

ATTACHMENT H

DATA USE ADDENDUM AND AGREEMENT FOR CONFIDENTIAL DATA EXCHANGE BETWEEN THE SAN PASQUAL UNION ELEMENTARY SCHOOL DISTRICT, THE SAN DIEGO COUNTY OFFICE OF EDUCATION, AND FORECAST5

This Data Use Addendum and Agreement (“Data Use Agreement”) is between the San Pasqual Union Elementary School District (hereinafter referred to as LEA), the San Diego County Office of Education (hereinafter referred to as SDCOE) and Forecast5. This Data Use Agreement describes the means used by SDCOE and Forecast5 to ensure the confidentiality and security and terms of use for information and data exchanged between LEA, SDCOE, and Forecast5 for the purposes stated below. Within the scope of this agreement, confidential data may be exchanged between and amongst the LEA, SDCOE, and Forecast5. This addendum expressly permits SDCOE to share LEA Data with Forecast5, as permitted by Section 4 of “Memorandum of Understanding for Data Sharing Services” executed by the parties on July 12, 2019.

Forecast5 hereby agrees that upon execution of this Data Use Addendum, they shall be bound by all of the terms and conditions of the Data Use Addendum and shall be deemed a party to such Addendum in all respects.

This Data Use Addendum and Agreement, together with the 5Lab Contract and Forecast5 Terms of Services, represents an addition to the “Memorandum of Understanding for Data Sharing Services” with the LEA, fully executed on July 12, 2019. This Addendum represents an additional agreement above and beyond the core services outlined in the Memorandum.

1. GENERAL TERMS

A. PURPOSE

SDCOE and Forecast5 have entered into a License Agreement to provide analytical support for LEA student data. The purpose of this Agreement is to outline the responsibilities of all parties and allow for the transfer and/or exchange of data through the development of Application Programming Interfaces (APIs) and/or Secure File Transfer processes for the regular and real time transfer/exchange of district data with SDCOE and Forecast5. The Data referenced in this Addendum is part of a pilot project for the San Diego County Superintendent of Schools, data will be collected and organized first by the San Diego County Superintendent of Schools, and then provided to the parties named in the preceding documents labeled as Attachments F and G. The purpose of the data project is to provide customized data visualizations of data in the form of dashboards, visual displays, and data files for export to support the LEA in its efforts towards continuous improvement. Participation in the project provides LEA staff with digital password protected access to the Forecast5 platform as well as professional learning support services provided by SDCOE staff to optimize use of the platform.

B. NATURE OF DATA

To achieve the objective of the above stated purpose, the LEA will permit SDCOE and Forecast5 to access the types of data below necessary to produce and report analytics and measures to view in the Forecast5 Application. This access will include password protected sign-on access to student level details

by designated and trained SDCOE staff in support of district onboarding, data analysis and improvement. The types of data will include but are not limited to:

- E-learning
- Learning Management System Data
- Demographics of students and staff
- Assessment data to include summative, interim and real-time
- Attendance
- Discipline
- College and career
- Staffing, personnel, and staff assignments
- Financial program data
- Student enrollment
- Student grade history

Additional data elements may be provided at the discretion of the LEA.

C. TRANSFER OF DATA

LEA, SDCOE, and Forecast5 shall use a secure electronic means and schedule for transferring confidential information, including the use of APIs and/or Secure File Transfer processes.

D. DATA PRIVACY AND SECURITY

This addendum incorporates by reference Exhibit B "SDCOE Data Security Practices and Procedures."

E. LEA RIGHTS AND RESPONSIBILITIES

LEA shall provide system linkages or necessary Data extracts or permission access from LEA's student information or other systems on an agreed upon or pre-defined schedule between the Parties. Any such schedule agreed upon in writing (including email) between the Parties shall be deemed incorporated herein and made a part hereof upon such mutual agreement.

Data Extracts will be provided through secure electronic transmission by LEA to SDCOE. The LEA will be responsible for providing the data needed to integrate LEA's Data into SDCOE's data repositories as needed to perform the required tasks.

Data provided by LEA shall include Data relevant to the purpose of this MOU or specific system requirements.

LEA shall be responsible for determining which of their staff has access to system, communicating to SDCOE the roles and responsibilities of each person with said access, including the person who is responsible for maintaining LEA's main and sub-accounts, and communicating the names of the individuals for whom access should be removed due to change of position or separation from the LEA. The LEA shall designate those individuals who can: a) transmit Data to SDCOE, b) request release of Data to LEA or 3rd parties, or c) request extracts or analysis of LEA's data.

F. PERIOD OF AGREEMENT

This Agreement shall be effective from the signing of this Agreement through June 30, 2023, unless terminated earlier pursuant to Section G.

G. TERMINATION

The LEA reserves the right to revoke participation in this pilot project at any time. Notice in writing must be provided to SDCOE with 30 days prior notice. Additionally, upon the request in writing with at least 30 days prior notice, SDCOE and Forecast5 will permanently destroy transferred data and deactivate API's with the LEA's Student Information System.

H. INDEMNIFICATION AND LIABILITY

Each Party agrees to indemnify the other against any and all liability, actions, claims, damages, losses, costs, and expenses (including attorneys' fees) arising out of or in any way resulting from the indemnifying Party's own negligent or intentional acts, errors, or omissions in connection to the performance of the responsibilities of each Party, per this MOU. The Parties shall not be held liable for any special, consequential, indirect or incidental damages incurred as a result of this MOU. The Parties shall be held harmless for any claims or lawsuits arising out of the release of information pursuant to a request by one of the Parties in conformity with this MOU or pursuant to law, excluding such release in connection to the negligence of either Party, or that of its officers, agents, or employees. If liability, damages, or any other claim relating to Data shared pursuant to this MOU is a result of a third party's act or omission, then the indemnification and defense that the third party contractually owes to SDCOE and/or LEA shall also be extended to the other Party to this MOU, to the maximum extent possible.

J. DISPUTES

In the event of a dispute among the parties to this Agreement regarding the provisions of this Agreement, the parties shall attempt to resolve their disputes informally, in discussions involving the decision-makers for each of the parties. If these discussions are not successful, the parties shall retain a mediator to resolve the dispute with the mediation to be held within ninety (90) days of the date the dispute arises. If mediation is not successful, either party shall have the right to bring the dispute before the San Diego County Superior Court.

K. APPLICABLE LAW

Data sharing under this MOU will from time to time include SDCOB collecting and maintaining educational, personnel, medical and financial records that contain personally identifiable information (PII) on students or staff of LEA. SDCOE is bound by the same regulations and laws for access and management of this Data, and will conform to all legal requirements. SDCOE and LEA agree that the disclosure of information under this MOU complies with the requirements of Education Code § 49073 et seq., FERPA, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), SOPIPA, and other state and federal/European Union laws and regulations regarding educational, personnel, medical and financial records.

The Parties understand that certain federal and state programs and laws, including the free and reduced lunch program and laws governing the provision of special education services, have additional legal requirements for data security, and both Parties agree to maintain full compliance with such

requirements. Without limitation to the foregoing, the Parties additionally agree that aggregated (non-individually identifiable) and nonaggregated PII Data may be reported upon or shared as allowable by law.

The Parties shall ensure joint coordination and cooperation with one another to ensure compliance with FERPA, 20 U.S.C. § 1232g; 34 C.F.R. Part 99, as amended. The foregoing notwithstanding, SDCOE and LEA agree that LEA shall be responsible for providing notices to parents required under FERPA, obtaining necessary parental consent required under FERPA, and for providing parent(s), guardian(s) or student(s) with an opportunity to inspect and challenge the contents of Data shared with SDCOE pursuant to this MOU.

This Agreement shall be governed by and construed under the laws of the State of California. Venue for any proceeding relating to enforcement of this Agreement shall be in the California state courts located in San Diego County, California.

L. ASSOCIATED COSTS

The LEA will incur no costs for services during the 2020-2021 school year as all costs associated with participation will be covered by SDCOE. The LEA and SDCOE agree that any associated costs related to the Services outlined herein for Forecast5 data related services beyond the 2020-2021 school year will be outlined in a separate financial agreement with the LEA outside of this addendum.

San Pasqual Union Elementary School District

Signature: _____

Name: _____


Title: _____

Address: _____

Phone: _____

Email: _____

Forecast5

Signature:  _____

Name: Scott K. Smith

Title: CEO/President

Address: 2135 CityGate Lane

Suite 420

Naperville, IL 60563

Phone: 630-251-7401

Email: ssmith@forecast5analytics.com

San Diego County Office of Education

Signature: _____

Name: _____

Title: _____

Address: _____

Phone: _____

Email: _____

AMENDMENT TO AGREEMENT

This Amendment to Agreement (this "**Amendment**") is dated as of November 10, 2020 and is made by and between the San Diego County Superintendent of Schools ("**County**"), and San Pasqual Union School District ("**Consultant**"). County and Consultant may be collectively referred to as the "**Parties**":

This Amendment is made with reference to the following facts and objectives:

- A. County and Consultant are parties to County Agreement No. C19200186 dated July 1, 2019. Subsequently the Agreement was amended on November 10, 2020. The Original Agreement and all prior Amendments may be collectively referred to as "**Agreement**".
- B. The Parties wish to amend the Agreement as stated below.
- C. All terms not specifically changed by this Amendment shall remain in full force and effect as stated in the agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as set forth below.

Please refer to Attachment H, Data Use Addendum and Agreement for Confidential Data Exchange Between the San Pasqual Union School Districts, The San Diego County Office of Education, and Forecast5.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the effective date set forth above.

SAN DIEGO COUNTY SUPERINTENDENT OF SCHOOLS

CONTRACTOR

 By (Authorized Signature)
 Michael Simonson

 Name (Type or Print)
 Deputy Superintendent, Chief Business Officer

 Title

 Date

 By (Authorized Signature)

 Name (Type or Print)

 Title

 Date