



DATA SHARING AND SERVICES AGREEMENT

Between

THE FOUNDATION FOR CALIFORNIA COMMUNITY COLLEGES

On behalf of:

The California College Guidance Initiative

And

[INSERT] DISTRICT

Agreement No. *[FCCC will enter]*

This Data Sharing and Services Agreement ("Agreement") is entered into by and between the Foundation for California Community Colleges, a nonprofit 501(c)(3) organization ("Foundation"), on behalf of the California College Guidance Initiative ("CCGI"), and the **[INSERT] DISTRICT** ("District"), to set forth the roles and responsibilities of the Parties related to District's uploading of its students Education Records to www.CaliforniaColleges.edu or hereinafter ("CaliforniaColleges Website") and Foundation's provision of account support services on the CaliforniaColleges Website.

I. RECITALS

WHEREAS, Foundation is the official nonprofit organization supporting the California Community College Chancellor's Office and the California Community Colleges Board of Governors and its mission to benefit, support and enhance the California Community College system;

WHEREAS, CCGI is operated by the Foundation on behalf of the State of California, in order to ensure the awareness and utilization of online planning tools in K-12 districts and systematic baseline guidance and support for 6th-12th grade students as they plan, prepare and finance college;

WHEREAS, CCGI's tools and services constitute the K-12 student, family and educator facing tools for college planning and transition under California's Cradle to Career Data System, and are codified in Ed Code Section 60900.5;

WHEREAS, CCGI is the State of California's official provider of technical assistance regarding a-g course alignment to the Course Management Portal and to provide a one stop platform for college planning;

WHEREAS, CCGI is authorized and funded by the state to provide these services to all K-12 districts serving 6th-12th grade students, free of charge;

WHEREAS, CCGI transmits student transcript data across institutions to help inform admissions, enrollment, placement, guidance and financial aid at institutions of higher education;

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WHEREAS, the Family Educational Rights and Privacy Act (“FERPA”), 34 CFR §99.31(a)(1)(i)(B) and the California Education Code, §49076 (a)(2)(G), allow District to disclose student data to Foundation, without parental consent, in order to provide services to District that District otherwise could have provided with its own employees; and

WHEREAS, the purpose of this Agreement is to set forth the roles and responsibilities of the Parties related to District’s uploading of Education Records to the CaliforniaColleges Website and Foundation’s provision of technical assistance and account support services on the CaliforniaColleges Website.

THEREFORE, the Parties desire and agree to enter into this Agreement in furtherance of the purpose stated below.

II. DEFINITIONS

The following capitalized terms when used in this Agreement shall have the meanings ascribed to them respectively, in this Definitions section, unless such term is otherwise expressly defined in this Agreement.

“Agreement” shall have the meaning set forth in the preamble above and includes all exhibits (see below), schedules and other attachments hereto, as each may be amended in a writing signed by both Parties from time to time.

Exhibit A: Data Privacy and Security Addendum

Exhibit B: Data File Technical Specifications

“Business Day” shall mean a Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding (i) any day on which national banks having banking offices in either Sacramento or Los Angeles, California are authorized by law to remain closed and (ii) those days, not to exceed eleven (11) in any calendar year, which Foundation and/or District treats as a holidays but would otherwise be Business Days.

“Confidential Information” shall mean any and all information, data, Software (as defined below), know-how and intellectual property of a confidential or proprietary nature, including but not limited to, information, data, Software, know-how and intellectual property relating to (a) technical, scientific, developmental, marketing, manufacturing, sales, operating, performance and cost matters, (b) processes, (c) designs and (d) techniques, in any and all forms in which the foregoing may appear including, but not limited to, all record-bearing media containing or disclosing any of the foregoing. Confidential Information shall include, but not be limited to, all information, data, Software, know-how, and intellectual property that is (a) marked as “confidential” or “proprietary” at the time it is provided by or on behalf of the Party providing it, (b) expressly stated by or on behalf of the Party providing it to the Party receiving it at the time of disclosure to be considered confidential or proprietary, or (c) would under the circumstances be recognized by someone generally experienced in business affairs to be confidential or proprietary.

“CaliforniaColleges Website” shall mean the Internet website located at www.CaliforniaColleges.edu. The Foundation is responsible for directly contracting and compensating a third-party technology vendor (“Vendor”) for the continued operation and maintenance of www.CaliforniaColleges.edu under a separate agreement. Information describing the current Vendor can be found in the **Data Privacy and Security Addendum**, attached to this Agreement as **Exhibit A**, and herein incorporated by reference. This definition shall also include any successor website thereto including any such site established on some other form of

Commented [ET1]: These regulations allow the District to use an “opt-out” approach. Meaning that they need not receive consent from a parent or eligible student prior to disclosing the information to CCGI.

See Reference document for further analysis.

interactive digital or electronic communications offered over or via any alternative or successor broad band or narrow band network or method of broadcast including wireless, intranets, extranets, and interactive television or cable.

“Data Breach” shall mean actual evidence of the loss or unauthorized access to, or unauthorized use of Student Data (as defined below) uploaded to the CaliforniaColleges Website.

“Education Record” shall have the meaning as set forth in 34 CFR §99.3 or under applicable state law. Education Records are those records that directly relate to a student and are maintained by an education agency or institution or by a party acting for the agency or institution. The term Education Record shall not include records that are otherwise excluded under 34 CFR §99.3 or applicable state laws.

“Effective Date” shall have the meaning set forth in Section III.A of this Agreement.

“Eligible Student” shall mean a student who has reached 18 years of age or is attending an institution of postsecondary education.

“Misuse” shall have the meaning as set forth in Section IX.A of this Agreement.

“Party” or “Parties” shall mean either Foundation, on behalf of CCGI, or District, or both.

“Student Data” shall mean any information (a) contained in a student's Education Record maintained by or for the District and provided to the CaliforniaColleges Website by an employee or agent of the District; or (b) acquired directly from a student or parent or legal guardian of the student through the use of the CaliforniaColleges Website, as assigned to the student or parent or legal guardian by District. Student Data includes Personally Identifiable Information (defined below). Student Data does not include information created by a student, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of that information.

“Services” means the services and levels of support offered by Foundation and accepted by District, as described in Section V.D of this Agreement.

“Software” shall mean, at a minimum, the computer programs, in machine-readable object code and source code, created by Vendor, pursuant to its separate agreement with the Foundation, in order to develop, operate and maintain the CaliforniaColleges Website.

“Personally Identifiable Information” or “PII” shall have the meaning specified in FERPA regulations, 34 CFR §99.3.

Commented [ET2]: PII shall be defined as in FERPA Regulations

“System User” shall mean any student or parent whose Student Data are disclosed to the CaliforniaColleges Website by the District or by a student (or parent) who is assigned to use the CaliforniaColleges Website by the District.

Any other capitalized terms used in this Agreement that are not defined in this Section or in any exhibit, schedule or other attachment that is expressly incorporated into this Agreement, shall have the meaning given to them in this Agreement.

III. TERM AND TERMINATION

A. Term. This Agreement will be deemed to be effective as of the date the Agreement is fully executed by all signatories to the Agreement (“Effective Date”) and will continue until terminated by either party pursuant to Section III(B), (C), or (E). No fees will be assessed under this Agreement while CCGI continues to be the provider of operational tools for the State of California.

B. Termination for Convenience. The Parties shall have the right to terminate this Agreement for any reason or no reason, without penalty, at any time by providing the other with written notice of termination in accordance with Section X of this Agreement at least thirty (30) calendar days in advance of the Termination Date.

C. Termination for Cause. Either party shall have the right to terminate the Agreement immediately upon written notice to the other Party upon the occurrence of a material breach of this Agreement, including a material breach with respect to the any representations and warranties which remain uncured for more than sixty (60) days after the non-breaching Party provides notice of such material breach to the other Party.

D. Handling of Data Following Termination of Agreement

1. **Deletion of Data.** Education Records provided under the Agreement shall be destroyed by Foundation and Vendor upon termination of this agreement or within thirty (30) days from the date on which District requests destruction of the data or determines that such student data are no longer needed for the purposes of this Agreement. In order to commence the procedure for requesting destruction of Education Records, District shall provide written notice to the Foundation as specified in Section X, requesting destruction of the data. Upon receipt of District’s written notice, the Foundation and Vendor agree to use reasonable commercial efforts to certify within thirty days (30) after the Termination Date that Education Records are no longer retained or accessible to the Foundation and Vendor.

2. **Requests for Return of Data to District.** In lieu of destruction of Education Records, as provided in Sec. III.D.1, the District may request return of the data. In the event of such a request, the District shall provide thirty days (30) advance written notice to the address listed in Section X of this Agreement to the Foundation. Upon request and notice by District in accordance with this Section III.D.2, Foundation shall provide assistance with the migration and conversion of historical data in a flat file or other format reasonably requested by District and reasonably acceptable to Foundation. District shall be responsible for all costs and expenses associated with such requests including but not limited to costs for migration and data conversion and shall otherwise cooperate with Foundation to transfer such data to the District.

3. **Retention of Student Data by the System User after Termination.** The Parties acknowledge and agree that the requirements provided in Section III.D.1 shall not apply to Student Data if the student or the student’s parent supplied such Student Data to CaliforniaColleges Website and elects upon termination of the Agreement to continue to maintain a personal account with Foundation: (1) for the purpose of storing their individual data; (2) in the event the student or parent elects to

Commented [ET3]: AB 1584 – Education Code 49073.1(b)(7)(A) and (1)
Pupil records shall not be retained by third party
See SOPIPA
Operator shall delete a student’s covered information if the school or district requests deletion of data under the control of the school or district.
See FERPA 34 C.F.R. 99.35 (a)(2)(iii); (a)(3)(iii)&(iv)
Require authorized representative to destroy PII from education records when information is no longer needed and specify the time period in which the information must be destroyed.

Commented [ET4]: AB 1584 – Education Code 49073.1(b)(7)(A) and (1).
Pupil records shall not be retained by third party.
See SOPIPA
Operator shall delete a student’s covered information if the school or district requests deletion of data under the control of the school or district.
34 C.F.R. 99.31 (a)(5)(iii)(B)

retain their data in the CCGI Program for purposes of continuing to obtain the benefits of participation in the CCGI Program.

- E. Termination for Funding Contingency:** It is mutually understood and agreed that if the Foundation does not receive sufficient funding from the State of California to provide the Services described in this Agreement, Foundation may without penalty, terminate this Agreement by providing District with written notice of termination in accordance with Section X of this Agreement at least fifteen (15) calendar days in advance of the Termination Date.

Commented [ET5]: See Education Code 49073.1(b)(7)(B). Students, if they so choose, have the ability to maintain an account for pupil-generated content. See Education Code 49073.1(b)(2) This is the description by which pupil's may retain possession of their pupil generated content. See SOPIPA 22584 (r) This section does not impede students ability to download, export, or otherwise save or maintain their own student created data or documents

Commented [ET6]: FERPA, SOPIPA, AB 1584

IV. DISTRICT RESPONSIBILITIES

A. Data Sharing

1. District shall comply with all applicable federal and state laws regarding privacy and security of Education Records and Student Data, including but not limited to those identified and discussed in **Exhibit A**.
2. District shall upload course catalog files at least once a year to enable the use of academic planning tools by a student planning coursework at a District high school.
3. District agrees to verify accuracy of courses entered by District into the University of California ("UC") Course Management Portal at the UC Office of the President.
4. District agrees to upload Education Records, in accordance with the **Data File Technical Specifications**, attached as **Exhibit B** to this Agreement, and hereby incorporated by reference.

B. Implementation

1. District shall make staff, appropriate technology resources, and space available for ongoing professional development and user support.
2. District agrees to collaborate with Foundation staff to provide both individual user experience and technical feedback in order to improve implementation for all System Users.
3. District agrees to identify a Point of Contact (POC) to (1) assist the Foundation during implementation phase including providing any necessary support to Vendor; and (2) navigate or immediately report any issues regarding availability of the CaliforniaColleges Website.

V. FOUNDATION RESPONSIBILITIES

A. Data Ownership. Foundation acknowledges and agrees that Education Records provided by the District continue to be the property of and under the control of the District.

Commented [ET7]: See Education Code 49073.1(b)(1) This is required under AB 1584 and codified here. District retains control over their data.

B. Compliance with Laws. Foundation shall comply with all applicable federal and state laws regarding privacy and security of Education Records and Student Data, including but not limited to those identified and discussed in **Exhibit A**.

Commented [ET8]: See Education Code 49073.1(b)(8) FERPA compliance

C. Technical and Service Level Support. The CaliforniaColleges Website is operated and maintained by Vendor. All service level support for the CaliforniaColleges Website is provided

directly by Vendor. Districts should reach out to [Contact Us](#) in order to facilitate communication with Vendor regarding technical issues with CaliforniaColleges Website.

D. Scope of Services. “Services” means the enhanced services and levels of support offered by Foundation under this Agreement or on the CaliforniaColleges Website that are only possible when students’ transcript data is uploaded to their accounts.

1. Foundation shall provide the necessary support for the integration of Education Records and Student Data into individual student accounts on the CaliforniaColleges Website. Foundation agrees to cooperate with representatives from the District to ensure the data is properly uploaded in CCGI’s file format and in accordance with the requirements and instructions as more fully set forth and incorporated herein as **Exhibit B** to this Agreement.
2. Education Records and Student Data will be maintained and processed by CCGI on behalf of the District in a manner that meets the standards of the California Community Colleges, California State University (“CSU”), California Student Aid Commission (CSAC), and University of California systems for verified transcript data.
3. Foundation will provide an audit report of District’s a-g course listings in the UC Course Management Portal database to identify discrepancies. Foundation agrees to provide [technical assistance, guidance and support](#) to District staff for purposes of reconciliation of any identified discrepancies.
4. CSU and UC eligibility analyses, both individual student reports and aggregate tracking and reporting capability for counselors.
5. Ability for students to auto-populate applications for admission to all CSU campuses with course data from their individual account on the CaliforniaColleges Website, when such data matches to the Course Management Portal at the University of California Office of the President (CMP), and which enables students, their families and educators in their school and District to track application submission.
6. Ability for students to launch their Application to the California Community Colleges using the CCCApply platform in a manner that tracks submission on the CaliforniaColleges Website.
7. Ability for students to launch their Application for admission to the University of California using the UC Application in a manner that tracks submission on the CaliforniaColleges Website.
8. Ability for students to initiate their Free Application for Federal Student Aid (“FAFSA”) from within the CaliforniaColleges.edu, in a manner that allows students, their families and educators at their school site or District to track the launch of this application and which enables CCGI to provide the California Student Aid Commission with information that supports the Cal-grant eligibility determination process.

Commented [ET9]: See Reference doc at FERPA(1)(g)
See also Exhibit B(3)(a)(5)
34 CFR §99.31(a)(2);
Disclosure is for purposes related to the student’s enrollment or transfer
Calif. Education Code §49076(a)(3)
Shall not permit access except for allowable exceptions within FERPA

Commented [ET10]: See reference doc at FERPA(1)(f)
See also Exhibit B(3)(a)(6)
34 CFR §99.31(a)(4);
Disclosure allowed if the disclosure is in connection with financial aid.
Calif. Education Code, §49076(a)(2)(B)
Districts may release information from pupil records in connection with the receipt of Financial Aid

9. Ability for students to launch additional college and financial aid applications as additional institutions develop articulation agreements with the Foundation, on behalf of CCGI.

10. The following services and supports for participating Local Educational Agencies (“LEA”):

- e) Technical assistance to support alignment between LEA’s a-g course list in the UC Course Management Portal (“CMP”) and the district Student Information System (“SIS”).
- f) Training opportunities.
- g) Implementation planning and support for strategic goal setting.
- h) User support to respond to student, educator, and/or parent questions or other inquiries.

VI. FEES AND PAYMENT FOR SERVICES

1. Foundation will provide the Services under this Agreement District free of charge as long as Foundation continues to receive funding from the State of California as part of the Cradle to Career Data System.

Commented [ET11]: FERPA, SOPIPA, AB 1584

2. In the event that funding from the State of California is not sustained in future years, the Parties understand that the Foundation will assess and charge a fee for services provided to the District. In the event a fee is assessed, this Agreement will be amended, in writing, to affect that arrangement. Foundation shall provide District with a 90-day notice if funding from the State of California’s is reduced or discontinued.

VII. INTELLECTUAL PROPERTY

A. **Data Ownership.** Foundation acknowledges and agrees that Education Records provided by the District continue to be the property of and under the control of the District.

Commented [ET12]: See Education Code 49073.1(b)(1). This is required under AB 1584 and Ed Code. District retains control over their data.

B. **Proprietary Rights and Licenses**

1. **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Foundation reserves all of its rights, title and interest in and to the Services, including all of Foundation’s related intellectual property rights in the Software. No rights are granted to District hereunder other than as expressly set forth herein.

2. **License by District to Use Feedback.** District grants to Foundation a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Services any suggestion, enhancement request, recommendation, correction or other feedback provided by District or Users relating to the operation of the Services.

VIII. INDEMNIFICATION AND INSURANCE

A. **Indemnification Obligations of the Parties in the Event of A Data Breach**

1. Foundation

- a) Foundation's indemnification obligations under this Section VIII.A.1 of this Agreement shall continue in full force and effect during the Term of this Agreement.
- b) Foundation shall, at its own expense, indemnify, defend, and hold harmless District from any expense, cost, claim, loss, or liability (collectively, "Loss") resulting from any Data Breach provided that the Loss arises solely from Foundation's loss or unauthorized access or use of Student Data and does not arise as the result of: (1) any Misuse by District as defined in Section IX.A of this Agreement; (2) any action or inaction by District or any officer, director, employee, affiliate, contractor, or subcontractor of District; or (3) any action or inaction by a System User.
- c) District shall promptly (and in no event more than ten (10) calendar days after District receives notice of a potential or actual Loss) notify Foundation of such Loss that may give rise to an obligation of Foundation under this Section VIII.A.1.
- d) Foundation promptly takes reasonable actions, if any, to mitigate the harm caused as a result of the data loss or disclosure.

2. District

- a) District's indemnification obligations under this Section VIII.A.2 of this Agreement shall continue in full force and effect during the Term of this Agreement.
- b) District shall, at its own expense, indemnify, defend, and hold harmless Foundation from any expense, cost, claim, loss, or liability (collectively, "Loss") resulting from any Data Breach provided that: the Loss arises solely from District's Misuse of the CaliforniaColleges Website or System or any action or inaction by District or any officer, director, employee, affiliate, contractor, or subcontractor of District

B. Mutual Indemnification. Each Party to this Agreement ("Indemnitor") agrees to indemnify, defend and hold harmless the other, and its directors, trustees, officers, employees, agents (collectively "Indemnitees") against any and all liability, claims, demands, suits, losses, costs, legal fees including reasonable attorneys' fees, personal injury or illness and/or death, resulting from, arising out of, or connected with (a) Indemnitor's performance or omissions related to same under this Agreement, except as otherwise provided in Section VIII.A above; (b) any breach by Indemnitor of this Agreement. The Indemnitee must approve the extension of all settlement offers proposed by the Indemnitor and Indemnitee's approval shall not be unreasonably withheld. The Indemnitor shall furnish Indemnitees with all related evidence in its control. Nothing in this Agreement shall constitute a waiver of limitation of any rights which Indemnitees may have under applicable law.

C. Insurance

- 1. District. At District's sole cost and expense, District will obtain, keep in force, and maintain insurance as listed below. Coverages required will not limit any liability of District and will include: commercial general liability insurance with a combined single limit of no less than

one million dollars (\$1,000,000.00) per occurrence and automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than one million dollars (\$1,000,000.00) per accident; and workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time. The Commercial General Liability Policy shall name Foundation for California Community Colleges, its directors, officers, and employees as Additional Insureds. District, upon the execution of this Agreement, shall cause their insurance carrier(s) to furnish Foundation with a properly executed Certificate(s) of Insurance and endorsements effecting coverage as required herein. All insurance required to be carried by District and/or Indemnitor shall be primary, and not contributory, to any insurance carried by Foundation.

2. Foundation. At Foundation's sole cost and expense, Foundation will obtain, keep in force, and maintain insurance as listed below. Coverage required will not limit any liability of Foundation and will include: commercial general liability insurance with a combined single limit of no less than one million dollars (\$1,000,000.00) per occurrence and automobile liability insurance for all owned, scheduled, or hired automobiles with a combined single limit of no less than one million dollars (\$1,000,000.00) per accident; and workers' compensation as required under the Workers' Compensation and Safety Act of the State of California, as amended from time to time. Foundation, upon the execution of this Agreement, shall cause their insurance carrier(s) to furnish District with a properly executed Certificate(s) of Insurance and endorsements effecting coverage as required herein. All insurance required to be carried by Foundation and/or Indemnitor shall be primary, and not contributory, to any insurance carried by District.

IX. GENERAL TERMS AND CONDITIONS

A. Misuse of CaliforniaColleges Website. District acknowledges and agrees that this Section IX.A shall set forth the certain acts which shall either singularly or collectively constitute ("Misuse") under this Agreement. The Parties agree that the below Sections IX.A.1 through IX.A.8 shall not be construed to limit Foundation with respect to a determination of any other acts which may constitute Misuse under this Agreement, and which may not otherwise be included in this Section IX.A in Foundation's sole discretion. District agrees that it shall not, nor allow any System Users under the direct control of District to engage in any of the acts as set forth below:

1. Access or use CaliforniaColleges Website in breach of the terms of this Agreement;
2. Access or use CaliforniaColleges Website in violation of applicable federal, foreign, international, provincial, state and local laws, rules and regulations or any applicable privacy or data protection laws, rules, regulations or directives;
3. Access or use CaliforniaColleges Website for any unauthorized, fraudulent or malicious purpose;
4. Access or use CaliforniaColleges Website in a manner that could damage, disable, overburden or impair the CaliforniaColleges Website so as to diminish or destroy Foundation or Vendor's ability to provide CaliforniaColleges Website to System Users;

5. Share, obtain or use, or attempt to share, obtain or use, CaliforniaColleges Website related access codes or passwords;
6. Engage in any act that would cause Foundation or Vendor's failure in maintaining the integrity of CaliforniaColleges Website;
7. Engage in any use of CaliforniaColleges Website or engage in any acts which could substantially interfere with or substantially degrade the website and impact System Users;
8. Violate the CaliforniaColleges Website Terms of Use, or violate the terms of use for any Foundation or third party applications hosted by or accessible within CaliforniaColleges Website for utilization by System Users.

B. Confidential Information

1. District and Foundation each agrees that (i) it shall receive and use the Confidential Information it receives (in such capacity a "Recipient") in connection with this Agreement from the other Party (in such capacity a "Discloser") solely for the purposes contemplated by this Agreement, (ii) it shall not use any such Confidential Information for any other purpose, and (iii) it shall receive and hold such Confidential Information in trust and confidence for the benefit of the Discloser. All Confidential Information provided in connection with this Agreement:

a) Shall not be distributed, disclosed, or disseminated in any way or form by the Recipient to anyone except those of its own employees and professional advisors who have a reasonable need to know said Confidential Information for the purpose or purposes described above, who are informed of the confidential and proprietary nature of the Confidential Information, and who have agreed in a writing in favor of the Recipient to protect the confidentiality of the Confidential Information with terms at least as restrictive as those in this Section IX.B;

b) Shall be treated by the Recipient with at least the same degree of care utilized by Recipient to protect its own confidential and proprietary information of a similar nature, but in no event with less than reasonable care;

c) Shall not be used by the Recipient for its own purposes, except as otherwise expressly provided in this Agreement; and

d) Shall remain the property of and be returned to the Discloser or, at the Discloser's election, destroyed (along with all copies or other embodiments thereof) immediately upon the termination or expiration of this Agreement for any reason and by either Party.

2. The obligations of a Recipient pursuant to this Section IX.B hereof shall not apply, however, to any Confidential Information which (i) at the time it is delivered to the Recipient hereunder is already in the public domain or subsequent to such delivery comes into the public domain in a manner that does not involve a breach of this Agreement by the Recipient or its employees or advisors; (ii) at the time it is delivered to the Recipient hereunder is already in the Recipient's possession free of any obligation of confidentiality; (iii) is received independently by

Commented [ET13]: FERPA has requirements limiting the redisclosure of education records.
See Redisclosure of Education Records on Reference Document.

the Recipient from a third Party who is entitled to disclose such information to the Recipient; (iv) is subsequently independently developed by the Recipient without use of or benefit from or reference to the Confidential Information of Discloser.

3. Notwithstanding anything to the contrary herein, the Recipient may disclose Confidential Information if required to be disclosed by a court or regulatory or other governmental agency of competent jurisdiction, provided that in connection with any such requirement the Recipient shall (A) if legally permitted, promptly notify the Discloser of such requirement in writing, (B) cooperate with the Discloser, at the Discloser's request and expense, to obtain a protective order or other confidential treatment or to contest such required disclosure, (C) shall afford the Discloser all available opportunities to obtain a protective order or other confidential treatment or challenge such required disclosure, including the opportunity to challenge it in the name and with the standing of the Recipient, (D) shall comply with any protective order or other confidential treatment obtained by the Discloser, and (E) shall disclose only the minimum amount of information that the Recipient is required to disclose.

C. Representation, Warranties and Covenants of the Parties

1. Exchange of Information. The Parties represent and warrant that all information that each Party presently knows or reasonably should recognize to be materially relevant to the other Party's understanding of their obligations under the Agreement has been provided to that Party.

2. Compliance with Laws. The Parties agree to comply with all applicable national, state, and local laws and regulations in the performance of their obligations under the Agreement, including but not limited to the observance of all applicable laws and regulations related to the privacy and security of the Student Data provided by any System User.

3. Relationship of the Parties. Foundation is acting as an independent non-profit organization to facilitate the Services under this Agreement for the purposes as set forth in the Recitals. Foundation is neither an employee, subcontractor, nor an agent of District. Foundation shall have no right or authority to enter into agreements on behalf of or otherwise bind, District, and District shall have no right to enter into agreements or otherwise bind Foundation.

4. Due Authorization. Each of the Parties represents and warrants that (i) it has all requisite power, authority, and capacity to enter this Agreement and to perform its obligations herein; (ii) the execution and delivery of this Agreement by such Party and the consummation of the transactions contemplated herein by such Party have been duly and validly authorized by all necessary action, including all approvals and consents required from any other person or governmental authority; and (iii) this Agreement constitutes a valid, legally binding Agreement of such Party, enforceable against such Party in accordance with its terms.

5. Other Instruments. Each of the Parties hereto represents and warrants that the execution, delivery, and performance of this Agreement by such Party, its compliance with the terms hereof, and the consummation by it of the transactions contemplated herein will not violate, conflict with, result in a breach of, or constitute a default under its certificate of incorporation or other charter instrument, by-laws, or any instrument or agreement to which it is a Party or by which it is bound,

any state or federal law, rule or regulation, or any judicial or administrative decree, order, ruling or regulation applicable to it.

6. **Covenant of Further Assistance.** In the event that at any time after the date hereof any further action is necessary or desirable to carry out the purposes of this Partnership Agreement, each Party will cooperate with the other Party and take such further action for such purposes (including the execution and delivery of such further instruments and documents) as the other party reasonably may request and to which the recipient of the request has no reasonable objection

D. Disclaimer of Warranties. FOUNDATION MAKES NO WARRANTIES RELATED TO THE SERVICES PROVIDED BY FOUNDATION OR VENDOR HEREUNDER, AND HEREBY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. DISTRICT ASSUMES TOTAL RESPONSIBILITY FOR ITS USE OF THE RESULTS OBTAINED FROM THE SERVICES. FOUNDATION DOES NOT WARRANT THAT THE SERVICES MEET DISTRICT'S REQUIREMENTS OR WILL BE UNINTERRUPTED OR ERROR FREE.

E. Limitations of Liability. IN NO EVENT WILL FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY SERVICES PROVIDED BY FOUNDATION HEREUNDER, INCLUDING WITHOUT LIMITATION, DAMAGES FOR DISTRICT'S MISUSE OF THE CALIFORNIA COLLEGES WEBSITE, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES, DATA OR ANY OUTPUT, EVEN IF FOUNDATION HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF AVAILABLE REMEDIES ARE FOUND TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE TOTAL LIABILITY, IF ANY, OF FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND AGENTS THEREOF) IN THE AGGREGATE OVER THE TERM OF THIS AGREEMENT FOR ALL CLAIMS, CAUSES OF ACTION OR LIABILITY WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT AND/OR THE SERVICES PROVIDED HEREUNDER (COLLECTIVELY, "CLAIMS"), SHALL BE LIMITED TO THE DISTRICT'S DIRECT DAMAGES, ACTUALLY INCURRED. NOTWITHSTANDING THE FOREGOING, FOUNDATION'S SOLE OBLIGATION IN THE EVENT OF AN ERROR BY FOUNDATION IN THE PERFORMANCE OF ANY SERVICES UNDER THIS AGREEMENT SHALL BE LIMITED TO REPROCESSING APPLICABLE DATA OR REPERFORMING THE SERVICES. FOUNDATION (INCLUDING ITS SUBSIDIARIES, ITS PARENT AND SUBSIDIARIES OF ITS PARENT, ITS SERVICE PROVIDERS AND LICENSORS, AND THE EMPLOYEES, OFFICERS, DIRECTORS AND

AGENTS THEREOF) SHALL HAVE NO LIABILITY, EXPRESS OR IMPLIED, WHETHER ARISING UNDER CONTRACT, TORT OR OTHERWISE, FOR ANY CLAIM OR DEMAND: (A) RESULTING DIRECTLY OR INDIRECTLY FROM FOUNDATION'S INTERNAL OPERATIONS, EQUIPMENT, SYSTEMS OR SOFTWARE OWNED OR LICENSED BY FOUNDATION; OR (B) BY THIRD PARTIES, EVEN IF FOUNDATION WAS ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS, EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN. DISTRICT ACKNOWLEDGES THAT FOUNDATION HAS SET ITS FEES, IF ANY, AND ENTERED INTO THIS AGREEMENT IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS AGREEMENT, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

F. Mutual Audit Rights of the Parties. The Parties shall be entitled to upon reasonable notice to the other party an opportunity to conduct compliance audits under 20 U.S.C. Section 1232g. The Parties shall negotiate the scope, length and terms of such audits in good faith between each Party's representatives.

G. Independent Status. Foundation is an independent non-profit entity, in business for itself, which shall perform the specific tasks relative to providing technical support and related Services to fulfill the terms of this Agreement. Foundation does not have the authority to incur any obligation, contractual or otherwise, in the name or on behalf of District.

H. Waiver. No verbal or implied waiver of any breach of any provisions of this Partnership Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions in this Agreement. Any waiver by either party must be in writing and delivered to the other party.

I. Governing Law. This Agreement shall be construed in accordance with the 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 the laws of any jurisdiction other than the State of California.

J. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which together shall constitute one and the same instrument. If this Agreement is executed in counterparts, no signatory hereto shall be bound until both the parties have fully executed a counterpart of this Agreement.

K. Entire Agreement. This Agreement constitutes the entire, complete, final and exclusive agreement between the parties with respect to the subject matter hereof and supersedes and replaces any and all prior and contemporaneous communications between Foundation and District regarding such subject matter.

L. Construction of Partnership Agreement. Both parties have participated in the negotiation and drafting of this Agreement. Therefore, the terms and conditions of this Agreement shall not be construed against either party as the drafting party.

M. Authority to Bind. The parties each represent and warrant that the signatories below are authorized to sign this Agreement on behalf of themselves or the party on whose behalf they execute this Agreement.

N. Survival. Sections II, III.D, IV.A-B, V.A-D, VI, VII.A-B, VIII.A-C, and IX.A-O of this Agreement shall survive Termination of the Partnership Agreement.

O. Severability. If any part of this Agreement is found invalid or unenforceable, that part will be amended to achieve as nearly as possible, the same economic effect as the original provision and the remainder of this Agreement will remain in full force and effect.

X. NOTICE

Any request, notice or other communication by either Party shall be given in writing and shall be deemed given when actually delivered, one (1) Business Day after it is entrusted to a courier service of national reputation promising overnight delivery service, or three (3) Business Days after deposited in the United States Mail for delivery by registered or certified mail, return receipt requested, with postage prepaid, addressed as follows:

CCGI:

Name: Contracts Manager

Email: ccgicontracts@californiacolleges.edu

Mailing Address:

Foundation for California Community Colleges

Attn: Contracts Department

1102 Q Street, Suite 4800

Sacramento, CA 95811

DISTRICT:

Name:

Email:

Mailing Address:

THE PARTIES HEREBY EXECUTE THIS AGREEMENT.

| | |
|---|-------------------|
| [INSERT] DISTRICT | FOUNDATION |
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |
| DISTRICT <i>(if second signature required)</i> | FOUNDATION |
| By: _____ | By: _____ |
| Print Name: _____ | Print Name: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |
| | CCGI |
| | By: _____ |
| | Print Name: _____ |
| | Title: _____ |
| | Date: _____ |

EXHIBIT A

DATA PRIVACY AND SECURITY ADDENDUM

The purpose of this addendum is to provide a more detailed review of federal and state data privacy and security compliance measures that apply to this Agreement, specifically addressing the requirements of the Family Educational Rights and Privacy Act (“FERPA”), the Children’s Online Privacy Protection Act of 1998 (“COPPA”), California Education Code Section 49073.1, commonly referred to as California Assembly Bill 1584 (or “AB 1584”), and California Business and Professions Code Section 22584, commonly referred to as the “Student Online Personal Information Protection Act” (or “SOPIPA”) or “SB 1177”.

The Foundation for California Community Colleges (“Foundation”), on behalf of its fiscally sponsored project, the California College Guidance Initiative (“CCGI”), receives public funding via the state of California, for the purpose of developing, operating, and maintaining the CaliforniaColleges Website (as defined in the Agreement). Foundation, on behalf of CCGI, sub-contracts with a third party vendor (“Vendor”) to perform the development, operation, and maintenance work. Foundation staff perform data analysis, district support, and serve as the direct point of contact for CaliforniaColleges Website users, as well as managing data sharing relationships and technological articulations with institutions of higher education and financial aid providers.

Foundation Contact for Data Privacy and Security Inquiries

Fowzy Shacker
Chief Technology Officer
California College Guidance Initiative
Foundation for California Community Colleges
1102 Q Street, Suite 4800
Sacramento, CA 95811
(408) 910-0253
Fshacker@californiacolleges.edu

Vendor Contacts for Data Privacy and Security Inquiries

Satish Mirla
Chief Executive Officer
MaiaLearning, Inc.
871 Sycamore Drive
Palo Alto, CA 94303
(408) 332-1534
satish@maialearning.com

Barry Coleman
Chief Technology Officer
MaiaLearning, Inc.
871 Sycamore Drive
Palo Alto, CA 94303
(408)718-9636
Barry@maialearning.com

Commented [ET14]: Third Parties listed under this exhibit must comply with 34 CFR 99.33 “redisclosure of information.” This requires (1) that there is an exception to the parental consent requirement outlined in 34 CFR 99.31 and (2) the names of the additional parties to which CCGI may disclose the information on behalf of the District.

The District should ensure that the authorized third parties have an exception under 34 CFR 99.31 and inform CCGI, which exception is applicable.

I. DATA COLLECTION

- A. Foundation, on behalf of CCGI, collects the following information from Districts and/or directly from System Users:
1. Via district-wide electronic transcript file:
 - a) School demographic data
 - b) Student demographic data
 - c) Student course data
 - d) Student test data
 - e) Student ethnicity data
 2. Via district-wide electronic course catalog file:
 - a) Course data
 3. Via CaliforniaColleges.edu:
 - a) Student-generated data resulting from college and career planning activities like college lists, career lists, major lists, and career assessment results.
- B. As indicated in the Agreement, Education Records, including Student Data, collected from the District continue to be the property of and under the control of the District.
- C. A parent, legal guardian, or Eligible Student must contact District to correct any erroneous information that was uploaded by District into a CaliforniaColleges Website account, as the District is responsible for verifying the accuracy of its Student's Data. Upon receipt of a request to amend erroneous information uploaded by District, District shall notify Foundation and provide to the Foundation an amended transcript file with the correct information. Upon receipt of the amended transcript file, Foundation through Vendor shall upload the amended transcript file within a commercially reasonable time.
- D. Upon termination of this Agreement, System Users will be provided notification and instructions on steps to take in order to retain possession and control of their own student-generated data, if applicable.
- E. Unless a System User elects to maintain their CaliforniaColleges Website account beyond the Term of this Agreement, any Student Data uploaded by District will not be retained or available to Foundation or any third party upon termination of this Agreement.

II. DATA USE

- A. The information listed above is used to create student portfolios on the CaliforniaColleges Website for use in college and career planning and guidance activities.
- B. Education Records, including Student Data, may only be used as specifically required or permitted by this Agreement.
- C. Foundation shall not sell, use or permit any third party to use Student Data, including PII, for commercial purposes or for targeted advertising.

Commented [ET15]: 20 U.S. Code §1232g(2)
Parents/Eligible Students must have the opportunity to review and correct erroneous information.

34 CFR 99.7(a)(2)(ii)
Parents/Eligible Students must be given notice that they have the right to seek amendment of the student's education records that the Parent/Eligible Student believes to be inaccurate, misleading or in violation of student's privacy rights
34 CFR 99.20 (process to amend)

Commented [ET16]: Foundation will not retain student data as described in FERPA and AB 1584.

Commented [ET17]: Ed. Code 49073.1(b)(3)
Required to have this language. Student Data can only be used by CCGI as described in the contract.

Commented [ET18]: See Education Code 49073.1(b)(9).
Prohibits using PII for targeted advertising

III. WHO HAS ACCESS TO DATA (AUTHORIZED DISCLOSURE)

- A. The information from student’s portfolios is only disclosed to the officials or employees of the following groups who have a legitimate interest in the information for purposes consistent with this Agreement:
1. Foundation (collects and maintains Student Data)
 2. Vendor (maintains Student Data)
 3. CaliforniaColleges Website and FTP infrastructure (will not access or use content for any purpose other than as legally required and for maintaining services, and will not directly process or access content)
 4. Any College or College System to which a System User has applied for admission (can be provided Student Data for the purposes of admission, enrollment, matriculation, placement, and supportive services)
 5. System-wide Offices of Educational Segments in California and their employees, contractors, and vendors with a legitimate educational interest in the data for the purpose of performing longitudinal analysis
 6. Any Financial Aid Organization to which a System User has applied for aid, or with whom the District has legally shared Student Data under California law, including, but not limited to, the California Student Aid Commission (“CSAC”).
 - a) Under California Education Code §69432.9 Districts are generally required to provide and verify their student’s grade point average to the CSAC for the Cal Grant Program application. The Foundation, on behalf of CCGI, may provide PII to CSAC to support CSAC’s data matching process by providing CSAC data elements that help to associate the correct SSID with the student’s FAFSA if it is launched via the CaliforniaColleges.edu platform. This data matching assistance helps to facilitate the determination of Cal Grant Program eligibility for students who attend and graduate from a District.
 7. The District’s County Office of Education for the purpose of assisting in planning or preparing for college or a career, seeking admission to college or financial aid for college, and/or research and analysis to help improve instruction and student success.
 8. If the District is a charter school, Foundation may provide Student Data to District’s charter-authorizing entity pursuant to the Charter Schools Act (Education Code section 47600 et seq.)
 9. Foundation may provide Student Data in an aggregated, non-personally identifiable form, to other contracted entities for the purpose of evaluating the impact and effectiveness of the CCGI program or to inform research and evaluation related to state funded grant programs that require participation in CCGI.
 - o If the District is a participant in a grant funded college and/or career readiness collaborative, funded by a state or local agency, in which provision of accounts on CaliforniaColleges.edu is a grant requirement, Foundation may provide Student Data in an aggregated, non-personally identifiable form, to such state and local entities and any collaborative lead agencies for the purpose of evaluating career college readiness services or streamlining eligibility for services. CCGI will not share

Commented [ET19]: 34 CFR 99.31(a)(1)(i)(A) & 99.31(a)(1)(ii) Information only shared with those who have a legitimate interest in the information.

Commented [ET20]: See Reference doc at FERPA(1)(g) 34 CFR §99.31(a)(2); Calif. Education Code §49076(a)(3)

Commented [ET21]: 34 CFR § 99.31(a)(1); 34 CFR §99.31(a)(2); Calif. Education Code §49076(a)(3)

Commented [ET22]: See reference doc at FERPA(1)(f) 34 CFR §99.31(a)(4); Calif. Education Code, §49076(a)(2)(B)

Commented [ET23]: 34 CFR 99.31(a)(3)

Commented [SH24]: This language in 3(a)8 is not listed in the Annotated_LEA_MOU_Consolidated Agreement Template. Please review the Annotated Template for alignment with the LEA_MOU_Consolidated Template_8.11.2023

Commented [ET25]: 34 CFR 99.35 (a)(1) & 34 CFR 99.31(a)(6)

- District data under this section, unless CCGI and the funding entity have entered into an agreement regarding use and security of District’s aggregate, de-identified data.
- Foundation may also provide aggregate level data to California institutions of higher education (“IHE”) in order to support IHE’s in their outreach, admissions, and placement efforts to drive and improve student outcomes.
- Foundation may also disclose aggregate level data to state agencies including, but not limited to: Cradle to Career Data System, CSAC, and the California Department of Education (“CDE”) in order to support inter-segmental cooperation and help identify where information or support can help students to optimize their post-secondary opportunities.

- B. The Parties shall maintain policies and procedures for the designation and training of responsible staff members to ensure the confidentiality and security of Student Data. The Foundation provides data security and privacy training on an annual basis to CCGI staff handling student data. The training covers Federal, State, and Local regulations for maintenance of student data, as well as best practices. All new staff undergo data security and privacy training prior to gaining access to CaliforniaColleges.edu. All data is encrypted both at rest and during transmission using commercially reasonable practices.

Commented [ET26]: Education Code 49073.1(b)(5)
Required to designate and train people to ensure confidentiality of student records.

IV. UNAUTHORIZED DISCLOSURE

- A. The Foundation agrees to maintain an incident response program for purposes of memorializing Foundation’s obligations under applicable law in the event Foundation detects any loss due to a Data Breach, or unauthorized access or use of Education Records or Student Data. Upon confirmation of a Data Breach, Foundation will notify District in accordance with its obligations under applicable law.
- B. District is responsible for any notices to parents as may be required under applicable law and for providing the parent(s), guardian(s) or student(s) with an opportunity to inspect and challenge the contents of the Student Data in question. The Foundation shall cooperate with the District in providing such notices and opportunities to review and challenge the content of the Student Data.
- C. The District agrees to cooperate fully with Foundation to ensure Foundation can comply with any notification obligations Foundation may have to student or any other parties for which notification by Foundation may be required under FERPA and any other applicable law.

Commented [ET27]: Education Code 49073.1(b)(6)
Requires District/Foundation to notify the affected parents or pupils.

Commented [ET28]: 34 CFR 99.7(a)(2) & 99.7(a)(3)



EXHIBIT B

DATA FILE TECHNICAL SPECIFICATIONS

Exhibit B is included for purposes of more fully describing the Data file and the Data file elements utilized by Foundation for the creation of accounts at www.californiacolleges.edu and to provide transparency with respect to the population of the System Users' plans of study with enrolled and completed courses. In alignment with state policy and/or to evolve functionality that serves students in the planning for and transition to college, the Data File Technical Specifications may be iterated over time and additional optional fields may be added to the Data File Technical Specifications.

Refer to the following file specs:

[Student Template](#)

[Course Grade Template](#)

[Test Grade Template](#)

[Course Catalog Template](#)

[Manifest File Overview](#)

[High School Graduate Template](#) - Sent at the End of Year only

District agrees to provide a centralized upload (not school site by school site) of Education Records from the local SIS system into the CaliforniaColleges Website or an FTP server, both hosted by Amazon Web Services, using a standard data format with naming conventions and using a pre-defined protocol. If CCGI has an API integration with district's Student Information System provider, data may alternatively be shared via said API. Files shall minimally be uploaded on a monthly basis, though a weekly upload frequency is strongly recommended in order to ensure alignment between the districts SIS and data as displayed on CaliforniaColleges.edu and as passed to higher education systems. Should there be a delay in data uploads that renders data potentially damaging to students, or that prevents usage of the CaliforniaColleges.edu platform, CCGI reserves the right to revert to the use of CalPADS data to inform basic accounts for all students in the district until such time as a new file from the district has been received. CCGI shall not take this action without providing the District with thirty (30) days written notice.

In order to ensure that student accounts are populated with current and accurate data, the district must provide uploads:

- 1) Phase I data file (at minimum, school demographic information and student demographic information)
 - a. Several weeks prior to the first week of school to ensure that student accounts can be auto-generated and used by educators for training purposes
- 2) Phase II data file (complete electronic transcript file)
 - a. At the start of the school year
 - b. Immediately preceding the CSU and UC Application period (currently October 1-November 30)
 - c. At the end of each term, once grades have posted
 - d. Immediately preceding the district course scheduling period
 - e. At the end of the school year, once final grades have posted and seniors have graduated

The upload protocol is as follows:

- a) Review all data specifications with Foundation/CCGI team for Phase 1 data files (at minimum, school demographic information and student demographic information)

- b) Prepare and upload Phase 1 data files
- c) Make any necessary corrections to Phase 1 data files to meet upload requirements
- d) Conduct final review of testing on test site to ensure accuracy of Phase 1 upload
- e) Review all data specifications with CCGI team for Phase 2 data files (complete electronic transcript file)
- f) Prepare and upload Phase 2 data files
- g) Make any necessary corrections to Phase 2 data files to meet upload requirements
- h) Conduct final review of data on test site to ensure accuracy of Phase 2 upload

SAMPLE