadband Provider in connection with this Agreement is herein referred to as the “**District Level Information**”);

(c) information to facilitate End User’s enrollment in Services, such as Student Contact Information-Address; Local Identifiers-Dummy Identifiers; Demographics-Home Language; Parent/Guardian Contact Information-Name, Email, Phone; and Digital Equity Data-

Responses from Tech Check survey or other similar surveys, Student location, demographic, enrollment data related to hotspot distribution, collectively (the “**Adoption Data**”);

(d) information regarding any District or private infrastructure, including physical and information technology infrastructure;

(e) information related to the security systems of any District or private entities;

(f) information regarding the business operations of the Disclosing Party, including any current, planned, or proposed procurements, marketing strategies, projections, sales estimates, business plans, plans for products or services, customer or supplier lists, scientific or technical information, design, process, procedure, formula, improvement, technology or method, concepts, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, inventions, and trade secrets;

(g) any other information relating to any Broadband Provider’s subscribers or end users, including all lists or other records containing any such information, even if such information is aggregated; all financial, technical, business, and credit information, including without limitation, all market analyses and market expansion plans;

(h) all technical information, including, without limitation, all implemented or planned product and service improvements or changes, and all information about any Broadband Provider’s network configuration, plant or any equipment attached thereto;

(i) all other proprietary information relating to the operations of any Broadband Provider which was disclosed or provided to the District or became known to the Recipient through its relationship with the Disclosing Party; and all information that should reasonably have been understood by the Recipient, because of legends or other markings, the circumstances of disclosure, or the nature of the information itself, to be proprietary and confidential to the Disclosing Party;

(j) any other information that should reasonably be recognized as confidential information of or in the custody of the Disclosing Party; and

(k) all notes, analyses, reports, data, summaries and other materials (the “**Notes**”) prepared by or for the Recipient or its Representatives that contain, are based on, or otherwise reflect or are derived from, in whole or in part, any of the foregoing.

2. Exclusions from Confidential Information. Except as required by applicable federal, state, or local law or regulation, the term “Confidential Information” as used in this Agreement shall not include information that:

(a) at the time of disclosure was, is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives;

(b) at the time of disclosure was, is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by a legal, fiduciary, or contractual obligation to the Disclosing Party;

(c) was known by or in the possession of the Recipient or its Representatives, as established by documentary evidence, before being disclosed by or on behalf of the Disclosing Party under this Agreement (for the avoidance of doubt, any information disclosed by or on behalf of the Disclosing Party under this Agreement which may be related to, but is supplemental to, information known by or in possession of the Recipient shall be considered Confidential Information); or

(d) was or is independently developed by the Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information.

3. Recipient Obligations.

(a) The Recipient shall protect and safeguard the confidentiality of all such Confidential Information with in strictest confidence. The Recipient agrees that during and after the term of this Agreement, neither Recipient nor any person, firm, corporation or other entity affiliated with, owned in whole or in part by, employed by or otherwise connected with Recipient, shall directly or indirectly, without the express written consent of Disclosing Party, divulge, use, sell, exchange, furnish, give away, or transfer in any way any Confidential Information other than as permitted by this Agreement. The Recipient agrees that all Confidential Information, whether provided by the Disclosing Party prior to or after the commencement date hereof, is the exclusive property of the Disclosing Party. In furtherance thereof, the Recipient shall use the same degree of care to safeguard and avoid disclosure (including, but not limited to, disclosure to any federal, state or local government or any agency or department thereof), publication, dissemination, or use of any or all of the Confidential Information obtained hereunder as it would use with respect to its own Confidential Information or proprietary information, but in any case using no less than a reasonable degree of care.

(b) The Recipient shall: (i) carefully restrict access to Confidential Information solely to those employees, contractors, and third parties who have a need to know such Confidential Information as reasonably required for the execution of the Recipient's duties to the Disclosing Party; and (ii) advise such persons of the proprietary and/or confidential nature of the Confidential Information and of the obligations set forth in this Agreement. Absent the prior written approval of the Disclosing Party, the Recipient shall not publish, copy, summarize, use for the Recipient's own benefit in any manner, otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Disclosing Party, any Confidential Information.

(c) Upon written request by the Disclosing Party, the Recipient shall immediately return to the Disclosing Party or destroy any and all tangible or electronic records, notes, documentation, copies, diagrams, media, and/or any other written or printed materials in its possession pertaining to any portion of the Confidential Information. All Confidential Information that is not returned or destroyed as permitted by the immediately foregoing sentence shall

remain subject to this Agreement for so long as such materials are so retained. For the avoidance of doubt, this provision shall not prohibit ESH from using Confidential Information received under this Agreement to publish aggregated de-identified data related to home connectivity in furtherance of the Purpose, provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual.

(d) The Recipient shall not disclose any such Confidential Information to any person or entity, except to the Recipient’s Representatives who:

(i) need to know the Confidential Information to assist the Recipient, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;

(ii) are informed by the Recipient of the confidential nature of the Confidential Information; and

(iii) are subject to confidentiality duties or obligations to the Recipient that are no less restrictive than the terms and conditions of this Agreement; and

(e) be responsible for any breach of this Agreement caused by any of its Representatives.

4. Use of Confidential Information. The Recipient shall collect and store only such Confidential Information that is reasonably necessary in connection with the contemplated Purpose and business relationship between the Parties described above and not for any purpose other than as authorized by this Agreement. The Parties agree that for the contemplated Purpose of this Agreement, reasonably necessary Confidential Information is limited to de-identifiable student addresses, and ISP service status for those addresses, together with Adoption Data reasonably necessary to facilitate the End User’s enrollment in Services. Confidential Information may be used only to the extent necessary to further the Purpose as specified in this Agreement, including but not limited to disclosure by ESH to a Broadband Provider of District Level Information. The Recipient shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of the Disclosing Party unless permitted in writing to do so by a duly authorized representative of the Disclosing Party.

5. Permitted Disclosure.

(a) Disclosure of Personally Identifiable Information. In order to determine eligibility and facilitate the District’s outreach to End Users to procure Services for End Users or to promote End Users to enroll directly in Services, the Parties may disclose the Adoption Data to each other. Neither party may sell, retain, use, or disclose such Personally Identifiable Information for any purpose other than for the specific purposes set forth in this Agreement. For the purposes of this Agreement “Sell” means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, Personally Identifiable Information by one entity to another for monetary or other valuable consideration.

(b) Disclosure of this Agreement. Notwithstanding anything contained herein to the contrary, the Parties agree that either Party may, without further consent or notice from the other Party, share a copy of this Agreement, or any of the terms herein, with any school district or local education agency within the State of California that is or may be interested in working with ESH to enter into a separate Mutual Confidentiality Agreement with ESH in connection with the ESH K-12 Bridge to Broadband Program or any other initiative, project or services with ESH.

(c) District Level Information. ESH shall comply with all federal, state, and local laws that are expressly applicable to the privacy, and security of District Level Information, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children’s Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C, § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), Pub. L. 104-191, and its implementing regulations (45 CFR part 160 and 164), and the Individuals with Disabilities Education Act, and its implementing regulations (34 C.F.R. §§ 300.610 - 300.626 and 34 C.F.R. §§ 303.400 – 303.417).

(d) Required Disclosure. Any Disclosure by the Recipient or its Representatives of any of the Disclosing Party’s Confidential Information under applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction (a “**Legal Order**”) shall be subject to the terms of this Section. Before making any such disclosure, the Recipient shall provide the Disclosing Party with (i) prompt written notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy and (ii) reasonable assistance, at the Disclosing Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, the Recipient remains subject to a Legal Order to disclose any Confidential Information, the Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of the Recipient’s legal counsel, such Legal Order specifically requires the Recipient to disclose.

6. Return or Destruction of Confidential Information. Within sixty (60) days after the earlier of the termination of this Agreement or date on which the Purpose has been entirely satisfied, or reasonably promptly after the Disclosing Party’s written request, the Recipient and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party’s Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. In addition, the Recipient shall also destroy all copies of any Notes created by the Recipient or its Representatives and certify in writing to the Disclosing Party that such copies have been destroyed. Notwithstanding the foregoing, the Recipient may retain copies of Confidential Information that are stored on the Recipient’s IT backup and disaster recovery systems until the ordinary course deletion thereof. The Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

7. Injunctive Relief. Both Parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of

the Confidential Information would destroy or diminish the value of such information. The damages to the Disclosing Party that would result from the unauthorized dissemination of the Confidential Information may be difficult or impossible to calculate, and may be irreparable in nature. Therefore, the Parties hereby agree that the Disclosing Party shall be entitled to pursue injunctive relief in a court of competent jurisdiction. Such injunctive relief shall be in addition to any other reasonable remedies available hereunder, whether at law or in equity.

8. Civil and Criminal Liability; Damages.

(a) The Recipient acknowledges that improper disclosure of Confidential Information may subject the Recipient to liability under state and federal civil and criminal statutes, including but not limited to the Health Insurance Portability and Accountability Act (“HIPAA”) (Pub. L. 104-191), the Family Educational Rights and Privacy Act (“FERPA”) (20 U.S.C. §1232g), the Economic Espionage Act of 1996 (18 U.S.C. §1831 *et seq.*).

(b) If damages resulting from unauthorized disclosures of Confidential Information can be determined, the Recipient agrees to fully compensate the Disclosing Party or other persons whose Confidential Information was disclosed for any and all such reasonable damages.

(c) Each Party hereby acknowledges and agrees that neither Party shall be liable to the other Party for any special, incidental, punitive, exemplary or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities or services, or down time cost, resulting from the improper disclosure of Confidential Information, even if advised of the possibility of such damages.

9. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall remain in effect until June 30, 2024, unless it is terminated without cause earlier by either Party by the provision of thirty (30) days’ written notice to the other Party. Notwithstanding anything to the contrary herein, each Party’s rights and obligations under this Agreement shall survive any expiration or termination of this Agreement and the Parties shall be bound by such obligations after the termination hereof, even after the return or destruction of Confidential Information by the Recipient.

10. No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Recipient hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Recipient or any of its Representatives relating to or resulting from the Recipient’s use of any of the Confidential Information or any errors therein or omissions therefrom.

11. No Transfer of Rights, Title, or Interest. Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Recipient or any of its Representatives.

12. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Purpose or otherwise.

13. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted in the federal courts of the United States or the courts of the State of California in each case located in the city of Oakland and County of Alameda, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice, or other document by mail to such Party's address set out herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

14. Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set out on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).

15. Entire Agreement. This Agreement, the Data Sharing Agreement entered into by and between ESH and OUSD with an effective date of July 1, 2022, and the Service Agreement entered into by and between ESH and OUSD with an effective date of July 1, 2022, constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein. To the extent any terms or provision of this Agreement conflict with the Data Sharing Agreement or the Service Agreement, the terms of the Data Sharing Agreement shall govern. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.

16. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

18. Assignment. Neither Party may assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the other Party. Any purported assignment or delegation

in violation of this Section shall be null and void. No assignment or delegation shall relieve the assigning or delegating Party of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

19. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.