



CONTRACT

No. 25PR395

**FOR
COLLEGE IN HIGH SCHOOL PILOT**

By and Between

**STATE OF WASHINGTON
STUDENT ACHIEVEMENT COUNCIL**

and

HERITAGE UNIVERSITY

Dated November 12, 2024

CONTRACT
No. 25PR395

COLLEGE IN HIGH SCHOOL PILOT

This Contract ("Contract") is made and entered into by and between the State of Washington acting by and through the Washington Student Achievement Council, a Washington State governmental agency ("WSAC") and Heritage University, a Washington private institution ("Contractor") and is dated and effective as of November 12, 2024.

RECITALS

- A. Pursuant to Legislative direction codified in RCW 39.26, WSAC is authorized to competitively solicit and award contracts for goods and/or services for use by WSAC.
- B. WSAC has determined that entering into this Contract will meet the identified needs.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. TERM.

- 1.1. The term of this Contract is eight months (8) months, commencing November 12, 2024, and ending June 30, 2025; subject to mutual agreement, the term of the Contract may be extended for up to five (5) additional one-year terms by signed amendment.
- 1.2. **DES FILING REQUIREMENT.** The provisions of Chapter 39.26 require the agency to file this sole source contract with the Department of Enterprise Services (DES) for approval. The effective date of this contract is upon DES approval of the contract, the fifteenth (15th) working day after it is filed with DES, or as agreed between the parties, whichever is later.

2. SCOPE – INCLUDED SERVICES AND PRICE.

- 2.1. **CONTRACT SCOPE.** Pursuant to this Contract, Contractor is authorized to sell and provide only those services set forth in *Exhibit A – Included Services* for the prices set forth in *Exhibit B – Prices for Services*.
 - (a) **Services.** For purposes of this Contract, "Services" means all services of any nature ordered by WSAC pursuant to this Contract.
- 2.2. **STATE'S ABILITY TO MODIFY SCOPE OF CONTRACT.** Subject to mutual agreement between the parties, WSAC reserves the right to modify the services included in this Contract; *Provided*, however, that any such modification shall be effective only upon ten (10) days advance written notice; and *Provided further*, that any such modification must be within the scope of the Competitive Solicitation for this Contract.
- 2.3. **CONTRACT BUDGET.** WSAC has budgeted an amount not to exceed thirty thousand dollars (\$30,000) for this project. In the event that additional funding becomes necessary, any contract awarded may

be renegotiated to provide for additional related services in an amount not to exceed one-hundred thousand dollars, (\$100,000). Any contract awarded is contingent upon availability of funding.

- 2.4. PRICE CEILING. Although Contractor may offer lower prices to WSAC, during the term of this Contract, Contractor guarantees to provide the Services at no greater than the prices set forth in *Exhibit B - Prices for Services*.

3. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Contract and at the time of performance pursuant to this Contract. If, at the time of performance, Contractor cannot make such representations and warranties, Contractor shall not perform and shall, within three (3) business days notify WSAC, in writing, of such breach.

- 3.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- 3.2. TAXES. Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- 3.3. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- 3.4. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither Contractor nor its principals or affiliates presently are not have ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental Contract by any governmental department or agency within the United States.
- 3.5. WAGE VIOLATIONS. Contractor represents and warrants that during the term of this Contract and the three (3) year period immediately preceding the award of the 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 judgement entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
- 3.6. CIVIL RIGHTS. Contractor represents and warrants that Contractor complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 3.7. PUBLIC CONTRACTS AND PROCUREMENT FRAUD. Contractor represents and warrants that, within the three (3) year period prior to this Contract, neither Contractor nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) are presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state or local) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state or local) terminated for cause or default.

- 3.8. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that Contractor 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 State employees.
- 3.9. **WASHINGTON'S STATEWIDE PAYEE DESK.** Contractor represents and warrants that Contractor is registered with Washington's Statewide Payee Desk, which registration is a condition to payment.
- 3.10. **ADVERTISING AND ENDORSEMENT.** Contractor understands and acknowledges that neither WSAC nor the State of Washington are endorsing Contractor's services or suggesting that such services are the best or only solution to their needs. Accordingly, Contractor further represents and warrants that Contractor shall make no reference to WSAC or the State of Washington in any promotional material without the prior written consent of WSAC.
- 3.11. **CONTINGENT FEES.** Contractor represents and 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 agents as defined in the Federal Acquisition Regulations.
- 3.12. **FINANCIALLY SOLVENT.** Contractor represents and warrants that Contractor has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any Services that are the subject of this Contract.
- 3.13. **OPERATIONAL CAPABILITY.** Contractor represents and warrants that Contractor has the operational and financial capability to perform the Contract.
- 3.14. **CONTRACT TRANSITION.** Contractor represents and warrants that, in the event this Contract is transitioned to another contractor (e.g., Contract expiration or termination), Contractor shall use commercially reasonable efforts to assist WSAC for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.

4. QUALITY; WARRANTY; REMEDIES.

- 4.1. **SERVICES WARRANTY.** Contractor warrants that: (a) Services will be performed in a timely, efficient, professional, and workmanlike manner; (b) all Contractor personnel assigned to perform Services will have the necessary skill and training; and (c) Services will be performed in a manner consistent with the standard of care in the industry ("Services Warranty"). The Services Warranty will survive for a period of twelve (12) months after the date when Services are completed ("Services Warranty Period").
- 4.2. **SERVICES REMEDY.** If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, Contractor promptly shall remedy the non-conformance, or at WSAC'S election, Contractor shall re-perform or correct the nonconforming Services at no additional cost to WSAC or refund the amounts paid for the Services.
- 4.3. **FAILURE TO REMEDY.** If Contractor does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from WSAC, or if an emergency exists rendering it impossible or impractical for WSAC to have Contractor provide a remedy, WSAC may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Services, in which case Contractor shall reimburse WSAC for its actual costs or, at WSAC'S option, WSAC will offset the costs incurred from amounts owing to Contractor.

5. SECURITY. Contractor's failure to comply with any of the requirements in this Section shall be cause for termination.

5.1. IT SECURITY POLICIES. Contractor, its agents, employees, or subcontractors shall comply with all Washington State IT security policies and standards which will be made available to Contractor upon request.

6. DELIVERY.

6.1. DELIVERY REQUIREMENTS. Contractor must ensure that the Services are delivered or provided as required by this Contract, including the requirements set forth in *Exhibit A*, or as otherwise mutually agreed in writing between WSAC and Contractor.

6.2. RECEIPT AND INSPECTION OF SERVICES. Services purchased under this Contract are subject to WSACS' reasonable inspection, testing, and approval at WSACS' destination. WSAC reserves the right to reject and refuse acceptance of services that are not in accordance with this Contract. If there are any apparent defects in the Services at the time of delivery, WSAC promptly will notify Contractor. At WSACS' option, and without limiting any other rights, WSAC may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged services or, at WSACS' option, WSACS' may note any damage to the services on the receiving report, decline acceptance, and deduct the cost of rejected services from final payment.

7. PERFORMANCE OF SERVICES.

7.1 OWNERSHIP OF DELIVERABLES. Notwithstanding any provision to the contrary, the parties understand and agree that WSAC shall own all rights to any plans, reports, or other deliverables provided to WSAC pursuant to this Contract. The copyright in all works of authorship created pursuant to this Contract shall be owned by the State of Washington. All such works or portions of works created by the Contractor are hereby agreed to be "works made for hire" within the meaning of 17 U.S.C. § 201. If, however, the State of Washington is not able to obtain copyright ownership under the statutory provisions for "works made for hire," then Contractor hereby assigns to State of Washington all right, title, and interest in: (a) the copyright to Contractor's work of authorship ("Work") and contribution to any such Work ("Contribution"); (b) any registrations and copyright applications, along with any renewals and extensions thereof, relating to the Contribution or the Work; (c) all works based upon, derived from, or incorporating the Contribution or the Work; (d) all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Work; (e) all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Contribution or the Work, and all rights corresponding to any of the foregoing, throughout the world. In addition, to the extent any applicable law or treaty prohibits the transfer or assignment of any moral rights or rights of restraint the Contractor has in the Contribution or the Work, the Contractor waives those rights as to State of Washington, its successors, licensees, and assigns.

7.2 COMPLIANCE WITH HOUSE BILL 2441. WSAC shall adopt rules which will allow for each institution of higher education to annually sign an affidavit that the institution has adopted policies in compliance with Engrossed Substitute House Bill 2441 as passed by the Legislature – 2024 Regular Session – Nondiscrimination. Attached as Attachment A.

7.3 CONTRACTOR KEY STAFF CHANGES. Except in the case of a leave of absence, sickness, death, termination of employment or unpaid or paid leave of absence, agreed upon Key Staff must not be changed during the term of this contract. Otherwise, any change in Key Staff must be agreed in writing between the parties. During the term of the Contract, WSAC reserves the right to approve or

disapprove of Contractor and Subcontractor Key Staff assigned to perform services as required by this contract, or to require the removal or reassignment of any Contractor or Subcontractor Key Staff found unacceptable by WSAC, subject to WSAC's compliance with applicable laws and regulations. Contractor must provide WSAC with a resume of any member of its Key Staff or a Subcontractor's Key Staff assigned to or proposed for any aspect of performance under this Contract prior to commencing any Services.

In the event that proposed Contractor resources are unavailable to deliver the work, Contractor must staff the project with resources with equal or greater skills and capabilities, subject to approval from WSAC.

WSAC must be notified of any change in Contractor Key Staff as soon as practicable but in no event less than five (5) working days after removal of such staff from their duties in support of this Contract. Contractor must provide resumes and describe the roles and responsibilities of any replacement staff to WSAC as soon as practicable but in no event less than five (5) working days prior to the date that such staff begin work under this Contract. WSAC reserves the right, in its sole judgement, to approve or reject such replacement staff. WSAC's approval of such staff will not be unreasonably withheld.

8. INVOICING & PAYMENT.

8.1 **CONTRACTOR INVOICE.** Contractor shall submit properly itemized invoices to WSAC's designated invoicing contact for Services delivered under this Contract. Such invoices shall itemize the following:

- a. Contract No. 25PR395;
- b. Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
- c. Contractor's State of Washington Statewide Vendor Number (SVN);
- d. Date(s) of delivery;
- e. Description of Services and Deliverables provided;
- f. Net invoice Price for each Service or Deliverables;
- g. Applicable taxes;
- h. Total invoice amount; and
- i. Payment terms.

Contractor's invoices for payment shall reflect accurate Contract prices. Invoices will not be processed for payment until receipt of a complete invoice as specified herein. WSAC shall have no obligation to pay Contractor for any services that do not comply with this Contract.

8.1 **PAYMENT.** Payment is the sole responsibility of, and will be made by, WSAC. Payment is due within thirty (30) days of invoice. If WSAC fails to make timely payment(s), Contractor may invoice WSAC in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

8.2 **OVERPAYMENTS.** Contractor promptly shall refund to WSAC the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) calendar days of written notice to Contractor; *Provided*, however, that WSAC shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely refunds of overpayment(s) (either directly or by such credit memo), Contractor shall pay WSAC interest at a

rate of one percent (1%) per month on the amount overdue thirty (30) calendar days after notice to Contractor.

- 8.3 ADVANCE PAYMENT PROHIBITED. Except as authorized by law, Contractor shall not request or receive advance payment for any Services furnished by Contractor pursuant to this Contract.
- 8.4 NO ADDITIONAL CHARGES. Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, insurance, or payment processing.
- 8.5 TAXES/FEES. Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Contract. Failure to do so shall constitute breach of this Contract. Unless otherwise agreed, WSAC shall pay applicable sales tax imposed by the State of Washington on purchased services. Contractor's invoices shall separately state (a) taxable and non-taxable charges and (b) sales/use tax due by jurisdiction. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to WSAC, WSAC has not provided Contractor with a valid exemption certificate from such federal excise taxes.

9. CONTRACT MANAGEMENT.

- 9.1 CONTRACT ADMINISTRATION & NOTICES. Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of contract administration for this Contract. WSAC's contract administrator shall provide contract administrative oversight. Contractor's contract administrator shall be Contractor's principal contact for invoice/billing activities under this Contract. The parties may change contract administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

WSAC
Attn: Rathi Sudhakara
WSAC
PO Box 43430
Olympia, WA 98504
Tel: (360) 485-1212
Email: rathis@wsac.wa.gov

Heritage University
Attn: SaraBecca Martin
Heritage University
3240 Fort Road
Toppenish, WA 98948
Tel: (509) 388-6523
Email: martin_s@heritage.edu

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 9.2 CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform WSAC of the same) who shall be responsible for addressing WSAC's issues pertaining to this Contract
- 9.3 LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

WSAC

Attn: Brian Richardson
WSAC
917 Lakeridge Way SW
Olympia, WA 98502
Email: briandr@wsac.wa.gov

Heritage University

Attn: Melissa Hill
Heritage University
3240 Fort Road
Toppenish, WA 98948
Email: hill_m@heritage.edu

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

10. RECORDS RETENTION & AUDITS.

- 10.1 RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect contract performance and administration of purchases, payments, taxes and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 10.2 AUDIT. WSAC reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor properly has invoiced WSAC. Accordingly, Contractor shall permit WSAC and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following expiration or termination of this Contract or final payment, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

11. INSURANCE.

- 11.1 REQUIRED INSURANCE. Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit C– Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for Services and no additional payment shall be made to Contractor.
- 11.2 WORKERS COMPENSATION. Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, WSAC may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. If Contractor performs Services on WSAC'S behalf in the State of Washington, and only to the extent of claims against Contractor by WSAC under the Indemnity obligations in this Contract, Contractor expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. Contractor's indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.

12. CLAIMS.

- 12.1 ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with Contractor's operations under this Contract. WSAC has made no representations regarding any factor affecting Contractor's risks. Contractor shall pay for all damage to any WSAC's property resulting directly or indirectly from Contractor's acts or omissions under this Contract, even if not attributable to negligence by Contractor or its agents.
- 12.2 THIRD-PARTY CLAIMS; GENERAL INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold WSAC and its employees and agents harmless from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "Claims") arising out of Contractor's or its successors', agents', and subcontractors' negligence, other tortious fault, or intentional misconduct under this Contract, ; *Provided*, however, that no right to indemnity will exist as to that portion of a Claim resulting from the sole negligence, tortious fault, or intentional misconduct of WSAC. The parties agree that if there are any limitations of Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability shall not apply to injuries to persons, including death, or to damages to property. Contractor shall take all steps needed to keep WSAC's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed.
- 12.3 INTELLECTUAL PROPERTY INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold WSAC and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Services provided, or the use of the Services under this Contract. If WSAC'S use of Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for WSAC the right to continue using the Services or, after consulting with WSAC and obtaining WSAC'S consent, replace or modify the Services with substantially similar and functionally equivalent non-infringing Services.

13 DISPUTE RESOLUTION.

- 13.1 The parties shall cooperate to resolve any dispute pertaining to this Contract efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior manager of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

14 SUSPENSION; EXPIRATION; TERMINATION; REMEDIES.

- 14.1 TERMINATION. This Contract may be terminated: (a) upon the mutual written agreement of the parties; (b) by the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for

cure is otherwise stated in this Contract; and (c) as otherwise expressly provided for in this Contract. This Contract shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this Contract as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

- 14.2 TERMINATION FOR NONAPPROPRIATION OR REDUCTION OF FUNDS OR CHANGES IN LAW. WSAC may suspend or terminate this Contract, at the sole discretion of WSAC or, as applicable, if WSAC reasonably determines that: (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects WSACS' ability to pay Contractor. A change of available funds as used in this section includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor. If a written notice is delivered under this provision, WSAC will reimburse Contractor for Services properly performed until the effective date of said notice. Except as stated in this provision, in the event of termination for nonappropriation or reduction of funds or changes in law, WSAC will have no obligation or liability to Contractor.
- 14.3 TERMINATION FOR PUBLIC CONVENIENCE. WSAC, for public convenience, may terminate this Contract; *Provided*, however, that such termination for public convenience must, in WSACS' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for public convenience shall not relieve WSAC from payment for Services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for public convenience, WSAC shall not have any obligation or liability to Contractor.
- 14.4 EXPIRATION – WSACS' OBLIGATIONS. Upon expiration of this Contract, WSAC shall accept and take delivery of all outstanding and not yet fulfilled orders and pay Contractor the price as set out in the Contract.
- 14.5 EXPIRATION OR TERMINATION – CONTRACTOR'S OBLIGATIONS. Upon expiration or termination of this Contract, Contractor shall: (a) continue to fulfill its warranty obligations with respect to any Services sold hereunder and all provisions of the Contract that, by their nature, would continue beyond the expiration, termination, or cancellation of the Contract shall so continue and survive; and (b) promptly return to WSAC all keys, badges, and other materials supplied by WSAC pursuant to this Contract.
- 14.6 DEFAULT. Any of the following events shall constitute cause for WSAC to declare Contractor in default of this Contract:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Contract;
 - (b) Contractor breaches any representation or warranty provided herein; or
 - (c) Contractor fails to maintain the insurance coverages specified herein or timely provide to WSAC the Certificate of Insurance and updates thereto specified herein, or

- (d) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 14.7. SUSPENSION & TERMINATION FOR DEFAULT. WSAC may suspend Contractor's operations under this Contract immediately by written cure notice of any default. Suspension shall continue until the default is remedied to WSAC's reasonable satisfaction; *Provided*, however, that, if after twenty (20) days from such a suspension notice, Contractor remains in default, WSAC may terminate Contractor's rights under this Contract. All of Contractor's obligations to WSAC survive termination of Contractor's rights under this Contract, until such obligations have been fulfilled.
- 14.8. REMEDIES FOR DEFAULT.
 - (a) WSAC's rights to suspend and terminate Contractor's rights under this Contract are in addition to all other available remedies.
 - (b) In the event of termination for default, WSAC may exercise any remedy provided by law including, without limitation, the right to procure replacement services. In such event, Contractor shall be liable to WSAC for damages as authorized by law including, but not limited to, any price difference between the Contract price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.
- 14.9. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party be liable to the other for exemplary or punitive damages; *Provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any Services warranty provided in this Contract; or (c) damages subject to the Intellectual Property Indemnity section of this Contract. Any limitation of either party's obligations under this Contract, by delivery slips or other documentation is void.
- 14.10. SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the parties shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, Contractor shall deliver to WSAC all Services that are complete (or with approval from WSAC, substantially complete) and WSAC shall inspect, accept, and pay for the same in accordance with this Contract. Unless directed by WSAC to the contrary, Contractor shall not process any orders after notice of suspension or termination inconsistent therewith.

15. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 15.1 WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this Contract and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 15.2 CONTRACTOR OBLIGATION. Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to WSAC that Contractor believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in Contractor's judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of Contractor's records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that Contractor protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, Contractor shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.

15.3 **WSACS' OBLIGATION.** In the event that WSAC receives a public records disclosure request pertaining to records that Contractor has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive WSAC, prior to disclosure, will do the following: WSACS' Public Records Officer will review any records marked by Contractor as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, WSAC will redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where WSAC determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, WSAC will notify Contractor, at the address provided in the Contract, of the public records disclosure request and identify the date that WSAC intends to release the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining WSAC from such disclosure. In the event Contractor fails to timely file a motion for a court order enjoining such disclosure, WSAC will release the requested record(s) on the date specified. Contractor's failure properly to identify exempted or sensitive information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such records are exempt or protected from public disclosure.

16. ORDER OF PRECEDENCE

Each of the attachments listed below is by the 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:

1. Applicable federal and state of Washington statutes and regulations
2. Special terms and conditions as contained in this basic contract instrument
3. Exhibits A – Performance/Scope of Work
4. Exhibit B – Pricing
5. Exhibit C – Insurance
6. Any other provision, term or material incorporated herein by reference or otherwise incorporated

17. GENERAL PROVISIONS.

- 17.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Contract.
- 17.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law. Contractor shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this Contract.
- 17.3. **NONDISCRIMINATION.**
- (a) **Nondiscrimination Requirement.** During the term of this Contract, Contractor, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). 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, Agency 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 Agency 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), Agency 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. Agency 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 Agency for default under this provision.
- 17.4. ENTIRE AGREEMENT. This Contract constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.5. AMENDMENT OR MODIFICATION. Except as set forth herein, this Contract may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.6. AUTHORITY. Each party to this Contract, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Contract and that its execution, delivery, and performance of this Contract has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.7. NO AGENCY. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.
- 17.8. INDEPENDENT CONTRACTOR. The parties intend that an independent contractor relationship is created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of WSAC. Contractor shall not have authorization, express or implied, to bind WSAC to any agreement, liability, or understanding, except as expressly set forth herein. Contractor and its employees and agents are not entitled to unemployment insurance or worker's compensation benefits through WSAC or the State of Washington and WSAC and the State of Washington will not pay for or otherwise provide such coverage for Contractor and its employees and agents.
- 17.9. ASSIGNMENTS. Contractor may not assign its rights under this Contract without WSAC's prior written consent and WSAC may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to WSAC within thirty (30) days, Contractor may assign its rights under this Contract in full to any parent, subsidiary, or affiliate of

Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Contract notwithstanding any prior assignment of its rights.

- 17.10. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.11. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED SERVICES.** Contractor irrevocably assigns to WSAC, on behalf of the State of Washington, any claim for relief or cause of action which Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any services provided in Washington for the purpose of carrying out the Contractor's obligations under this Contract, including, at WSAC's option, the right to control any such litigation on such claim for relief or cause of action.
- 17.12. **FORCE MAJEURE.** Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences. If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the rights reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract. Notwithstanding any provision to the contrary, in the event that a Contractor-declared force majeure event lasts for more than thirty (30) days, WSAC shall have the right to terminate the Contract and/or purchase the services set forth in this Contract; *Provided*, however, that in such event, Contractor shall not be liable to WSAC for any price difference for such services.
- 17.13. **FEDERAL FUNDS.** To the extent that WSAC uses federal funds to purchase services pursuant to this Contract, WSAC shall specify any applicable requirement or certification that must be satisfied by Contractor as a condition of payment and Contractor shall adhere to such applicable federal requirements and/or certifications.
- 17.14. **SEVERABILITY.** If any provision of this Contract is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Contract, and to this end the provisions of this Contract are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Contract.
- 17.15. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Contract, nor shall any purported oral modification or rescission of this Contract by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.

- 17.16. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Contract shall survive and remain in effect following the expiration or termination of this Contract, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.17. GOVERNING LAW. The validity, construction, performance, and enforcement of this Contract shall be governed by and construed in accordance with the laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.
- 17.18. JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Contract, the parties agree to submit to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington.
- 17.19. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce the terms of this Contract or alternative dispute process, each party agrees to bear its own attorneys' fees and costs.
- 17.20. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Contract shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Contract. Each party hereto and its counsel has reviewed and revised this Contract and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Contract. Each term and provision of this Contract to be performed by either party shall be construed to be both a covenant and a condition.
- 17.21. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Contract, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Contract including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Contract.
- 17.22. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Contract in their entirety.
- 17.23. CAPTIONS & HEADINGS. The captions and headings in this Contract are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Contract nor the meaning of any provisions hereof.
- 17.24. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this Contract or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Contract or such other ancillary agreement for all purposes.

17.25. COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Contract at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Contract.

EXECUTED as of the date and year first above written.

WASHINGTON STUDENT ACHIEVEMENT COUNCIL	Heritage University
Signature	Signature
Name Isaac Kwakye Title Deputy Executive Director Date Email	Name Title Date Email
Reviewed and Concur with Agreement Rathi Sudhakara	Signature Date

**INCLUDED SERVICES
PERFORMANCE REQUIREMENTS/SCOPE OF WORK**

College in the High School Pilot**Pilot Overview**

The 2023 Washington State Legislature passed House Bill 2441 establishing a pilot program eliminating college in the high school fees for private not-for-profit four-year institutions to be administered by the Washington Student Achievement Council (WSAC). WSAC shall provide reimbursement to a selected private not-for-profit institution located in Yakima County serving rural or underserved communities that will participate in the pilot program by offering college in the high school courses at no cost to students enrolling in the courses.

College in the High School Pilot Funding and Reimbursement

WSAC will allocate \$100,000 for fiscal year 2025 for the College in the High School pilot. Funds will be distributed to the pilot institution at a rate of \$300 per student, up to a maximum of \$6,000 per college in the high school course administered by the pilot institution.

“Course” means a class taught under a contract between an institution and a single high school teacher on an articulated subject in which the student is able to earn college credit if they meet the learning objectives and can demonstrate proficiency.

Pilot Institution Responsibilities

1. Pilot institution shall comply with all the rules governing college in the high school program as identified in WAC 392-725.
2. Pilot institution shall provide the following information to the Washington Student Achievement Council by Nov 1, 2025, and annually thereafter:
 - a. College in the high school courses offered, including:
 - i. The name of each course.
 - ii. The number of courses offered.
 - iii. The specific school district and town where the courses are taught, and
 - iv. Student enrollment information disaggregated by school districts and high schools.
 - b. Data on college in the high school student demographics
 - c. Awards of postsecondary credit at Heritage University
 - d. Academic performance of students taking the offered college in the high school course
3. College in the high school courses shall not include content or instruction that would subject students to religious behavior or conduct by the institution or its faculty.
4. Pilot institution must annually sign an affidavit that the institution has adopted non-discrimination policies. Institutions of higher education that take no action regarding the signing of the affidavit are ineligible to participate in the pilot program.

**PRICES FOR
PERFORMANCE REQUIREMENTS**

Compensation Amount

Funding is not to exceed \$30,000 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

Billing schedule:

50% of per course by January 31, 2025;

Remaining 50% of per course cost by June 30, 2025.

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INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Contract, Contractor shall obtain and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial General Liability Insurance (and, if necessary, commercial umbrella liability insurance) covering Bodily Injury and Property Damage on an 'occurrence form' in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include Contractual Liability insurance for the indemnity provided under this Contract.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL UMBRELLA LIABILITY INSURANCE.** Commercial umbrella liability insurance coverage in the sum of \$3,000,000 shall be provided and shall apply over all liability policies, without exception, including but not limited to Commercial General Liability, Commercial Automobile Liability, Employers Liability, and Professional Liability.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. WSAC reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability shall include the State of Washington and all authorized WSAC (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Contract, Contractor shall furnish to WSAC, as evidence of the insurance coverage required by this Contract, a certificate of insurance satisfactory to WSAC that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to WSAC an updated or renewed certificate of insurance, satisfactory to WSAC, that

insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Contract number stated on the cover of this Contract.** All certificates of Insurance and any related insurance documents shall be delivered to WSAC by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as WSAC may specify in writing:

US Mail: Contracts & Procurement – Contract Insurance Certificate
Contract No. 25PR395 – College in High School Pilot
Attn: Rathi Sudhakara
WSAC
PO Box 43430
Olympia, WA 98504

Email: rathis@wsac.wa.gov
Note: For Email notice, the Email Subject line must state:
Contract Insurance Certificate – Contract No. 25PR395 – College in High School Pilot

5. **PRIMARY COVERAGE.** Contractor’s insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any WSAC. All insurance or self-insurance of the State of Washington and/or WSAC shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor’s liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any WSAC for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to WSAC. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Contract number stated on the cover of this Contract.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Contract.