

State of New Mexico

Public Education Department

Agreement No.21-924-P527-00156

THIS Agreement (“Agreement”) is made by and between the State of New Mexico, **Public Education Department (PED)** hereinafter referred to as the “Procuring Agency” and **Graduation Alliance**, hereinafter referred to as the “Contractor” and collectively referred to as the “Parties”.

WHEREAS, pursuant to the Procurement Code, NMSA 1978 13-1-28 *et. seq.* and Procurement Code Regulations, NMAC 1.4.1 *et.seq.* the Contractor has held itself out as an entity with the ability to provide the required services to implement the Scope of Work as contained herein and the Procuring Agency has selected the Contractor as the offeror most advantageous to the State of New Mexico; and

NOW, THEREFORE, THE FOLLOWING TERMS AND CONDITIONS ARE MUTUTALLY AGREED BETWEEN THE PARTIES:

1. **Definition**

- A. “Business Hours” means 8:00 a.m. to 5:00 p.m. Mountain Time.
- B. “ITB” means Invitation to Bid as defined in New Mexico statute and rule.
- C. “New Mexico State Purchasing Agent” or “NMSPA” means purchasing agent. For the State of New Mexico or a designated representative. May be used interchangeably with “State Purchasing Agent” or “SPA”.
- D. “Procuring Agency” means any state agency or local public body that enters into an Agreement to procure products or services.
- E. “Products and Services Schedule” refers to the complete list of products ND SERVICES OFFERED UNDER THIS Agreement and the price for each. Product and service descriptions may be amended only through a written amendment signed by all required signatories and with the prior approval of the Agreement Administrator, if any.
- F. “We”, “us” or “our” refers to the State of New Mexico, agencies, commissions, institutions, political sub-divisions and local public bodies allowed by law to participate in the Agreement and whose accounts are created under this Agreement.
- G. “you” and “your” refers to Graduation Alliance or Contractor.

2. **Scope of Work**

The Contractor shall perform the work as outlines in Exhibit A, attached hereto and incorporated herein by reference.

3. **Compensation**

- A. Compensation Schedule The Procuring Agency shall pay to the Contractor based upon fixed prices for each Deliverable, per the schedule outlined in Exhibit B, less retainage, if any, as identified in paragraph D of this Clause.
- B. Payment The total compensation under this Agreement shall not exceed One Million Six-Hundred Sixty-Seven Thousand, Five Hundred Dollars **and No Cents (\$1,667,500.00)** including New Mexico gross receipts tax. **This amount is a maximum and not a guarantee that the work assigned to be performed by Contractor under this Agreement shall equal the amount stated herein. The Parties do not intend for the Contractor to continue to provide Services without compensation when the total compensation amount is reached. Contractor is responsible for notifying the Procuring Agency when the Services provided under this Agreement reach the total compensation amount. In no event will the Contractor be paid for Services provided in excess of the total compensation amount without this Agreement being amended in writing prior to services, in excess of the total compensation amount being provided.**

Payment shall be made upon Acceptance of each Deliverable and upon the receipt and Acceptance of a detailed, certified Payment Invoice. Payment will be made to the Contractor's designated mailing address. In accordance with Section 13-1-4158 NMSA 1978, payment shall be tendered to the Contractor within thirty (30) days of the date of written certification of Acceptance. All Payment Invoices **MUST BE** received by the Procuring Agency no later than fifteen (15) days after the termination of this Agreement. Payment Invoices received after such date **WILL NOT BE PAID**.

- C. Taxes The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, State and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- D. Retainage The Parties agree there is no retainage.
- E. Performance Bond The Parties agree there is no Performance Bond.

4. **Term**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE FINAL REQUIRED SIGNATORY. This Agreement shall begin on the date approved by the Final Required Signatory and shall end on **June 30, 2021**, unless terminated pursuant to this Agreement's Termination Clause or Appropriations Clause. The procuring Agency reserves the right to renew the Agreement through a written amendment signed by all required signatories and in accordance with the term of the request for proposals, if this contract was based on a request for proposals.

5. **Termination**

A. **Grounds** The Procuring Agency may terminate this Agreement for convenience or cause. The Contractor may only terminate this Agreement based upon the Procuring Agency's uncured, material breach of this Agreement.

B. **Notice; Procuring Agency Opportunity to Cure**

1. Except as otherwise provided in sub-paragraph A of this Clause and Appropriation Clause of this Agreement, the Procuring Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Procuring Agency written notice of termination at least Thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Procuring Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Procuring Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the Procuring Agency does not cure all material breaches within the thirty (30) day notice period or (ii) in the case of material breaches that cannot be cured within thirty (30) days, the Procuring Agency does not, within the thirty (30) day notice period, notify the Contractor of its intent to cure and begin with due diligence to cure the material breach.

3. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Procuring Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement is terminated pursuant to the Appropriations Clause of this Agreement.

C. **Liability** Except as otherwise expressly allowed or provided under this Agreement, the Procuring Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor

shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE PROCURING AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

6. **Appropriations**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

7. **Status of Contractor**

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the contractor has express written authority to do so, and then only within the strict limits of that authority.

8. **Conflict of Interest; Governmental Conduct Act**

A. The Contractor represents and warrants that it presently has no interest and, during The term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with and, during the term of this agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter, Article NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1. in accordance with NMSA 1978, 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency's contracting process;

2. this Agreement complies with MNSA 1978 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;

3. in accordance with NMSA 1978 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;

4. this Agreement complies with NMSA 1978 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5. in accordance with NMSA 1978, 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6. in accordance with MNSA 1978, 10-16-3 and 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor's representations and warranties in paragraphs A and B of this Clause are material representations of fact upon which the Procuring Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in paragraphs A and B of the Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition

to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.
D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

9. **Amendment**

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provision as set forth in the Termination Clause of this Agreement, or to agree to the reduced funding.

10. **Merger**

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

11. **Penalties for violation of law**

The Procurement Code, NMSA 1978 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

12. **Equal Opportunity Compliance**

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

13. **Workers Compensation**

The Contractor agrees to comply with state laws and rules applicable to worker's compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

14. **Applicable Law**

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, 38-3-1 (G). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

15. **Records and Financial Audit**

The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Procuring Agency, the Department of Finance and Administration and the State Auditor. The Procuring Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

16. **Invalid Term or Condition**

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

17. **Enforcement Agreement**

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

18. **Non-Collusion**

In signing this Agreement, the Contractor certified the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

19. **Notices**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Gwendolyn Perea Warniment, PhD
300 Don Gaspar Avenue, Room 127
Santa Fe, NM 87501
Gwen.Warniment@state.nm.us

To the Contractor:

Andy Cusimano, Chief Financial Officer
310 S Main Street, 12th Floor
Salt Lake City, UT 84101
Andy.Cusimano@graduationalliance.com

20. **Succession**

This Agreement shall extend to and be binding upon the successors and assignees of the parties.

21. **Headings**

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

22. **Default/Breach**

In case of Default and/or Breach by the Contractor, for any reason whatsoever, the Procuring Agency and the State of New Mexico may procure the goods or services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, including but not limited to, direct damages, indirect damages, consequential damages, special damages and the Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law of equity.

23. **Equitable Remedies**

Contractor acknowledges that its failure to comply with any provision of this Agreement will cause the Procuring Agency irrevocable harm and that a remedy at law for such a failure would be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's obtaining from a court of competent jurisdiction, specific performance, or injunction, or

any other equitable relief in order to enforce such compliance. Procuring Agency's rights to obtain equitable relief pursuant to this Agreement shall be in addition to, and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

24. **New Mexico Employees Health Coverage**

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of this Agreement, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the Agreement, health insurance for those employees and offer that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000.00 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the State.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following website link to additional information: <https://bewellnm.com>.

25. **Indemnification**

The Contractor shall defend, indemnify and hold harmless the Procuring Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorney's fees, and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Procuring Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

26. **Default and Force Majeure**

The State reserves the right to cancel all or any part of any orders placed under this Agreement without cost to the State, if the Contractor fails to meet the provisions of this Agreement and, except as otherwise provided herein, to hold the Contractor liable for any excess cost occasioned by the State due to the Contractor's default. The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or public

enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargos, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

27. **Assignment**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Procuring Agency.

28. **Subcontracting**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Procuring Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency.

29. **Inspection of Plant**

The State Purchasing Agent or agency or entity that is a party to this Agreement may inspect, at any reasonable time during Contractor's regular business hours and upon prior written notice, the Contractor's plant or place of business, or any subcontractor's plant or place of business, which is related to the performance of this Agreement.

30. **Commercial Warranty**

The Contractor agrees that the tangible personal property or services furnished under this Agreement shall be covered by the most favorable commercial warranties the Contractor gives to any customer for such tangible personal property or services, and that the rights and remedies provided herein shall extend to the State and are in addition to and do not limit any rights afforded to the State by any other Clause of this Agreement or order. Contractor agrees not to disclaim warranties of fitness for a particular purpose or merchantability.

31. **Condition of Proposed Items**

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW and of most current production, unless otherwise specified.

32. **Release**

Final payment of the amounts due under this Agreement shall operate as a release of the Procuring Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from the payment of fees from or under this Agreement.

33. **Confidentiality**

Any confidential information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency. Upon termination of this Agreement, Contractor shall deliver all confidential information in its possession to the Procuring Agency within thirty (30) business days of such termination. Contractor acknowledges that failure to deliver such confidential information to the Procuring Agency will result in direct, special and incidental damages.

34. **Contractor Personnel**

A. **Key Personnel** Contractor's key personnel shall not be diverted from this Agreement without the prior written approval of the Procuring Agency. Key personnel are those individuals considered by the Procuring Agency to be mandatory to the work to be performed under this Agreement. Key personnel shall be:

Rebekah Richards, Co-Founder and Chief Academic Officer
Chad Craycraft, Senior Vice President
Gregg Rosann, President and Chief Technology Officer
Fernando Moreno, Chief Operating Officer
Will Poulson, VP of Student Life Cycle

B. **Personnel Changes** Replacement of any personnel shall be made with personnel of equal ability, experience, and qualification and shall be approved by the Procuring Agency. For all personnel, the Procuring Agency reserves the right to require submission of their resumes prior to approval. If the number of Contractor's personnel assigned to the Project is reduced for any reason, Contractor shall, within ten (10) business days of the reduction, replace with the same or greater number of personnel with equal ability, experience, and qualifications, subject to Procuring Agency approval. The Procuring Agency, in its sole discretion, may approve additional time beyond the ten (10) business days for replacement of personnel. The Contractor shall include status reports of its efforts and progress in finding replacements and the effect of the absence of the personnel on the progress of the Project. The Contractor shall also make interim arrangements to assure that the Project progress is not affected by the loss of personnel. The Procuring Agency reserves the right to require a change in Contractor's personnel if the assigned personnel are not, in the sole opinion of the Procuring Agency, meeting the Procuring Agency's expectations.

35. **Incorporation by Reference and Precedence**

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

36. **Inspection**

If this Agreement is for the purchase of tangible personal property (goods), final inspection and acceptance shall be made at destination. Tangible personal property rejected at destination for non-conformance to specifications shall be removed at Contractor's risk and expense promptly after notice of rejection and shall not be allowable as billable items for payment.

37. **Inspection of Services**

If this Agreement is for the purchase of services, the following terms shall apply:

- A. Services, as used in this Clause, include services performed, workmanship, and material furnished or utilized in the performance of services.
- B. The Contractor shall provide and maintain an inspection system acceptable to the State Purchasing Agent or other party to this Agreement covering the services under this Agreement. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the State Purchasing Agent or other party to this Agreement during the terms of performance of this Agreement and for as long thereafter as the Agreement requires.
- C. The State Purchasing Agent or other party to this Agreement has the right to inspect and test all services contemplated under this Agreement to the extent practicable at all times and places during the term of the Agreement. The State Purchasing Agent or other party to this Agreement shall perform inspections and tests in a manner that will not unduly delay or interfere with Contractor's performance.
- D. If the State Purchasing Agent or other party to this Agreement performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in Agreement price, all reasonable facilities and assistance for the safe and convenient performance of such inspections or tests.

E. If any part of the services does not conform with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may require the Contractor to re-perform the services in conformity with the requirements of this Agreement at no increase in Agreement amount. When the defects in services cannot be corrected by re-performance, the State Purchasing Agent or other party to this Agreement may:

- (1) require the Contractor to take necessary action(s) to ensure that future performance conforms to the requirements of this Agreement; and
- (2) reduce the Agreement price to reflect the reduced value of the services performed.

F. If the Contractor fails to promptly re-perform the services or to take the necessary action(s) to ensure future performance in conformity with the requirements of this Agreement, the State Purchasing Agent or other party to this Agreement may:

- (1) by Agreement or otherwise, perform the services and charge to the Contractor any cost incurred by the State Purchasing Agent or other party to this Agreement that is directly related to the performance of such service; or
- (2) terminate the Agreement for default.

THE PROVISIONS OF THIS CLAUSE ARE NOT EXCLUSIVE AND DO NOT WAIVE THE STATE PARTIES TO THIS AGREEMENT OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.

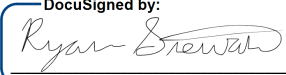
38. **Insurance**

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement the following insurance coverage(s), naming the State of New Mexico, General Services Department or other party to this Agreement as additional insured.

- A. Workers Compensation (including accident and disease coverage) at the statutory limit. Employers Liability: \$100,000.
- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:
 - a. Bodily injury: \$1,000,000 per person/\$1,000,000 per occurrence.
 - b. Property damage or combined single limit coverage: \$1,000,000.
 - c. Automobile liability (including non-owned automobile coverage): \$1,000,000.
 - d. Umbrella: \$1,000,000.

C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured and provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Contractor. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By:  Date: 9/25/2020
DocuSigned by:
7DFDA69D049749D...
Ryan Stewart, Ed.L.D., Secretary
Public Education Department

By:  Date: September 23, 2020
Andy Cusimano, Chief Financial Officer
Graduation Alliance

Approved for Legal Sufficiency:

By:  Date: 9/23/2020
DocuSigned by:
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Agency Legal Counsel
Public Education Department

By:  Date: 9/23/2020
DocuSigned by:
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Agency Financial Officer
Public Education Department

Exhibit A
Scope of Work
Graduation Alliance
ENGAGE New Mexico Project

The ENGAGE New Mexico Student Attendance Recovery Program (the “Attendance Program”) is a statewide project offered to New Mexico’s public school districts and charter schools. Districts or charter schools who opt-in to participate are referred to as “Participating Districts and Charter Schools.” The Attendance Program is designed to assist Participating Districts and Charter Schools disrupted by the COVID-19 crisis in intensive outreach, engagement, and enhanced support for middle and high school (“Students”). Students are defined as unique individuals whose contact information is provided by a Participating District and Charter School for outreach, engagement, and enhanced support as part of the Attendance Project who meet the eligibility criteria to be established in conjunction with the PED.

Contractor shall fulfill the obligations of the Attendance Program as set forth in this statement of work (“Services”). Contractor shall be considered a School Official with a legitimate educational interest in performing the Services contemplated in this Scope of Work.

Contractor previously entered into an agreement with the PED, on August 7, 2020, to fulfill the obligation of the Attendance Program for 13,500 eligible students. This agreement is an expansion of the services to be provided in that August 7, 2020 agreement.

Contractor shall provide Services to an additional 14,500 Students over that initial amount of 13,500 Students from the August 7, 2020 Agreement. Contractor shall extend the opportunity for on-going support to families of K-12 students and will work with the PED to establish appropriate business rules for referrals as well as barrier analysis questions to inform placement into On-Going Support Levels and provide essential data collection for the State.

Contractor shall provide coaching support for K-5 students directly to parents or guardians. With appropriate permission from parents or guardians, Contractor shall provide coaching support for K-5 students directly to caregivers to ensure they have the tools needed to support younger students in their education.

As with the current program, families that opt-in will be asked to self-identify barriers to participation based on a uniform set of questions developed by the Contractor in coordination with the PED. Based on families’ answers, those families will be placed in one of three RTI-type On-going Support Levels: general, targeted, and intensive.

Contractor’s coaches shall work with families throughout the school year to develop an individualized plan for implementing learning time and for support solving problems when they arise such as technical access, connection to the teacher, resources for additional support, and other similar supports. Contractor’s coaches shall work with families in mitigating social emotional barriers such as access to healthcare/behavioral health and referrals for local and state resources. Coaches shall be available from 7 am to 7 pm MT and bilingual (Spanish) coaches will be assigned to support families as appropriate.

Contractor shall support the PED in developing an outreach and communication strategy for public school districts and charter schools to inform them about the expansion of the Attendance Program and provide them with the ability and instructions in order to opt-in or otherwise benefit from this expansion.

Contractor shall develop the expanded outreach plan and present its recommendations to the PED for review, modification, and approval prior to deployment. The outreach plan may include written communication to public school district and charter school leadership, creation and publishing of an informational website and/or landing page, development of materials that can be shared during webinars or virtual meetings, and a general Frequently Asked Questions for the Attendance Program targeted at parents, students, and public school districts, and on-going technical assistance and support for Participating Districts and Charter Schools.

Once the PED has approved the outreach plan, Contractor shall, in coordination with the PED, deploy the Outreach Plan and implement its various elements. Additional LEA outreach and notification activities may be undertaken by Contractor in consultation with and with the approval of PED.

In order for Contractor to provide its Services under the Attendance Program, Participating Districts and Charter Schools must supply certain information, as available, to Contractor about Students.

Individuals whom the Participating Districts and Charter Schools may submit as Students under the Attendance Program must be in accordance with the published eligibility requirements to be agreed upon with the PED.

Additional lists of Students may include referrals of individuals who were previously engaged but who are not regularly attending or making progress in their courses.

Contractor shall collaborate with PED to provide templates and multiple methods for Participating Districts and Charter Schools to provide the Necessary Data at the commencement of the Attendance Program and on an on-going basis throughout the duration of the Attendance Program, including via a secure data transfer site provided by Contractor.

<p>Necessary Data includes the following (where available) in addition to any further information agreed to between Contractor and Participating Districts and Charter Schools:</p>	<p>Additional data to facilitate assignment to intervention levels is recommended but not required and could include:</p>
<ul style="list-style-type: none"> • Student’s first name • Student’s last name • Parent/Guardian name • Home phone number • Student’s cell phone number • Parent/Guardian’s cell phone number 	<ul style="list-style-type: none"> • Student ID • Student attendance data for the year • Student’s last attendance date • Number of credits earned by Student this academic year

<ul style="list-style-type: none"> • Student's emergency contact name • Student's emergency contact number • Student's home address • Student's email address • Parent/Guardian's email address • Student's grade level • Student's date of birth 	<ul style="list-style-type: none"> • Number of credits attempted by Student this academic year • Number of credits Student has remaining to graduate • Student's current cumulative GPA • Student's current courses • Student's course grades in the courses in which Student is currently enrolled
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Contractor shall request any updates to Necessary Data for Students from Participating Districts and Charter Schools s in addition to any additional Student referrals at least two times per week. Contractor shall manage the ongoing and various lists of Students for the purposes of establishing weekly and final re-engagement metrics and identify Students who are removed by a Participating District and Charter School from the attendance recovery report.

Contractor is a regionally-accredited education services provider authorized by Cognia to award high school credit and grant high school diplomas upon successful completion of graduation requirements, serving over 200 public school districts across the nation. Data security is a paramount concern in Contractor's daily efforts to educate students, share data with its school district partners, and provide meaningful metrics on student progress and outcomes. Appendix A of this Scope of Work contains a Data Sharing Agreement outlining the standards agreed to between Contractor and PED regarding the storage and security of data related to the ENGAGE New Mexico project.

Data will be shared with Contractor by Participating Districts and Charter Schools via the data-sharing and security agreement attached to this Scope of Work as Appendix A. Such agreement identifies the scope and conditions under which data will be shared by Participating Districts and Charter Schools and secured by Contractor.

In any event, data shared with Contractor may only be used for the purposes of fulfilling its obligations under the Attendance Program. Participating Districts and Charter Schools are responsible for excluding removing any individuals from the Student lists contact information for those who have requested no communication from the Participating District or Charter School.

Contractor shall utilize a team of trained Outreach Counselors to serve as the first point of engagement for Students referred to Contractor by participating districts and charter schools, and other entities making referrals as part of this agreement. Outreach Counselors will use data from the LEAs to reach out to Students and Students' families using multiple modalities, which may include phone, text, social media, email, and traditional mail, to find and engage Students who have not reconnected with their LEA or who are not consistently attending or progressing in their remote continuing education offerings.

Outreach Counselors shall employ different outbound communication strategies utilizing effectiveness data and trends, as well as industry best practices, to increase the likelihood of

reaching Students and subsequently reengaging those Students in their local public school district's remote continuing education offerings. These strategies may include different frequency attempts and calling during different time windows (morning, afternoon), as well as blending various contact modalities.

Outreach Counselors will be available to support inbound and outbound calls from 7AM-6PM Mountain Daylight Time. In an effort to increase inbound activity, informative voicemails as well as text messages may be sent per a predetermined treatment strategy to encourage Students to engage with outreach counselors or their Participating District and Charter School.

Outreach Counselors shall utilize a data-driven and structured Student email outreach campaign to promote engagement with outreach counselors and/or the Student's Participating District or Charter School. The campaign will have specific and relevant messaging and will be coordinated to operate in conjunction with other efforts conducted by the outreach counselors, such as via telephone or text message.

The Outreach Counselor team has the ability to work with both English and Spanish speaking Students and families.

Contractor, in consultation with the PED, including leveraging resources through IAD and media resources, shall implement a culturally and linguistically responsive outreach and support plan. Elements of this plan will include differentiated outreach and on-going coaching strategies for Native American and Spanish-speaking families to ensure cultural relevance. Examples of these differentiated strategies may include:

- a. outreach for Native American families, including leveraging existing resources and media outlets to promote the program within the Native American Community.
- b. For Spanish-speaking families, student outreach and support conducted by fluent Spanish-speaking outreach counselors and coaches to ensure students and families receive linguistically responsive support.
- c. providing a Spanish-speaking option for any family who actively calls the program to enlist support.
- d. Providing appropriate language translations for promotional material used in the Attendance Program. Languages may include Spanish, Dine, Vietnamese, Arabic. Contractor will work with LEAs and the PED related to appropriate language translations.

To the extent possible, Contractor shall strive to hire additional team members from New Mexico who demonstrate understanding of the cultural dynamics and linguistic competence needed to provide appropriate support for students and families.

Once a Student has been reached by an Outreach Counselor, and the Outreach Counselor has successfully committed them to reengage in his/her Participating District's or Charter School's remote continuing education offerings, the Student will be triaged using a proprietary algorithm developed by Contractor using data from Participating Districts and Charter Schools, or, absent

participating district and charter school data, self-reported data from the Students, to place the Student in the appropriate Ongoing Support Level (the “Ongoing Support Level” is the applicable retention strategy utilized to foster continued participation by the Student in the Participating District’s or Charter School’s remote continuous education offerings).

Ongoing Support Level assignments are determined based on a number of factors including but not limited to:

- a. Student’s class standing,
- b. Student’s risk level for attaining on-time graduation,
- c. Student’s current risk indicators in the remote learning environment such as availability of at-home support,
- d. Student’s recent and historical attendance patterns, and
- e. Student’s current and historical grades.

Upon designation into an Ongoing Support Level, Students will be assigned an Academic Coach for differentiated support based on their needs.

Contractor’s Ongoing Support Levels are delivered through its Academic Coaches and vary based on the Ongoing Support Level to which the Student is assigned. The engagement with Students could range from daily outreach to periodic check-ins with Students and their parents/guardians. Ongoing Support Levels will include a minimum of three support tiers following the general design of Response To Intervention (RTI) models, including Tier 1: Group Support, Tier 2: Targeted Support, and Tier 3: Intensive Support.

The goal is to break down barriers to engagement for all Students, such as technical access and support, competing priorities, confidence, lack of family support, stress management, or others. Additional topics that could be addressed by Academic Coaches include helping Students identify and connect to community resources needed to overcome social emotional barriers to education.

Academic Coaches shall employ a variety of outbound communication strategies utilizing available Necessary Data from Participating Districts and Charter Schools, self-reported Student data, as well as industry best practices, to increase the engagement of those Students in their local public school district’s remote continuing education offerings and courses. These strategies may include different frequency attempts and intervention strategies.

Academic Coaches will be available to support inbound and outbound calls, text messages, and emails from 7AM-7PM Mountain Time. In an effort to increase engagement and course activity, informative voicemails as well as text messages may be sent per a predetermined treatment strategy to encourage Students to engage with their Academic Coach or their Participating District or Charter School.

The Academic Coach team has the ability to work with both English and Spanish speaking Students and families.

For Students whose schools are utilizing online learning for continuity, Contractor’s Academic

Coaches can provide first level support for common technical issues. Academic Coaches can escalate to Contractor's technical support team for additional support as needed.

Contractor shall fund a subscription for all (i) Students participating in the Attendance Program, and (ii) immediate families (defined as Student's designated parent/guardian and other dependents living in the Student's household) of Students participating in the Attendance Program (the Eligible Participants) to a non-insurance telemedicine and behavioral health service offered telephonically or electronically (the Telehealth Services). Eligible Participants age 18 and older will have the Telehealth Services for the duration of the Attendance Program, but Eligible Participants 13-17 years of age will not begin to receive the behavioral health component of the Telehealth Services until the first quarter of 2021. If a Student ceases to be served under the Attendance Program, then that Student and his/her immediate family cease to be Eligible Participants and will not be eligible to continue to receive the Telehealth Services.

The Telehealth Services will be provided by a third-party provider chosen solely by Contractor and subject to change by Contractor at any time and without prior notice. Said third party provider is the entity that will maintain the Eligible Participants' data related to health, eligibility, and billing.

Without limitation, the following are specifically not included in the Telehealth Services: prescriptions, coordination of care, and referrals for visits to local healthcare professionals. The Telehealth Services are offered at no additional cost to Eligible Participants outside of what is identified in the Agreement, and Contractor will provide the State with a statistical utilization report if the State has at least twenty-five (25) Eligible Participants opt-in to receive the Telehealth Services.

The Telehealth Services are optional for all Eligible Participants, and any Eligible Participant wishing to receive the Telehealth Services must opt-in to do so. The designated parent/guardian of any Eligible Participant who is not eighteen years old must opt-in on the Eligible Participant's behalf. All utilization of the Telehealth Services must be initiated by the parent/guardian for any Eligible Participants who have not reached the age of eighteen.

Once per week during the Attendance Project, Contractor shall report to each Participating District and Charter School individually and PED collectively the following metrics. The data contained in all reports shall be de-identified and contain no Personally Identifiable Information as defined by the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99).

Phase	Indicators	Metrics
Outreach	Number of Students received from Participating Districts and Charter Schools	<ul style="list-style-type: none"> • % of Students who are contactable • Number of Students able to be contacted • Number of Students who commit to re-engage

		<ul style="list-style-type: none"> Number of Students who agree to academic coaching
Academic Coaching	Number of Students in each Ongoing Support Level	<ul style="list-style-type: none"> Average number of interventions received by Students by intervention support level
Re-engagement	<p>Two-way contacts by Ongoing Support Level</p> <p>Confirmed graduates (seniors only)</p>	<ul style="list-style-type: none"> Rate of two-way contact by Ongoing Support Level Percentage of participating seniors who graduate

A final data report containing summative data for the metrics identified in the table above will be provided to PED and Participating Districts and Charter Schools no later than June 30, 2021.

Contractor shall provide identifiable information about Student response to the Attendance Recovery offering for appropriate district personnel via Secure FTP.

11. Confidentiality of Student Data

Contractor, representing all members of the organization, shall ensure the confidentiality of PII Necessary Data through the following methods:

- a) Contractor shall have completed commercially-reasonable training in the handling and maintenance of PII Necessary Data.
- b) Contractor shall strictly comply with all state and federal laws that apply to the use and release of the PII Necessary Data. When necessary to comply with these laws, Contractor shall procure the consent of parents or eligible Students, as required under applicable law, to the release and use of the PII Necessary Data, and shall maintain and make written proof of parent or Student (if Student is over the age of 18) consent available to Contractor.
- c) Contractor shall comply with the re-disclosure limitations set forth in FERPA, including 34 C.F.R. § Part 99.33.
- d) Contractor shall restrict access to the data only to (i) the person or persons who provide direct services to Students participating in the Attendance Project; or (ii) the person or persons within Contractor's organization who have been tasked with analyzing the data; and make those persons aware of, and agree to abide by, the terms set forth in this provision.
- e) Contractor shall not release or otherwise reveal, directly or indirectly, the PII Necessary Data to any individual, agency, entity, or third party not included in this Agreement or otherwise directed by this Agreement and Attendance Project statement of work, unless such disclosure is required by law or court order.
- f) Graduation Alliance shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the PII Necessary Data without

the express written consent of Graduation Alliance, and if necessary, based upon FERPA and its regulations, Students and/or their parents.

- g) Graduation Alliance shall not use PII Necessary Data shared under this Agreement for any purpose other than the goals outlined in this Agreement. Nothing in the Agreement shall be construed to authorize Contractor to have access to additional Student data that is not included in the scope of the Agreement (or addenda). Graduation Alliance understands that the Agreement does not convey ownership of the PII Necessary Data to Contractor.
- h) Contractor shall take commercially-reasonable security precautions and protections to ensure that persons not authorized to view the PII Necessary Data do not gain access to the PII Necessary Data. Commercially-reasonable security precautions and protections include, but are not limited to:
 - a. Creating, distributing, and implementing data governance policies and procedures which protect PII Necessary Data through appropriate administrative, technical, and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all PII Necessary Data carried on mobile computers/devices;
 - c. Encrypting all PII Necessary Data stored in Contractor's databases or other storage and access media;
- i) Encrypting PII Necessary Data before it is transmitted electronically;
- j) Requiring that users be uniquely identified and authenticated before accessing PII Necessary Data;
- k) Establishing and enforcing well-defined data privilege rights which restrict users' access to the PII Necessary Data necessary for them to perform their job functions;
- l) Ensuring that all staff accessing PII Necessary Data sign a commercially-reasonable non-disclosure agreement;
- m) Securing access to any physical areas/electronic devices where PII Necessary Data are stored;
- n) Installing technology necessary to provide commercially-reasonable security for network transmissions involving PII Necessary Data;
- o) Installing commercially-reasonable anti-virus, network intrusion, logging and notification systems to protect the network and computers where PII Necessary Data is stored and accessed.

Appendix A: Data Sharing Agreement

This Data Sharing Agreement (“DSA”) is entered into between Graduation Alliance, Inc (“Provider”) and the New Mexico Public Education Department (“PED”). This DSA supplements the DATE Agreement between Provider and PED relating to the ENGAGE New Mexico project. Educational agencies or institutions which opt-in to participation in the ENGAGE New Mexico project in accordance with the Agreement and this DSA (referred to in the Agreement as “Participating Districts and Charter Schools”) are referred to individually in this DSA as a “District” and Provider is bound by this DSA to each Participating District and Charter School individually.

This DSA has the following overriding goals:

1. Preserving the confidentiality of Student identities, including assurance that identifiable Student Data is not released to third parties;
2. Enhancing the ability of Provider and the District to improve academic achievement for Students by allowing access to individual Student Records; and
3. Accurately measuring Provider and the District’s progress toward improving Student outcomes and indicators, and meeting set targets and other goals using data shared between the Parties.

NOW, THEREFORE, PROVIDER AND REQUESTOR AGREE AS FOLLOWS:

I. DEFINITIONS

The following definitions apply to this document:

- a. “Student” is defined as any individual who is or has been in attendance, whether in-person or online, with District, and regarding whom the District maintains education records.
- b. “Personally Identifiable Information” (“PII”) is as defined in the Family Educational Rights and Privacy Act (“FERPA”), as set forth at 20 U.S.C. § 1232g, 34 CFR Part 99, and if applicable as defined in related state laws and regulations pertaining to the state in which the Student resides.
- c. “Education Records” is as defined in FERPA and if applicable as defined in related state laws and regulations pertaining to the state in which the Student resides.
- d. “Student Data” is the combination in any form of Personally Identifiable Information and Education Records.

II. OBLIGATIONS OF PROVIDER

The Provider, representing all members of the organization, shall ensure the confidentiality of Student Data through the following methods:

- a. The Provider's data custodian(s) designated in Section II(k) shall have completed commercially-reasonable training in the handling and maintenance of Student Data.
- b. The Provider shall strictly comply with all state and federal laws that apply to the use and release of the Student Data. When necessary to comply with these laws, the Provider shall procure the consent of parents or eligible Students, as required under applicable law, to the release and use of the Student Data, and shall maintain and make written proof of parent or Student (if Student is over the age of 18) consent available to Provider.
- c. The Provider shall comply with the re-disclosure limitations set forth in FERPA, including 34 C.F.R. § Part 99.33.
- d. The Provider shall restrict access to the data only to (i) the person or persons who provide direct services to Students enrolled under the Master Agreement; or (ii) the person or persons within the Provider's organization who have been tasked with analyzing the data; and make those persons aware of, and agree to abide by, the terms set forth in this DSA.
- e. The Provider shall not release or otherwise reveal, directly or indirectly, the Student Data to any individual, agency, entity, or third party not included in this DSA, unless such disclosure is required by law or court order.
- f. The Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the Student Data without the express written consent of Provider, and if necessary, based upon FERPA and its regulations, Students and/or their parents.
- g. The Provider shall not use Student Data shared under this DSA for any purpose other than the goals outlined in this DSA. Nothing in the DSA shall be construed to authorize Provider to have access to additional Student Data from Provider that is not included in the scope of the DSA (or addenda). Provider understands that the DSA does not convey ownership of the Student Data to Provider.
- h. The Provider shall take commercially-reasonable security precautions and protections to ensure that persons not authorized to view the Student Data do not gain access to the Student Data. Commercially-reasonable security precautions and protections include, but are not limited to:
 1. Creating, distributing, and implementing data governance policies and procedures which protect Student Data through appropriate administrative, technical, and physical security safeguards, and outline staff responsibilities for maintaining data security;
 2. Encrypting all Student Data carried on mobile computers/devices;
 3. Encrypting all Student Data stored in Provider's databases or other storage and access media;

4. Encrypting Student Data before it is transmitted electronically;
 5. Requiring that users be uniquely identified and authenticated before accessing Student Data;
 6. Establishing and enforcing well-defined data privilege rights which restrict users' access to the Student Data necessary for them to perform their job functions;
 7. Ensuring that all staff accessing Student Data sign a commercially-reasonable non-disclosure agreement;
 8. Securing access to any physical areas/electronic devices where Student Data are stored;
 9. Installing technology necessary to provide commercially-reasonable security for network transmissions involving Student Data;
 10. Installing commercially-reasonable anti-virus, network intrusion, logging and notification systems to protect the network and computers where Student Data is stored and accessed;
- i. The Provider shall report all known or suspected breaches of Student Data, in any format, to District's data reporting team at _____ within twenty-four (24) hours of confirming or reasonably suspecting such a breach. The report shall include (1) the name, job title, and contact information of the person reporting the incident; (2) the name, job title, and contact information of the person who discovered the incident; (3) date and time the incident was discovered; (4) nature of the incident (e.g., system level electronic breach, an electronic breach of one computer or device, or a breach of hard copies of records; (5) a description of the information lost or compromised; (6) name of electronic system and possible interconnectivity with other systems; (7) storage medium from which information was lost or compromised; (8) controls in place to prevent unauthorized use of the lost or compromised information; (9) number of individuals potentially affected; and (10) whether law enforcement was contacted.
- j. The Provider shall securely and permanently destroy the Student Data, and any and all hard and soft (electronic) copies thereof, upon the termination of this DSA or the Master Agreement. Provider agrees to require all employees, contractors, or agents of any kind using Student Data to comply with this provision. Provider agrees to document the methods used to destroy the Student Data, and upon request, provide written certification to Provider that the Student Data has been destroyed.
- k. For purposes of this DSA and ensuring Provider's compliance with the terms of this DSA and all applicable state and Federal laws, Provider will designate a custodian of the Student Data that Provider shares with the Provider. Provider will release all Student Data and information under this DSA to said named custodian (the "Data Custodian") in Section VI of this DSA. The Data Custodian shall be responsible for transmitting all Student Data requests and maintaining a log or other record of all Student Data requested and received pursuant to the DSA, including confirmation of the return or destruction of Student Data as described below.
- l. Provider or its agents may, upon request, review the records the Provider is required to keep under this DSA. Provider designates its Chief Technology Officer (or an alternative

designee specified in writing) as its liaison for all communications with the Provider regarding this DSA;

- m. The Provider acknowledges that any violation of this DSA and/or the provisions of FERPA or accompanying state regulations related to the nondisclosure of protected Student information constitutes just cause for Provider to immediately terminate this DSA and the Master Agreement.

III. OBLIGATIONS OF DISTRICT

During the term of this Agreement, District shall prepare and deliver to Provider the Student Data as defined in Exhibit A - Data File Description.

IV. PAYMENT

No payments will be made under this DSA by either party.

V. INDEMNIFICATION

- a. District agrees that to the fullest extent permitted by law, District will hold harmless, defend, and indemnify Provider, its agents, employees, and board members from any liability, cost, or expense, including without limitation penalties, losses, damages, attorneys' fees, taxes, expenses of litigation, judgments, liens, and encumbrances, to the extent arising out of or resulting from any act or omission by District under this DSA. The terms of this section shall survive termination of this DSA.
- b. Provider agrees that to the fullest extent permitted by law, Provider will hold harmless, defend, and indemnify the District, its agents, employees, and board members from any liability, cost or expense, including without limitation penalties, losses, damages, attorneys' fees, taxes, expenses of litigation, judgments, suits, liens, and encumbrances, to the extent arising out of or resulting from any act or omission by Provider under this DSA. The terms of this section shall survive termination of this DSA.

VI. NOTICES

All notices contemplated or required under this DSA shall be in writing and delivered by email, with a copy sent via U.S. Mail as follows:

To Provider:	and
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Data Custodian name and email: _____

To District:

VII. TERM

The Term of this DSA is from _____ to _____.

This DSA will allow for the District to provide GA with Student Data, as defined in Exhibit A, for the Term specified above. The DSA shall become effective on the date when the last party to sign has executed this DSA unless terminated under the terms of Paragraph VII below. This DSA may be extended upon mutual written agreement.

VIII. TERMINATION

Either party may terminate this DSA, with 30 days written notice to the other party, at any time, for any reason. In addition, District may terminate this DSA with immediate effect if it determines such action is necessary for the health, safety or education of Students or staff.

IX. MISCELLANEOUS PROVISIONS

- a. Amendment. Modifications to this DSA must be in writing and be signed by each party.
- b. Governing Law. The terms of this DSA shall be interpreted according to and enforced under the laws of the State of New Mexico. The parties agree that any judicial proceedings filed by the parties regarding this DSA will take place in Santa Fe, New Mexico.
- c. Severability. If any provision of this DSA is held invalid or unenforceable, the remainder of the DSA shall continue in full force and effect.
- d. Assignment. Neither party shall assign its rights or responsibilities under this DSA, unless it receives written permission from the other party.
- e. Non-Waiver. Any express waiver or failure to exercise promptly any right under this DSA will not create a continuing waiver or any expectation of non-enforcement.
- f. Counterparts. The parties agree that this DSA may be executed in one or more counterparts, each of which shall constitute an enforceable original of the DSA, and that facsimile signatures shall be as effective and binding as original signatures.
- g. Debarment. District, by executing this contract, warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions (defined as not being eligible to receive federal funds) by any local, state or federal department or agency.
- h. Cooperation with Provider Auditor: District agrees to provide reasonable cooperation with any inquiry by either Provider or 3rd party auditors retained by Provider relating to the performance of this Agreement.

By signing below, each signatory represents that it has the authority to execute this DSA.

_____	_____
_____	_____
Signature	Signature
_____	_____
Printed Name	Printed Name
_____	_____
Title	Title
_____	_____
Date	Date

EXHIBIT A: DATA FILE DESCRIPTION

Files will be sent through a secure File Transfer Protocol (SFTP) or similar secure transport.

Category	Item
Demographics	<<list>>
Grade History	<<list>>
Enrollment History	<<list>>