

**INFORMATION TECHNOLOGY (IT) CONTRACT
BETWEEN WYOMING DEPARTMENT OF EDUCATION
AND
UNIVERSITY OF WYOMING, GEAR UP WYOMING**

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 University of Wyoming, Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Wyoming (Contractor), whose address is 1000 E University, Department 3808, Room 330 Knight Hall, Laramie, WY 82071.

2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Contractor shall receive data from the Agency to fulfill the responsibilities as outlined in the sub-recipient award between the Contractor and the Agency, and the Application for Grants Under the Gaining Early Awareness & Readiness for Undergraduate Programs Catalog of Federal Domestic Assistance (CFDA #84.334S), Closing Date: July 14, 2011. Grant Dates September 26, 2011 through September 25, 2018. This data, as fully described in the Attachment A, Data Request, herein made part of this Contract.

3. **Term of Contract and Required Approvals.** This Contract is effective October 1, 2016 or when all parties have executed it and all required approvals have been granted, whichever is later. The term of the Contract is from the Effective Date through December 31, 2018. All services will be completed during this term.

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

By law, contracts for professional or other services must be approved as to form by the Attorney General and approved by A&I Procurement, Wyo. Stat. § 9-1-403(b)(v), and all contracts for services costing over one thousand five hundred dollars (\$1,500.00) must be approved by the Governor or his designee, Wyo. Stat. § 9-2-1016(b)(iv).

4. **Payment.** No payment shall be made to the contractor.

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5. **Responsibilities of Contractor.** The services provided by Contractor are described in the Attachment A, Data Request, which is attached to and made a part of this Contract by this reference.

The Contractor further agrees to:

- A. Acknowledge and agree that the contract is 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.
- B. Acknowledge and agree 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.
- C. Have 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.

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- D.** Disciplinary policies are applied 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 flagrant 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.
- E.** 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.
- F.** Notify Agency representative of any legal, investigatory, or other demand for access to any Agency related data, in any form.
- G.** The following technical specifications will serve as a baseline but are not 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.
- H.** Provide an authorized representative and custodian.

Jennifer Ingram
Grant Manager
University of Wyoming, GEAR UP
1000 E. University
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Room 330 Knight Hall
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- I. Meet at least annually with representatives of the WDE to update and review Agency documentation regarding the collection and management of student information.
- J. 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 responsibilities of the Agency are described in the Attachment A, Data Request.

The Agency further agrees to:

- A. Review these contract requirements with successor State Superintendent or designee within 60 days of the transition of leadership of the Agency.
- B. Retain student records as the exclusive property of the Districts. No loss of control or ownership will result through this Contract.
- C. Meet at least annually with representatives of the Contractor to update and review Agency documentation regarding the collection and management of student information.
- D. Provide an authorized representative and custodian.

Sean McInerney
Supervisor
Wyoming Department of Education
2300 Capitol Ave, 2nd Floor
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307-777-8752

- E. 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.
- F. Provide authorized user access to the FAFSA Portal.

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7. **Special Provisions.**

- A. **Monitor Activities.** The Agency shall have the right to monitor all Contract related activities of the Contractor and all subcontractors. This will include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Contractor personnel in every phase of performance of Contract related work.
- B. **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.

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/Venue.** The construction, interpretation, and enforcement of this Contract will be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and the venue will 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. If funds are not allocated and available for the continuance of the services performed by the Contractor, 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 will accrue to the Agency in the event this provision is exercised, and the Agency will not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision will not be construed to permit the Agency to terminate this Contract to acquire similar services from another party.
- 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.** Contractor shall provide to Agency Certificate of Good Standing verifying compliance with the unemployment insurance and workers' compensation programs before and during performing 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 in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, and any other work provided to or produced by the Contractor in the performance of this Contract will be kept confidential by the Contractor until publicly released by the Agency or until 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 not release such information to a third party unless directed to do so by Agency.

Notwithstanding any conflicting provision in this Contract or any attached or incorporated documents, all records and other information pertinent to this Contract are subject to the Wyoming's Public Records Act, Wyo. Stat. § 16-4-201 et seq. which may include the custodian of such records denying access to records in accordance with Wyo. Stat. § 16-4-203(d).

- J. Entirety of Contract.** This Contract, consisting of ten (10) pages, Attachment A, Data Request, consisting of one (1) page, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

- 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 will 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 will 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. This provision will not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming party.
- N. Indemnification.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- O. Independent Contractor.** Each party to this Contract shall assume the risk of any liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.
- P. 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/or 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.
- Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail, facsimile, e-mail, or delivery in person.

- R. Ownership of Documents/Information/Product/Materials.** 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 will be secured. The return of information by any other means will 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 under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract until this Contract has been reduced to writing, 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. Publicity.** Any publicity given to the projects, programs or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Contractor, will identify the Agency as the sponsoring agency and will not be released without prior written approval from the Agency.
- V. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract will continue in full force and effect, and the parties may renegotiate the terms affected by the severance.
- W. Sovereign Immunity.** The State of Wyoming, the Agency and the Contractor do not waive sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should 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.

- X. 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.
- Y. Termination of Contract.** This Contract may be terminated, without cause, by the Agency upon thirty (30) days written notice. This Contract may be terminated immediately for cause if the Contractor fails to perform in accordance with the terms of this Contract.
- Z. 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 will not be construed so as to create such status. The rights, duties and obligations contained in this Contract will operate only between the parties to this Contract, and will 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.
- AA. Time is of the Essence.** Time is of the essence in all provisions of the Contract.
- BB. Titles Not Controlling.** Titles of sections and subsections are for reference only and will not be used to construe the language in this Contract.
- CC. Waiver.** The waiver of any breach of any term or condition in this Contract will not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach will not constitute a waiver.

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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.

This Contract is not binding on either party until approved by the Procurement Services Division of the Department of Administration and Information and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b) (iv).

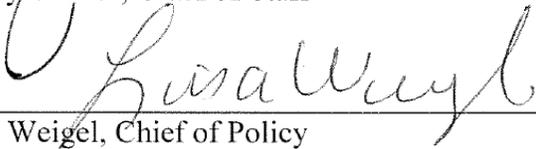
The effective date of this Contract is the date of the signature last affixed to this page.

AGENCY:

Wyoming Department of Education

 State Superintendent
Dicky Shanor, Chief of Staff

11-14-16
Date


Lisa Weigel, Chief of Policy

Date

CONTRACTOR:

University of Wyoming, GEAR UP Wyoming


Jennifer Ingram, Grant Manager

11-8-16
Date

ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM

 158594
Susan G. O'Brien, Senior Assistant Attorney General

Oct 25, 2016
Date