



## EVERYDAY LABS INC. DATA USE AGREEMENT

This **DATA USE AGREEMENT** (this “Agreement”) is between DeKalb County School District, hereinafter referred to as “District,” and EveryDay Labs Inc., hereinafter referred to as “EveryDay Labs”. District and EveryDay Labs may hereinafter be referred to individually as a “Party,” and collectively as the “Parties.” The effective date of this Agreement shall be which shall be the date on which the Agreement is fully executed by both parties (the “Effective Date”).

In addition to the terms and conditions contained herein, the following documents are attached hereto and made a part of this Agreement:

- Attachment A – Description of Services
- Attachment B – Data Transfer Standards
- Attachment C – Contact Information

**WHEREAS**, District desires to make Data (as defined below) available to EveryDay Labs for the limited purpose of enabling EveryDay Labs to provide the Service (as described in Attachment A) on behalf of District; and

**WHEREAS**, EveryDay Labs is willing to provide the Service for the benefit of District to help improve student attendance and performance in DeKalb County School District.

**NOW, THEREFORE**, the Parties hereto agree as follows:

1. **SERVICES.** Subject to the terms and conditions of this Agreement, EveryDay Labs will provide District with the services specified in Attachment A (collectively, the “Services”) during the applicable Term (as defined below). The Services are subject to modification from time to time (at EveryDay Labs’s sole discretion, for any purpose deemed appropriate by EveryDay Labs). EveryDay Labs will use reasonable efforts to give District prior written notice of any such modification. District will cooperate with EveryDay Labs in connection with the performance of this Agreement by making available such personnel and information as may be reasonably required, and taking such other actions as EveryDay Labs may reasonably request.
2. **TERM.** The term of this Agreement commences on the Effective Date and expires August 31, 2024, subject to early termination as provided herein (the “Term”)
3. **LIMITED RIGHTS TO USE STUDENT RECORDS.** District will provide the Student Records (as defined below) to EveryDay Labs solely for EveryDay Labs to provide the Services and otherwise exercise and fulfill its rights and obligations hereunder, and hereby grants to EveryDay Labs the non-exclusive, royalty-free, worldwide, transferable license and right to (i) internally use, copy, modify, create derivative works of, and disclose the Student Records to EveryDay Labs Persons (as defined below) and/or other persons authorized in writing by District solely to provide the Service for the benefit of District, and (ii) freely use, copy, modify, create derivative works of, disclose and otherwise exploit De-Identified Aggregated Data (as defined below) for any business purposes during and after the Term (including without limitation, for purposes of improving, testing, operating, promoting and marketing products and services).

EveryDay Labs warrants that it will comply with the requirements of FERPA with respect to the use and disclosure of student records.

“Student Records” means the confidential and proprietary student-related information which District discloses to EveryDay Labs, including as set forth in Attachment B (Data Transfer Standards), and excludes De-Identified Aggregated Data. “De-Identified Aggregated Data” means data submitted to, collected by, or generated by EveryDay Labs in connection with District’s use (and EveryDay Labs’s provision) of the Services, but only in anonymized form which does not (and cannot be used to) specifically identify District, any of District’s students or any other individual. District shall retain ownership of any rights it may have to the Student Records. “EveryDay Labs Person” is (i) a director, employee, contractor, agent or affiliate of EveryDay Labs, (ii) who needs to access the Student Records in connection with EveryDay Labs’s provision of the Service, and (iii) is subject to confidentiality obligations that are no less protective of the Student Records than the terms of Section 7 of this Agreement. EveryDay Labs reserves the right to utilize independent contractors (e.g., third-party mailing vendors, third-party data integration vendors) to provide the Service. Prior to providing Student Records to such contractors, EveryDay Labs will enter into a separate agreement restricting the use and disclosure of Student Records in accordance with this Agreement.

Except for the rights expressly granted herein, this Agreement does not give EveryDay Labs any rights, implied or otherwise, to the Student Records. **At no time will EveryDay Labs share any Student Records with any non-EveryDay Labs Person without the written permission of District.** EveryDay Labs shall notify District should EveryDay Labs become aware of any unauthorized access to Student Records. Such notification shall reasonably include a description of the corrective actions that will be undertaken by EveryDay Labs. Upon contract termination, Student Records will be destroyed in accordance with Section 9.

4. **DISTRICT RESPONSIBILITIES.** District shall only provide the Student Records to EveryDay Labs in accordance with the Data Transfer Standards set forth in Attachment A. District will not, and will not permit any third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover or obtain the source code, object code or underlying structure, ideas or algorithms of the Services or any software, documentation or data related to the Services (“Software”) (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); (ii) modify, translate, or create derivative works based on the Services or Software; (iii) use the Services or Software for timesharing or service bureau purposes or for any purpose other than its own internal use for its own internal benefit; (iv) use the Software or Services in any infringing, defamatory, harmful, fraudulent, illegal, deceptive, threatening, harassing, or obscene way; or (v) use the Services or Software other than in accordance with this Agreement and in compliance with all applicable laws, regulations and rights (including but not limited to those related to, intellectual property, consumer and child protection). District further represents and warrants that neither the Student Records nor the use thereof by EveryDay Labs in accordance with this Agreement will infringe, misappropriate or violate any rights of or agreements with a third party or any laws or regulations. If EveryDay Labs receives any notice or claim that any data provided to EveryDay Labs, or activities hereunder with respect to any such data, may infringe or violate rights of or agreements with a third party or any laws or regulations (a “Claim”), EveryDay Labs may, but is not required to, suspend or terminate the Service.
5. **WARRANTIES.** Each party represents and warrants that it (i) has the authority to enter into this agreement (ii) will comply with applicable law, including without limitation the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) (FERPA) and other data privacy laws. The parties shall reasonably cooperate with each other to facilitate compliance with these laws, regulations and standards.
6. **OWNERSHIP.** District shall retain ownership of any rights it may have to the Student Records. As between the parties, EveryDay Labs alone will retain all intellectual property rights relating to the Service, including without limitation (i) any processes designed, used or implemented or works authored by EveryDay Labs, and (ii) the Absence Reports other than information specific to the District. District grants to EveryDay Labs a non-exclusive, royalty-free right and license to (directly or through EveryDay Labs Persons) use and otherwise exploit the District’s names, marks, logos and other identifiers (“Logos”) during the Term in accordance with District’s reasonable trademark usage guidelines for EveryDay Labs to perform the Services hereunder, including without limitation using

the Logos with Absence Reports. District may use the EveryDay Labs's Logos, in accordance with EveryDay Labs's relevant usage guidelines to identify and publicize the Services at conferences and education events; and (ii) EveryDay Labs may identify District as its customer and use District's Logos for marketing and sales purposes, provided that such identification shall not state or imply an endorsement by District. Except as expressly permitted by this Section 6, each Party shall have a written right of approval over the use of its Logos by the other party, which will not to be unreasonably withheld.

7. **CONFIDENTIALITY.** EveryDay Labs will (i) use commercially reasonable efforts to protect the security of Student Records at all stages of providing the Service, (ii) use commercially reasonable efforts to limit access to Student Records to authorized recipients as provided in Section 3, and (iii) not at any time during or after the term of this Agreement disclose Student Records to any other person (other than EveryDay Labs Persons) without District's prior written consent (except that notwithstanding anything else the foregoing may be disclosed as required by law, regulation, or valid legal process, in which case EveryDay Labs shall, unless otherwise prohibited by law, notify District prior to such disclosure). Notwithstanding the foregoing, the confidentiality obligations of this Section 7 do not apply to any information that (a) was lawfully in the possession of EveryDay Labs before receipt from District; (b) is or becomes publicly available through no fault of EveryDay Labs; (c) is received by EveryDay Labs, without use or disclosure restriction, from a third party having an apparent bona fide right to disclose the information to EveryDay Labs; or (d) is independently developed by EveryDay Labs without use of the Student Records. District may be identified as the source of the Student Records.

While the terms of this Agreement are EveryDay Labs's confidential information, each party may disclose the relationship and the existence of this Agreement. EveryDay Labs understands and agrees that the District must comply with the Georgia Open Records Act O.C.G.A. § 50-18-70 (the "Act") and release public documents as defined by the Act upon request, including this Agreement and all records prepared and maintained in relation to this Agreement.

EveryDay Labs shall, to the extent of its liabilities under the laws of the State of Georgia, defend the District (including but not limited to, its directors, trustees, officers, and employees) ("District Indemnitees") from any and all claims, actions or suits by unaffiliated third parties, and shall indemnify and hold the District Indemnitees harmless up to \$1,000,000 from and against all losses, damages, costs, expenses paid or payable to such third party(ies) (including attorney fees, where such claims, actions or suits arise solely and directly from EveryDay Labs's or an EveryDay Labs Person's breach of the Student Record confidentiality requirements contained herein, provided EveryDay Labs is promptly notified of any and all threats, claims and proceedings related thereto; EveryDay Labs will not be responsible for any settlement it does not approve in writing.

8. **WARRANTY DISCLAIMER.** OTHER THAN THE EXPRESS WARRANTIES SET FORTH IN SECTION 5, THE SERVICES, SOFTWARE, AND EVERYDAY LABS PROPRIETARY INFORMATION AND ANYTHING PROVIDED BY OR ON BEHALF OF EVERYDAY LABS IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY WARRANTIES OF ANY KIND, AND EVERYDAY LABS (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.
9. **TERMINATION.** Subject to earlier termination as provided below, this Agreement is for the Term as specified in the Order From. In the event of any material breach of this Agreement, the non-breaching party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching party; provided, however, that this Agreement will not terminate if the breaching party has cured the breach prior to the expiration of such thirty-day period. Either party may terminate this Agreement, without notice, (i) upon the institution by or against the other party of insolvency, receivership or bankruptcy proceedings (provided that if such proceedings are involuntary, they are not dismissed within 120 days), (ii) upon the other party's making an assignment for the benefit of creditors, or (iii) upon the other party's dissolution or ceasing to do business without a successor.

All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, indemnification obligations, intellectual property rights, warranty disclaimers, and limitations of liability. Upon termination or expiration of this Agreement, District may instruct EveryDay Labs in writing to destroy Student Records within sixty (60) days from the date of notification.

10. **LIMITATION OF LIABILITY.** EXCEPT FOR EITHER PARTY'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER (I) FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL, OR SPECIAL DAMAGES, INCLUDING LOST REVENUES OR PROFITS, ARISING FROM BREACH OF THE TERMS IN THIS AGREEMENT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR ANY OTHER CAUSE, OR (II) AMOUNTS, IN THE AGGREGATE, IN EXCESS OF THE FEES PAID OR PAYABLE TO EVERYDAY LABS HEREUNDER IN THE TWELVE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED.
11. **INSURANCE.** EveryDay Labs shall procure and maintain the types and minimum limits of insurance as required by District, covering the performance of the Service. EveryDay Labs shall procure all insurance solely from insurers authorized to do business on an admitted basis in the State of Georgia, or otherwise acceptable to District and their Office of Risk Management, or the equivalent office thereof.
12. **MISCELLANEOUS.** This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of Georgia, without giving effect to any choice or conflict of law provision. Any action, suit or other proceeding arising under or relating to this Agreement (a "Suit") shall be brought in a court of competent jurisdiction in the State of Georgia, and the parties hereby consent to the sole jurisdiction of the state and federal courts sitting in the State of Georgia. The Parties are independent contractors and neither party shall be deemed to be an agent or employee of the other party. Neither party shall have authority to make any statements, representations or commitments of any kind on behalf of the other party, or to take any action which shall be binding on the other party. Neither party may assign this Agreement without the written consent of the other party; provided that either party may assign all of its rights and obligations under this Agreement to a successor-in-interest in connection with a sale or transfer of substantially all of such party's assets or business to which this Agreement relates. No modification or waiver of any provision of this Agreement or any Attachment shall be valid unless in writing and executed by duly-authorized representatives of both Parties. A failure by one of the Parties to this Agreement to assert its rights hereunder shall not be deemed a waiver of such rights. No such failure or waiver in writing by any one of the Parties hereto with respect to any rights shall extend to or affect any subsequent breach or impair any right consequent thereon. If any provision of this Agreement is or becomes invalid or is ruled invalid by any court of competent jurisdiction or is deemed unenforceable, it is the intention of the parties that the remainder of this Agreement shall not be affected. This Agreement may be executed in two or more counterparts, and by facsimile or electronic transmission, each of which will be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement and its Exhibits and Attachments embody the entire understanding between District and EveryDay Labs, and any prior or contemporaneous representations, either oral or written, are hereby superseded. All notices required by or relating to this Agreement shall be in writing and shall be sent by means of certified mail, postage prepaid, to the Parties to the Agreement and addressed, if to District, to the address set forth on the Order Form, and if to EveryDay Labs, as follows:

EveryDay Labs Inc.  
303 Twin Dolphin Drive, Suite 600  
Redwood City, CA 94065  
Attn: Contracts  
Email: [contracts@everydaylabs.com](mailto:contracts@everydaylabs.com)

or addressed to such other address as that party may have given by written notice in accordance with this provision. All notices required by or relating to this Agreement may also be communicated by email, provided that the sender receives and retains confirmation of successful transmittal to the recipient. Such notices shall be effective on the date indicated in such confirmation. In the event that either party delivers any notice hereunder by means of email


transmission in accordance with the preceding sentence, such party will promptly thereafter send a duplicate of such notice in writing by means of certified mail, postage prepaid, to the receiving party, addressed as set forth above or to such other address as the receiving party may have previously substituted by written notice to the sender.

**IN WITNESS WHEREOF**, District and EveryDay Labs have executed this Agreement as of the Effective Date.

**DEKALB COUNTY SCHOOL DISTRICT**

Signature: \_\_\_\_\_  
Name: Dr. Devon Q. Horton  
Title: Superintendent  
Date: \_\_\_\_\_

**EVERYDAY LABS INC.**

Signature:   
Name: Emily Bailard  
Title: Chief Executive Officer  
Date: 9/26/2023

## **ATTACHMENT A DESCRIPTION OF SERVICES**

EveryDay Labs will send absence reports (“Absence Reports”) in English and Spanish that use behavioral science to provide parents and guardians with actionable information about their child’s attendance. EveryDay Labs will use data from the District to deliver the Absence Reports Program, analyzing the data to determine which students receive Absence Reports, determining appropriate content for each student based on their grade, attendance record, language, and other factors, and generating, printing and mailing the Absence Reports. If there are more eligible students than the number of planned Absence Reports, then EveryDay Labs may apply student selection criteria to select the students most likely to benefit from receiving the intervention, considering factors such as absences to date. Specific students may be excluded by the District, and EveryDay Labs will exclude students whose parents or guardians have elected to opt-out of receiving Absence Reports, as well as those with undeliverable addresses or who don’t meet other eligibility criteria.

The Absence Reports Program leverages best practices from research conducted by EveryDay Labs and others in the field, and EveryDay Labs’s goal is to provide services that improve over time. As a result, EveryDay Labs may from time to time suggest new approaches and make changes to the Absence Reports Program likely to further program objectives.

EveryDay Labs will provide the following Professional Services:

- Parent Support Team to handle questions from report recipients and direct callers to relevant district resources
- Program Manager to provide periodic updates, answer questions, and lead information webinar trainings for school and district staff
- Program monitoring including information about students receiving Absence Reports and parent/guardian calls to the Parent Support Team, and students who may have out of date addresses
- End of year program impact analysis projecting the days of attendance generated, as well as detailing the number of students receiving reports by school, grade level, and student subgroup (if necessary data is provided)
- EveryDay Pro, our attendance analytics and collaboration platform, which empowers attendance teams to analyze data, coordinate intervention, and track student progress.
- EveryDay Learning Membership, our data-driven professional learning that builds staff capacity to improve attendance and engagement. Your district’s dedicated Program Manager will deliver at least three sessions throughout the year. Additionally, your team will have access to a resource library of best practices and monthly webinars.

## ATTACHMENT B DATA TRANSFER STANDARDS

District will provide EveryDay Labs with access to data as specified in the “**EveryDay Labs Data Specification and Transfer Standards**” which contains comprehensive information on data fields and the transfer process.

A summary of key steps are as follows:

- **Data Fields:** District will provide EveryDay Labs with the following data files for all students who are currently enrolled in the district, as well as historical data. A complete list of the fields and transfer protocol can be found in the “EveryDay Labs Data Specifications and Transfer Standards”.
  - **Roster File:** One row per student. Sample fields: student ID, first name, last name, enrollment date, un-enrollment date, school, grade, mailing address(es), contact information, demographic information, home language, exclusion flag
  - **Daily Attendance File:** One row per attendance event. Sample fields: student ID, attendance date, attendance code
  - **Period Attendance File (Optional):** One row per attendance event. Sample fields: student ID, attendance date, attendance code
  - **Exclusion File (Optional):** One row per student who school site or district staff would like to exclude from receiving Absence Reports. Sample fields: student ID, first name, last name, school, grade
- **Executing the Data Transfers:** EveryDay Labs will host a secure, FERPA-compliant data transfer protocol through which the District will transfer all required data files. Additional details can be found in “EveryDay Labs Data Specification and Transfer Standards.”

Note: These data specifications and transfer standards are subject to change.

**ATTACHMENT C  
CONTACT INFORMATION**

<b>District Information</b>	
<b>District Name: DeKalb County School District</b>	<b>Principal Contact:</b>
Address:	Title:
	Phone:
	Email:
<b>Billing Contact:</b>	<b>Data Contact:</b>
Phone:	Phone:
Email:	Email:

<b>EveryDay Labs Contacts</b>	
<b>Program Manager: Emily Cunningham</b>	<b>Sales &amp; Contracts: Emily Bailard</b>
Phone: 650-641-9485	Phone: 650-641-9485
Email: emilyc@everydaylabs.com	Email: contracts@everydaylabs.com
<b>Billing Contact: Victor Aguayo</b>	
Email: ar@everydaylabs.com	