

Mutual Confidentiality Agreement

This Mutual Confidentiality Agreement (the “**Agreement**”), effective as of July 8 2021 (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 Barnstable Public Schools (“**DISTRICT**”) and together with ESH, the “**Parties**,” and each, a “**Party**”).

WHEREAS, in connection with the implementation of a program that provides 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 Town of Barnstable/Barnstable Public School students (the “**Covered Territory**”), free of charges to the End Users (the “**Purpose**”), the Parties desire to share certain information that is non-public, confidential or proprietary in nature with ESH.

WHEREAS, ESH will receive information from both the Covered District (as hereinafter defined) 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) name; (ii) mailing and email address; (iii) personal identifier, such as social security number, student number, or biometric record; (iv) other indirect identifiers, such as date of birth, place of birth, and mother’s maiden name; (v) 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 (vi) 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 (vi) 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 each district within the Covered Territory [(each a “**Covered District**” and collectively, the “**Covered Districts**”)]/[the

[District]]¹, either directly or through Barnstable [INSERT RELEVANT STATE OR COUNTY] or ESH, to any Broadband Provider in connection with this Agreement is herein referred to as the “**District Level Information**”). Personally Identifiable Information further includes all information recording and computer tapes, microfilm, microfiche, or any other materials regardless of physical form or characteristics concerning a student that is organized on the basis of the student's name or in a way that such student may be individually identified, and that is kept by the Covered District. ;

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

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

(e) 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;

(f) any other information relating to any of Broadband Providers’ 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;

(g) 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;

(h) all other proprietary information relating to the operations of any Broadband Provider which was disclosed or provided to any Covered District or became known to the Recipient through its relationship with 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.

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

(j) 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:

¹ Note to Draft: Covered District(s) concept is intended for use if this Agreement covers multiple districts. Use of singular here is intended for use if this Agreement is with a single district, which would require conforming changes of “Covered District” to “District” throughout.

(a) at the time of disclosure 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 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 Disclosing Party prior to or after the commencement date hereof, is the exclusive property of 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 in a summary form 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 or the school or district. Prior to publishing any document that names the District explicitly or indirectly, a Recipient shall obtain the District's written approval of the manner in which de-identified data is presented. Such approval shall not be unreasonably withheld.

(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. 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 each Covered District's payment obligations for the Services, the Parties may disclose the address information of End Users 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) 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) and 603 C.M.R. 23.00, Massachusetts General Law, Chapter 71, Sections 34D to 34H and 603 CMR 28.00.

(c) 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. At any time during or after the term of this Agreement, at 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 the 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 terminated by either Party at any time by the provision of 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 Massachusetts without giving effect to any choice or conflict of law provision or rule (whether of the State of Massachusetts or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Massachusetts 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 Massachusetts in each case located in the city of Barnstable (Hyannis) [RELEVANT CITY] and County of Barnstable [RELEVANT COUNTY], 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 constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. 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.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

EDUCATIONSUPERHIGHWAY

By _____

Name:

Title:

[SCHOOL DISTRICT]

Barnstable Public Schools

By Bethann Orr

Name: Bethann Orr

Title: Director of Technology

Signature: *Bethann Orr*

Email: orr_bethann@mybps.us






K12 Bridge to Broadband District NDA

Final Audit Report

2021-07-09

Created:	2021-07-07
By:	Ramah Hawley (rhawley@tec-coop.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_V-clm5_YtDh84p2zSemDksrfdx2Jta_

"K12 Bridge to Broadband District NDA" History

-  Document created by Ramah Hawley (rhawley@tec-coop.org)
2021-07-07 - 10:44:23 PM GMT- IP address: 100.1.115.187
-  Document emailed to Bethann Orr (orr_bethann@mybps.us) for signature
2021-07-07 - 10:44:26 PM GMT
-  Email viewed by Bethann Orr (orr_bethann@mybps.us)
2021-07-09 - 3:42:54 PM GMT- IP address: 66.102.8.7
-  Document e-signed by Bethann Orr (orr_bethann@mybps.us)
Signature Date: 2021-07-09 - 3:45:27 PM GMT - Time Source: server- IP address: 174.242.70.149
-  Agreement completed.
2021-07-09 - 3:45:27 PM GMT