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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Rebecca Lacocque, Director, Linked Learning

Meeting Date April 12, 2023

Subject Memorandum of Understanding - Educational Results Partnership - Cal-Pass Plus – High School Linked Learning Department

Ask of the Board Approval by the Board of Education of a Memorandum of Understanding by and between the Educational Results Partnership, Cal-Pass Plus, Sacramento, CA, for the latter to provide The Launch Board, a statewide data system supported by the California Community Colleges Chancellor's Office and hosted by Cal-PASS Plus, provides data to California community colleges on progress, employment, and earnings outcomes for both CTE and non-CTE pathways; collects, analyzes and shares student data among Cal-PASS Plus Members in order to track performance and improve student outcomes from pre-K through 12th grade, and through college and the workplace. Cal-PASS Plus services are provided without fees or cost to Cal-PASS Plus Members; improve transitions and success across educational segments, for the High School Linked Learning Office, for the period of April 13, 2023 through June 30, 2028, at no cost to the District.

Background This information is intended to facilitate local, regional, and statewide conversations about how to foster economic mobility. Oakland Unified School District has been awarded grant funds through the K12 Strong Workforce Program to improve high school completion and postsecondary transition to community college, Career Technical Education, and ultimately livable-wage and fulfilling careers. The K12 Strong Workforce Program (SWP) requirements provide that to participate in the SWP, grantees are required to submit data related to Career Technical Education programs as required by CA EDUC 88828(d)(8). All student data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of OUSD. OUSD shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.

Discussion All student data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of OUSD. OUSD shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 158 and all other California privacy statutes.

Fiscal Impact The MOU is required for OUSD to receive Strong Workforce Funding. Annually, OUSD receives approximately \$1 million from the K12 Strong Workforce Program.

Attachment(s)

- Memorandum of Understanding
- Copy - Data Privacy Agreement, Education Results Partnership, File ID #21-1245, Enactment # 21-0938



CALIFORNIA PARTNERSHIP FOR ACHIEVING STUDENT SUCCESS

MEMBER INSTITUTION MEMORANDUM OF UNDERSTANDING

In signing this Memorandum of Understanding (“MOU”),
[Institution Name] Oakland Unified School District (“Institution”) agrees become a member institution of the California Partnership for Achieving Student Success (“Cal-Pass Plus”) and to be bound by all terms and conditions of this MOU.

RECITAL

A. Cal-PASS Plus is a program conducted by Education Results Partnership, Inc., a California nonprofit public benefit corporation (“ERP”) together with San Joaquin Delta College (“SJDC”) and the California Community Colleges Chancellor’s Office (“CCCCO”). Cal-PASS Plus collects, analyzes, and shares student data with educational institutions who have agreed to become part of Cal-PASS Plus by entering into a memorandum of understanding (“Cal-PASS Plus Members”). Cal-PASS Plus collects, analyzes and shares student data among Cal-PASS Plus Members in order to track performance and improve student outcomes from pre-K through 12th grade, and through college and the workplace. Cal-PASS Plus services are provided without fees or cost to Cal-PASS Plus Members. Data sharing also assist educational institutions to meet compliance reporting requirements and to assist organizations with the research necessary to increase knowledge and collaboration among educational institutions. To that end, Cal-PASS Plus will coordinate the process of Cal-PASS Plus Members sharing academic performance data concerning students who have attended or who are attending their institutions by facilitating the transfer of data between Cal-PASS Plus Members in a manner consistent with FERPA, other applicable federal and California state laws and regulations, local regulations, and best practices and guidelines.

B. Cal-PASS Plus is designed to improve transitions and success across educational segments. Cal-PASS Plus Members may use data provided by Cal-PASS Plus to develop, implement, and assess interventions to improve instruction, and also to identify higher performing institutions and programs to support collaboration and peer-to-peer sharing of best practices. Institution-based, multi-segmental work groups (also known as Regional Learning Councils, or RLC’s) are the preferred venues for Cal-PASS Plus participation.

C. In entering into this MOU, Institution accepts and agrees to abide by all MOU terms and conditions, elects to become a Cal-PASS Plus Member, and to actively engage in data sharing with Cal-PASS Plus and the other Cal-PASS Plus Members.

THEREFORE, the Institution agrees to the following terms of this MOU:

ARTICLE 1. DEFINITIONS

As used in this Agreement, the following terms have the meanings as specified below:

“**Cal-PASS Plus Parties**” shall have the meaning assigned to such term in Article 2.

“**Cal-PASS Plus**” shall have the meaning assigned to such term in the first paragraph of this MOU.

“**Cal-PASS Plus Data**” means the data elements that are defined in the Data Element Dictionary as may be amended by Cal-PASS Plus from time to time and which data elements have been provided to Cal-PASS Plus.

“**Cal-PASS Plus Members**” shall have the meaning assigned to such term in Recital A.

“**CCCCO**” shall have the meaning assigned to such term in Recital A.

“**ERP**” shall have the meaning assigned to such term in Recital A.

“**FERPA**” shall mean the Family Education Rights and Privacy Act of 1974.

“**Institution**” shall have the meaning assigned to such term in the first paragraph of this MOU.

“**MOU**” shall have the meaning assigned to such term in the first paragraph of this MOU.

“**MOU Addenda**” shall have the meaning assigned to such term in Section 2.

“**Partner Organizations**” shall mean ERP, SJDC and CCCCCO.

“**SJDC**” shall have the meaning assigned to such term in Recital A.

“**Termination Event**” shall mean (a) a material breach of this MOU by Institution; (b) any act by Institution exposing the Cal-PASS Plus, any Partner Organization or any other Cal-PASS Plus Party to liability for personal injury or property damage; or (c) Institution confirms its insolvency or is adjudged a bankrupt, or assumes negative fiscal status; Institution makes a general assignment for the benefit of creditors, or a receiver is appointed on account of Institution’s insolvency.

ARTICLE 2. PURPOSE OF CAL-PASS PLUS AND MOU

It is the role of Cal-PASS Plus to create the mechanisms and procedures by which CAL-PASS Plus Members, ERP, SJDC and CCCCCO (collectively, “**Cal-PASS Plus**”) share, store, compare, analyse and disseminate academic performance data and research obtained through the analysis of such data, concerning students who have attended or who are attending Cal-PASS Plus Member institutions by facilitating the transfer of data between Cal-PASS Plus Parties in a manner

consistent with all federal, state and local laws and regulations including, without limitation, FERPA, and best practices and guidelines within this industry.

The purpose of this MOU is to provide the terms and conditions by which Cal-PASS Plus Parties agree to share and use such data. The Cal-PASS Plus Parties may enter into one or more addenda or amendment outlining additional terms, conditions, roles or obligations with respect to the operation of Cal-PASS Plus (“**MOU Addenda**”). Each MOU Addenda shall be binding on the Cal-PASS Plus Member upon its execution of the MOU Addenda and shall, upon such execution, form a part of this Agreement and its terms shall be fully incorporated herein as though fully set forth in this Agreement.

Institution acknowledges that performance of its obligations under this MOU may require frequent and timely exchanges of information between one or more of the Cal-PASS Plus Parties. Cal-PASS Plus’ ability to execute the Cal-PASS Plus program is conditioned upon timely receipt of necessary information from Institution, provided that Cal-PASS Plus provides Institution with reasonable advance notice of the need for such information and the date by which such information is required.

ARTICLE 3. DATA SHARING

Institution shall provide to Cal-PASS Plus the Cal-PASS Plus Data as required of Institution by the Cal-PASS Plus administrator. Said Cal-PASS Plus Data shall be provided in the manner and form as specified by the administrators of Cal-PASS Plus. Cal-PASS Plus Data shall be used by Cal-PASS Plus Parties consistent with the terms and conditions of this MOU.

Occasionally, requests may be made from researchers or research institutions for data aggregated in a particular manner. Cal-PASS Plus may, from time to time at its discretion, provide aggregated and anonymous data based on the data received from Cal-PASS Plus Parties to researchers or research institutions for analysis and research concerning the improvement of academic instruction and student outcomes. Cal-PASS Plus agrees to share the data in a manner consistent with the FERPA guidelines, ensuring the confidentiality of records.

Institution understands that, in order to conduct the Cal-PASS Plus Program, it may be necessary for Cal-PASS Plus and/or its Partner Organizations to share Cal-PASS Plus Data with such third parties as it deems necessary or appropriate to conduct Cal-PASS Plus provided, however, that the third party has agreed in writing to maintain the confidentiality obligations, including compliance with FERPA, as each of the Cal-PASS Plus Parties are required to do under this MOU.

In addition, Cal-PASS Plus shall have the ability to display summary-level reports of Cal-PASS Plus Data on the publicly accessible Cal-PASS website.

A. Confidentiality and Security of Data

All Cal-PASS Plus Parties shall maintain the confidentiality of any and all student data exchanged by each as a part of this MOU and Cal-PASS Plus. In accepting, maintaining and sharing Cal-PASS Plus Data, all Cal-PASS Plus Parties shall comply with all federal, state and local laws and regulations including, without limitation, FERPA. The requirements under this paragraph shall survive the termination or expiration of this MOU or any subsequent agreement intended to supersede this MOU.

To ensure the continued confidentiality and security of the student data processed, stored, or transmitted under this MOU, each Cal-PASS Plus Party shall establish a system of safeguards that will, in all respects, comply with all federal, state and local laws and regulations including, without limitation, FERPA and other privacy protection laws and regulations. Specifically:

1. Institution, to the extent it is an education institution collecting educational records of its students, understands that it may not disclose educational records without written consent from the parent or eligible student, except to the following parties under the following conditions: school officials with legitimate educational interest; other schools to which a student is transferring; specified officials for audit or evaluation purposes; appropriate parties in connection with financial aid to a student; organizations conducting research or studies for or on behalf of the school; accrediting organizations; to comply with a judicial order or lawfully issued subpoena; appropriate officials in cases of health and safety emergencies; and state and local authorities, within a juvenile justice system, pursuant to specific State law.
2. For the purposes of this MOU, Institution acknowledges and agrees that Cal-PASS Plus is considered an organization conducting research and other services on behalf of Institution.
3. Institution will not use Cal-PASS Plus Data received through Cal-PASS Plus for any purpose other than that specifically allowed under the terms of this MOU.
4. This MOU does not allow Institution (or its subcontractors) to disclose Cal-PASS Plus Data to any other third parties except as set forth under this MOU or in limited circumstances permitted under FERPA.
5. To ensure the continued confidentiality and security of the Cal-PASS Plus Data, stored, or transmitted under this MOU, Institution shall assume responsibility of data received and will employ industry best practices, both technically and procedurally, to protect data from unauthorized physical and electronic access.
6. To ensure the continued confidentiality and security of the student data processed, stored, or transmitted under this MOU, Institution shall establish, implement, and maintain policies, procedures, and systems that ensure all Cal-PASS Plus Data is kept in secured facilities and access to such records is limited to personnel who are authorized to have access to said data.
7. All staff of Institution involved in the handling, transmittal, and/or processing of Cal-PASS Plus Data provided under this MOU will be required to execute a confidentiality

agreement requiring said personnel to maintain the confidentiality of all student related personally identifiable information.

8. To ensure the continued confidentiality and security of Cal-PASS Plus Data, stored, or transmitted under this MOU, Institution shall establish, implement, and maintain policies, procedures, and systems shall require the use of appropriate safeguards, including secure passwords to access databases used to process, store, or transmit Cal-PASS Plus Data provided under this MOU.

9. Institution will establish, implement, and maintain internal procedures, systems, and safeguards: to maintain the integrity of their systems and secure databases used to process, store, or transmit Cal-PASS Plus Data provided under this MOU, and to maintain the Cal-PASS Plus Data in a secure manner that prevents the interception, diversion, or other unauthorized access to said data.

10. Institution shall ensure that any and all disclosures of Cal-PASS Plus Data comply with all provisions of FERPA and other applicable federal and California state laws and regulations relating to the privacy rights of students, such as but not limited to, the Information Practices Act and the California Public Records Act.

11. Institution shall immediately notify Cal-PASS Plus in the event the security, confidentiality, or integrity of the Cal-PASS Plus Data exchanged is, or is reasonably believed to have been, compromised. Notification will take place within 24 hours of discovery.

12. Exchange of data between Cal-PASS Plus Parties and/or third party contractors is subject to the requirements outlined in this MOU. Cal-PASS Plus Parties may subcontract to assist in performing the Roles and Responsibilities hereunder.

B. Method of Transfer

Cal-PASS Plus will employ industry best practices, both technically and procedurally to protect the data from unauthorized physical and electronic access during transfer. Typical secure methods of transfer include Secure File Transfer Protocol (SFTP), Secure HTTPS transfer or via encrypted physical media. Any other transfer methods employed and the procedures utilized by Institution to protect the data provided under this agreement are the responsibility of the Institution but are subject to review and approval by the administrators of Cal-PASS Plus.

C. Disposition of Data

Any Cal-PASS Plus Data received pursuant to this Agreement shall be one way encrypted, stripped of personally identifiable information and the primary source data will be archived securely, detached from all Internet connected devices, and only accessible to the administrators of Cal-PASS Plus authorized staff.

ARTICLE 4. INDEMNIFICATION

Institution shall defend, indemnify, and hold harmless each of the other Cal-PASS Plus Parties and their affiliates, respective officers, directors, shareholders, members, employees, agents, attorneys, representatives and their respective successors and permitted assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind (including reasonable attorneys' fees and costs) arising out of or resulting from: (a) any misrepresentations made or factually incorrect information provided willfully or negligently by Institution to another Cal-PASS Plus Party; (b) Institutions' noncompliance with any federal, state or local law, statute, rule, or regulation; (c) Institution's breach of any term or condition of this MOU; or (d) the negligent or intentional acts or omissions of Institution.

ARTICLE 5. ENTIRE AGREEMENT

This MOU states the entire agreement between the Cal-PASS Plus Parties with respect to its subject matter and supersedes any previous and contemporaneous or oral representations, statements, negotiations, or agreements. Institution and Cal-PASS have entered a Data Sharing Agreement that governs the sharing of data pursuant to this MOU.

ARTICLE 6. REPRESENTATIONS AND WARRANTIES

Institution represents and warrants that:

- 1) The person signing this MOU on behalf of Institution represents and warrants that he or she has authority to sign on behalf and to bind such party.
- 2) Institution represents that it has the right and power to authorize participation in Cal-PASS Plus and to undertake its obligations as set forth in this Agreement.
- 3) The execution of this MOU by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary actions.
- 4) In performing its obligations under this MOU, Institution will comply with all applicable federal, state and local, laws, rules and regulations.
- 5) Institution shall not knowingly provide to Cal-PASS Plus, Cal-PASS Plus Data that is false or inaccurate.

ARTICLE 7. ASSIGNMENT

Institution may not assign their rights, duties, or obligations under this MOU, either in whole or in part, without the prior written consent of Cal-PASS Plus.

ARTICLE 8. SEVERABILITY

Each term or provision of this MOU shall be valid and enforced as written to the full extent permitted by law. If any provision of this MOU is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this MOU, such provision shall be fully severable. This MOU shall remain in full force and effect, unaffected by such severance, provided that the severed provision(s) are not material to the overall purpose and operation of this MOU.

ARTICLE 9. WAIVER

Waiver by any signatory to this MOU of any breach of any provision of this MOU or warranty of representation set forth herein shall not be construed as a waiver of any subsequent breach of the same or any other provision. The failure to exercise any right under this MOU shall not operate as a waiver of such right. All rights and remedies provided for in this MOU are cumulative.

ARTICLE 10. MODIFICATION AND AMENDMENTS

Except for the Data Element Dictionary, this MOU may only be amended, modified or supplemented by an agreement in writing signed by authorized representatives of the Institution. The Data Element Dictionary may be amended by Cal-PASS Program from time to time by providing Institution with thirty (30) days prior written notice of any such amendment.

ARTICLE 11. TERM

This MOU shall be in effect with respect to Institution upon its execution of this MOU and will remain in effect until terminated in accordance with Article 12. This MOU shall be deemed terminated five (5) years from date of execution, and notice shall be deemed given **ARTICLE 12. TERMINATION** thirty (30) days prior.

Institution, may terminate this MOU and, as a result, its participation in Cal-PASS Plus, by providing Cal-PASS Plus thirty (30) days' written notice. Notice shall be deemed given upon Cal-PASS Plus' actual receipt of the written notice. However, termination of Institution will have no force or effect on the rights and responsibilities as to the remaining Cal-PASS Plus Parties.

A Partner Organization will notify in writing Cal-PASS Plus in the event it decides to terminate its participation in Cal-PASS Plus. This MOU shall also immediately terminate in the event of the termination or cancellation of Cal-PASS Plus as a program.

The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to Cal-PASS Plus at law or equity. Written notice by Cal-PASS Plus shall be deemed given when received by Institution.


ARTICLE 13. JOINDER OF OTHER CAL-PASS PLUS PARTIES

Cal-PASS Plus Parties agree that any school district, county office of education, community college district, WASC accredited public or private four-year college or university located in California or other educational organization whose purpose is to improve student success, may

become a party to this MOU by executing a counterpart of this MOU in form substantially similar hereto.

ARTICLE 14. EXECUTION AND DELIVERY OF MOU

A signed copy of this MOU delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MOU. In executing and returning a signed copy of this MOU, the "Authorized Officer" represents and warrants that he or she has all requisite power and authority to execute and deliver this MOU, all necessary approvals for the execution and delivery of this MOU on behalf of the Institution has been obtained.

Approved as to form by OUSD Staff Attorney Joanna Powell on 10/7/2022. 

Authorized Officer Signature: 

Date: 10/7/2022

Institution Name: Oakland Unified School District

Print Name: Juan Du

Title: Executive Director, Department of Research, Assessment and Data

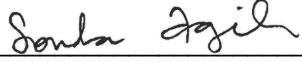
Phone: 510-879-5703 Email: juan.du@ousd.org

MOU Submission

This MOU may be signed and completed via Echosign by visiting this URL [<https://www.calpassplus.org/CalPASS/Join/NewMou.aspx>], by e-mail to [dmoynihhan@edresults.org] or by US Mail addressed as follows:

Educational Results Partnership
Attn: Cal-PASS Plus
428 J Street, Suite 320
Sacramento, CA 95814

If you choose to limit the institutions with which you share data, contact Cal-PASS Plus for assistance.

x  3/16/2023
Sondra Aguilera,
Chief Academic Officer

Designation of Contacts for Cal-PASS Plus

Name of Institution/District: Oakland Unified School District

Primary Contact: This person is responsible for coordinating the Cal-PASS Plus process at your institution. This is also the person who will receive a primary User ID and Password, which are required to access data and performance reports on the web site. The primary contact will be notified when a new user from your institution has been given login credentials. If login credentials are to be revoked, it is the responsibility of the primary Contact to notify Cal-PASS Plus in writing. It is the responsibility of the Institution to notify Cal-PASS Plus, in writing, when the Primary Contact role moves to another employee.

Name: Rebecca Lacocque

Title: Linked Learning Director

Phone Number: 510-326-8054

Email Address: rebecca.lacocque@ousd.org

Data Submission Contact: This person is responsible for generating and submitting the data files. It is the responsibility of the Institution to notify Cal-PASS Plus, in writing, when the Data Submission Contact role moves to another employee.

Name: Kevin Schmidke

Title: Data Analyst II

Phone Number: 510-879-1751

Email Address: kevin.schmidke@ousd.org

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| Board Office Use: Legislative File Info. | |
| File ID Number | 21-1245 |
| Introduction Date | 6/2/21 |
| Enactment Number | 21-0938 |
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Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Sondra Aguilera, Chief Academic Officer
Lucia Moritz, Executive Director, College & Career Readiness
Rebecca Lacocque, Director, Linked Learning

Meeting Date June 2, 2021

Subject Data Privacy Agreement, Educational Results Partnership

Ask of the Board Ratification by the Board of Education of a Data Privacy Agreement between Oakland Unified School District (“OUSD”) and Educational Results Partnership (“ERP”).

Background Oakland Unified is a member educational institution in the California state-wide Cal-PASS Plus program. ERP, a nonprofit public benefit corporation, is a Cal-PASS Plus Partner Organization responsible for facilitating the exchange of Cal-PASS Plus Data. Oakland Unified has been awarded a Strong Workforce Program (“SWP”) grant to create, support and expand quality Career Technical Education programs in K-12. The SWP grant requires recipients to submit data related to CTE programs in K-12 to ERP as part of Cal-PASS Plus.

Discussion All student data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of OUSD. OUSD shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRA, SOPIPA, AB 1584 and all other California privacy statutes.

Fiscal Impact The Data Privacy Agreement is required for OUSD to receive Strong Workforce funds. Annually, OUSD receives approximately \$1 million from the SWP.

Attachment(s)

- Educational Results Partnership Data Privacy Agreement

**EDUCATIONAL RESULTS PARTNERSHIP DATA PRIVACY AGREEMENT
(for use with Cal-PASS Plus MOU)**

This Data Privacy Agreement (“**DPA**”) is entered into by and between **Oakland Unified School District** (“**OUSD**”) and Educational Results Partnership (“**ERP**”). District Name and ERP are each referred to herein as a “**Party**” and collectively, as the “**Parties.**” Capitalized terms used but not defined herein shall have the meaning set forth in the MOU (as that term is defined in the first recital below). The Parties agree to the terms as stated herein.

RECITALS

WHEREAS, OUSD is a member educational institution in the California state-wide Cal-PASS Plus program (“**Cal-PASS Plus**”) and, as a result, **OUSD** has executed the Memorandum of Understanding (“**MOU**”) required of all Cal-PASS Members;

WHEREAS, ERP, a California nonprofit public benefit corporation, is a Cal-PASS Plus Partner Organization responsible for facilitating the exchange of Cal-PASS Plus Data in order to fulfil the purposes of Cal-PASS Plus as set forth in the MOU;

WHEREAS, ERP will receive or create, and the District Name will provide documents or data as part of the Cal-PASS Plus Data that are covered by several federal statutes, among them, the Family Educational Rights and Privacy Act (“**FERPA**”) at 20 U.S.C. 1232g (34 CFR Part 99), Children's Online Privacy Protection Act (“**COPPA**”), 15 U.S.C. 6501-6506; Protection of Pupil Rights Amendment (“**PPRA**”) 20 U.S.C. 1232h;

WHEREAS, the Cal-PASS Plus Data also is subject to California state student privacy laws, including AB 1584, found at California Education Code Section 49073.1 and the Student Online Personal Information Protection Act (“**SOPIPA**”) found at California Business and Professions Code section 22584;

WHEREAS, for the purposes of this DPA, ERP is a school official with legitimate educational interests in accessing educational records pursuant to the Cal-PASS Plus;

WHEREAS, OUSD has been awarded a Strong Workforce Program (“**SWP**”) grant to create, support and expand quality CTE programs in K-12;

WHEREAS, the SWP grant requirements provide that to participate in the SWP, District Name is required to submit data related to CTE programs as required by CA EDUC 88828(d)(8) by November 1st of each year;

WHEREAS, OUSD will provide student data to ERP (“**SWP Data**”) as part of Cal-PASS Plus necessary for ERP to compile the data required for under the SWP grant; and

WHEREAS, the Parties wish to enter into this DPA to ensure that the exchange of Cal-PASS Plus Data conforms to the requirements of the privacy laws referred to above and to establish implementing procedures and duties with respect to Cal Pass Plus and SWP.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

ARTICLE I: PURPOSE AND SCOPE

1. **Purpose of DPA.** The purpose of this DPA is to describe the duties and responsibilities of ERP to protect the Cal-PASS Plus Data transmitted to ERP from **OUSD** pursuant to Cal-PASS Plus, including compliance with all applicable statutes, including the FERPA, PPRa, COPPA, SOPIPA, AB 1584, and other applicable California State laws, all as may be amended from time to time. In performing the services as a Partner Organization, ERP shall be considered a School Official with a legitimate educational interest, and performing services otherwise provided by the **OUSD**. With respect to the use and maintenance of Student Data, ERP shall fulfill the purposes of Cal-PASS Plus as set forth in the MOU.
2. **SWP Grant Compliance.** **OUSD** shall submit those data requested by the K12 Strong Workforce Program (“SWP Data”) to ERP at OUSD’s discretion throughout the term of this DPA. . ERP shall use the SWP Data to provide the data necessary for **OUSD** to meet the grant requirements contained in CA EDUC 88828(d)(8) (“**Grant Requirement Data**”). For purposes of this DPA and the MOU, SWP Data shall be considered Cal-PASS Plus Data.
3. **DPA Definitions.** The definition of terms used in this DPA is found in Exhibit "A".

ARTICLE II: DATA OWNERSHIP AND AUTHORIZED ACCESS

1. **Student Data Property of OUSD.** All Student Data transmitted to ERP pursuant to Cal-PASS Plus is and will continue to be the property of and under the control of the **OUSD**. ERP further acknowledges and agrees that all copies of such Student Data transmitted to ERP, including any modifications or additions or any portion thereof from any source, are subject to the provisions of this DPA in the same manner as the original Student Data. The Parties agree that as between them, all rights, including all intellectual property rights in and to Student Data contemplated per the MOU shall remain the exclusive property of the **OUSD**. For the purposes of FERPA, ERP shall be considered a School Official, under the control and direction of the **OUSD** as it pertains to the use of Student Data notwithstanding the above. ERP may transfer pupil-generated content to a separate account, according to the procedures set forth below.
2. **Parent Access.** **OUSD** shall establish reasonable procedures by which a parent, legal guardian, or eligible student may review Student Data in the pupil's records, correct erroneous information, and procedures for the transfer of pupil-generated content to a personal account, consistent with the functionality of services. ERP shall respond in a timely manner (and no later than 45 days from the date of the request) to the **OUSD** request for Student Data in a pupil's records held by ERP to view or correct as necessary. In the event that a parent of a pupil or other individual contacts ERP to review any of the Student Data accessed pursuant to the Services, ERP shall refer the parent or individual to the

OUSD, who will follow the necessary and proper procedures regarding the requested information.

3. **Separate Account.** If pupil generated content is stored or maintained by ERP as part of Cal-PASS Plus, ERP shall, at the request of the **OUSD**, transfer said pupil generated content to a separate student account upon termination of **OUSD** participation in Cal-PAS Plus; provided, however, such transfer shall only apply to pupil generated content that is severable from Cal-PASS Plus Data.
4. **Third Party Request.** Should a Third Party, including law enforcement and government entities, contact ERP with a request for Student Data held by the ERP pursuant to Cal-PASS Plus, ERP shall redirect the Third Party to request the data directly from the **OUSD**. ERP shall notify the **OUSD** in advance of a compelled disclosure to a Third Party.
5. **Subprocessors.** ERP shall enter into written agreements with all Subprocessors performing functions pursuant to Cal-PASS Plus where the Subprocessor will have access to Student Data, whereby the Subprocessors agree to protect Student Data in manner consistent with the terms of this DPA.

ARTICLE III: DUTIES OF OUSD

6. **Privacy Compliance.** **OUSD** shall provide Cal-PASS Plus Data for Cal-PASS Plus as set forth in the MOU in compliance with FERPA, COPPA, PPRa, SOPIPA, AB 1584 and all other California privacy statutes.
7. **Annual Notification of Rights.** If **OUSD** has a policy of disclosing education records under FERPA (4 CFR § 99.31 (a) (1)), **OUSD** shall include a specification of criteria for determining who constitutes a school official and what constitutes a legitimate educational interest in its Annual notification of rights.
8. **Reasonable Precautions.** **OUSD** shall take reasonable precautions to secure usernames, passwords, and any other means of gaining access to the services and hosted data as required in the MOU.
9. **Unauthorized Access Notification.** **OUSD** shall notify ERP promptly of any known or suspected unauthorized access. **OUSD** will assist ERP in any efforts by ERP to investigate and respond to any unauthorized access.

ARTICLE IV: DUTIES OF ERP

10. **Privacy Compliance.** ERP shall comply with all applicable state and federal laws and regulations pertaining to data privacy and security, including FERPA, COPPA, PPRa, SOPIPA, AB 1584 and all other California privacy statutes (as applicable).
11. **Authorized Use.** The data shared pursuant to the MOU and this DPA, including persistent unique identifiers, shall be used only as set forth in the MOU, this DPA and/or otherwise authorized under the statutes referred to in subsection (1), above. ERP also acknowledges and agrees that it shall not make any re-disclosure of any Student Data or any portion

thereof, including without limitation, meta data, user content or other non-public information and/or personally identifiable information contained in the Student Data, without the express written consent of the **OUSD** and as may be required under the SWP grant.

12. **Employee Obligation.** ERP shall require all employees and agents who have access to Student Data to comply with all applicable provisions of this DPA with respect to the data shared under Cal-PASS Plus.
13. **No Disclosure.** De-identified information may be used by the ERP as set forth in the MOU, this DPA and for the purposes of development, research, and improvement of educational sites, services, or applications, as any other member of the public or party would be able to use de-identified data pursuant to 34 CFR 99.31(b). Except in furtherance of Cal-PASS Plus, as specifically set forth in the MOU and this DPA, upon the written consent of the student (or if the student is a minor, the student's parent or legal guardian) or as otherwise permitted by law, ERP agrees not to attempt to re-identify de-identified Student Data and not to transfer de-identified Student Data to any party unless (a) that party agrees in writing not to attempt re-identification, and (b) prior written notice has been given to **OUSD** who has provided prior written consent for such transfer. ERP shall not copy, reproduce or transmit any Student Data obtained from **OUSD** as part of Cal-PASS Plus, except as necessary to conduct Cal-PASS Plus.
14. **Disposition of Data.** Upon written request and in accordance with the applicable terms in subsection a or b, below, ERP shall dispose or delete all Student Data obtained as part of Cal-PASS Plus when it is no longer needed for the purpose for which it was obtained. Disposition shall include (1) the shredding of any hard copies of any Student Data; (2) Erasing; or (3) Otherwise modifying the personal information in those records to make it unreadable or indecipherable by human or digital means. Nothing in the MOU or this DPA authorizes ERP to maintain Student Data obtained as part of Cal-PASS Plus beyond the time period reasonably needed to complete the disposition. ERP shall provide written notification to **OUSD** when the Student Data has been disposed. The duty to dispose of Student Data shall not extend to data that has been de-identified or placed in a separate Student account, pursuant to the other terms of the DPA. **OUSD** may employ a "Request for Return or Deletion of Student Data" form, a copy of which is attached hereto as Exhibit "B". Upon receipt of a request from the **OUSD**, ERP will immediately provide the **OUSD** with any specified portion of the Student Data within ten (10) calendar days of receipt of said request.
 - a. **Partial Disposal During OUSD Participation in Cal-PASS Plus.** While **OUSD** is still participating in Cal-PASS Plus, **OUSD** may request partial disposal of Student Data provided as part of Cal-PASS Plus that is no longer needed. Partial disposal of data shall be subject to **OUSD** request to transfer data to a separate account, pursuant to Article II, section 3, above.
 - b. **Complete Disposal Upon Termination of OUSD Participation in Cal-PASS Plus.** Upon termination of **OUSD** participation in Cal-PASS Plus, ERP shall dispose or delete all Student Data obtained from **OUSD**. Prior to disposition of the

data, ERP shall notify OUSD in writing of its option to transfer data to a separate account, pursuant to Article II, section 3, above. In no event shall ERP dispose of data pursuant to this provision unless and until ERP has received affirmative written confirmation from **OUSD** that data will not be transferred to a separate account.

15. **Advertising Prohibition.** ERP is prohibited from using or selling Student Data to (a) market or advertise to students or families/guardians; (b) inform, influence, or enable marketing, advertising, or other commercial efforts by a ERP; (c) develop a profile of a student, family member/guardian or group, for any commercial purpose other than for Cal-PASS Plus; or (d) use the Student Data for the development of commercial products or services, other than as necessary for the Cal-PASS Plus. This section does not prohibit ERP from using Student Data for adaptive learning or customized student learning purposes.

ARTICLE V: DATA PROVISIONS

16. **Data Security.** ERP agrees to abide by and maintain adequate data security measures, consistent with industry standards and technology best practices, to protect Student Data from unauthorized disclosure or acquisition by an unauthorized person. The general security duties of ERP are set forth below. These measures shall include, but are not limited to:
- a. **Passwords and Employee Access.** ERP shall secure usernames, passwords, and any other means of gaining access to Student Data, at a level suggested by the applicable standards, as set forth in Article 4.3 of NIST 800-63-3. ERP shall only provide access to Student Data to employees or contractors that are performing services related to Cal-PASS Plus. Employees with access to Student Data shall have signed confidentiality agreements regarding said Student Data. All employees with access to Student Records shall be subject to criminal background checks in compliance with state and local ordinances.
 - b. **Destruction of Data.** ERP shall destroy or delete all Student Data obtained under Cal-PASS Plus when **OUSD** is no longer a Cal-PASS Plus member, or transfer said data to **OUSD** or **OUSD** designee, according to the procedure identified in Article IV, section 5, above.
 - c. **Security Protocols.** Both Parties agree to maintain security protocols that meet industry standards in the transfer or transmission of any data, including ensuring that data may only be viewed or accessed by parties legally allowed to do so. ERP shall maintain all **OUSD** Student Data in a secure digital environment and not copy, reproduce, or transmit data obtained pursuant to Cal-PASS Plus, except as necessary for Cal-PASS Plus to fulfill the purpose of data requests by **OUSD**.
 - d. **Employee Training.** ERP shall provide periodic security training to those of its employees who operate or have access to the system. Further, ERP shall provide **OUSD** with contact information of an employee who **OUSD** may contact if there are any security concerns or questions.

- e. **Security Technology.** When the service is accessed using a supported web browser, ERP shall employ industry standard measures to protect data from unauthorized access. The service security measures shall include server authentication and data encryption. ERP shall host data pursuant to the MOU in an environment using a firewall that is updated according to industry standards.
 - f. **Security Coordinator.** If different from the designated representative identified in Article VII, section 5, ERP shall provide the name and contact information of ERP's Security Coordinator for the Student Data received pursuant to the MOU.
 - g. **Subprocessors Bound.** ERP shall enter into written agreements whereby Subprocessors agree to secure and protect Student Data in a manner consistent with the terms of this Article V. ERP shall periodically conduct or review compliance monitoring and assessments of Subprocessors to determine their compliance with this Article.
 - h. **Periodic Risk Assessment.** ERP further acknowledges and agrees to conduct digital and physical periodic (no less than semi-annual) risk assessments and remediate any identified security and privacy vulnerabilities in a timely manner.
17. **Data Breach.** In the event that Student Data in ERP's possession is accessed or obtained by an unauthorized individual, ERP shall provide notification to **OUSD** within a reasonable amount of time of the incident, and not exceeding forty-eight (48) hours. ERP shall follow the following process:
- a. The security breach notification shall be written in plain language, shall be titled "Notice of Data Breach," and shall present the information described herein under the following headings: "What Happened," "What Information Was Involved," "What We Are Doing," "What You Can Do," and "For More Information." Additional information may be provided as a supplement to the notice.
 - b. The security breach notification described above in section 2(a) shall include, at a minimum, the following information:
 - i. The name and contact information of the reporting **OUSD** subject to this section.
 - ii. A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.
 - iii. If the information is possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
 - iv. Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

- v. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
- c. At **OUSD** discretion, the security breach notification may also include any of the following:
 - i. Information about what the agency has done to protect individuals whose information has been breached.
 - ii. Advice on steps that the person whose information has been breached may take to protect himself or herself.
- d. ERP agrees to adhere to all requirements in applicable State and in federal law with respect to a data breach related to the Student Data, including, when required, the required responsibilities and procedures for notification and mitigation of any such data breach.
- e. ERP further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incident or unauthorized acquisition or use of Student Data or any portion thereof, including personally identifiable information and agrees to provide **OUSD**, upon request, with a copy of said written incident response plan.
- f. ERP is prohibited from directly contacting parent, legal guardian or eligible pupil unless expressly requested by **OUSD**. If **OUSD** requests ERP's assistance providing notice of unauthorized access, and such assistance is not unduly burdensome to ERP, ERP shall notify the affected parent, legal guardian or eligible pupil of the unauthorized access, which shall include the information listed in subsections (b) and (c), above. If requested by **OUSD**, ERP shall reimburse **OUSD** for costs incurred to notify parents/families of a breach not originating from **OUSD** use of the Service.
- g. In the event of a breach originating from **OUSD** use of the Service, ERP shall cooperate with **OUSD** to the extent necessary to expeditiously secure Student Data.

ARTICLE VI: MISCELLANEOUS

- 18. **Term.** ERP shall be bound by this DPA for the duration of **OUSD** participation in Cal-PASS Plus or so long as ERP maintains any Student Data.
- 19. **Termination.** In the event that either Party seeks to terminate this DPA, they may do so by mutual written consent so long **OUSD** is no longer participating in Cal-PASS Plus. **OUSD** shall have the right to terminate the DPA in the event of a material breach of the terms of this DPA.

20. **Effect of Termination Survival.** If OUSD is no longer participating in Cal-PASS Plus, ERP shall destroy all of OUSD Student Data pursuant to Article V, section 1(b), and Article II, section 3, above.

21. **Notice.** All notices or other communication required or permitted to be given hereunder must be in writing and given by personal delivery, or e-mail transmission (if contact information is provided for the specific mode of delivery), or first-class mail, postage prepaid, sent to the designated representatives before:

a. **Designated Representatives:**

The designated representative for OUSD for this DPA is:

Name: Josh Daniels
Title: General Counsel

Contact Information:
1000 Broadway, Suite 300
Oakland, CA 94607
josh.daniels@ousd.org

The designated representative for ERP for this DPA is:

Name: Alex Barrios
Title: Executive Vice President, External Relations

Contact Information:
428 J Street, Ste. 320
Sacramento, CA 95814
abarrios@edresults.org

22. **Entire Agreement.** This DPA constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto. This DPA may be amended and the observance of any provision of this DPA may be waived (either generally or in any particular instance and power, or privilege preclude any further exercise thereof or the exercise of any other right, power or privilege.

23. **Severability.** Any provision of this DPA that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this DPA, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of


this DPA or affecting the validity or enforceability of such provision in any other jurisdiction.

24. **Governing Law; Venue and Jurisdiction.** THIS DPA WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE SOLE AND EXCLUSIVE JURISDICTION TO THE STATE AND FEDERAL COURTS FOR THE COUNTY IN WHICH THIS DPA IS FORMED FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS MOU.
25. **Authority.** ERP represents that it is authorized to bind to the terms of this DPA, including confidentiality and destruction of Student Data and any portion thereof contained therein, all related or associated institutions, individuals, employees or contractors who may have access to the Student Data and/or any portion thereof, or may own, lease or control equipment or facilities of any kind where the Student Data and portion thereof stored maintained or used in any way.
26. **Waiver.** No delay or omission of **OUSD** to exercise any right hereunder shall be construed as a waiver of any such right and **OUSD** reserves the right to exercise any such right from time to time, as often as may be deemed expedient.
27. **Successors Bound.** This DPA is and shall be binding up on the respective successors in interest to ERP in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this 3rd day, June 2021 DPA as of the last day noted below.

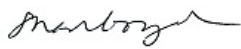
ERP:

BY: 


Date: February 24, 2021

Printed Name: Alex Barrios

Title/Position: Executive Vice President, External Relations



OUSD: Shanthi Gonzales, President, Board of Education 6/3/2021

BY:  _____ Date: _____

Kyla Johnson Trammell, Secretary, Board of Education 6/3/2021

Printed Name: _____ Title/Position: _____

Approved as to form by OUSD Staff Attorney Joanna Powell on 2/26/2021.

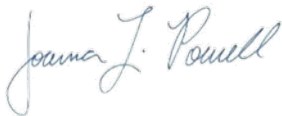


EXHIBIT "A"

DEFINITIONS

AB 1584, Buchanan: The statutory designation for what is now California Education Code § 49073.1, relating to pupil records.

De-Identifiable Information (DII): De-Identification refers to the process by which the ERP removes or obscures any Personally Identifiable Information (“**PII**”) from student records in a way that removes or minimizes the risk of disclosure of the identity of the individual and information about them.

Educational Records: Educational Records are official records, files and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder, such as general identifying data, records of attendance and of academic work completed, records of achievement, and results of evaluative tests, health data, disciplinary status, test protocols and individualized education programs. For purposes of this DPA, Educational Records are referred to as Student Data.

NIST: Draft National Institute of Standards and Technology (“**NIST**”) Special Publication Digital Authentication Guideline.

Personally Identifiable Information (PII): The terms “**Personally Identifiable Information**” or “**PII**” shall include, but are not limited to, student data, metadata, and user or pupil-generated content obtained by reason of the use of ERP's software, website, service, or app, including mobile apps, whether gathered by ERP or provided by **OUSD** or its users, students, or students' parents/guardians. PII includes Indirect Identifiers, which is any information that, either alone or in aggregate, would allow a reasonable person to be able to identify a student to a reasonable certainty. For purposes of this DPA, Personally Identifiable Information shall include the categories of information listed in the definition of Student Data.

Pupil Generated Content: The term “pupil-generated content” means materials or content created by a pupil during and for the purpose of education including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, videos, and account information that enables ongoing ownership of 1 pupil content.

Pupil Records: Means both of the following: (1) Any information that directly relates to a pupil that is maintained by 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 **OUSD** employee. For the purposes of this DPA, Pupil Records shall be the same as Educational Records, Student Personal Information and Covered Information, all of which are deemed Student Data for the purposes of this DPA.

School Official: For the purposes of this DPA and pursuant to 34 CFR 99.31 (B), a School Official is a contractor that: (1) Performs an institutional service or function for which the agency or institution would otherwise use employees; (2) Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) Is subject to 34 CFR 99.33(a) governing the use and re-disclosure of personally identifiable information from student records.

SOPIPA: Once passed, the requirements of SOPIPA were added to Chapter 22.2 (commencing with Section 22584) to Division 8 of the Business and Professions Code relating to privacy.

Student Data: Student Data includes any Cal-PASS Plus Data provided by **OUSD**, whether gathered by ERP or provided by **OUSD** or its users, students, or students' parents/guardians, that is descriptive of the student including, but not limited to, information in the student's educational record or email, first and last name, home address, telephone number, email address, or other information allowing online contact, discipline records, videos, test results, special education data, juvenile dependency records, grades, evaluations, criminal records, medical records, health records, social security numbers, biometric information, disabilities, socioeconomic information, food purchases, political affiliations, religious information text messages, documents, student identifies, search activity, photos, voice recordings or geolocation information. Student Data shall constitute Pupil Records for the purposes of this DPA, and for the purposes of California and federal laws and regulations. Student Data shall not constitute that information that has been anonymized or de-identified, or anonymous usage data.

Student Personal Information: “**Student Personal Information**” means information collected through a school service that personally identifies an individual student or other information collected and maintained about an individual student that is linked to information that identifies an individual student, as identified by Washington Compact Provision 28A.604.010. For purposes of this DPA, Student Personal Information is referred to as Student Data.

Subprocessor: For the purposes of this DPA, the term “**Subprocessor**” (sometimes referred to as the “**Subcontractor**”) means a party other than **OUSD** or ERP, who ERP uses for data collection, analytics, storage, or other service to operate and/or improve its software, and who has access to PII.

Targeted Advertising: Targeted advertising means presenting an advertisement to a student where the selection of the advertisement is based on student information, student records or student generated content or inferred over time from the usage of the ERP's website, online service or mobile application by such student or the retention of such student's online activities or requests over time.

Third Party: The term “Third Party” means provider of digital educational software or services, including cloud-based services, for the digital storage, management, and retrieval of pupil records.

EXHIBIT "B"

DIRECTIVE FOR DISPOSITION OF DATA

OUSD directs ERP to dispose of data obtained by ERP pursuant to the terms of the Service Agreement between **OUSD** and ERP. The terms of the Disposition are set forth below:

| | |
|--|---|
| | |
| Extent of Disposition | Partial. The categories of data to be disposed of are as follows: |
| Disposition shall be: | <input checked="" type="checkbox"/> Complete. Disposition extends to all categories of data. |
| | |
| Nature of Disposition | <input checked="" type="checkbox"/> Destruction or deletion of data. |
| Disposition shall be by: | Transfer of data. The data shall be transferred as set forth in an attachment to this Directive. Following confirmation from OUSD that data was successfully transferred, ERP shall destroy or delete all applicable data. |
| | |
| Timing of Disposition | |
| Data shall be disposed of by the following date: | <input type="checkbox"/> As soon as commercially practicable |
| | <input checked="" type="checkbox"/> Upon termination of either the MOU Between OUSD and CalPASS or this DSA. |

Authorized Representative of DISTRICT

Date

Verification of Disposition of Data by Authorized Representative of ERP

Date

