

## Appendix A: Data Sharing Agreement

This Data Sharing Agreement (**DSA**) is entered into between Graduation Alliance, Inc (**Contractor**) and the local education agency accepting and entering into this DSA (**LEA**). This DSA relates to the 2020-2021 Section 25i Attendance Recovery Program grant (**ENGAGE Michigan**), and districts electing to participate in ENGAGE Michigan are governed by the aforementioned grant and this DSA. Each LEA is referred to in this DSA individually as a “District” and Contractor is bound by this DSA to each LEA 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 Contractor and the District to improve academic achievement for Students by allowing access to individual Student Records; and
3. Accurately measuring Contractor 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, CONTRACTOR 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 CONTRACTOR

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

- a. The Contractor'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 Contractor 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 Contractor 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 Student or District.
- c. The Contractor shall comply with the re-disclosure limitations set forth in FERPA, including 34 C.F.R. § Part 99.33.
- d. The Contractor 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 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 DSA.
- e. The Contractor 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 Contractor 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 District, and if necessary, based upon FERPA and its regulations, Students and/or their parents.
- g. The Contractor 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 Contractor to have access to additional Student Data from Contractor that is not included in the scope of the DSA (or addenda). Contractor understands that the DSA does not convey ownership of the Student Data to Contractor.
- h. The Contractor 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 Contractor'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 Contractor shall report all known or suspected breaches of Student Data, in any format, to both the District and DESE 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 Contractor 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. Contractor agrees to require all employees, contractors, or agents of any kind using Student Data to comply with this provision. Contractor agrees to document the methods used to destroy the Student Data, and upon request, provide written certification to District that the Student Data has been destroyed.
  - k. For purposes of this DSA and ensuring Contractor's compliance with the terms of this DSA and all applicable state and Federal laws, Contractor will designate a custodian of the Student Data that District shares with the Contractor. District will release all Student Data and information under this DSA to said named custodian (the "Data Custodian"). 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. District or its agents may, upon request, review the records the Contractor is required to keep under this DSA. Contractor designates its Chief Technology Officer (or an alternative

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

- m. The Contractor 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 District to immediately terminate this DSA and the Master Agreement.

### III. OBLIGATIONS OF DISTRICT

If a District elects to participate in the Attendance Recovery Program, then during the term of this Agreement, District shall prepare and deliver to Contractor 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

Contractor agrees that to the fullest extent permitted by law, Contractor 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 Contractor 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 Contractor: Graduation Alliance, Inc  
Chief Financial Officer  
310 South Main Street  
12<sup>th</sup> Floor  
Salt Lake City, Utah 84101

To District: Notices to Districts shall be sent to the email address provide by District at the time it opts-in to participation in ENGAGE Michigan and accepts this DSA.

## VII. TERM

The Term of this DSA begins with District's acceptance and opt-in and ends at the conclusion of the ENGAGE Michigan initiative.

This DSA will allow for the District to provide Contractor 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 Missouri. The parties agree that any judicial proceedings filed by the parties regarding this DSA will take place in Jefferson City, Missouri.
- 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 Contractor Auditor: District agrees to provide reasonable cooperation with any inquiry by either Contractor or 3<sup>rd</sup> party auditors retained by Contractor relating to the performance of this Agreement.