

## **DATA SHARING AGREEMENT**

This Data Sharing Agreement (the “Agreement”) is entered into on this March 26, 2018 (“Effective Date” by and between the **San Rafael City Schools**, a California public school district (“District”) and **10,000 Degrees, a California non-profit corporation on behalf of its initiative Marin Promise Partnership** (“Partnership”). District and Partnership may be referred to herein individually as “Party” and collectively as “Parties.”

### **RECITALS**

**WHEREAS**, Partnership is a county-wide organization dedicated to closing the educational achievement gap in Marin County. Partnership includes school districts, community members, nonprofit directors, government officials, neighborhood leaders, post-secondary educators, CEOs and funders.

**WHEREAS**, District participates in the Marin Promise Partnership by belonging to its executive committee, Marin Promise Partnership Council and six action teams.

**WHEREAS**, Partnership desires to obtain District’s Student Data as defined in Article 1 herein for purposes of creating Deidentified Aggregate Data, as defined in Article 1 herein, that does not identify individual pupils and that can be analyzed and used to assist the District and Partnership in determining the best methods of closing the educational achievement gap.

**WHEREAS**, District desires to authorize Partnership to create from District Student Data the Deidentified Aggregate Data for the use by District and Partnership to meet both Parties objectives of closing the educational achievement gap.

**NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, DISTRICT AND PARTNERSHIP AGREE AS FOLLOWS:**

### **ARTICLE 1 PURPOSE**

1.1 Purpose. The purpose of this Agreement is to set forth the specifications for the sharing of Student Data of the District with certain individuals employed by Partnership for the sole purpose of processing such data for use in the aggregate as Deidentified Aggregate Data (i.e., Student Data is not published, but used for generating Deidentified Aggregate Data) by Partnership and the District.

1.2 “Student Data” is defined as Personally Identifiable Information (as defined in Section 6.1 of this Agreement) about District Pupils that may include Clearing House Data, Demographic Data, and Assessments Data as defined below:

1.2.1 “Clearing House Data” may consist of the following data elements: Pupil name, high school code, high school graduation date, college name, college state, college type (2/4 year, public/private), date enrolled and ended, enrollment status, college graduation status/date, degree title, and major.

1.2.2 “Demographic Data” may consist of the following: School Name, Permanent ID, Last Name, First Name, Grade, District Code, School Code, SSID, Gender, GPA, Zip Code, Language Fluency, Age, Redesignation Date, Newcomer status, School Enter Date, K-5 Teacher Name, Parent Education, Special Ed Status, NSLP Status, Socioeconomic Disadvantaged Status, Birth Country, Home Language, Graduation Status & Date, Race/Ethnicity, Days Tardy, Taking AP Courses, Total Suspensions, Total Referrals, 504 Status, Foster Status, GATE Status, Days Absent, Days Enrolled, Credits Attempted, Credits Completed, Total Community Service hours, Total A-G courses Enrolled current year, Total A-G courses in Transcript, and Total A-G courses student is currently not passing.

1.2.3 “Assessments” consist of the following data elements: CELDT Scores for the last 3 years, SBAC Scores for the last 3 years, and MAP Scores for last 2 years.

1.3 “Deidentified Aggregate Data” is Deidentified Information (as defined in Section 6.2.3 of this Agreement) that is produced by Partnership from Student Data. Partnership will provide Deidentified Aggregate Data to District in the form of cross-sectional and detailed analysis reports such as analyzing student performance based on more than one demographic input (e.g. ethnicity and gender.)

## **ARTICLE 2 TERM AND TERMINATION**

2.1 Term. The term of this Agreement shall be for a period of five (5) years from the Effective Date unless sooner terminated as provided for in Section 2.2 below.

2.2 Termination. Either Party may terminate this Agreement upon fourteen (14) days written notice. If such Agreement is terminated, Partnership shall be responsible for returning all Student Data, Deidentified Aggregate Data, and any other District Data provided to Partnership in whatever format held by Partnership to the District within thirty (30) days of the effective date of termination. Partnership shall delete from its computer systems, networks, and servers any electronically stored District Data and Student Data shared with it by the District or developed by Partnership regarding students of the District and shall produce to the District an affidavit confirming compliance with this Article 2.2 so stating within the thirty (30) day window.

## **ARTICLE 3 OWNERSHIP OF DATA/INFORMATION**

3.1 Partnership acknowledges that information provided to Partnership from the District is the property of District and includes Student Data that will be maintained in accordance with the Family Educational Rights and Privacy Act (“FERPA”) and consistent with District policies and this Agreement.

## **ARTICLE 4 CONFIDENTIALITY/NON-DISCLOSURE**

4.1 Partnership acknowledges that the sharing of data by the District is for the sole purpose of processing Student Data into a format so that it may be shared as Deidentified Aggregate Data. Accordingly, such Student Data shall only be shared by the District with the specific individuals mentioned in this Agreement who will be processing the Student Data. Partnership acknowledges that during the course of this Agreement, **Michael Looft and Ann Mathieson** are the only staff members of Partnership who will have access to and become acquainted with personally identifiable and other confidential Student Data. Such individuals acknowledge that they will not disclose any such information, directly or indirectly, either during the term of this Agreement or at any time thereafter, to any person, even other employees of Partnership, except as specified in this Agreement. All files, records, documents, specifications, information and similar items relating to Student Data including all confidential student information and personally identifiable student information, whether prepared by employees of Partnership or otherwise coming into the possession of **Michael Looft and Ann Mathieson**, shall remain the exclusive property of the District. Upon the expiration or earlier termination of this Agreement, or whenever requested by the District, Partnership shall immediately deliver to the District all such files, records, documents, information, and other items in the possession of Partnership or under the control of Partnership which pertain to the District Student Data. All Student Data shared with Partnership will reside on a dedicated folder located on Dropbox (a cloud-based server) with view access restricted to Michael Looft and Ann Mathieson. Partnership shall be responsible for ensuring that the protections of Student Data required by this Agreement and applicable law shall be applicable to and complied with by Dropbox.

## **ARTICLE 5 BREACH OF CONFIDENTIALITY**

5.1 Partnership further acknowledges that it must contact the District in writing immediately if there has been an unauthorized disclosure of Student Data including any personally identifiable student information or other confidential student information whether or not maintained in educational records, or if Partnership reasonably believes that such disclosure has occurred. Under no circumstances may Partnership disclose Student Data to a party other than the District without express written permission of the District. Partnership agrees to cooperate with the District in any investigation into any suspected disclosure of Student Data.

## **ARTICLE 6 COMPLIANCE WITH CALIFORNIA EDUCATION CODE SECTION 49073.1**

6.1 Partnership will be authorized to access, store and use Pupil Records as specified in this Agreement. As a California school district, District is subject to California Education Code section 49073.1 and Partnership is a “third party” under California Education Code section 49073.1(d)(6). California Education Code section 49073.1 requires that any contract for the provision of services entered into between District and Partnership contain provisions specified in sections (b)(1) through (b)(9) of California Education Code section 49073.1.

6.2 Definitions: As used in herein the following terms are defined as follows:

6.2.1 “Adult Pupil” means a Pupil who has reached 18 years of age.

6.2.2 “District Data” means documents, information and data, including Pupil Records, submitted to Partnership by District for processing through Partnership’s services and/or documents, information and data input or maintained by District through Partnership’s services.

6.2.3 “Deidentified Information” includes “Deidentified Aggregate Data and means information that does not contain Personally Identifiable Information and that cannot be used to identify an individual Pupil.

6.2.4 “Parent” means a natural parent, an adopted parent or legal guardian of a Pupil.

6.2.5 “Pupil” means a student of District.

6.2.6 “Personally Identifiable Information” includes: 1) the Pupil’s name, 2) the name of the Pupil’s parent or other family members, 3) the address of the Pupil or Pupil’s family, 4) a personal identifier, such as a Pupil’s social security number, Pupil’s number, or biometric record, 5) other indirect identifiers, such as the Pupil’s date of birth, place of birth, and mother’s maiden name, 6) other information that, alone or in combination, is linked or linkable to a specific Pupil that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the Pupil with reasonable certainty, or 7) information requested by a person who the educational agency or institution reasonably believes knows the identity of the Pupil to whom the Pupil Record relates.

6.2.7 “Pupil Records” includes Student Data and means both of the following regardless of how otherwise defined or described in the Agreement: 1) any information directly related to a Pupil that is maintained by District, and 2) any information acquired directly from the Pupil through the use of instructional software or applications assigned to the Pupil by a teacher or other District employee. “Pupil Records” does not mean aggregated Deidentified Information used by Partnership for the following purposes: to improve educational products for adaptive learning purposes and for customizing Pupil learning; to demonstrate the effectiveness of the Partnership’s products in the marketing of those products; or for the development and improvement of educational sites, services, or applications.

6.2.8 “Pupil Generated Content” means materials created by a Pupil, including but not limited to essays, research reports, portfolios, creative writing, music or other audio files, photographs; but it does not include Pupil responses to a standardized assessment where Pupil possession and control would jeopardize the validity and reliability of that assessment.

6.3 Ownership and Control of District Data, Including Pupil Records. All District Data, including Pupil Records, remain the exclusive property of District and District retains exclusive rights, ownership and control thereto.

6.4 Ownership and Control of Generated Content. A Pupil may retain possession and control of his/her own Pupil Generated Content retained, stored or hosted by Partnership's software/information systems.

6.5 Use of Pupil Records. Partnership shall not use Pupil Records to which it has access by way of the Agreement for any purpose other than those required or specifically permitted by the Agreement.

6.6 Review and Correction of Pupil Records. A Parent or Adult Pupil may review his/her Pupil Records that are retained, stored, hosted, accessed or used by Partnership by making a request in writing to District for access to his/her subject Pupil Records. Subject to District verification of identity, approval of disclosure and redaction of any Personally Identifiable Information of a Pupil, other than the Pupil of the Parent or Adult Pupil who is making the request, District will direct Partnership to provide access to any/all requested Pupil Records within five (5) business days or as otherwise required by law, by issuing the Parent or Adult Pupil a temporary user name and password to log on to the Partnership's software/information system to review the requested Pupil Records. This time frame may be extended by written consent of the Parent or Adult Pupil. District shall have exclusive authority over Partnership with respect to authorizing disclosure of Pupil Records pursuant to this Amendment. A Parent or Adult Pupil may correct erroneous information identified upon review of Pupil Records by making a written request to District. Subject to District's verification of identity and approval of such a request to correct erroneous information, District shall notify Partnership of the approved request. Partnership shall correct the erroneous information as directed by District. Partnership shall direct all requests to review and/or correct erroneous information to District's data representative.

6.7 Security and Confidentiality of Pupil Records. Partnership will do the following to ensure the security and confidentiality of Pupil Records:

6.7.1 Designate an employee responsible for the training and compliance of all Partnership employees, agents, and assigns on compliance with security and confidentiality provisions detailed in this Amendment.

6.7.2 Partnership will protect the confidentiality of Pupil Records and take all reasonably necessary measures consistent with industry standards to protect District Data from any and all unauthorized access and disclosures.

6.7.3 Partnership represents and warrants that it has designated an individual responsible for training Partnership employees, agents and assigns on reasonable protection measures and the confidentiality of Pupil Records consistent with state and federal law.

6.7.4 Partnership shall not disclose Pupil Records, except as specified under the terms of the Agreement or as required by law.

6.7.5 Partnership shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all stored, managed, retained, accessed or used Pupil Records received from or on behalf of District, Parents or Adult Pupils.

6.7.6 Partnership warrants that all confidentiality and security measures identified in the Agreement will be extended by contract to any and all subcontractors used by Partnership, if any, to execute the terms of the Agreement.

6.7.7 Partnership warrants that all Pupil Records will be encrypted in transmission and storage.

6.7.8 Partnership will use appropriate and reliable storage media, regularly backup Pupil Records and retain such backup copies for the duration of the Agreement.

6.7.9 Partnership warrants that all Pupil Records will be stored in the United States.

6.7.10 Partnership warrants that all confidentiality and security measures identified in this Agreement will be extended by contract to any and all subcontractors used by Partnership. Compliance with this requirement shall not, in itself, absolve Partnership of any liability in the event of an unauthorized disclosure of Pupil Records.

6.8 Unauthorized Disclosure Notifications. In the event of an unauthorized disclosure of Pupil Records the following process will be implemented:

6.8.1 Immediately upon becoming aware of a compromise of Pupil Records, or of circumstances that could have resulted in an unauthorized access to or disclosure of Pupil Records, District and Partnership agree to notify the other party, fully investigate the incident and fully cooperate with District's investigation of the incident, implement remedial measures and respond in a timely manner.

6.8.1.1 Parent or Adult Pupil will be immediately notified of:

(1) the nature of the unauthorized use or disclosure (e.g., security breach, nonconsensual re-disclosure, etc.);

(2) the specific Pupil Records that were used or disclosed without authorization;

(3) what Partnership and District have done or will do to mitigate any effects of the unauthorized use or disclosure; and

(4) what corrective action Partnership and District have taken or will take to prevent future occurrences.

6.8.2 Except as otherwise required by law, Partnership will not provide notice of the incident directly to the Parent or Adult Pupil whose Pupil Records were involved, regulatory agencies, or other entities, without prior written permission from District.

6.8.3 Compliance with this requirement shall not, in itself, absolve Partnership of any liability in the event of an unauthorized disclosure of Pupil Records.

6.9 Retention and Destruction of Pupil Records. Partnership warrants that upon the termination of the Agreement, Partnership will securely transmit all District Data, including Pupil Records, to District in a mutually agreed upon format, without retaining any copies of District Data. In the alternative, and subject to a written request from District, Partnership will securely destroy all District Data, including Pupil Records, upon termination of the Agreement. Partnership will then provide verification to District that the District Data not otherwise returned to District was destroyed pursuant to District's written request, the date of destruction and the method of destruction. If Pupil chooses to establish or maintain an account with Partnership for the purpose of storing Pupil Generated Content, this provision shall not apply. Notwithstanding this provision, Partnership will comply with all litigation holds and/or court orders to preserve District Data.

6.10 Compliance with Applicable Laws. As District Data includes Pupil Records subject to the Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) ("FERPA"), Partnership will be considered a "School Official" (as the term is used in FERPA and its implementing regulations) for any and all software, hosting and services provided to District through the Agreement. District and Partnership agree that the services provided to District through the Agreement serve a "legitimate educational interest," as defined and used in FERPA and its implementing regulations. District and Partnership will jointly ensure compliance with FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to California Education Code section 49060 *et seq.*, the Children's Online Privacy Protection Act ("COPPA") and the Student Online Personal Information Protection Act ("SOPIPA"). The parties shall comply with the following process for compliance with FERPA and California law:

6.10.1 Partnership and District warrant that they are familiar with the confidentiality, security and disclosure requirements of FERPA, its implementing regulations and Pupil privacy and confidentiality requirements of California law, including but not limited to California Education Code section 49060 *et seq.* COPPA and SOPIPA and have designated an individual responsible for ensuring compliance therewith.

6.10.2 Partnership and District shall abide by the disclosure, security, breach notification, retention/destruction and use provisions contained in this Amendment to the Agreement and as required by law.

6.10.3 By the signature of its authorized representative or agent below, Partnership hereby acknowledges that District has provided notice under California Education Code section 49075(a) and 34 C.F.R. section 99.33(d) that Partnership is strictly prohibited from disclosing Pupil Records to any third party without prior written consent and direction to authorize disclosure by District.

6.10.4 Compliance with this requirement shall not, in itself, absolve Partnership of its duty to comply other applicable privacy laws. Partnership hereby agrees to comply with all other applicable federal and state privacy laws.

6.11 Targeted Advertising Prohibited. Partnership shall not use any District Data, including Pupil Records, to engage in targeted advertising during the term of the Agreement, and this provision shall survive the termination of the Agreement.

6.12 Material Breach and Termination of Agreement. If District reasonably determines in good faith that Partnership has materially breached any of its obligations under this Amendment, District, in its sole discretion, shall have the right to provide Partnership with written notice of a fifteen (15) day period to cure the breach. If Partnership fails to cure a breach within that period of time, District may terminate the Agreement immediately. If, in its sole discretion, District determines that cure is not possible, District may provide written notice of immediate termination of the Agreement.

6.13 Indemnity. Partnership shall indemnify, defend and hold District harmless from all claims, liabilities, damages or judgments, including District's costs and attorney's fees, which arise as a result of such unauthorized disclosures or misuse of District Data, including Pupil Records, or Partnership's breach of any terms of the Agreement or this Amendment, excluding those claims, liabilities, damages or judgments arising from the sole active negligence or willful misconduct of District. This indemnification shall survive the termination of the Agreement and shall extend to claims arising after the Agreement is terminated as well as while it is in force.

## **ARTICLE 7 GENERAL TERMS AND CONDITIONS**

7.1 No Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by Partnership to any person other than persons specified in this Agreement and/or to any other entity without the prior written consent of the District.

7.2 Recitals. The Recitals are true and correct and hereby incorporated by reference into the Agreement.

7.3 Modification. Any modification of this Agreement will be effective only if it is in writing signed by both Parties.

7.4 Governing Law/Forum. This Agreement will be governed and construed in accordance with the laws of the State of California, and the parties consent to the exclusive jurisdiction of the appropriate state or federal Court in Marin County, California.

7.5 Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

7.6 Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

7.7 Independent Contractor. In the performance of their respective duties and obligations under this Agreement, each Party is an independent contractor, and neither is the agent, employee, or servant of the other, and each is responsible for its own conduct.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first written above.

**Marin Promise Partnership**

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

Title: \_\_\_\_\_

**San Rafael City Schools**

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

Title: \_\_\_\_\_

**10,000 Degrees**

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

Title: \_\_\_\_\_