

Sole Source Notification

Maker-Centered Learning Training

It is the intent of Washington State to promote open competition and transparency for all contracts for goods and services. In accordance with Department of Enterprise Service (DES) policy #DES-140-00, all intended sole source contracts must be made available for public inspection for a period of not less than ten (10) working days before the start date of the contract. This Sole Source Notification satisfies the requirement.

*This Sole Source Notification is available at the [Office of Superintendent of Public Instruction \(OSPI\) website](#) and at the Department of Enterprise Services, [Washington Electronic Business Solution \(WEBS\) Procurement website](#) under the following commodity codes: **918-38**: Education and Training Consulting; **924-05**: Advisory Services, Educational; **924-16**: Course Development Services, Instructional/Training; **924-18**: Educational Services, Alternative; **924-19**: Educational Research Services; **924-35**: In-Service Training (For Employees); **924-41**: Instructor-led, Classroom Training (Non-Technical); **924-42**: Instructors, Classes for the Public; **924-60**: Not-For-Credit Classes, Seminars, Workshops, etc.*

The Office of Superintendent of Public Instruction (OSPI) intends to award a \$57,500 sole source contract to EPC Consulting, LLC for the period of May-August 2024.

The purpose of this contract to provide professional learning opportunities for educators serving migratory students implementing maker-centered learning (MCL) experiences for their summer school/summer learning programs.

Specifically, the proposed contractor will conduct three (3) day-long workshops for up to twenty-five (25) educators at each site, at which educators will be assisted in developing a sensitivity to the designed dimension of objects and systems so that they may be empowered to shape students' knowledge and skills through building, tinkering, re/designing, or hacking.

Consultants contemplating the above requirements shall submit capability statements detailing their ability to meet the state's requirements **no later than 3:00 pm on May 6, 2024**.

Capability statements must address the following state requirements:

- Knowledge and training experience on research-based Maker-Centered Learning.
- Knowledge and experience in introducing access and equity in a creative classroom.
- Strategies for ensuring diversity, equity, and inclusion in education
- Ability to engage learners in fundamental questions of human potential-including intelligence, learning, critical thinking, and creativity as they relate to issues facing schools and families.



In the absence of other qualified sources, and pending approval by the Department of Enterprise Services, it is OSPI's intent to make a sole source award of the contract mentioned above to EPC Consulting, LLC.

Although this Sole Source Notification is not an invitation to bid, if you feel your firm is able to provide the goods or services listed above, you may submit a capability statement to:

Kyla Moore
Office of Superintendent of Public Instruction
Email: contracts@k12.wa.us

In accordance with DES Sole Source policy process #PRO-DES-140-00A, the following documents are attached:

- *Attachment 1 – A copy of the Sole Source Contract Filing Justification*
- *Attachment 2 – A copy of the proposed draft sole source contract in significantly final form*

Attachment 1 – Sole Source Contract Filing Justification

Specific Problem or Need

- *What is the business need or problem that requires this contract?*
Title I, Part C Migrant Education Program's State Service Delivery Plan has identified academic achievement gaps for migratory students in English language arts and mathematics. Many students are also English language learners and benefit from academic experiences that include tactile learning to build critical thinking skills while engaging in opportunities. Responses to Dr. Clapp's state conference presentation and other introductory information generated high interest by Local Educational Agencies to participate in a training opportunity to incorporate maker-centered learning into their local summer program. As part of Harvard Graduate School of Education, Project Zero's Agency by Design, the proposed Contractor researched how maker-centered learning could support educational interventions. As part of its research, they noted that while making in the classroom was not a new concept, maker-centered learning provided a new kind of hands-on pedagogy that encourages community and collaboration (a do-it together mentality), distributed teaching and learning, boundary crossing, and responsive and flexible teaching practices. By providing professional development to educators regarding effective maker-centered strategies, migratory students will have an opportunity to build on the inherently natural social structure found in many migratory communities.

Sole Source Criteria

- *Describe the unique features, qualifications, abilities or expertise of the contractor proposed for this sole source contract.*

The team from EPC LLC has extensive experience in training on maker-centered learning. Dr. Edward Clapp is an internationally respected lecturer, author and trainer on Maker-Centered Learning: Empowering Young People to Shape their Worlds; Participatory Creativity: Introducing Access and Equity to the Creative Classroom; and diversity, equity and inclusion in education. He is a principal investigator for Harvard's Project Zero, which "poses fundamental questions of human potential-including intelligence, learning, critical thinking, and creativity" as they relate to issues facing schools and families.

- *What kind of market research did the agency conduct to conclude that alternative sources were inappropriate or unavailable? Provide a narrative description of the agency's due diligence in determining the basis for the sole source contract, including methods used by the agency to conduct a review of available sources such as researching trade publications, industry newsletters and the internet; contacting similar service providers; and reviewing statewide pricing trends and/or agreements. Include a list of businesses contacted (if you state that no other businesses were contacted, explain why not), date of contact, method of contact (telephone, mail, e-mail, other), and documentation demonstrating an explanation of why those businesses could not or would not, under any circumstances, perform the contract; or an explanation of why the agency has determined that no businesses other than the prospective contractor can perform the contract.*

OSPI's Migrant and Bilingual Program coordinated with staff from OSPI's Arts Education Program at OSPI. Collectively, they determined there is no in-house expertise, nor expertise embedded within the state's Educational Service District, to professional development focused on research-based maker-centered academic programs.

As the Migrant and Arts Education Programs continued to investigate strategies and resources to engage migratory students in their learning, the Arts Education Program Identified Maker-Centered Learning as a successful research-based program that could successfully be implemented to serve migratory students. Other possible student engagement learning opportunities included the Chalk Art work of David Zinn. However, as Maker-Centered was research-based through Harvard Graduate School of Education, it was recommended by Arts Education. Harvard does offer Maker-Centered trainings but does not redesign the program to specifically address staff working with migratory students

- *What considerations were given to providing opportunities in this contract for small business, including but not limited to unbundling the goods and/or services acquired.*
No, OSPI did not consider unbundling this service to multiple small businesses. It is important to provide consistent training and mentoring to the three sites across the state.

- Provide a detailed and compelling description that includes quantification of the costs and risks mitigated by contracting with this contractor (i.e. learning curve, follow-up nature).*

The Title I, Part C Migrant Education Program under the Elementary and Secondary Education Act notes states are responsible for making decisions about how best to implement and operate the MEP. It is critical that staff at the state and local/district levels realize that they should not continue practices simply because they are based on long-standing policy. Looking beyond what programs have done in the past to what they can do in the future to improve teaching and learning for all children is the biggest challenge of educational reform. State and local education entities are encouraged to adopt new ideas and practices (particularly those grounded in research and evidence of success) to enable migratory children to succeed in school. By collaborating with EPC LLC and Maker-Centered Learning, the program is able to provide professional learning to successfully implement research and evidence based practices that are aligned to traditional and culturally established ways of hands-on learning. State data indicates 54% of migratory students are also enrolled in English language learner programs. By training teachers on how to use Maker-Centered Learning as a hands-on approach to engaging students in their learning, educators can build vocabulary and communication skills in a low-risk setting that allows students to build confidence in their communication and foster trusting relationships with teachers and peers. By engaging in the key concepts of Looking Closely, Exploring Complexity, and Finding Opportunity, for which Maker-Centered Learning is established, educators become facilitators and guides for helping students see they are agents of change in their personal learning and community interactions.
- Is the agency proposing this sole source contract because of special circumstances such as confidential investigations, copyright restrictions, etc.? If so, please describe.*

No.
- Is the agency proposing this sole source contract because of unavoidable, critical time delays or issues that prevented the agency from completing this acquisition using a competitive process? If so, please describe. For example, if time constraints are applicable, identify when the agency was on notice of the need for the goods and/or service, the entity that imposed the constraints, explain the authority of that entity to impose them, and provide the timelines within which work must be accomplished.*

No.
- Is the agency proposing this sole source contract because of a geographic limitation? If the proposed contractor is the only source available in the geographical area, state the basis for this conclusion and the rationale for limiting the size of the geographical area selected.*

No.

- *What are the consequences of not having this sole source filing approved? Describe in detail the impact to the agency and to services it provides if this sole source filing is not approved.*

If this Sole Source Filing is not approved school districts (LEAs) will not have the opportunity to further explore the benefits of Maker-Centered Learning as a method to engage migratory students in their learning and increase academic growth and language development.

Reasonableness of Cost

- *Since competition was not used as the means for procurement, how did the agency conclude that the costs, fees, or rates negotiated are fair and reasonable? Please make a comparison with comparable contracts, use the results of a market survey, or employ some other appropriate means calculated to make such a determination.*

Cost for this contract was based on the consultant's rate which averages \$337 per hour, per trainer. The rate includes the trainers' responsibility for taxes, personal insurance, travel, and any other costs incurred by the trainer. The trainers will conduct a six-day tour across Washington state, three eight-hour training days, virtual mentoring (at least two one-hour sessions for each participant) and develop and submit a final results report. Based on many other contracts for expert level, specialized trainers, OSPI determined the cost of the contract is in alignment with comparable professional learning opportunities when considerations are made for traveling to three sites across the state, providing virtual mentorship to participants, and evaluating the program efforts including summer school implementation.

Attachment 2 – Proposed Draft Sole Source Contract

See next page

CONTRACT FOR SERVICES
Contract No. 20240447

between

SUPERINTENDENT OF PUBLIC INSTRUCTION,
STATE OF WASHINGTON

(hereinafter referred to as Superintendent/OSPI)
Old Capitol Building, PO Box 47200
Olympia, WA 98504-7200

and

EPC CONSULTING, LLC

(hereinafter referred to as Contractor)
47 Hamilton Avenue
South Hamilton, MA 01982

Employer Identification #47-2168866

In consideration of the promises and conditions contained herein, Superintendent and Contractor do mutually agree as follows:

I. DUTIES OF THE CONTRACTOR

A. The general objective of this Contract is as follows:

Provide professional learning opportunities for educators serving migratory students implementing maker-centered learning (MCL) experiences for their summer school/summer learning programs.

B. In order to accomplish the general objective of this Contract, Contractor shall perform the following specific duties, and those outlined in Attachment B – MCL Summer Learning 2024 Proposal, to the satisfaction of the OSPI Contract Manager:

- Implement research-based maker-centered strategies to immerse educators in a tailored program designed to develop skills and strategies to engage students in their learning.
- Assist educators in developing a sensitivity to the designed dimension of objects and systems so that they may be empowered to shape students' knowledge and skills through building, tinkering, re/designing, or hacking (modifying things).
- Use the maker-centered strategies and practices with educators to facilitate issues related to diversity, equity, inclusion, and belonging as well as understanding complex systems – including the social and cultural systems that are particular to different student demographics.
- Work with participating educators to identify maker-centered activities and models to implement as part of summer learning.
- Work with participating educators to identify elements of learning that can be included in maker-centered activities that can be evaluated to gauge student's ability to become empowered agents of change.

- C. The Contractor shall provide the following deliverables to the OSPI Contract Manager by the dates indicated below:

SCHEDULE OF DELIVERABLES	
Deliverable	Due Date
1. Conduct three (3) day-long workshops for up to twenty-five (25) educators at each site for a total of seventy-five (75) educators.	5/13/2024 - 5/16/2024
2. Meet with OSPI's Migrant Education Program to review workshop efforts and preliminary results of training.	5/17/2024
3. Submit a schedule demonstrating at least two (2), but no more than three (3) virtual mentor sessions for participating educators following the on-site training.	6/10/2024
4. Provide a report of completed mentor sessions with participant names to include insights on developing a maker-center model, evaluation components, following Attachment C, to gauge student empowerment and self-efficacy, and overall feedback to the summer initiative with recommendations for next steps.	8/31/2024

**II. CONDITIONS OF COMMENCEMENT OF PERFORMANCE
AND
SCHEDULE OF PERFORMANCE**

Contractor shall not commence performance, or be entitled to compensation or reimbursement for any services rendered, prior to the occurrence of each of the following conditions: (1) This Contract must be executed by a representative of the Contractor and the Superintendent; (2) Provisions of Chapter 39.26 RCW require the Agency to file this sole source Contract with the Department of Enterprise Services (DES) for approval; no Contract so filed is effective nor shall work commence under it until the tenth (10th) working day following the date of filing, subject to DES approval. In the event DES fails to approve the Contract, the Contract shall be null and void; and (3) Contract Manager must confirm the occurrence of conditions number one (1) and two (2) and notify the Contractor to commence performance.

The schedule of performance of Contractor's duties is as follows subject, however, to the three (3) prior conditions to commencement of performance set forth immediately above:

May 7, 2024, date of approval by DES, or date of execution, whichever is later, through August 31, 2024.

III. DUTIES OF THE SUPERINTENDENT

- A. In consideration of Contractor's satisfactory performance of the duties set forth herein, Superintendent shall compensate Contractor in an amount not to exceed a total of fifty-seven thousand, five hundred dollars (\$57,500) as noted below in part B, Schedule of Payments. Payment for satisfactory performance shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work, which will cause the maximum payment to be increased.

One hundred percent (100%) of the funds for the payment of this Contract are provided by federal program Title I, Part C, Migrant Education Program, CFDA # 84.011A/Award #S011A220048 therefore, Contractor shall comply with Federal Grant Terms and Conditions, attached hereto as Attachment A1.

All expenses necessary to the Contractor's performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

- B. Payment shall be made to the Contractor as follows:

Periodically (not more often than monthly), in the form of progress payments in the amounts and for the stages of partial performance set forth below:

SCHEDULE OF PAYMENTS		
Deliverable	Due Date	Payment
1. Completion of three (3) day-long workshops for educators. Proof of completion must include sign-in sheets, final agenda, sample session evaluation.	5/24/2024	\$37,500
2. Schedule of virtual mentor sessions	6/10/2024	\$10,000
3. Submit a report of completed mentor sessions with participant names that include insights on developing a maker-center model, evaluation components identified to gauge student empowerment and self-efficacy, and overall feedback to the summer initiative with recommendations of next steps.	8/31/2024	\$10,000

The invoices shall include the Contract number, and document to the OSPI Contract Manager's satisfaction a description of the work performed and payment requested. Within approximately thirty (30) calendar days of the OSPI Contract Manager receiving and approving the invoice, payment will be mailed or electronically transferred to the Contractor by Agency Financial Services, OSPI.

If errors are found in the submitted invoice or supporting documents, the OSPI Contract Manager will notify the Contractor. In order to receive payment, it shall be the responsibility of the Contractor to make corrections in a timely manner, resubmit the invoice and/or supporting documentation as requested, and notify the OSPI Contract Manager.

- C. Final payment shall be made after acceptance by the OSPI Contract Manager if received by the OSPI Contract Manager within ninety (90) days after the contract expiration date, unless negotiated with the OSPI Contract Manager and the Fiscal Budget Analyst.

IV. CONTRACT MANAGEMENT

The following shall be the contact person for all communications and billings regarding the performance of this contract. Any changes to this information shall be communicated to the other party in writing as soon as reasonably possible.

Contractor	OSPI

V. INCORPORATION OF ATTACHMENTS AND ORDER OF PRECEDENCE

Each of the attachments listed below is by this reference hereby incorporated into this Contract. In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and state of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Attachment A – Contract for Services, General Terms and Conditions
- Attachment A1 – Federal Grant Terms and Conditions
- Attachment B – MCL Summer Learning 2024 Proposal
- Attachment C – MCL Benefits Outcomes Evaluation
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

VI. APPROVAL

This Contract shall be subject to the written approval of the Superintendent's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

We the undersigned agree to the terms of the foregoing Contract.

EPC Consulting LLC

Superintendent of Public Instruction
State of Washington

Signature

Kyla L. Moore, Contracts Administrator

Printed Name

Date

Title

Date

Who certifies that he/she is the Contractor identified herein, OR a person duly qualified and authorized to bind the Contractor so identified to the foregoing Agreement.

Approved as to FORM ONLY
by the Assistant Attorney General

Attachment A
Contract for Services
GENERAL TERMS AND CONDITIONS,

Definitions. As used throughout this Contract and General Terms and Conditions, the following terms shall have the meaning set forth below:

“Contract” or **“Agreement”** means the entire written agreement between OSPI and the Contractor, including any attachments, exhibits, documents, or materials incorporated by reference. Contract and Agreement may be used interchangeably.

"Contractor" shall mean that firm, provider, organization, individual, or other entity performing service(s) under this Contract, and shall include all employees of the Contractor.

“Services” means all work performed or provided by Contractor pursuant to this Contract.

“Statement of Work” or **“SOW”** or **“Scope of Work”** means a detailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline.

"Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms " Subcontractor" and " Subcontractors" means Subcontractor(s) in any tier.

"Superintendent" shall mean the Office of Superintendent of Public Instruction (OSPI) of the State of Washington, any division, section, office, unit or other entity of the Superintendent, or any of the officers or other officials lawfully representing the Superintendent. Superintendent and OSPI may be used interchangeably.

1. **Access to Data.** In compliance with Chapter 39.26 RCW, the Contractor shall provide access to data generated under this Contract to the Superintendent, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor’s reports, including computer models and methodology for those models.
2. **Alterations and Amendments.** This Contract may be amended only by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.
3. **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the “ADA” 28 CFR Part 35.** The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.
4. **Assignment.** Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of the Superintendent.
5. **Assurances.** The Superintendent and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable current federal, state and local laws, rules and regulations.

- 6. Attorney's Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
- 7. Audit Requirements.** If the Contractor is a Subrecipient of federal awards as defined by the Office of Management and Budget (OMB) CFR, Part 200, Subpart F, and expends seven hundred and fifty thousand dollars (\$750,000) or more in federal awards (does not apply to contracts for goods and services) from all federal sources in any fiscal year beginning on or after December 26, 2014, the Contractor shall procure at their expense a single or program-specific audit for that year. The Contractor shall incorporate OMB CFR, Part 200, Subpart F audit requirements into all contracts between the Contractor and its Subcontractors who are Subrecipients of federal awards. The Contractor shall comply with any future amendments to OMB and any successor or replacement Circular or regulation.
- 8. Budget Revisions.** Any monetary amount budgeted by the terms of this Contract for various activities and line-item objects of expenditure may be revised without prior written approval of Superintendent, so long as the revision is no more than ten percent (10%) of the original line item amount and the increase in an amount is offset by a decrease in one or more other amounts equal to or greater than the increase. All other budget revisions exceeding ten percent (10%) shall only be made with the prior written approval of the Superintendent.
- 9. Certification Regarding Debarment, Suspension, and Ineligibility.** The Contractor certifies that neither it nor its principals are debarred, suspended, proposed for debarment, or voluntarily excluded from participation in transactions by any federal department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, proposed for debarment, or voluntarily excluded from participation in covered transactions by any federal department or agency. "Covered transactions" include procurement contracts for goods that are expected to equal or exceed twenty-five thousand dollars (\$25,000). Contractor may do so by obtaining a certification statement from the potential subcontractor or subrecipient or by checking online at the System for Award Management (SAM), Excluded Parties List. The Contractor shall immediately notify the Superintendent if, during the term of this contract, Contractor becomes debarred. The Superintendent may immediately terminate this Contract by providing Contractor written notice if Contractor becomes debarred during the term of this Contract.

The Contractor also certifies that neither it nor its principals are debarred, suspended, or proposed for debarment from participation in transactions by any state department or agency. The Contractor further certifies that they will ensure that potential subcontractors or any of their principals are not debarred, suspended, or proposed for debarment from participation in covered transactions by any state department or agency.

- 10. Certification Regarding Lobbying.** The Contractor certifies that Federal-appropriated funds will not be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress or an employee of a member of Congress in obtaining any Federal contract, grant or any other award covered by 31 USC 1352. Contractor must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor shall require its subcontractors to certify compliance with this provision.

11. Certification Regarding Wage Violations. The Contractor certifies that within three (3) years prior to the date of execution of this Contract, Contractor has not been determined by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction to have willfully violated, as defined in RCW 49.48.082, any provision of RCW chapters 49.46, 49.48, or 49.52.

The Contractor further certifies that it will remain in compliance with these requirements during the term of this Contract. Contractor will immediately notify the Superintendent of any finding of a willful violation entered by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction entered during the term of this Contract.

12. Change in Status. In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the Superintendent of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

13. Confidentiality. The Contractor acknowledges that all of the data, material and information which originates from this Contract, and any student assessment data, material and information which will come into its possession in connection with performance under this Contract, consists of confidential data owned by the Superintendent or confidential personally identifiable data subject to the federal Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) or other privacy laws, and that the data must be secured and protected from unauthorized disclosure by the Contractor. The Contractor is wholly responsible for compliance with FERPA requirements.

The Contractor, therefore, agrees to hold all such material and information in strictest confidence, not to make use thereof other than for the performance of this Contract, to release it only to authorized employees and agents requiring such information and not release or disclose it to any other party. The Contractor agrees to release such information or material only to employees and agents who have signed a written agreement expressly prohibiting disclosure or usages not specifically authorized by this Contract.

14. Copyright Provisions. Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and copyright shall be owned by the Superintendent. The Superintendent shall be considered the author of such Materials. If Materials are not considered "works for hire", Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Superintendent effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Copyright ownership includes the right to patent, register and the ability to transfer these rights.

Contractor understands that, except where otherwise agreed to in writing or approved by the Superintendent or designee, all original works of authorship produced under this Contract shall carry a [Creative Commons Attribution License](#), version 4.0 or later.

All Materials the Contractor has adapted from others' existing openly licensed resources must be licensed with the least restrictive open license possible that is not in conflict with existing licenses.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor will license the materials to allow others to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. If the Contractor would like to limit these pre-existing portions of the work to [non-commercial use](#), the [Creative Commons Attribution-NonCommercial](#) (preferred) or [Creative Commons Attribution-NonCommercial-ShareAlike](#) licenses, version 4.0 or later, are acceptable for these specific sections.

The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to apply such a license.

The Contractor shall exert all reasonable effort to advise the Superintendent, at the time of delivery of data furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Superintendent shall receive prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Superintendent shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

15. Covenant Against Contingent Fees. The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. The Superintendent shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

16. Disputes. In the event that a dispute arises under this Contract, it shall be determined by a Dispute Board in the following manner: (1) The Superintendent shall appoint a member to the Dispute Board; (2) the Contractor shall appoint a member to the Dispute Board; (3) the Superintendent and the Contractor shall jointly appoint a member to the Dispute Board; (4) the Dispute Board shall evaluate the dispute and make a determination of the dispute; and, the determination of the Dispute Board shall be final and binding on the parties hereto.

As alternatives to the above Dispute Board process: (1) if the dispute is between two or more state agencies, any one of the agencies may request intervention by the Governor, as provided by 43.17.330 RCW, in which event the Governor's process shall control; and, (2) if the dispute is between a non-state agency and another state agency or non-state agency party to this Contract, all the disputing parties may mutually agree to mediation prior to submitting the dispute to a Dispute Board in the event the dispute is not resolved pursuant to mediation within an agreed-upon time period.

17. Duplicate Payment. The Superintendent shall not pay the Contractor, if the Contractor has charged or will charge the state of Washington or any other party under any other contract or agreement, for the same services or expenses.

18. Electronic signature. Any signature page delivered via fax machine or electronic image scan, receipt acknowledged in each case, shall be binding to the same extent as an original, wet ink signature page. Any Party who delivers such a signature page agrees to later deliver an original counterpart to any Party which requests it.

19. Entire Agreement. This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

20. Ethical Conduct. Neither the Contractor nor any employee or agent of the Contractor shall participate in the performance of any duty or service in whole or part under this Contract in violation of, or in a manner that violates any provision of the Ethics in Public Service law at Chapter 42.52 RCW, RCW 42.17A.550, RCW 42.17A.555, and 41.06.250 prohibiting the use of public resources for political purposes.

Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to the Superintendent's employees.

21. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the State of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

22. Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Superintendent and all officials, agents, and employees of the Superintendent, from and against all claims for injuries or death arising out of or resulting from the performance of this Contract. "Claim" as used in this Contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting therefrom. Additionally, "claims" shall include but not be limited to, assertions that the use or transfer of any software, book, document, report, film, tape or sound reproduction or material of any kind, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, or otherwise results in an unfair trade practice or in unlawful restraint of competition. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the Superintendent for any and all claims, costs, charges, penalties, demands, losses, liabilities, damages, judgments, or fines out of or incident to Contractor's or subcontractor's performance or failure to perform the Contract. Contractor's obligation to indemnify, defend, or hold harmless the Superintendent shall not be eliminated or reduced by any actual or alleged concurrent negligence by Superintendent or its agents, employees, or officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless Superintendent and its agents, employees, or officials.

23. Independent Capacity of the Contractor. The parties intend that an independent Contractor relationship will be created by this Contract. The Contractor and his/her employees or agents performing under this Contract are not employees or agents of the Superintendent. The Contractor will not hold himself/herself out as nor claim to be an officer or employee of the

Superintendent or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege, or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

24. Insurance.

a. **Worker's Compensation Coverage.** The Contractor shall at all times comply with all applicable worker's compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the fullest extent applicable. This requirement includes the purchase of industrial insurance coverage for the Contractor's employees, as may now hereafter be required of an "employer" as defined in Title 51 RCW. Such worker's compensation and occupational disease requirements shall include coverage for all employees of the Contractor, and for all employees of any subcontract retained by the Contractor, suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. Satisfaction of these requirements shall include, but shall not be limited to:

- 1) Full participation in any required governmental occupational injury and/or disease insurance program, to the extent participation in such a program is mandatory in any jurisdiction;
- 2) Purchase worker's compensation and occupational disease insurance benefits to employees in full compliance with all applicable laws, statutes, and regulations, but only to the extent such coverage is not provided under mandatory governmental program in "a" above, and/or;
- 3) Maintenance of a legally permitted and governmentally approved program of self-insurance for worker's compensation and occupational disease.

Except to the extent prohibited by law, the program of the Contractor's compliance with worker's compensation and occupational disease laws, statutes, and regulations in 1), 2), and 3) above shall provide for a full waiver of rights of subrogation against the Superintendent, its directors, officers, and employees.

If the Contractor, or any subcontractor retained by the Contractor, fails to effect and maintain a program of compliance with applicable worker's compensation and occupational disease laws, statutes, and regulations and the Superintendent incurs fines or is required by law to provide benefits to such employees, to obtain coverage for such employees, the Contractor will indemnify the Superintendent for such fines, payment of benefits to Contractor or subcontractor employees or their heirs or legal representatives, and/or the cost of effecting coverage on behalf of such employees. Any amount owed the Superintendent by the Contractor pursuant to the indemnity may be deducted from any payments owed by the Superintendent to the Contractor for the performance of this Contract.

b. **Automobile Insurance.** In the event that services delivered pursuant to this Contract involve the use of vehicles, owned or operated by the Contractor, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per accident or occurrence, using a Combined Single Limit for bodily injury and property damage.

- c. **Business Automobile Insurance.** In the event that services performed under this Contract involve the use of vehicles or the transportation of clients, automobile liability insurance shall be required. If Contractor-owned personal vehicles are used, a Business Automobile policy covering a minimum Code 2 “owned autos only” must be secured. If the Contractor’s employees’ vehicles are used, the Contractor must also include under the Business Automobile policy Code 9, coverage for “non-owned autos.” The minimum limits for automobile liability is:

\$1,000,000 per accident or occurrence, using a Combined Single Limit for bodily injury and property damage.

- d. **Public Liability Insurance/General Liability.** The Contractor shall at all times during the term of this Contract, at its cost and expense, carry and maintain general public liability insurance, including contractual liability, against claims for bodily injury, personal injury, death, or property damage occurring or arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or servants. The limits of liability insurance, which may be increased from time to time as deemed necessary by the Superintendent, with the approval of the Contractor (which shall not be unreasonably withheld), shall not be less than as follows:

Each Occurrence	\$1,000,000
General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising Injury Limit	\$1,000,000
Fire Damage Limit (any one fire)	\$ 50,000
Medical Expense Limit (any one person)	\$ 5,000

- e. **Additional Insured.** The State of Washington, Office of Superintendent of Public Instruction, shall be specifically named as an additional insured on all policies except for liability insurance on privately-owned vehicles, and all policies shall be primary to any other valid and collectible insurance. The Superintendent may waive this requirement at its discretion. Policies and certificates of insurance shall include the contract reference number.
- f. **Proof of Insurance.** Certificates and or evidence satisfactory to the Superintendent confirming the existence, terms and conditions of all insurance required above shall be delivered to the Superintendent within five (5) days of the Contractor’s receipt of Authorization to Proceed.
- g. **General Insurance Requirements.** Contractor shall, at all times during the term of the Contract and at its cost and expense, buy and maintain insurance of the types and amounts listed above. Failure to buy and maintain the required insurance may result in the termination of the Contract at the Superintendent’s option. By requiring insurance herein, Superintendent does not represent that coverage and limits will be adequate to protect Contractor and such coverage and limits shall not limit Contractor’s liability under the indemnities and reimbursements granted to the Superintendent in this Contract.

Contractor shall include all subcontractors as insureds under all required insurance policies, or shall furnish proof of insurance and endorsements for each subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

25. Licensing and Accreditation Standards. The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary to the performance of this Contract.

26. Limitation of Authority. Only the Superintendent or the Superintendent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Superintendent.

27. Nondiscrimination.

- a. **Nondiscrimination Requirement.** During the term of this Contract, the Contractor, including any subcontractor, shall comply with all the federal and state nondiscrimination laws, regulations and policies, which are otherwise applicable to the Superintendent. Accordingly, on the bases enumerated at RCW 49.60.530(3), no person shall, on the ground of sex, race, creed, religion, color, national origin, marital status, families with children, age, veteran or military status, sexual orientation, gender expression, gender identity, disability, or the use of a trained dog guide or service animal, be unlawfully excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any activity performed by the Contractor and its agents under this Contract. In addition, Contractor, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Contractor, or subcontractor, has a collective bargaining or other agreement.
- b. **Obligation to Cooperate.** Contractor, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Contractor, including any subcontractor, has engaged in discrimination prohibited by this Contract pursuant to RCW 49.60.530(3).
- c. **Default.** Notwithstanding any provision to the contrary, the Superintendent may suspend Contractor, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until Superintendent receives notification that Contractor, including any subcontractor, is cooperating with the investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), the Superintendent may terminate this Contract in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

d. **Remedies for Breach.** Notwithstanding any provision to the contrary, in the event of Contract termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. The Superintendent shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe the Superintendent for default under this provision.

28. Overpayments. Contractor shall refund to Superintendent the full amount of any overpayment under this Contract within thirty (30) calendar days of written notice. If Contractor fails to make a prompt refund, Superintendent may charge Contractor one percent (1%) per month on the amount due until paid in full.

29. Payments. No payments in advance or in anticipation of services or supplies to be provided under this Contract shall be made by the Superintendent. All payments to the Contractor are conditioned upon (1) Contractor's submission of a properly executed and supported invoice for payment, including such supporting documentation of performance and supporting documentation of costs incurred or paid, or both as is otherwise provided for in the body of this Contract, and (2) Acceptance and certification by the OSPI Contract Manager or designee of satisfactory performance by the Contractor.

Except as otherwise provided in this Contract, (1) All approvable invoices for payment due to the Contractor shall be paid within thirty (30) calendar days of their submission by the Contractor and acceptance and certification by the OSPI Contract Manager or designee, and (2) All expenses necessary to the Contractor's performance of this Contract not specifically mentioned in the Contract shall be borne in full by the Contractor.

30. Public Disclosure. Contractor acknowledges that the Superintendent is subject to the Washington State Public Records Act, Chapter 42.56 RCW, and that this Contract shall be a public record as defined in RCW 42.56. Any specific information that is claimed by the Contractor to be confidential or proprietary must be clearly identified as such by the Contractor. To the extent consistent with chapter 42.56 RCW, the Superintendent shall maintain the confidentiality of all such information marked confidential or proprietary. If a request is made to view the Contractor's information, the Superintendent will notify the Contractor of the request and the date that such records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If the Contractor fails to obtain the court order enjoining disclosure, the Superintendent will release the requested information on the date specified.

31. Publicity. The Contractor agrees to submit to the Superintendent all advertising and publicity matters relating to this Contract which in the Superintendent's judgment, Superintendent's name can be implied or is specifically mentioned. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Superintendent.

32. Registration with Department of Revenue. The Contractor shall complete registration with the Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

33. Records Maintenance. The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review or audit by the Superintendent, personnel duly authorized by the Superintendent, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

34. Right of Inspection. The Contractor shall provide right of access to its facilities to the Superintendent or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract on behalf of the Superintendent. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the Contractor's business or work hereunder.

35. Severability. The provisions of this Contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Contract.

36. Site Security. While on Superintendent premises, Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

37. Subcontracting. Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the Superintendent. Contractor is responsible to ensure that all terms, conditions, assurances and certifications set forth in this Contract are included in any and all Subcontracts. In no event shall the existence of the subcontract operate to release or reduce liability of the Contractor to the Superintendent for any breach in the performance of the Contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

If, at any time during the progress of the work, the Superintendent determines in its sole judgment that any subcontractor is incompetent, the Superintendent shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work. The rejection or approval by the Superintendent of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to the Superintendent.

38. Subcontractor Payment Reporting. If a subcontractor is used to perform all or part of the services under this Contract under a separate contract with the Contractor, this Contract is subject to compliance tracking using the State's business diversity management system, [Access Equity](#) (B2Gnow). The Contractor and all Subcontractors shall report and confirm receipt of payments made to the Contractor and each Subcontractor through the Access

Equity system. User guides and documentation related to Contractor and Subcontractor access to and use of Access Equity are provided by the Office of Minority and Women's Business Enterprises in the [Access Equity Help Center](#). The Superintendent reserves the right to withhold payments from the Contractor for non-compliance with this section. For purposes of this section, Subcontractor means any subcontractor working on the Contract, at any tier and regardless of status as certified woman and/or minority business (WMBE) or Non-WMBE. The Contractor shall:

- a. Register and enter all required Subcontractor information into Access Equity no later than fifteen (15) days after the Superintendent creates the Contract Record.
- b. Complete the required user training (two (2) one- (1-) hour online sessions) no later than twenty (20) days after the Superintendent creates the Contract Record.
- c. Report the amount and date of all payments (i) received from the Superintendent, and (ii) paid to Subcontractors, no later than thirty (30) days, issuance of each payment made by the Superintendent to the Contractor, unless otherwise specified in writing by the Superintendent, except that the Contractor shall mark as "Final" and report the final Subcontractor payments) into Access Equity no later than thirty (30) days after the final payment is due the Subcontractor(s) under the Contract, with all payment information entered no later than sixty (60) days after end of fiscal year.
- d. Monitor contract payments and respond promptly to any requests or instructions from the Superintendent or system-generated messages to check or provide information in Access Equity.
- e. Coordinate with Subcontractors, or Superintendent, when necessary, to resolve promptly any discrepancies between reported and received payments.
- f. Require each Subcontractor to: (i) register in Access Equity and complete the required user training; (ii) verify the amount and date of receipt of each payment from the Contractor or a higher tier Subcontractor, if applicable, through Access Equity; (iii) report payments made to any lower tier Subcontractors, if any, in the same manner as specified herein; (iv) respond promptly to any requests or instructions from the Contractor or system-generated messages to check or provide information in Access Equity; and (v) coordinate with Contractor, or Superintendent when necessary, to resolve promptly any discrepancies between reported and received payments.

39. Taxes. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

40. Technology Security Requirements. The security requirements in this document reflect the applicable [requirements of Standard 141.10 of the Office of the Chief Information Officer \(OCIO\)](#) for the state of Washington, which by this reference are incorporated into this agreement.

The Contractor acknowledges it is required to comply with WaTech OCIO IT Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets. OCIO IT Security Standard 141.10, Securing Information Technology Assets, applies to all Superintendent assets stored as part of a service, application, data, system, portal, module, components or plug-in product(s) that are secured as defined by the WaTech OCIO's IT

Security Policy 141 and OCIO IT Security Standard 141.10, Securing Information Technology Assets.

As part of OCIO IT Security Standard 141.10, a design review checklist and/or other action may be required. These activities will be managed and coordinated between Superintendent and the Contractor. Any related costs to performing these activities shall be at the expense of the Contractor. Any such activities and resulting checklist and/or other products must be shared with the Superintendent's Information Technology Services.

- 41. Termination for Convenience.** Except as otherwise provided in this Contract, the Superintendent or Superintendent's Designee may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part. The notice shall specify the date of termination and shall be conclusively deemed to have been delivered to and received by the Contractor as of midnight the second day of mailing in the absence of proof of actual delivery to and receipt by the Contractor. If this Contract is so terminated, the Superintendent shall be liable only for payment required under the terms of the Contract for services rendered or goods delivered prior to the effective date of termination.
- 42. Termination for Default.** In the event the Superintendent determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Superintendent has the right to suspend or terminate this Contract. The Superintendent shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) days, the Contract may be terminated. The Superintendent reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Superintendent to terminate the Contract. In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising and staff time. The termination shall be deemed to be a "Termination for Convenience" if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence. The rights and remedies of the Superintendent provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.
- 43. Termination Due to Funding Limitations or Contract Renegotiation, Suspension.** In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion of this Contract, with the notice specified below and without liability for damages:
- a. At Superintendent's discretion, the Superintendent may give written notice of intent to renegotiate the Contract under the revised funding conditions.
 - b. At Superintendent's discretion, the Superintendent may give written notice to Contractor to suspend performance when Superintendent determines there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed.

- (1) During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
 - (2) When Superintendent determines that the funding insufficiency is resolved, it will give the Contractor written notice to resume performance, and Contractor shall resume performance.
 - (3) Upon the receipt of notice under b. (2), if Contractor is unable to resume performance of this Contract or if the Contractor's proposed resumption date is not acceptable to Superintendent and an acceptable date cannot be negotiated, Superintendent may terminate the Contract by giving written notice to the Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- c. Superintendent may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. Superintendent shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to Superintendent in the event the termination option in this section is exercised.
- d. For purposes of this section, "written notice" may include email.

44. Termination Procedure. Upon termination of this Contract the Superintendent, in addition to other rights provided in this Contract, may require the Contractor to deliver to the Superintendent any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Superintendent shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Superintendent and the amount agreed upon by the Contractor and the Superintendent for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services which are accepted by the Superintendent, and (d) the protection and preservation of the property, unless the termination is for default, in which case the Superintendent shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause for this Contract. The Superintendent may withhold from any amounts due to the Contractor such sum as the Superintendent determines to be necessary to protect the Superintendent against potential loss or liability.

The rights and remedies of the Superintendent provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the Superintendent, the Contractor shall:

- a. Stop work under this Contract on the date and to the extent specified, in the notice.
- b. Place no further orders or subcontractors for materials, services or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- c. Assign to the Superintendent, in the manner, at the times, and to the extent directed by the Superintendent, all rights, title, and interest of the Contractor under the orders and subcontracts in which case the Superintendent has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Superintendent to the extent the Superintendent may require, which approval or ratification shall be final for all the purposes of this clause;
- e. Transfer title to the Superintendent and deliver, in the manner, at the times and to the extent as directed by the Superintendent, any property which, if the Contract had been completed, would have been required to be furnished to the Superintendent;
- f. Complete performance of such part of the work not terminated by the Superintendent;
and
- g. Take such action as may be necessary, or as the Superintendent may direct, for the protection and preservation of the property related to this Contract which, in is in the possession of the Contractor and in which the Superintendent has or may acquire an interest.

45. Treatment of Assets. Except as otherwise provided for in the Contract, the ownership and title to all real property and all personal property purchased by the Contractor in the course of performing this Contract with moneys paid by the Superintendent shall vest in the Superintendent, except for supplies consumed in performing this Contract. The Contractor shall (1) maintain a current inventory of all the real and personal property; (2) label all the property "State of Washington, Superintendent of Public Instruction"; and, (3) surrender property and title to the Superintendent without charge prior to settlement upon completion, termination or cancellation of this Contract.

Any property of the Superintendent furnished to the Contractor shall, unless otherwise provided herein, or approved by the Superintendent, be used only for the performance of the Contract.

The Contractor shall be responsible for any loss or damage to property of the Superintendent which results from the negligence of the Contractor which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.

If any property is lost, destroyed, or damaged, the Contractor shall notify the Superintendent and take all reasonable steps to protect the property from further damage.

All reference to the Contractor under this clause shall include Contractor's employees, agents and subcontractors.

46. Waiver. A failure by either party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this agreement. Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing and signed by personnel authorized to bind each of the parties.

**Attachment A1
Federal Grant Terms and Conditions**

**PROHIBITION OF TEXT MESSAGING AND EMAILING WHILE
DRIVING DURING OFFICIAL FEDERAL GRANT BUSINESS**

Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email when driving.

Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

**MEMORANDUM to ED GRANTEES REGARDING THE USE OF GRANT FUNDS FOR
CONFERENCES AND MEETINGS**

You are receiving this memorandum to remind you that grantees must take into account the following factors when considering the use of grant funds for conferences and meetings:

- Before deciding to use grant funds to attend or host a meeting or conference, a grantee should:
 - Ensure that attending or hosting a conference or meeting is consistent with its approved application and is reasonable and necessary to achieve the goals and objectives of the grant;
 - Ensure that the primary purpose of the meeting or conference is to disseminate technical information, (e.g., provide information on specific programmatic requirements, best practices in a particular field, or theoretical, empirical, or methodological advances made in a particular field; conduct training or professional development; plan/coordinate the work being done under the grant); and
 - Consider whether there are more effective or efficient alternatives that can accomplish the desired results at a lower cost, for example, using webinars or video conferencing.
- Grantees must follow all applicable statutory and regulatory requirements in determining whether costs are reasonable and necessary, especially the Cost Principles for Federal grants set out at 2 CFR Part 200 Subpart E of the, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards." In particular, remember that:
 - Federal grant funds cannot be used to pay for alcoholic beverages; and
 - Federal grant funds cannot be used to pay for entertainment, which includes costs for amusement, diversion, and social activities.
- Grant funds may be used to pay for the costs of attending a conference. Specifically, Federal grant funds may be used to pay for conference fees and travel expenses (transportation, per diem, and lodging) of grantee employees, consultants, or experts to attend a conference or meeting if those expenses are reasonable and necessary to achieve the purposes of the grant.
 - When planning to use grant funds for attending a meeting or conference, grantees should consider how many people should attend the meeting or

conference on their behalf. The number of attendees should be reasonable and necessary to accomplish the goals and objectives of the grant.

- A grantee hosting a meeting or conference may not use grant funds to pay for food for conference attendees unless doing so is necessary to accomplish legitimate meeting or conference business.
 - A working lunch is an example of a cost for food that might be allowable under a Federal grant if attendance at the lunch is needed to ensure the full participation by conference attendees in essential discussions and speeches concerning the purpose of the conference and to achieve the goals and objectives of the project.
- A meeting or conference hosted by a grantee and charged to a Department grant must not be promoted as a U.S. Department of Education conference. This means that the seal of the U.S. Department of Education must not be used on conference materials or signage without Department approval.
 - All meeting or conference materials paid for with grant funds must include appropriate disclaimers, such as the following:
The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.
- Grantees are strongly encouraged to contact their project officer with any questions or concerns about whether using grant funds for a meeting or conference is allowable prior to committing grant funds for such purposes.
 - A short conversation could help avoid a costly and embarrassing mistake.
- Grantees are responsible for the proper use of their grant awards and may have to repay funds to the Department if they violate the rules on the use of grant funds, including the rules for meeting and conference-related expenses.

Empowering Educators to Support Students through Maker-Centered Learning

Scope of Work | Spring/Summer 2024

The *Empowering Educators to Support Students through Maker-Centered Learning* program will equip up to 100 Washington State-based educators and teaching artists with the skills and strategies to engage their students in maker-centered learning. There will be an especial focus on preparing educators and teaching artists to implement maker-centered learning experiences for their summer school/summer learning programs. This immersive professional development experience will further be tailored to meet the needs of two populations of educators and teaching artists: (1) Educators and teaching artists working within the Visual and Performing Arts Program in the Seattle Public Schools and the South End Stories program in the Seattle area, and (2) Educators and teaching artists working with the Migrant Education Program throughout the state.

For as long as humans have stood on two legs and walked forward, our species has been defined by our ability as makers. Yet, too many teaching and learning environments deny young people the opportunity to learn through making. Maker-centered learning can be understood as an approach to teaching and learning centered on making. The greater goal of maker-centered learning is to support young people in developing a sensitivity to the designed dimensions of objects and systems so that they may be empowered to shape their worlds through building, tinkering, re/designing, or hacking.

In addition to a thorough introduction to maker-centered learning, the Consultants conducting the *Empowering Educators to Support Students through Maker-Centered Learning* professional development experience will also highlight issues related to diversity, equity, inclusion, and belonging, as well as understanding complex systems—including the social and cultural systems that are particular to the target student population’s experiences.

Consultants

Edward P. Clapp and Yerko Sepúlveda are global authorities on the practice of maker-centered learning. Clapp and Sepúlveda will serve as the designers and facilitators of the *Empowering Educators to Support Students through Maker-Centered Learning* program.

Edward P. Clapp, Ed.D. is a Principal Investigator at Project Zero interested in exploring creativity and innovation, design and maker-centered learning, contemporary approaches to arts teaching and learning, and diversity, equity, and inclusion in education. In addition to his work as a

researcher, Edward is also a Lecturer on Education at the Harvard Graduate School of Education. Edward's most recent books include *The Participatory Creativity Guide for Educators* (with Julie Rains, Routledge 2024), *Participatory Creativity: Introducing Access and Equity to the Creative Classroom* (Routledge, 2016) and *Maker-Centered Learning: Empowering Young People to Shape their Worlds* (with Jessica Ross, Jennifer Oxman Ryan, and Shari Tishman, Jossey-Bass, 2016).

Yerko Sepúlveda, Ph.D. is the Director of Community Engagement and Belonging at Porter-Gaud School in Charleston, South Carolina. He is an experienced teacher-trainer and educational consultant. He holds a B.A. in English, an M.A. in Applied Linguistics, an M.Ed. in Bilingual Education and Diversity Studies, and a Ph.D. in Linguistics and Intercultural Competence. He has facilitated learning for teachers in over 20 countries as an instructional coach at Harvard's Project Zero and has presented his work at national and international conferences. In September 2023, the National Diversity Council awarded Dr. Sepúlveda the "2023 National Latino Leader Award" for his leadership excellence.

Objectives

The objective for this project is to equip a community of educators with the tools, strategies, and resources associated with maker-centered learning so that they can best serve their students to become empowered agents of change. Throughout this program, there will be an especial emphasis on diversity, equity, inclusion, and belonging, and the understanding of complex systems.

Key Components

The key components of the *Empowering Students to Support Educators through Maker-Centered Learning* project will include the following:

- **One Week-long Site Visit:**
 - Edward and Yerko will visit Washington State to conduct a suite of workshops and meetings. The primary focus of this site visit will be to conduct four day-long workshops that equip educators and teaching artists with the tools and strategies to engage young people in the practice of maker-centered learning. An itinerary for the trip may look like this:
 - Sunday: Arrive in Seattle.
 - Monday: Conduct a day-long workshop for Seattle-area educators and teaching artists.
 - Tuesday: Travel to another part of the state to conduct a day-long workshop for local educators and teaching artists.

- Wednesday: Travel to a third part of the state to conduct a day-long workshop for local educators and teaching artists.
 - Thursday: Travel to a fourth part of the state to conduct a day-long workshop for local educators and teaching artists.
 - Friday: Travel to Olympia for a meeting with key stakeholders at the Washington State Office of the Superintendent for Public Instruction. Depart via Seattle.
- If time allows, school visits and/or social events with participants and key stakeholders may be scheduled as part of this site visit.
- **Virtual Coaching:** Following the site visit noted above, participants will be asked to design lessons and experiment with their practice. The consultants will then conduct four 60-minute virtual coaching sessions (one per each workshop site) for the participating educators and teaching artists to offer them feedback and further support before they conduct their summer learning experiences.

Participants

The participants in the *Empowering Educators to Support Students through Maker-Centered Learning* project will include up to 100 educators and teaching artists (a maximum of 25 per workshop site). The majority of these participants will be preparing to conduct summer learning experiences for young people.

Project Liaison

A staff person on the ground in Washington State will be designated as the project liaison for the *Empowering Educators to Support Students through Maker-Centered Learning* project. The project liaison will coordinate all aspects of the initiative and be the main point of contact for the Consultants. The Consultants will meet regularly with the project liaison to coordinate and conceptualize the site visit and virtual coaching sessions, and to check on the progress of the participating educators and teaching artists' work.

Timeline

The *Empowering Educators to Support Students through Maker-Centered Learning* site visit will ideally take place 4-6 weeks before the participating educators and teaching artists begin their summer school/summer learning experiences. The follow-up virtual coaching sessions will ideally take place 1-2 weeks before the summer school/summer learning sessions begin.

MCL Teacher Training Experience Benefits, Outcomes, and Evaluation

Overview:

Maker-centered learning offers significant benefits for the migrant education community by fostering individual and collective **agency, empathy, perspective-taking, sensitivity to the designed dimensions of the world, systems thinking, cultural participation, and the value of hands-on learning**. This educational experience empowers young migrants to see themselves not just as consumers but as creators of their worlds, enhances their empathy and ability to consider others' viewpoints, and develops a critical understanding of systems they interact with daily. Educators, through training in the Agency *by Design* Framework, gain a deep understanding of these concepts, learn to apply them in the context of migrant education, and acquire tools to implement maker-centered learning effectively.

What are the primary benefits of maker-centered learning for the migrant education community?:

- The Agency *by Design* framework highlights **individual and collective agency** as being the primary outcomes of engaging in this work. By participating in the process of maker-centered learning, young people become maker-empowered—and, in turn, move beyond seeing themselves as the consumers of their experiences and instead see themselves as the creators of their worlds. We feel this is especially powerful for the migrant education population as they develop the skills and dispositions to forge their own paths forward. It positions them as active participants in shaping culture and systems, resonating deeply with the migrant experience of shaping and being shaped by new environments.
- A key outcome associated with maker-centered learning is **empathy and perspective-taking**. By engaging in making and design, one must consider the perspectives of others before contributing a new object or system to the world. This awareness of the thoughts, feelings, and priorities of others has resonated with many young people as they have engaged in the thoughtful process of maker-centered learning. We see empathy and perspective taking as being important to the migrant education community as they consider how their contributions to the world may shape, impact, and influence the experiences of others.
- One of the most unique benefits of maker-centered learning is developing a **sensitivity to design**. Wherever we are in the world, we each engage with the design of both objects, structures, and systems multiple times throughout the day. For the most part, our engagement with design is passive. We accept the affordances and limitations of the designed objects, structures, and systems in our world without questioning them—or even realizing them. Having a sensitivity to design is a way of seeing and being in the world that makes one aware of the designed dimensions of their experiences while at the same time seeing the designed world as malleable. We see the disposition of developing a sensitivity to design being pertinent to the migrant education population in regards to how migrant students look critically at the world, understanding that the

United States has been shaped by migrants and that they have continued agency in the tradition of that larger American experience.

- Relatedly, one of the most significant outcomes of maker-centered learning is the support of **systems thinking**. While many pedagogical frameworks for design and making focus on “stuff,” the Agency *by* Design framework focuses on the analysis, making, and design of systems. Systems thinking is relevant across the content areas and grade levels. We see taking a critical lens towards systems thinking and seeing oneself as an agent of change within systems as being particularly apt to the migrant education experience. If nothing else, young migrant students are a part of a system. It is important for these young people to recognize and understand the many systems that they are a part of in order for them to prosper and excel—and maybe even affect change—within those systems.
- Another key aspect of maker-centered learning is **cultural participation**. Whenever we make anything—be it an object or a concrete or intangible system—we are contributing to culture. Building on the concepts of systems thinking and empathy and perspective taking, framing maker-centered learning as cultural participation helps young people understand that their contributions to the world are part of a broader cultural tradition—and that those contributions shape those traditions. We see the concept of cultural participation as being relevant to the migrant education population in very pronounced ways: migrants are not separate from the culture; they retrospectively bring the culture with them and prospectively shape their cultures in profound ways.
- Perhaps the most relevant connection to maker-centered learning and the migrant experience is the notion of **working with one’s hands**. While not leaning too far into stereotypes, it is the case that many immigrants to the United States have a long history of labor and working with one’s hands. A primary focus of maker-centered learning is the idea that students learn best when they are up and out of their seats and engaging in knowledge in the way that our species came to be—by working with our hands. Given that learning by working with one’s hands is so intrinsically connected to the migrant education population’s experience, we see maker-centered learning as a natural fit for this community while also viewing maker-centered learning as an opportunity to especially leverage all that migrant students have to offer their colleagues and peers.

What will educators take away from their maker-centered learning training experiences?:

At the end of each training experience session, the participating educators will:

- A. Have a deep understanding of the Agency *by* Design framework for maker-centered learning;
- B. Make connections between the Agency *by* Design framework for maker-centered learning and their work with migrant students, and;
- C. Walk away with a set of actionable pedagogical tools and resources that they may use in their classrooms.

How will we evaluate the maker-centered learning training experience?:

- The impact of this training is evaluated through reflective prompts, enabling a comprehensive understanding of its effect on educators' perspectives and their planned actions. At the end of each training session, participants will be asked to respond to the prompts "I used to think..., Now I think..., Now I will..." This simple series of prompts will help us understand the educators' perspectives before they engaged in this professional development experience, their perspectives after they engaged in this experience, and the action steps they will take in regard to what they hope to do next as a result of having engaged in this professional development experience.