

**INFORMATION TECHNOLOGY (IT) CONTRACT
BETWEEN WYOMING DEPARTMENT OF EDUCATION
AND
DATA DRIVEN ENTERPRISES**

1. **Parties.** The parties to this Contract are the Wyoming Department of Education (Agency), whose address is: 2300 Capitol Avenue Hathaway Building, 2nd Floor Cheyenne, WY 82002-0206, and Data Driven Enterprises (Contractor), whose address is 11184 Huron Street, Suite 17, Northglenn, Colorado, 80234.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall provide and implement data support in the implementation of Wyoming's System of General Supervision, specifically outlined under the Individuals with Disabilities Education Act (IDEA). Furthermore, the purpose of this contract is to analyze special education students' enrollment characteristics, discipline behaviors, graduation/drop-out data, and performance on the PAWS, ACT Suite, and MAP tests in order to fulfill requests for general supervision under IDEA and to fulfill State Performance Plan (SPP) requirements of the Office of Special Education Programs (OSEP). In addition, enrollment information of kindergarten students is needed in order to collect, analyze and report out on kindergarten readiness data on the Instructional Foundations for Kindergarten (IFK) tool. These services, as fully described in the Attachment A, Statement of Work, which is attached to and incorporated into this Contract by this reference.
3. **Term of Contract.** This Contract is effective May 10, 2017 or when all parties have executed it and all required approvals have been granted (Effective Date), whichever is earlier. The term of the Contract is from the Effective Date through May 31, 2018. All services will be completed during this term.

This Contract may be extended once by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Agency.

4. **Payment.** Agency agrees to pay Contractor for the services described in the Attachment A, Statement of Work. Total payment under this Contract for services will not exceed one hundred fifty five thousand dollars (\$155,000.00). Total payment for travel under this contract will not exceed twenty thousand dollars (\$20,000.00). Total payment under this contract shall not exceed one hundred seventy five thousand dollars (\$175,000.00). Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Contractor shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.

No payment shall be made for work performed before the Effective Date of this Contract. Should the Contractor fail to perform in a manner consistent with the terms and conditions

set forth in this Contract, payment under this Contract may be withheld until such time as the Contractor performs its duties and responsibilities to the satisfaction of Agency.

When the Contractor is working at a location requiring an overnight stay, the Contractor shall be reimbursed at the rates set out in Wyo. Stats. §§ 9-3-102 and 9-3-103.

5. Responsibilities of Contractor. The Contractor agrees to:

- A.** Provide the services described in Attachment A.
- B.** The contract being subject to all Federal and State mandates including but not limited to The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. §1232g; 34 CFR Part 99), Protection of Pupil Rights Amendment (PPRA), Children's Online Privacy Protection Act, Children's Internet Protection Act and Privacy Act of 1974.
- C.** All information data must be treated as privileged communications; must be held confidential; and must meet the terms and conditions of compliance. Under the contract, the Contractor is responsible for security and privacy compliance and must take advantage of the appropriate security capabilities and measures and adequate data validation, as well as have appropriate policies and procedures in place to minimize or prevent unlawful access by any person who may have access to the system or environment in which the data is stored. Failure of Contractor or its employees, agents, and/or subcontractors to comply with these regulations will be a material breach of the contract and must permit the Agency to immediately terminate the contract. Any breach of security involving data from public school districts in Wyoming requires notification of Agency and school districts, as data owner. Contractor will be required to provide a proposed incident response plan as it applies to the any observable occurrence in a system or network that compromises the confidentiality, integrity and availability of Agency data. This includes any suspected violation or threat of violation of computer security policies, acceptable use policies, or standard security practices. In the event that the contractor hosts the State of Wyoming's data, contractor will be required to notify the Agency's project representative, within twenty-four (24) hours of detection, of any suspected breach of data related to the State of Wyoming's data.
- D.** Having written policies governing access to, duplication and dissemination of all such information. Contractor must advise its employees, agents and subcontractors, if any, that they are subject to these confidentiality requirements. Contractor must provide its employees, agents and subcontractors, if any, with a copy or written explanation of these confidentiality requirements before access to confidential data is permitted.
- E.** Applying disciplinary policies across all sources of information identifying individuals or employers. Agency will consider any improper disclosure of any

information considered confidential under federal or state law to be serious misconduct. All employees of Contractor are to be made aware that all information collected under the auspices of this contract can be used only for purposes outlined in this contract and attachments. Further, individuals may be subject to civil penalties under the Privacy Protection Act of 1974 as amended by the Computer Matching and Privacy Protection Act of 1988 (5 USC Sec 552a) as well as subject to criminal penalties under the Confidential Information Protection and Statistical Efficiency Act of 2002 (Title V of PL 107-347), depending on the nature and extent of the disclosure.

- F.** Permit any authorized representative of Agency to inspect Contractor data holding premises for the State of Wyoming data, within reason and only with no less than fourteen (14) business days advanced notice, to determine whether Contractor is complying with all terms, conditions, and provisions of this contract.
- G.** Notify Agency representative of any legal, investigatory, or other demand for access to any Agency related data, in any form.
- H.** The following technical specifications serving as a baseline but not as an all-inclusive data security standard for compliance:
 - (i) Data in transit:** Data transmitted by the third party through an interface to another system, domain or enclave will be done securely using known secure protocols such as TLS/SSL, sFTP and other agreed upon methods.
 - (ii) Data at rest:** Data will be stored securely at rest using an agreed upon cipher such as AES 128, AES 256 or other approved cipher configured by the agency.
 - (iii) Data access controls:** Contractor will utilize the principle of least privilege (PoLP) when assigning user access to Agency related data.
- I.** Provide an authorized representative and custodian.

Susan Wagner, President
Data Driven Enterprises
11184 Huron Street, Suite 17, Denver, CO 80234
Susan@datadrivenenterprises.com
303-255-4648
- J.** Meet at least annually with representatives of the WDE to update and review Agency documentation regarding the collection and management of student information.
- K.** Destroy all Confidential Data stored on Contractor systems within 45 days after it is no longer needed to perform the services described in this agreement, upon

Agency's request or upon termination of this agreement, whichever occurs first or unless otherwise agreed upon in writing. Contractor shall provide written verification of the data destruction to the Agency within 45 days after the data is destroyed.

6. Responsibilities of Agency. The Agency agrees to:

- A.** Adhere to its responsibilities as described in Attachment A.
- B.** Provide student level ACT Suite (Aspire, WorkKeys, COMPASS, Plus Writing) information by August 31, 2017.
- C.** Provide student level PAWS information, this includes PAWS and PAWS-ALT data by August 31, 2017.
- D.** Provide student level information from the fall WDE 684 special education component, this includes K-12 and Pre-K student data by February 28, 2018.
- E.** Provide student level information from the June WDE 684 special education component, this includes K-12 and Pre-K student data by September 30, 2017.
- F.** Provide student information from the WDE fall 684 file, this includes all students on the enrollment file by February 28, 2018.
- G.** Provide the student information from the WDE June 684 file, this includes all students on the enrollment file, by August 31, 2017.
- H.** Provide the student level discipline information from the WDE 636 by October 31, 2017.
- I.** Provide the student level graduation and drop-out information, condensed file, by December 31, 2017.
- J.** Provide the student level fall and spring MAP information by September 30, 2017 for spring data and February 28, 2018 for fall data.
- K.** Provide a summary Graduation/Drop-Out Statistics by December 31, 2017.
- L.** Provide the accountability report data by school and district by September 30, 2017. This includes AYP data and WAEA data reports.
- M.** Provide a summary AYP and PAWS participation and proficiency data by state and district for Indicator 3A, 3B, and 3C as reported on the SPP by December 30, 2017.

- N. Provide student level information from the 2016-17 WDE 600 attendance file as soon as the data is available.
- O. Provide student level data from the 2016-17 WDE 626 early literacy longitudinal data collection when the data becomes available.
- P. Provide student level information from the WDE 686A institution demographics file when data becomes available. Students without disabilities are also requested to be included.
- Q. Provide student level information from the 2016-17 WDE 567 institution Title I Part D program evaluation file when data becomes available.
- R. Review these contract requirements with successor State Superintendent or designee within 60 days of the transition of leadership of the Agency.
- S. Retain student records as the exclusive property of the Districts. No loss of control or ownership will result through this Contract.
- T. Meet at least annually with representatives of the Contractor to update and review Agency documentation regarding the collection and management of student information.
- U. Provide an authorized representative and custodian.

Anne-Marie Williams, Director of Individual Learning
Wyoming Department of Education
2300 Capitol Ave, 2nd Floor, Cheyenne, WY 82002
anne-marie.williams@wyo.gov
307-777-3530

- V. Use reasonable efforts to prevent unauthorized access to or use of Contractor's Services and Products, and notify Contractor promptly of any such unauthorized access or use.

7. **Special Provisions.**

- A. **Assumption of Risk.** The Contractor shall assume the risk of any loss of state or federal funding either administrative or program dollars, due to the Contractor's failure to comply with state or federal requirements. The Agency shall notify the Contractor of any state or federal determination of noncompliance.
- B. **Environmental Policy Acts.** Contractor agrees all activities under this agreement will comply with the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and other related provisions of federal environmental

protection laws, rules or regulations.

- C. Human Trafficking:** As required by 22 U.S.C. § 7104(g) and 2 CFR Part 175, this Contract may be terminated without penalty if a private entity that receives funds under this Contract:
- (i) Engages in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procures a commercial sex act during the period of time that the award is in effect; or
 - (iii) Uses forced labor in the performance of the award or subawards under the award.
- D. Kickbacks.** Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Contractor breaches or violates this warranty, Agency may, at its discretion, terminate this Contract without liability to Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.
- E. Limitations on Lobbying Activities.** By signing this Contract, Contractor certifies and agrees that, in accordance with P.L. 101-121, payments made from a federal grant shall not be utilized by Contractor or its subcontractors in connection with lobbying member(s) of Congress, or any federal agency in connection with the award of a federal grant, contract, cooperative agreement, or loan.
- F. Monitoring Activities.** Agency shall have the right to monitor all activities related to this Contract that are performed by Contractor or its subcontractors. This shall include, but not be limited to, the right to make site inspections at any time and with reasonable notice; to bring experts and consultants on site to examine or evaluate completed work or work in progress; to examine the books, ledgers, documents, papers, and records pertinent to this Contract; and, to observe personnel in every phase of performance of the related work.
- G. Nondiscrimination.** The Contractor shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.
- H. No Finder's Fees:** No finder's fee, employment agency fee, or other such fee

related to the procurement of this agreement, shall be paid by either party.

- I. Publicity.** Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor and related to the services and work to be performed under this Contract, shall identify the Agency as the sponsoring agency and shall not be released without prior written approval of Agency.
- J. Suspension and Debarment.** By signing this Contract, Contractor certifies that neither it nor its principals/agents are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction or from receiving federal financial or nonfinancial assistance, nor are any of the participants involved in the execution of this Contract suspended, debarred, or voluntarily excluded by any federal department or agency in accordance with Executive Order 12549 (Debarment and Suspension), 44 CFR Part 17, or 2 CFR Part 180, or are on the debarred, or otherwise ineligible, vendors lists maintained by the federal government. Further, Contractor agrees to notify Agency by certified mail should it or any of its principals/agents become ineligible for payment, debarred, suspended, or voluntarily excluded from receiving federal funds during the term of this Contract.
- K. Conflicts of Interest.**
- (i) Contractor shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which results in a disadvantage to the Agency or a disclosure which would adversely affect the interests of the Agency. Contractor shall notify the Agency of any potential or actual conflicts of interest arising during the course of the Contractor's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Contractor shall take steps to insure that the file, evidence, evaluation, and data are provided to the Agency or its designee. This does not prohibit or affect the Contractor's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.
 - (ii) A conflict of interest warranting termination of the Contract includes, but is not necessarily limited to, representing a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions or the University of Wyoming, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or quo warranto.

- L. Project Representative.** All project management and coordination for the Agency shall be through a single point of contact designated as the Project Representative. The Agency Project Representative for this project is Anne-Marie Williams, Director of Individual Learning.

Any and all work performed under this Contract will be subject to approval and acceptance by the Agency Project Representative. In no instance will the Contractor's staff refer any matters to any Agency Director or Deputy Directors or any other official in Wyoming unless initial contact, both verbal and in writing, regarding the matter has first been presented to the Agency Project Representative. This does not prevent the Contractor from communicating with the Agency's Executive Leadership within the Governor's office with appropriate coordination with the Agency Project Representative (courtesy).

All correspondence from the Contractor shall be addressed directly to the Agency Project Representative. The Agency Project Representative or his designee shall be responsible for corresponding and arranging meetings with Agency personnel and outside Agencies and associations.

The Agency Project Representative shall document performance of the Contractor as to the satisfaction of any deliverables required to meet the requirements of the Contract.

The Contractor will be required to perform their work in compliance with Agency technology standards, policies, and procedures; as well as any applicable Federal guidelines.

- M. Source Code Ownership and/or Escrow.** In the event the Contractor develops or provides custom made software, a complete copy of the most current version of Contractor's software source code, with internal documentation, will be provided to the User (in confidence) for the sole purpose of maintaining the license use of Contractor's software at Agency's location at the time of the issuance of the license. Except for such individual use by Agency at its business location(s), such code and documentation will at all times be maintained in confidence. No disclosure of such information will be made other than that required to carry out the foregoing except by the authority of Contractor. In the event the Contractor becomes insolvent, goes out of business or ceases to support the software Contractor agrees to transfer the rights to the source code to the Agency such that the Agency may continue to utilize the software pursuant to the above.

- N. System Failure or Damage.** In the event of system failure or damage, as defined in this paragraph, directly caused in whole or in part as a result of the services provided by the Contractor, Contractor agrees to use its best efforts to restore the system to operational capacity. System failure or damage for purposes of this Contract will mean the inability of any mechanism provided by the Contractor

pursuant to the terms of this Contract, to operate properly and, as a result of its failure to operate properly, critical government functions, including sending and receiving data information, are unable to be performed.

- O. Use of Subcontractors.** The Contractor shall be wholly responsible for performance of the entire Contract whether or not subcontractors are used. In any event, whether there are subcontracting or joint venture arrangements or not, a prime Contractor shall be designated and the prime contractor shall sign this Contract. The Agency reserves the right to reject any named subcontractor or any subcontractor relationship. The Contractor shall not enter into any subcontracts or joint venture arrangement for any of the work proposed under this Contract without prior written acceptance from the Agency.
- P. Warranty of the Deliverables.** In the event that the Contractor develops software and applications for the Agency, the Contractor shall commit to a minimum warranty period of twelve (12) months for the software and applications related to this Contract. Notwithstanding prior acceptance of deliverables by the Agency, the Contractor shall expressly warrant all delivered programs and documentation as properly functioning at the start of operations and compliant with the terms of the Contract thereafter. The warranty period will begin at the time the implementation of the application has been formally accepted in writing by the Agency. During the warranty period, the Contractor shall be responsible to correct, at its expense, any problems, defects and/or deficiencies reported which do not meet the specifications set forth in the Statement of Work. The Contractor will correct all defects and deficiencies in the system and replace incorrect or defective programs and documentation within five (5) business days of notification from the Agency of such deficiencies or within such period as may be necessary to make correction(s) using all due diligence and dispatch as agreed upon between the Agency and the Contractor. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period will also be covered by this warranty.

8. General Provisions.

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed and signed by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts

of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.

- C. Assignment/Contract Not Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the other party. The Contractor shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.
- D. Audit/Access to Records.** The Agency and any of its representatives shall have access to any books, documents, papers, and records of the Contractor which are pertinent to this Contract. The Contractor shall, immediately upon receiving written instruction from the Agency, provide to any independent auditor, accountant, or accounting firm, all books, documents, papers, and records of the Contractor which are pertinent to this Contract. The Contractor shall cooperate fully with any such independent auditor, accountant, or accounting firm, during the entire course of any audit authorized by the Agency.
- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Contractor at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract. The Contractor shall cooperate fully with other contractors and the Agency in all such cases.
- G. Certificate of Good Standing.** The Contractor shall provide to the Agency a Certificate of Good Standing verifying compliance with all applicable unemployment insurance and workers' compensation programs before and during performance of work under this Contract, if applicable.
- H. Compliance with Laws.** The Contractor shall keep informed of and comply with all applicable federal, state, and local laws and regulations, and all federal grant requirements and executive orders in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by

the Contractor in the performance of this Contract shall be kept confidential by the Contractor unless written permission is granted by the Agency for its release. If and when Contractor receives a request for information subject to this Contract, Contractor shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.

- J. Entirety of Contract.** This Contract, consisting of fifteen (15) pages, Attachment A, Statement of Work, consisting of seven (7) pages represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- K. Ethics.** Contractor shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Contractor's profession.
- L. Extensions/Renewals.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Contractor shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, employees, successors, and assignees from any and all claims, lawsuits, losses, and liability arising out of Contractor's failure to perform any of Contractor's duties and obligations hereunder or in connection with the negligent performance of Contractor's duties or obligations, including, but not limited to, any claims, lawsuits, losses, or liability arising out of Contractor's negligence or other tortious conduct.

- O. Independent Contractor.** The Contractor shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the express terms of this Contract, the Contractor shall be free from control or direction over the details of the performance of services under this Contract. The Contractor shall assume sole responsibility for any debts or liabilities that may be incurred by the Contractor in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Contractor or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on the behalf of the State of Wyoming or the Agency. The Contractor agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance, or similar benefits available to State of Wyoming employees will inure to the benefit of the Contractor or the Contractor's agents or employees as a result of this Contract.
- P. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.
- Q. Notice of Sale or Transfer.** The Contractor shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Contractor. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Contractor's obligations under this Contract, then the Agency may, at its discretion, terminate or renegotiate the Contract
- R. Ownership and Destruction of Documents/Information.** Agency owns all documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Contractor in the performance of this Contract. Upon termination of services, for any reason, Contractor agrees to return all such original and derivative information/documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Contractor agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Contractor agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data.
- S. Patent or Copyright Protection.** The Contractor recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the

Contractor or its subcontractors will violate any such restriction. The Contractor shall defend and indemnify the Agency for any violation or alleged violation of such patent, trademark, copyright, license, or other restrictions.

- T. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).
- U. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- V. Sovereign Immunity.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. The parties further acknowledge that there are constitutional and statutory limitations on the authority of the State of Wyoming and its agencies or instrumentalities to enter into certain terms and conditions supplied by the Contractor, including, but not limited to, the following: liability for damages; choice of law; conflicts of law; venue and forum-selection clauses; defense or control of litigation or settlement; liability for acts or omissions of third parties; payment of attorneys' fees or costs; additional insured provisions; dispute resolution, including, but not limited to, arbitration; indemnification of another party; and confidentiality. Any such provisions in the Contract, or in any attachments or documents incorporated by reference, will not be binding on the State of Wyoming except to the extent authorized by the laws and Constitution of the State of Wyoming. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.
- W. Taxes.** The Contractor shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.
- X. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated by the Agency immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.

- Y. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.
- Z. Time is of the Essence.** Time is of the essence in all provisions of the Contract.
- AA. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- BB. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

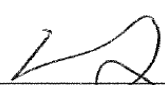
THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

AGENCY:

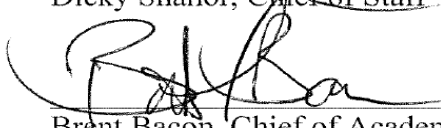
Wyoming Department of Education



Dicky Shanor, Chief of Staff

7/5/17

Date



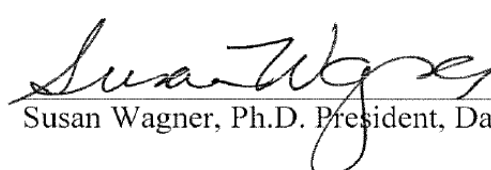
Brent Bacon, Chief of Academics

7/3/17

Date

CONTRACTOR:

Data Driven Enterprises



Susan Wagner, Ph.D. President, Data Driven Enterprises

6/29/17

Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM



Susan G. O'Brien, Senior Assistant Attorney General

June 26, 2017

Date