

Contract ID#23-924-P527-00173

STATE OF NEW MEXICO

Public Education Department
PROFESSIONAL SERVICES CONTRACT #23-924-P527-00173

THIS AGREEMENT is made and entered into by and between the State of New Mexico **Public Education Department (PED)**, hereinafter referred to as the “Agency,” and **Graduation Alliance**, hereinafter referred to as the “CONTRACTOR,” and is effective as of the date set forth below upon which it is executed by the General Services Department/State Purchasing Division (GSD/SPD Contracts Review Bureau).

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

The CONTRACTOR shall perform the following work:

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 elementary, middle, and high school students (“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 DEPARTMENT.

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

The CONTRACTOR shall provide Services to 7,000 students. The CONTRACTOR will work with the DEPARTMENT to establish appropriate business rules for referrals as well as barrier analysis questions to inform placement into Ongoing Support Levels and provide essential data collection for the State.

Should CONTRACTOR add less than 2,540 students to Ongoing Support Levels 2 and 3 within 30 days of receiving 7,000 referrals, Graduation Alliance will add additional referrals to the contract at no additional cost to the state.

To determine the number of additional referrals, the CONTRACTOR will apply the following formula: The result of 2,540 - actual number of students in Support Levels 2 and 3 divided by the then-current conversion to support rate as reported in the weekly

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dashboard.

Should the CONTRACTOR over-perform against this benchmark, Graduation Alliance will serve students in accordance with terms of the contract at no additional cost to the state.

The CONTRACTOR shall provide coaching support for K-5 students directly to parents or guardians. With appropriate permission from parents or guardians, The 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 DEPARTMENT. Based on families' answers, those families will be placed in one of three Response to Intervention (RTI) tiers of Ongoing Support Levels: general, targeted, and intensive.

The 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.

The 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 Mountain Time, and bilingual (Spanish) coaches will be assigned to support families as appropriate.

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

The CONTRACTOR shall develop the 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 ongoing technical assistance and support for Participating Districts and Charter Schools.

Once the DEPARTMENT has approved the outreach plan, the CONTRACTOR shall, in coordination with the DEPARTMENT, deploy the Outreach Plan and implement its various elements. Additional Local Education Agency (LEA) outreach and notification activities may be undertaken by the CONTRACTOR in consultation with

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and with the approval of DEPARTMENT.

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

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.

The CONTRACTOR shall collaborate with DEPARTMENT 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 ongoing basis throughout the duration of the Attendance Program, including via a secure data transfer site provided by the CONTRACTOR.

Necessary Data includes the following (where available) in addition to any further information agreed to between the CONTRACTOR and Participating Districts and Charter Schools:	Additional data to facilitate assignment to intervention levels is recommended but not required and could include:
<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

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<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• Student's home language• Student's race or ethnicity	<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• Student's graduation status (as applicable)
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The CONTRACTOR shall request any updates to Necessary Data for Students from Participating Districts and Charter Schools in addition to any additional Student referrals at least two times per week. The CONTRACTOR shall manage the ongoing and various lists of Students for the purposes of establishing weekly and final reengagement metrics and identify Students who are removed by a Participating District and Charter School from the attendance recovery report.

The 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 the CONTRACTOR'S daily efforts to educate students, share data with its school district partners, and provide meaningful metrics on student progress and outcomes.

Data will be shared with the CONTRACTOR by Participating Districts and Charter Schools. In any event, data shared with the 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 or removing any individuals from the student lists contact information who have requested no communication from the Participating District or Charter School.

The CONTRACTOR shall utilize a team of trained Outreach Counselors to serve as the first point of engagement for Students referred to the 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

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the likelihood of reaching Students and subsequently reengaging those Students in their local public school district's 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.

The CONTRACTOR, in consultation with the DEPARTMENT, including leveraging resources through media resources, shall implement a culturally and linguistically responsive outreach and support plan. Elements of this plan will include differentiated outreach and ongoing 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, Diné, Vietnamese, and Arabic. The CONTRACTOR will work with LEAs and the DEPARTMENT related to appropriate language translations.

To the extent possible, the 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.

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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 the 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.

The 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

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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, the CONTRACTOR'S Academic Coaches can provide first-level support for common technical issues. Academic Coaches can escalate to the CONTRACTOR'S technical support team for additional support as needed.

Once per week during the Attendance Project, the CONTRACTOR shall report to each Participating District and Charter School individually and DEPARTMENT 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"> Percentage of Students who are contactable Number of Students able to be contacted Number of Students who commit to re-engage 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	Two-way contacts by Ongoing Support Level Confirmed graduates (seniors only)	<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 the DEPARTMENT and Participating Districts and Charter Schools no later than June 30, 2023.

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The CONTRACTOR shall provide identifiable information about Student response to the Attendance Recovery offering for appropriate district personnel via Secure File Transfer Protocol (FTP).

Confidentiality of Student Data

The CONTRACTOR, representing all members of the organization, shall ensure the confidentiality of personally identifiable information (PII) Necessary Data through the following methods:

- a) The CONTRACTOR shall have completed commercially reasonable training in the handling and maintenance of PII Necessary Data.
- b) The 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, the 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 the CONTRACTOR.
- c) The CONTRACTOR shall comply with the re-disclosure limitations set forth in Family Educational Rights and Privacy Act (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 participating in the Attendance Project; 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 provision.
- e) The 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.

The CONTRACTOR 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.
- f) The CONTRACTOR 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 the 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 the CONTRACTOR.
- g) The CONTRACTOR shall take commercially reasonable security precautions and protections to ensure that persons not authorized to view the PII Necessary Data

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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 the CONTRACTOR'S databases or other storage and access media;
- h) Encrypting PII Necessary Data before it is transmitted electronically;
- i) Requiring that users be uniquely identified and authenticated before accessing PII Necessary Data
- j) 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;
- k) Ensuring that all staff accessing PII Necessary Data sign a commercially reasonable nondisclosure agreement;
- l) Securing access to any physical areas/electronic devices where PII Necessary Data are stored;
- m) Installing technology necessary to provide commercially reasonable security for network transmissions involving PII Necessary Data;
- n) Installing commercially reasonable antivirus, network intrusion, logging and notification systems to protect the network and computers where PII Necessary Data is stored and accessed.

2. Compensation.

A. The Agency shall pay to the Contractor in full payment for services satisfactorily performed for the contract period, such compensation not to exceed **Nine Hundred Eighty-Six Thousand Eight Hundred Twenty-Three Dollars and Sixty-Two Cents (\$986,823.62)** including gross receipts tax. **The total amount payable to the Contractor under this Agreement, including gross receipts tax and expenses, shall not exceed Nine Hundred Eighty-Six Thousand Eight Hundred Twenty-Three Dollars and Sixty-Two Cents (\$986,823.62). 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 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 those services in excess of the total compensation amount being provided.**

B. Payment is owed to Contractor upon execution of the Agreement. Contractor will submit an invoice to PED, which shall be due in accordance with the terms of Article 3 of the Agreement.

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C. Payment is subject to availability of funds pursuant to the Appropriations Article set forth below and to any negotiations between the parties from year to year pursuant to Article 1, Scope of Work, and to approval by the General Services Department/State Purchasing Department (GSD/SPD). All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

D. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

3. Term.

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE GSD/SPD Contracts Review Bureau. This Agreement shall terminate on **June 30, 2023**, unless terminated pursuant to Article 4 (Termination), or Article 5 (Appropriations). In accordance with NMSA 1978, § 13-1-150, no contract term for a professional services contract, including extensions and renewals, shall exceed four years, except as set forth in NMSA 1978, § 13-1-150.

4. Termination.

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

B. Notice; Agency Opportunity to Cure.

1. Except as otherwise provided in Paragraph (4)(B)(3), the Agency shall give Contractor written notice of termination at least thirty (30) days prior to the intended date of termination.

2. Contractor shall give Agency written notice of termination at least thirty (30) days prior to the intended date of termination, which notice shall (i) identify all the Agency's material breaches of this Agreement upon which the termination is based and (ii) state what the Agency must do to cure such material breaches. Contractor's notice of termination shall only be effective (i) if the 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 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 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

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terminated pursuant to Article 5, "Appropriations", of this Agreement.

C. **Liability.** Except as otherwise expressly allowed or provided under this Agreement, the 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 AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.**

D. **Termination Management.** Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the agency as soon as practicable.

5. 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 Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the 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.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the 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.

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7. 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 Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the 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.

9. Release.

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

10. Confidentiality.

Any confidential information provided to or developed by the Contractor 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 Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

12. 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 10, Article 16 NMSA 1978. Without in anyway 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 Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with NMSA 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

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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 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 NMSA 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 Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the 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 Article 12 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 this Article 12 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 Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. 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.

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B. If the 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 provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. 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.

15. Penalties for violation of law.

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

16. 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.

17. 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.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers 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 Agency.

19. 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

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shall be subject to inspection by the Agency, the General Services Department/State Purchasing Division and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' 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, or if caused by the actions of any client of the Contractor 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 Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. 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 the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, 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 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.

22. 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.

23. Enforcement of 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.

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24. 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 Agency:

Anne Marlow-Geter
300 Don Gaspar Avenue, Room
127 Santa Fe, NM 87501
Anne.MarlowGeter@state.nm.us

To the Contractor:

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

25. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the GSD/SPD Contracts Review Bureau below.

By: DocuSigned by:
Kurt Steinhaus
BCCD059DF7D24D8 Date: 9/20/2022
Kurt A. Steinhaus, Ed.D., Secretary of Education
Public Education Department

By: DocuSigned by:
Cody Ethridge
FB0C0005C4E4A7 Date: 9/19/2022
Agency's Legal Counsel – Certifying legal sufficiency

By: DocuSigned by:
55BE5563EABA47D Date: 9/19/2022
Agency's Chief Financial Officer

By: Chad Craycraft Date: 09/15/2022
Contractor

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: 03-523319-00-2

By: DocuSigned by:
AnnMarie Lucero
A1E23260AE974AA Date: 9/20/2022
Taxation and Revenue Department

This Agreement has been approved by the GSD/SPD Contracts Review Bureau:

By: ARQ Date: 9/29/2022
GSD/SPD Contracts Review Bureau