

BACKGROUND

California Public Utilities Commission (CPUC) Decision (D.) 18-06-032 authorizes the CPUC to develop and implement a non-disclosure agreement for grant recipients from the California Advanced Services Fund (CASF) program Broadband Adoption Account to obtain subscription/enrollment data from Internet Service Providers (ISPs). Decision 18-06-032 further requires adoption program recipients to conduct a pre- and post-implementation survey or report, in addition to providing a summary of broadband enrollment/subscription information to the CPUC as a result of the CASF funded project in their payment request reports. The decision further directed the CPUC to develop a non-disclosure agreement for CASF grant recipients to obtain such enrollment information from Internet Service Providers (ISPs).

NONDISCLOSURE AGREEMENT REGARDING CONFIDENTIAL MATERIALS

1. This Nondisclosure Agreement (“Agreement”) is effective as of the ___ day of ____ (the “Effective Date”), by and among _____ (Grantee), (referred to herein as the “Recipient”); and _____ (Internet Service Provider), (referred to herein as “the Disclosing Party or Disclosing Parties”). (The Recipient and the Disclosing Party or Parties are collectively referred to herein as the “Parties,” and singularly as a “Party.”)
2. This Agreement shall govern access to and use of Confidential Material, produced by, or on behalf of the Disclosing Party in connection with an Application for a grant from the California Advanced Service Fund, submitted to the California Public Utilities Commission (the “CPUC”) on _____ (“Application”);
3. The Recipient is a party to an Application for the CASF Adoption Program, a program administered by the CPUC;
4. This Agreement is limited to Confidential Information which is in the possession or control of the Disclosing Party. For purposes of this Agreement, the term “Confidential Information” means:
 - a. certain information which the Disclosing Party deems, in its discretion, to be confidential or proprietary information and such information provided by the Disclosing Party is clearly marked as “Confidential”;
 - b. information and documents related to enrollment and subscription information (including but not limited to enrollment and subscription information; welcome letter or welcome email from the ISP after

installation with a date on it, copy of the first ISP bill showing the new service activation or verification or data from the ISP) which is in the possession or control of the Disclosing Party and be provided to the Recipient. The Recipient intends to use the Confidential Information or any material derived from the Confidential Information for the Limited Purpose of complying with the requirements of Decision (D.) 18-06-032 to conduct a pre- and post-implementation survey or report, and preparing a summary of broadband enrollment/subscription information for the CPUC derived from the CASF-funded project enrollment and subscription information to the CPUC in the Recipients payment request reports

- c. any communications between or among Disclosing Party, Recipient, any parties to the proceeding, or the CPUC, if any, regarding Confidential Information and or any material derived from the Confidential Information obtained by the Recipient from Disclosing Party employees, or agents, will be considered “Confidential Information” Confidential Information also include memoranda, handwritten notes, spreadsheets, computer files and reports, and any other form of information (including information in electronic form) that copies, discloses, incorporates, includes or compiles other Confidential Materials or from which such materials may be derived (except that any derivative materials must be separately shown to be confidential).

5. Confidential Information does not include the following:

- a. any information or document contained in the public files of the CPUC or any other state or federal agency, or in any state or federal court; or
 - b. any information that is public knowledge, or which becomes public knowledge, other than through disclosure in violation of this Nondisclosure Agreement or any other nondisclosure agreement or protective order;
6. The Disclosing Parties may produce or submit Confidential Information or material derived from Confidential Information related but not limited to enrollment and subscription information; a welcome letter or welcome email from the ISP after installation with a date on it, a copy of the first ISP bill showing the new service activation or verification or data from the ISP, which is in the possession or control of the Disclosing Party;

7. Recipient desires to have access to such Confidential Information for the Limited Purpose of complying with the requirements of Decision (D.) 18-06-032 to conduct a pre- and post-implementation survey or report, in addition to providing a summary of broadband enrollment/subscription information to the CPUC as a result of the CASF funded project enrollment and subscription information to the CPUC in the Recipients payment request reports;
8. Disclosing Parties may disclose to Recipient certain information which any Disclosing Party deems, in its sole discretion, to be Confidential Material. All such tangible information provided by the Disclosing Parties shall clearly be marked as “Confidential.”
9. The Recipient acknowledges that any communications between or among the Disclosing Parties, the Recipient, any parties to the proceeding, and the CPUC, if any, regarding the Confidential Information or any material derived from the Confidential Information, including but not limited to information the Recipient obtained from the Disclosing Parties’ employees, agents, or through inspection of the Disclosing Parties’ property or regulatory filings, which relate to formulas, databases, software, business methods, customers or prospective customers, pricing plans, costs, algorithms, know-how, schematics, design techniques, inventions, processes, trade secrets, product development plans, marketing plans, finances, costs, business opportunities, and personnel, also will be considered “Confidential Information.”
10. The Recipient shall take all reasonable security precautions to keep confidential the materials and documents provided to the Disclosing Parties under this Agreement. The Recipient shall notify the CPUC immediately upon the discovery of any unauthorized use or disclosure of the information and/or documents, or any other breach of this agreement and will cooperate in every reasonable way to help prevent further unauthorized disclosure or use of the information or documents.
11. The Parties agree that the restrictions on use of Confidential Information and other requirements in set forth in this Nondisclosure Agreement do not apply to information that:
 - a. is or becomes publicly available through an Order of the Commission or a Commissioner under Public Utilities Code, § 583;
 - b. is or becomes publicly available through no fault of the Recipient;
 - c. the Recipient received from a third party without a duty of confidentiality (not including PAO);

- d. a Disclosing Party disclosed, not inadvertently, to a third party without a duty of confidentiality on the third party;
- e. was known to Recipient before receipt from the Disclosing Party, provided that such knowledge was not obtained through disclosure by a third party owing a duty of confidentiality to the Disclosing Party; or
- f. the Recipient disclosed with the relevant Disclosing Party's prior approval.

In the event of (e) above (known to the Recipient prior to receipt from the Disclosing Party), the Recipient agrees, within a reasonable period of time and not less than 10 days before any public disclosure, to notify the Disclosing Party of this fact and the manner by which the Recipient obtained such knowledge with reasonable proof of same.

- 12. The Parties agree that the Confidential Information or any material derived from the Confidential Information produced pursuant to this Agreement will be made available to the California CPUC for the purpose of performing its functions under state law, and for the purpose of reporting to the Legislature pursuant to Public Utilities Code, § 914.
- 13. Any person employed by or acting on behalf of the Recipient, who seeks access to the Confidential Information for the Limited Purpose described above, shall sign and date the Acknowledgment attached hereto as Exhibit A. The Recipient shall provide the signed Acknowledgment to the Disclosing Parties and shall not provide or make available to those persons any Confidential Information until the Disclosing Parties consent to the Acknowledgment, which consent may be provided electronically.
- 14. The Recipient, and anyone employed by or acting on behalf of the Recipient, agree that it shall (a) use Confidential Information, or any information derived from Confidential Information, solely and exclusively for the Limited Purpose; (b) keep the Confidential Materials, or any information derived from Confidential Materials, strictly confidential and (c) take all necessary steps to prevent any unauthorized use, disclosure, publication, or dissemination of such information, including but not limited to the submission of such information to the CPUC, if any, under seal, provided those materials have not otherwise been made public under one of the methods specified in the Reservation in Paragraph 1 above.
- 15. The Recipient, and any authorized person employed by or acting on behalf of the Recipient, acknowledges that the Confidential Information are the valuable and proprietary information of the Disclosing Parties, and that all Confidential

Information remains the property of the Disclosing Parties and no license or other rights to Confidential Materials are granted or implied hereby.

16. Within ten (10) business days of the termination or expiration of this Agreement, or upon receipt of a written request from the Disclosing Parties, the Recipient shall (a) return all Confidential Information, including all copies of Confidential Information, as well as any information derived from Confidential Information, to Disclosing Parties or destroy the same and (b) confirm in writing signed by an authorized representative of the Recipient, that all Confidential Information, or material derived from Confidential Information, has been deleted or otherwise returned to the Disclosing Parties per this Agreement.
17. The Recipient hereby acknowledges that it is responsible for the unauthorized disclosure or use of the Confidential Information by any person to whom the Recipient provided access. The Disclosing Parties shall not be deemed to have waived any of their rights or remedies on account of their failure, delay or forbearance in exercising any such right or remedy in a particular instance.
18. This Agreement shall not be modified except by a written agreement signed by authorized representatives of both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence by either party, but only by an instrument in writing signed by an authorized representative of the party. No waiver of any provisions of this Agreement shall constitute a waiver of any provisions of this Agreement. This Agreement shall become effective as of the Effective Date and shall automatically expire on the date that is 180 days after the Effective Date (the "Term") unless extended in writing by Disclosing Parties. The Disclosing Parties or any of them may terminate this Agreement at any time upon ten (10) day's written notice to Recipient. The provisions hereof shall survive the expiration or termination of this Agreement and the return and/or destruction of Confidential Information to Disclosing Parties.
19. This Agreement constitutes the entire agreement between the Parties regarding the Confidential Information and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information. This Agreement may not be amended except by a written agreement signed by the authorized representatives of each Party. This Agreement will be governed by and construed in accordance with the laws of the State of California, and each Party hereby consents to the exclusive jurisdiction of the California courts to address any dispute arising from, or otherwise related to, this Agreement and or the use of the Confidential Information. In the event any Disclosing Party is the substantially prevailing party in any action to enforce the terms of this Agreement it shall be entitled to its attorney's fees. The Parties may execute this Agreement in any number of counterparts, each of which is deemed an original. This Agreement may not be assigned or transferred without the express written consent of the Disclosing Parties. Any attempt to assign or transfer

this Agreement without the express written consent of the Disclosing Parties consent is void.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in duplicate originals by their duly authorized representatives on the day and year first above written.

_____ (Recipient) _____ (Disclosing Party or Parties)

By: _____ By: _____

Name: _____ Name: _____

Attorneys for (Recipient) Attorneys for (Disclosing Party or Parties)

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

NONDISCLOSURE AGREEMENT

EXHIBIT A

ACKNOWLEDGEMENT - CONFIDENTIAL INFORMATION

The undersigned hereby certifies that: (1) I have received and read a copy of the attached Non-Disclosure Agreement; (2) I am an employee of, or otherwise acting on behalf of the Recipient; and (3) I will use said Confidential Information exclusively for the Limited Purpose described in the Agreement. Further, I understand and agree to be bound by all the terms and provisions of the Agreement.

Signature

Printed Name