



MONTGOMERY COUNTY PUBLIC SCHOOLS
MARYLAND

www.montgomeryschoolsmd.org

301-279-3097

November 19, 2018



RFP Number: 4181.1
Due Date: Dec. 19, 2018
Open Time: 2:00 p.m.

To: Prospective Offerors

Montgomery County Public Schools (MCPS) is seeking proposals from established providers of student information systems to provide Montgomery County Public Schools (MCPS) with high-quality, proven technology solutions for managing student information, scheduling, grading and reporting, and other functional modules related to student information. The information contained in the attached Request for Proposal (RFP) provides requirements.

A pre-proposal conference will be held on Tuesday, Dec. 4, 2018, at the MCPS Carver Center, 850 Hungerford Drive, Room 134, Rockville, MD 20850. Anyone interested in attending the pre-bid conference should plan to enter the Carver Center building through the North Entrance.

Please respond according to the instructions provided in the attached. Proposals must be received on or before 2:00 p.m., on Dec. 19, 2018. Proposals received after this date and time will not be considered. Proposals shall be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals shall be marked on cover pages with **"ORIGINAL"** and **"COPIES"**. Proposals shall be delivered to MCPS Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850.

The contractor must submit one (1) original and ten (10) separate copies of the Proposal as well as one (1) electronic version on CD or flash drive of the response, and one (1) redacted copy, as well as one (1) electronic version on CD or flash drive of the redacted response. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

In the event of emergency closing of the Board of Education offices, this bid will open at the same time on the next regular working day.

Sincerely,

Kathleen Lazor, Director
Department of Materials Management

KCL:lsc

Procurement Unit

45 West Gude Drive, Suite 3100 ♦ Rockville, Maryland 20850-9999

MONTGOMERY COUNTY PUBLIC SCHOOLS

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Department of Materials Management
MONTGOMERY COUNTY PUBLIC SCHOOLS
Procurement Unit
45 West Gude Drive, Suite 3100
Rockville, Maryland 20850

Request for Proposal No. 4181.1,
Student Information System

1.0 INTENT

The purpose of this Request for Proposal (RFP) is to solicit, on behalf of the Board of Education of Montgomery County, one or more established providers of student information systems to provide Montgomery County Public Schools (MCPS) with high-quality, proven technology solutions for managing student information, scheduling, grading and reporting, and other functional modules related to student information. MCPS' interest is to utilize the new system functionality to eliminate legacy systems and consolidate systems when possible. This RFP seeks providers with who have proven experience in K-12 student information systems (hereinafter "Respondents" or "Offerors") who share a vision for ensuring robust safeguards for the safety, security, and privacy of student information. Through this RFP, MCPS intends to solicit written proposals to replace the functionality of various "in-house" developed Student Information System (SIS) applications, as well as third party student information applications that are currently being used throughout the district.

2.0 BACKGROUND

MCPS, which is operated by the Board of Education of Montgomery County, is the 14th largest school system in the United States, and the largest in the state of Maryland. MCPS currently serves more than 162,000 students from 157 countries speaking 150 languages. With a Fiscal Year (FY) 2019 Operating Budget of approximately \$2.59 billion, MCPS employs more than 23,300 employees. Among the 206 schools that MCPS operates, 37 are National Blue Ribbon schools. Six MCPS high schools rank in the top 200 of The Washington Post 2015 High School Challenge, and all 25 MCPS high schools appear on this list, which only includes the top 11 percent of high schools in the country. MCPS has one of the highest graduation rates among the nation's largest school districts, according to an Education Week report. In 2010, MCPS was the recipient of the Malcolm Baldrige National Quality Award, the highest presidential honor given to American organizations for performance excellence.

Our school system

- 162,000+ students
- Largest school system in Maryland
- 14th largest school system in the United States
- 2010 Malcolm Baldrige National Quality Award recipient
- Students from 157 countries speaking 150 languages

206 schools

- 134 elementary schools
- 40 middle schools
- 25 high schools

- 1 career and technology center
- 5 special schools
- 1 alternative education program

Our students

Demographics

- 32.3 percent Hispanic/Latino
- 28.3 percent White
- 21.4 percent Black or African American
- 14.4 percent Asian
- ≤ 5.0 percent Two or more races
- ≤ 5.0 percent American Indian or Alaskan Native
- ≤ 5.0 percent Native Hawaiian or other Pacific Islander

Services

- 17.5% participate in English for Speakers of Other Languages (ESOL)
- 11.7% receive special education services
- 35.1% participate in Free and Reduced-price Meals System (FARMS)

Our employees

- 23,347 employees
- 13,094 teachers
- 86.4 percent of teachers have a master's degree or equivalent

Transportation and meals

1. 1,307 buses transport more than 103,000 students
2. 16 million meals served during the 2016-2017 school year

2.1 Current Systems

This section outlines the current student systems in MCPS. It is anticipated that these modules and functionalities will be maintained and enhanced as MCPS transitions to the technology solutions implemented through this RFP.

Student Information Systems

MCPS currently uses a mixture of in-house developed systems (OASIS, myMCPS/Sharepoint, and PowerSchool) with the following non-exhaustive list of functions, provided for illustrative purposes:

- **OASIS:** In house developed .net/Oracle SIS. Data resides on premise. This is our main system for student records. Currently, data is transferred overnight on a regular schedule between the various systems such as gradebook, PowerSchool, and Maryland IEP.
 - **Scheduling**
 - Elementary Subject Assignment
 - Secondary Drop Add
 - Master Schedule Maintenance

- Scheduling Reports
- Secondary Scheduling is done in PowerSchool and data imported into OASIS
- Elementary Scheduling is done in myMCPS Sharepoint ES Articulation and data is imported into OASIS
- **Enrollment**
 - Enrollment Main Page (selected student enrollment data elements required under applicable federal and state law, as well as Board of Education policies and regulations are available at this link:
<https://www.montgomeryschoolsmd.org/departments/forms/list.aspx?subCatID=25&catID=1>)
 - Enrollment Search & ID Generation
 - Release List
 - Students Not returning List
 - School Transfer COSA System (Change Of School Assignment)
 - RIA (Residency & International Admissions)
 - Home Instructions
 - Non MCPS Data Collection
- **Student Demographics**
 - Student Inquiry
 - Accommodations
 - Admin Functions
 - Appeals
 - Diploma Card
 - Directory Withholding
 - Emergency Card (primarily done in PowerSchool, data imported into OASIS)
 - ESOL Services
 - ESOL Survey
 - Extracurricular Activity (ECA) Fee
 - Homeless
 - Impact Aid
 - Learning Academy
 - Residency Compliance
 - Student Service Learning (SSL) requirements for students under state law
 - Student Programs
 - Student Promotions
 - Title I Student Services
- **Grade Reporting (data imported from Gradebook during report card process)**
 - Elementary Mark Correction
 - Secondary Mark Correction
 - Secondary Mark Exclusion
 - Secondary History Mark Correction
- **Assessment**
 - Pre-K Experience
 - Standardized Testing
- **Special Services**
 - History Services

- IEP Plan (OSS) – Read only history
 - Maryland Online IEP source system now data imported nightly from MOIP to OASIS
 - Extended School Year (ESY) Services
 - Psychological Assessments
 - **Summer School**
 - Title I Summer Program
 - Secondary Summer School
 - **Transportation (Special Transportation Requests)**
 - School Requests (Special Ed, Foster, Homeless, ESY)
 - Reports
 - Student transportation action request form
 - **Discipline and other Student Interventions**
 - Bullying, Harassment, and Intimidation (required data elements under applicable law and Board policies and regulations for bullying, harassment, and intimidation reporting and investigations are listed at these links: <https://www.montgomeryschoolsmd.org/departments/forms/pdf/230-35.pdf> and <https://www.montgomeryschoolsmd.org/departments/forms/pdf/230-36.pdf>)
 - Suspension (selected state discipline reporting codes are available at this link: <https://www.montgomeryschoolsmd.org/departments/forms/pdf/560-6.pdf>)
 - In School Interventions
 - Restraint/Seclusion
 - **Template Builder**
 - Schools build/setup their grades templates and they are imported into the gradebook
- **myMCPS Sharepoint:** In house developed SharePoint site which houses the following student information system applications from OASIS tables
 - **Student Center**
 - Communication Log (records communications with parents and others related to each student)
 - DOI
 - Attendance Intervention
 - Office Referrals
 - ES Articulation
 - **School Center**
 - Group Reports
 - **Assessment Center**
 - Score Entry
 - Bridge Plan
 - SIPPI
 - Student Planner
 - AEI
 - Testing Roster

- **Performance Center**
In house developed SSRS reports available to schools and offices with district and/or student level details.
- **PowerSchool:** MCPS currently uses PowerSchool as main for the following functions:
 - Secondary Scheduling (High Schools and Middle Schools)
 - Parent/Student Portal
 - Athletic Registration (selected student enrollment data elements required under applicable federal and state law, as well as Board of Education policies and regulations are available at this link: <https://www.montgomeryschoolsmd.org/departments/athletics/parent/forms.aspx>)
 - Compliance with Requirements under Section 504 of the Rehabilitation Act
 - Emergency Cards (selected student enrollment data elements required under applicable federal and state law, as well as Board of Education policies and regulations are available at this link: <https://www.montgomeryschoolsmd.org/departments/forms/detail.aspx?formNumber=565-1&catID=1&subCatId=25>)
 - Incident Management System (including data on arrests, other emergency situations, and other reporting requirements summarized in MCPS Regulation <https://www.montgomeryschoolsmd.org/departments/policy/pdf/cobra.pdf>)

Gradebooks

MCPS currently uses Wazzle (Pinnacle) for both the elementary and secondary gradebook. Both gradebooks currently interface with OASIS, Data Warehouse, PowerSchool, and our learning management platform, Canvas.

- Elementary Standards Based Gradebook
- Secondary Traditional Gradebook

In addition to the functionalities described above the following are examples of other MCPS systems that interact extensively with our student information systems but are currently under separate contracts and therefore not intended to be included in this RFP:

- **Performance Matters**
MCPS currently uses Performance Matters for assessment creation, administration, and data analysis. Data is transferred nightly from our student information systems and from our data warehouse to Performance Matters, including student schedules, class rosters, student grades, attendance, student program codes, and assessment scores.
- **Canvas**
MCPS currently uses Canvas as our Learning Management System, it currently interfaces with the gradebook. Section data with class rosters is transferred to Canvas to automatically provision courses for teachers and students. Teachers can create assignments, score them, and automatically have data transferred to the gradebook.
- **Data Warehouse**
MCPS currently uses SQL for its Data Warehouse for data storage and reporting. The Data Warehouse interfaces with the various systems that collect data, including the student information system.

3.0 SCOPE OF SERVICES

The following list of requirements, although extensive, is not exhaustive and is intended to provide interested Respondents with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential information. Proposals may be submitted for any combination of modules listed below. Respondents may submit proposals for one or more SIS modules within the same proposal.

The scope of services included in this request for proposals are:

- Student System Module:
 - Student Management/Registration and Enrollment
 - Student Demographics and Programs
 - Attendance
 - Beginning and End of Year Processes
 - Calendars
 - Articulation
 - Consortia, Choice, and Application Program Services
- Special Services Module:
 - Extended School Year Programs
 - Summer School
 - English Speakers of Other Languages Program Services
 - 504 Services
 - Special Transportation
 - Psychological assessment profiles
 - Systems of Intervention Programming
- Discipline and Student Logs
 - Office Referral
 - Communication Logs
 - Incident Management (including tracking of arrests, threat assessments, and other emergency incidents)
 - Use of Student Restraints
 - Bullying, Harassment, and Intimidation
- Scheduling
 - Current Year
 - Future Year
 - Dual Enrollment and Cross-Scheduling
- State and Federal Reporting
- Gradebook
 - Elementary Standards Based
 - Secondary Traditional
 - Cross-sectioning/combining
 - Report Cards
 - Alerts
 - Enterprise Management Tools
 - Roles and Permissions
- Assessment and Reports
 - Student Reporting
 - Creation of Assessments
 - Item Banks – external and internal
 - Data Analytics

- Student and Parent Portal
 - Online forms for parents and students (Emergency Card, Athletic Registration, Permission slips, SSL)
 - Workflow engine to process multi-step workflows with internal and external stakeholders

In addition to an overview and description of the modules and functionality listed above, modules are expected to comply with the detailed listing of requirements specified in Attachment I.

For each module and the SIS overall, the proposal should include a detailed explanation of the Respondent's approach to each of the following components:

- implementation planning and project management;
- supplying the necessary technology and software;
- integration and installation services;
- recommendations for production and development hardware and infrastructure;
- interface to external and internal applications;
- testing;
- training;
- data conversion and migration;
- deployment;
- documentations;
- disaster recovery/system recovery/backup and restore

PROJECT PHASES

The Respondent shall include an implementation proposal with estimated timing for the following project phases with expected full implementation by School Year 2020-2021:

Phase 1: Requirements Analysis, Validation of Requirements, Security Analysis, Change Management and Proposed roll-out Strategy for Implementation, including specific proposals for sequencing of module rollout.

Phase 2: Initial Configurations, Customizations, Backups/Disaster Recovery and Application Integrations

Phase 3: Data Mapping, Data Migration, Testing of the application

Phase 4: Initial district Roll-out, including proposed training

Phase 5: Continue Customization and integration of additional functionality, feedback and evaluation of initial roll-out on phase 4, Testing

Phase 6: Enterprise Roll-out, training, feedback and evaluation

3.1 Operational, Technical, and Service Level Requirements

The provider shall specify and propose system architecture designed to handle the standard day to day load as well as emergency load, including but not limited to:

- Hosting vs. On-Premises Description of Architecture
 - Detailed explanation of each, if available
- Service Level Requirements
 - Service Availability (measured in up-time)
 - Average Load Time
 - User volume (measured in simultaneous users)
 - Emergency Scalability and Emergency Load Time

- Error Management
- Maintenance and Support
 - Support Availability
 - Updates (ability to manage those; compatibility with customizations)
 - Remediation/Credits for Recurring Errors
 - Disaster Recovery and Data Retrieval

3.2 Sample Sandbox Credentials

The Respondents shall submit with their proposal response a “sandbox” link of the application and credentials for 30 users for a period of 60 days during the evaluation period to aid on the decision making. Access to any modules included in the proposal must be part of the sandbox.

3.3 Pricing

The Respondent’s proposal shall include a completed pricing sheet provided in Attachment E for each module or service, or portion of a module or service that the Respondent is proposing under this RFP. The cost proposal must include a detailed proposal for up to a five (5) year term starting with the 2019-2020 school year. Cost proposals must include:

- Price breakdown for each product license, modules or separate service
- Price breakdown for the implementation/project management phases as outlined on the implementation plan
- Price breakdown for MCPS hosted managed option as well as provider hosted and managed
- Price breakdown for customization (bulk customization packages included), including direct labor and overhead costs, average hourly rate
- Price breakdown for professional development/training
- Price breakdown for Support/Maintenance Services
- Price breakdown for Testing/Quality Assurance
- Price breakdown and disclosure of any overhead cost
- Price breakdown for travel and per diem or subsistence cost.

If Respondent proposes an alternative pricing methodology or schedule, it shall be clearly presented in a way that provides all of the information specified in Attachment E.

3.4 Timeline for Implementation and Key Staff

The Respondent’s proposal shall include a plan and schedule for implementation in accordance with experiences in implementing large district migration of data and functionality for the new student system modules selected under this RFP, with the goal of full implementation for all modules by the 2020–2021 school year.

After the Respondent has made student system modules available to MCPS, MCPS shall have a period of 180 days (“Acceptance Testing Period”) from the date of availability to verify that the platforms substantially perform to the specifications contained in the RFP. In the event that MCPS determines that

the student system platforms do not meet such specifications, MCPS shall notify the Respondent in writing, and Respondent shall modify or correct the platform so that it meets these specifications, or MCPS may determine in its sole discretion to terminate the contract in accordance with the MCPS General Contract Articles referenced in Section 20.0.

In addition, the proposal shall identify key staff members on the Respondent's project team, describe each team member's relevant experience, and describe the role he or she would play in the project. Such key staff shall not be substituted with other personnel or reassigned to another project without MCPS' prior approval in accordance with the MCPS General Contract Articles.

3.5 Data Privacy and Security

As specified in more detail in the MCPS General Contract Articles and elsewhere in this RFP, the Respondent will comply with all federal, state, and local laws, regulations, and ordinances applicable to this project, including but not limited to the requirements of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, ("PPRA") 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.

3.6 Training and Professional Development

The proposal shall describe the initial training and professional development necessary to begin implementation of the proposed student system modules. The training plan must include mechanisms to train MCPS system administrators, application developers, and database administrators on the setup, configuration, integration, and customization of the systems. In addition, the proposal shall describe end-user training services and materials for teachers, parents, students, and central services specialists who, in turn, will train school staff and provide support districtwide.

The training and professional development plan must be designed to supplement, not supplant, the district's existing approach to professional development that includes: development of district expertise and capacity to manage all aspects of the systems, including configuration, administration, customization, maintenance, operational tasks, and troubleshooting; development of school and district expertise and capacity to deliver training districtwide; school-based embedded support from school and district staff; and development of blended professional learning models that include both face to face and virtual learning. Special attention will be given to the availability of training materials in multiple languages for the parent and student facing modules.

Each Respondent's training and professional development digital or online web-based materials for all end users must be section 508 compliant and meet accessibility guidelines for our MCPS staff and parent/student community with disabilities. Each Respondent's training and professional development plan must include immediate on-site and/or interactive web-based training for MCPS staff and community so the selected student platforms can be used for training and use in the spring of the 2018–2019 school year, with more intense training during the summer months. The successful Respondent(s) shall work with MCPS to adapt on-site and/or interactive web-based training as needed, and repeat such trainings in the second and third years of the MCPS implementation plan.

3.7 Selection Process

It is the intention to award to the most favorable Respondent(s) based on the evaluation criteria in Section 11.0, with specific attention to the detailed requirements in Attachment I. However, the Board reserves the right to make awards according to the best interest of MCPS. As stated in Section 3.0, Respondents may submit responses for one or more SIS modules within the same proposal.

This RFP may result in multiple awards for different components of the scope of services, or MCPS may choose to select none of the proposed solutions.

The selected Respondent(s) must have demonstrated experience in working with and implementing in K-12 school districts comparable to MCPS in terms of student population and number of schools.

In determining the qualifications of a Respondent, MCPS will consider the Respondent's record and performance of any prior contracts with MCPS, federal departments or agencies, or other public bodies, including but not limited to the Respondent's record providing technology systems, solutions, and services to MCPS or other schools or school districts. MCPS expressly reserves the right to reject the proposal of any Respondent if the investigation discloses that the Respondent, in the opinion of MCPS, has not properly performed such prior contracts or has habitually and without just cause neglected the payment of bills or has otherwise disregarded its obligations to subcontractors or employees.

MCPS may conduct any necessary investigation to determine the ability of the Respondent to perform the work, and the Respondent shall furnish to MCPS all such information and data requested, such as information about its reputation, past performance, business and financial capability and other factors that demonstrate that the provider is capable of satisfying MCPS' needs and requirements for a specific contract. MCPS reserves the right to reject any proposal if the evidence submitted by the Respondent or investigation of such Respondent fails to satisfy MCPS that such Respondent is properly qualified to carry out the obligations of the contract and to complete all requirements contemplated therein. Consideration will be given to any previous performance with MCPS as to the quality and the acceptability of bidder's services.

All Respondents submitting a proposal shall include evidence that they maintain a permanent place of business. Copies of any appropriate licenses necessary to perform this work shall be submitted with each proposal. Respondents also shall demonstrate that they have adequate staff to perform the required services. Use of subcontractor(s) and/or third party providers, if any, must be specifically identified within the proposal. Subcontractor and/or third party provider roles shall be clearly expressed. MCPS reserves the right to accept or reject use of proposed subcontractor(s) and/or third party provider(s).

MCPS reserves the right to add or delete Respondents, as well as student information systems, services, and professional development, as needed or piloted, should its requirements change during the contract term. Also, nothing in this RFP precludes MCPS from utilizing other student information systems either developed by MCPS or otherwise at any point during the contract term.

4.0 CONTRACT TERM

The initial term of contract shall be for up to five (5) years, subject to the provisions of the MCPS General Contract Articles; however, the contract may not begin until one day after approval by the Board and will conclude as stated under the contract term. MCPS reserves the right to extend this contract at existing prices, terms, and conditions for up to three (3) additional terms of two (2) years each. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful Respondent(s) 90 days prior to the expiration of the original contract.

Once all responses are evaluated, MCPS staff may make a recommendation to the Board to extend the contract or decide to rebid. If the contract is extended by the Board, a contract amendment will be issued.

5.0 CONTRACT TERMINATION

MCPS reserves the right to cancel the contract in whole or in part at any time in accordance with Article 12 or Article 14 of the MCPS General Contract Articles. MCPS also reserves the right to cancel the contract with a Respondent for failure to comply or failure to fulfill the terms of this contract in accordance with Article 13 of the MCPS General Contract Articles.

6.0 REFERENCES

All Offerors shall include a list of a minimum of five references who use the Offeror’s services who can attest to their quality of work and, if possible, shall include school districts of comparable size to MCPS that have utilized the Respondents’ services. Include names of client, contact person, current e-mail address and phone number of all references. **Also, as an attachment, Offerors shall include a list of all current school district clients.**

References may or may not be reviewed or contacted at the discretion of MCPS. Typically, only references of the top ranked short listed Offerors are contacted. MCPS reserves the right to contact references other than, and/or in addition to, those furnished by an Offeror.

7.0 FORMAT OF RESPONSE

A complete response must be submitted using the format outlined in this Section 7.0 and in the following order. Proposals must also provide an individual response to each RFP specification. Proposals that do not follow this format can result in the submission being considered as non-responsive and may not be evaluated further.

Proposal Section Name	Section Content Information
Cover Sheet	The cover sheet must include: <ul style="list-style-type: none"> • Company Name; • Company Address, • Company Primary Contact for RFP and • MCPS RFP identification Number
Company Background	The company background must include a company timeline and history detailing the amount of time your company has been in business and your commitment to the k-12 marketplace. Recent or projected major updates to the software which may include road map. It must also include and list client/district of similar size as MCPS 200+ schools, 20,000+ staff, 160,000+ student enrollment and 300,000+ parents.
Description of SIS Application	Description of application software must include a high-level overview of the solution being proposed, along with a narrative explanation of your solution’s key features as it relates to the components outlined in Section 3.0.

Proposal Section Name	Section Content Information
Requirements Matrix Response – Use Attachment I	The proposal must include answers to the requirements matrix listed on Attachment I of the RFP.
Hardware and Technical Overview	<p>The hardware and technical overview must include recommended hardware, software, storage, operating system, database and any requirements for desktop computers, laptops, chrome books, and mobile devices to access the application as well as browser compatibility. The hardware recommendation must be provided based on the district size of 200+ schools, 20,000+ staff, 167,000+ student enrollment and 300,000+ parents.</p> <p>The proposal must also include recommended hardware for development/customization and list the different database options available for the application.</p>
System Performance	Based on Section 3.1, the proposal must include any benchmark information from school districts of comparable size that utilize the Respondent’s services on system performance including but not limited to the following: guaranteed uptime, system availability, frequency of hardware upgrades, problem avoidance techniques, and service level credits for failure to meet uptime and system availability targets. Respondents must provide benchmark/metric data from a district of comparable size to support their system performance.
Implementation Plan	Based on Section 3.0, the implementation plan must include information regarding the Respondent’s implementation methodology, provider and district staffing expectations to support the implementation, the expected roles of both the Respondent and district staff throughout the implementation process. The plan must also include a proposed timeline for implementation as defined on the project phases of scope of services with or without a pilot phase and known risks associated with the implementation for a district of MCPS size. The Respondent may suggest/provide recommendations on adjusted phases of the project for consideration and how to address change management of a large implementation. Specifically enumerate any subcontractors, third party service providers, or affiliated entities.
Security Plan	The proposal must include information on how the proposed solution mitigates against unauthorized access of data and functions within the application on both the desktop as well as the mobile version. The Respondent shall address authentication, authorization, user roles, levels of access to data and function, data encryptions, dual authentication, audit trails and reports available.
Data Conversion Plan	The data conversion plan must outline the data process for the current data analysis conversion methodology and the expected roles of both the

Proposal Section Name	Section Content Information
	Respondent and the district as it pertains to data conversion. The data conversion plan must also detail how the system will handle, active and historical records and any limitations on how many years back the application will handle data.
System Interface Integrations	MCPS currently interfaces with multiple systems, the proposal shall address in generic terms how the provider solutions interfaces with other systems, and specifically reference the systems listed in Section 2.1. As part of the gap analysis on phase 1 of the implementation is expected that the Respondent will customize if necessary the targeted systems to interface with the proposed MCPS systems.
Training/Professional Development Plan	The training/professional development plan must include an overview of the different training options (train the trainer, end user training) available for developers to do customization into the system, system and database administrators, reports development as well as end user training. The plan must also list what materials are available for parents/students.
Quality Assurance and Testing	The quality assurance and testing section must include the provider's proposed approach to testing to ensure a successful migration including but not limited to the following: unit and overall system testing, compatibility testing of different browsers, data migration testing, user acceptance and performance testing.
Disaster Recovery Planning	The proposal must include a backup and disaster recovery approach plan. The disaster recovery plan will be revisited during phase 2 of the project to be tailored to MCPS critical business processes, infrastructure, data and strategies for recovery in an event of system failure.
Ongoing Maintenance and Support	The ongoing maintenance and support must include the provider post-implementation plan, support model, escalation notification, and expected/guaranteed response time from the support team. The support plan must also include resolution time expectations from the support team and service level agreement information.
Customization Proposal	The proposal must/can include a plan for the development of custom screens/functionality that the district is seeking that the application does not currently provide based on the gap analysis performed of key functionality as defined in Attachment I – Technical Requirements that the provider would like to include as part of the proposal.
Cost Proposal – Use Attachment E	The cost proposal must include a detailed proposal for a 3 year term starting with the 2019-2020 school year. Cost proposals must include all the information specified in Section 3.3 above.
References	Consistent with Section 6.0 above, the proposal must include a minimum of five (5) references, preferable of current customers in districts the same size as MCPS that have been operating for a minimum of two (2) to three (3)

Proposal Section Name	Section Content Information
	<p>years. For each reference, the Respondent shall provide contact information specified in Section 6.0 above.</p> <p>The proposal must also include information on Maryland user groups that may exist.</p> <p>In addition, the proposal must list of all current school district clients, See 6.0 References.</p>
Point-by-Point Response	<p>Respondents shall include any and all statements and representations made within its proposal in the contract for services with MCPS. This includes, but is not limited to, the Respondent's point-by-point response to this RFP. If the Respondent responds only "Understand and comply," it is assumed that the Respondent complies with MCPS' understanding of the requirement.</p>
MCPS General Contract Article Exceptions	<p>A list of any allowable variances from, or objections to, this RFP or the terms and conditions of the MCPS General Contract Articles, as well as a justification for any such variances or objections (a list of non-negotiable terms and conditions are provided in Section 20.0 of this RFP).</p>
Fiscal Report and Required Certifications	<ul style="list-style-type: none"> • Respondent's annual fiscal report in order to demonstrate the Respondent's financial stability (If desired, the Respondent also may include any other financial documents that the Respondent wishes to include regarding Respondent's financial condition). • Equal Opportunities Certification (<u>Attachment A</u>) • Certification of Non-segregated Facilities (<u>Attachment B</u>) • Minority Business Enterprise (<u>Attachment C</u>) • Non-Debarment Acknowledgement (<u>Attachment D</u>) • Mid-Atlantic Purchasing Team Rider Clause • Current Form W-9
Redacted Copy	<p>A redacted copy of the Respondent's proposal as specified in Section 9.0 and 10.0.</p>

8.0 MANDATORY SUBMISSIONS

Each Offeror must submit a complete proposal including all required information and attachments. The response shall be in the order as stated in Section 7.0. Offerors may request via e-mail to Ms. Laurie Checco, Buyer II, MCPS Procurement Unit, at Laurie_S_Checco@mcpsmd.org, a Microsoft Word version to help them in preparing the response.

Please respond according to the instructions provided in Section 7 of this document. All proposals must be received on or before 2:00 pm ET on December 19, 2018 and follow the format outlined in Section 7. Proposals received after this date and time and that do not follow the proper format for response will not be considered.

One (1) original and ten (10) copies, as well as one (1) electronic version on CD or flash drive of the response, and one (1) redacted copy, as well as one (1) electronic version on CD or flash drive of the redacted response must be sent by mail, courier, or hand-delivery to the address below. Responses shall be in binders with tabs identifying

each section. A table of contents must be included and all pages numbered as referenced in the Table of Contents. No faxes or electronic submission of proposals will be accepted. Proposals are to be received no later than 2:00 p.m. on December 19, 2018. Submit responses of the entire RFP proposal to:

Montgomery County Public Schools
Procurement Unit
45 West Gude Drive, Suite 3100
Rockville, MD 20850

Submissions will become the property of MCPS.

The proposal must be signed by an official having authority to contract with MCPS. The firm and the official's name shall be used in the contract process. MCPS reserves the right to make an award without further discussion of the proposals received. MCPS also may negotiate with the one Offeror who submits the best proposal or with two or more Offerors who are in the competitive range. Therefore, it is important that the Offeror's proposal be submitted initially on the most favorable terms from both the technical and cost standpoints. After the submission and closure of proposals, no information will be released until after the award. It is understood that the Offeror's proposal will become a part of the official file on this matter without obligation to MCPS.

The proposal must be complete and comply with all aspects of these specifications. Marketing or promotional verbiage will likely overshadow the Offeror's qualifications and expertise. MCPS urges the Offeror to be specific and brief in their responses.

MCPS shall not be responsible or liable for any costs incurred by the Offeror in the preparation and submission of their proposals and pricing.

9.0 TREATMENT OF TECHNICAL DATA IN PROPOSAL

The proposal submitted in response to this RFP may contain technical data which the Offeror does not want used or disclosed for any purpose other than evaluation of the proposal. The use and disclosure of any such technical data, subject to the provisions of the Maryland Public Information Act ("MPIA"), may be so restricted:

Provided, that Offeror marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend: "Technical data contained in pages ___ of this proposal shall not be used or disclosed, except for evaluation purposes."

Provided, that if a contract is awarded to this Offeror as a result of or in connection with the submission of this proposal, MCPS shall have the right to use or disclose these technical data to the extent provided in the contract.

This restriction does not limit the right of MCPS to use or disclose technical data obtained from another source without restriction.

MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable. Price and cost data concerning salaries, overhead, and general and administrative expenses are considered proprietary information and will not be disclosed, if marked in accordance with the instructions in Section 10.0.

10.0 PROPRIETARY AND CONFIDENTIAL INFORMATION

Offerors are notified that MCPS has unlimited data rights regarding proposals submitted in response to this solicitation. Unlimited data rights means that MCPS has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by the Offeror in response to this or any solicitation issued by MCPS. However, MCPS will exempt information that is confidential, commercial, or financial information of an Offeror, as defined by the MPIA, State Government Article, Section 10-617, from disclosure. It is the responsibility of the Offeror to clearly identify each part of its proposal that is confidential, commercial, or financial information by stamping the **bottom right-hand corner** of each pertinent page with one-inch bold face letters stating the words “**confidential**” or “**proprietary**.” The Offeror agrees that any portion of the proposal that is not stamped as proprietary or confidential is not proprietary or confidential. As a condition for MCPS keeping the information confidential, the Offeror must agree to defend and hold MCPS harmless if any information is inadvertently released. Each Offeror must submit a proprietary and confidential redacted copy of its proposal to be used in responding to MPIA requests.

11.0 EVALUATION CRITERIA

MCPS reserves the right to ask clarifying questions about submitted proposals. Offerors also may ask questions that they may have related to this RFP prior to submitting their responses. See Section 12.0, Schedule of Events. Only proposals received by the deadline will be considered. Proposals will be screened down to a number of finalists.

MCPS reserves the right to convene a meeting or meetings with the top qualified Offeror(s) prior to awarding a contract. The purpose of the meeting(s) will be to afford both parties an opportunity to discuss any aspects of the requirements and services that will be performed and clarify any issues. Issues raised during the meeting, which cannot be resolved to the satisfaction of MCPS, shall be cause to reject the proposal.

In addition, Respondents shall be prepared to provide a products and services demonstration to MCPS staff and potentially other key stakeholders, providing an overview of the proposed products and services at no cost to MCPS, as well as a summary video or presentation document that may be posted on MCPS’ website for feedback from the broader school community. As appropriate, the Respondent shall be responsible for the installation of the proposed products and services and any third party software at the MCPS designated demonstration facility before the demonstration, as necessary. If requested by MCPS, the top qualified Offeror(s) shall provide MCPS staff and potentially other key stakeholders with an opportunity to access and review the Respondent’s student system modules that are in operation at that time, via the Internet from a MCPS computer, to ensure conformity to the requirements of this RFP as well as for the quality and ease of the user interface.

All Offerors are advised that in the event of receipt of an adequate number of proposals, which, in the opinion of MCPS require no clarification and/or supplementary information, such proposals may be evaluated without further discussions. Therefore, proposals should be submitted initially on the most complete and favorable terms and conditions. Should proposals submitted require additional clarification and/or supplementary information, Offerors must be prepared to submit such additional clarification and/or supplementary information, in a timely manner, when requested.

Proposals meeting all requisite criteria will be evaluated. Those who do not meet requisite criteria will not be evaluated further.

11.1 The determination of those that are qualified, interested, and available, and MCPS’ choice of the best qualified will be based on the following criteria:

Proposals will be considered and evaluated based on the following categories:

- 11.1.1 Completeness of response
- 11.1.2 Quality of product and ability to perform and meet MCPS' needs (based on the criteria set forth in this RFP, including but not limited to Section 3.0, Scope of Services).
- 11.1.3 Qualifications, reputation, and experience of the Respondent relevant to the Scope of Services including specific experience in providing products and services to comparable school districts.
- 11.1.4 Qualifications, reputation, and experience of key staff that will be responsible for this contract.
- 11.1.5 Past performance as determined by recent and relevant contracts. Evaluation will be based on information obtained from references provided by the bidder as well as other relevant past performance information obtained from other sources known to MCPS.
- 11.1.6 Pricing proposal and fee structure.
- 11.1.7 Terms of contract meeting MCPS required legal requirements
- 11.1.8 Other key relevant factors included on the scope of services such as implementation timeline aligning to district goals

A selection committee comprised of MCPS staff and potentially outside stakeholders will evaluate proposals based on these criteria.

12.0 SCHEDULE OF EVENTS

The anticipated schedule of activities related to this RFP is as follows:

RFP issued: Monday, November 19, 2018
Questions Due: Thursday, November 29, 2018
Pre-Proposal Conference: Tuesday, December 4, 2018
Proposals Due: Wednesday, December 19, 2018
Provider Presentations: January 14, 2019 – January 23, 2019
Anticipated award date: February 25, 2019

All dates are subject to change at the discretion of MCPS.

13.0 PRE-PROPOSAL CONFERENCE

A pre-bid conference will be held from 1:00 p.m. – 3:00 p.m. on Tuesday, December 4, 2018 at the MCPS Carver Center, 850 Hungerford Drive- Room 134, Rockville, MD 20850. Anyone interested in attending the pre-bid conference should plan to enter the Carver Center building through the North Entrance. Questions regarding the RFP must be submitted by the close of business on Thursday, November 29, 2018.

Respondents shall provide the names of the persons who will attend the pre-proposal conference or who will participate via conference call. Please send no more than two representatives. Send the names to Ms. Laurie Checco, Buyer II, fax number 301-279-3173 or e-mail to Laurie_S_Checco@mcpsmd.org no later than November 30, 2018.

The following information is provided for Respondents who wish to call into the pre-proposal conference:

1. You must use a touch-tone phone to participate in a WebEx Conference

2. Dial the appropriate access number.**Participants: Enter your numeric participant passcode followed by a # sign.**

Toll Free :	1-877-973-0884 Call-in toll number (US/Canada)
Access Code:	6489354

14.0 ADDENDA/ERRATA

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the Offeror's responsibility to check the MCPS website under "Open Solicitations" <http://procurement.montgomeryschoolsmd.org/home/Bids> or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued.

In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Offerors must acknowledge receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

15.0 eMARYLAND MARKETPLACE

Maryland law requires local and state agencies to post solicitations on eMaryland Marketplace. Registration with eMaryland Marketplace is free. It is recommended that any interested supplier register at www.eMarylandMarketplace.com, regardless of the award outcome for this procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

16.0 MULTIAGENCY PARTICIPATION

MCPS reserves the right to extend the terms and conditions of this solicitation to any and all other agencies within the state of Maryland as well as any other federal, state, municipal, county, or local governmental agency under the jurisdiction of the United States and its territories. This shall include but not be limited to private schools, parochial schools, nonpublic schools such as charter schools, special districts, intermediate units, nonprofit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that require these goods, commodities and/or services. Use of this solicitation by other agencies may be dependent on special local/state requirements attached to and made a part of the solicitation at the time of contracting. The supplier/contractor agrees to notify the issuing agency of those entities that wish to use any contract resulting from this bid and also will provide usage information, which may be requested. A copy of the contract pricing and the bid requirements incorporated in this contract will be supplied to requesting agencies. Each participating jurisdiction or agency shall enter into its own contract with the Award Offeror(s) and this contract shall be binding only upon the appropriate approved signature of such an agreement. Invoices shall be submitted "directly" to the ordering jurisdiction for each unit purchased. Disputes over the execution of any contract shall be the responsibility of the participating jurisdiction or agency that entered into that contract. Disputes must be resolved solely between the participating agency and the Award Offeror. MCPS assumes no authority, liability, or

obligation on behalf of any other public or nonpublic entity that may use any contract resulting from this bid. MCPS pricing is based on the specifications provided in this solicitation.

17.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing to Ms. Laurie Checco, CPPB, Buyer II, MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or e-mail to Laurie_S_Checco@mcpsmd.org. Questions are due 4:00 p.m. on November 29, 2018. Responses will be posted on eMaryland Marketplace and on MCPS' Procurement website on December 6, 2018. The Board will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS. Any binding information given to an Offeror in response to a request will be furnished to all Offerors as addenda/errata, if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed Offerors. Only such addenda/errata, when issued by MCPS, will be considered binding on MCPS.

Contact by Offerors with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response. In addition, MCPS expects all Offerors to review and assure compliance throughout the RFP process with Board Policy BBB, *Ethics*, and MCPS Regulation GCA-RA, *Employee Conflict of Interest*.

The MCPS Procurement website address is www.montgomeryschoolsmd.org/departments/procurement/.

18.0 UNNECESSARILY ELABORATE BROCHURES

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate art work and expensive visual and other presentation aids are neither necessary nor wanted.

19.0 BID PROTESTS

Any bid protests, including appeals, will be governed by the applicable MCPS Procurement Unit Regulations. The burden of production of all relevant evidence, data and documents and the burden of persuasion to support the protest is on the Offeror making the protest.

20.0 CONTRACT

MCPS plans to enter a contractual agreement with Respondent(s) to whom the award is made and intends to make MCPS General Contract Articles, attached hereto and incorporated herein as Appendix A, part of the contractual agreement, except and unless modified by MCPS. Proposals must clearly identify any variances from or objections to the specifications in this RFP and the terms and conditions of the MCPS General Contract Articles. Lacking any response to the contrary, MCPS will infer that the Respondent agrees to the specifications of this RFP and each term and condition of the MCPS General Contract Articles. Respondents should note that any variance may provide a basis for MCPS to reject the proposal. **In particular, the provisions set forth in Articles 5, 6, 12-14, 16-18, 21-24, 26, 28, and 29 of the MCPS General Contract Articles are non-negotiable.**

As a note of clarification, Article 19 of the MCPS General Contract Articles applies to any products or services that the Respondent develops specifically for MCPS pursuant to this RFP, not to the Respondent's existing off-the-shelf products and services. MCPS understands and acknowledges that the Respondent retains all intellectual property

rights to its existing off-the-shelf products and services and that MCPS will be granted licenses to utilize such products and services.

In addition, with regard to Article 8.D. of the MCPS General Contract Articles, MCPS reserves the right to submit payment in the form of credit card, Single Use Account (SUA), or Automated Clearing House (ACH). The Respondent shall not assess MCPS with any additional charge, fee, or price for the use of these electronic payment methods.

21.0 NOTICE TO OFFERORS

The appropriate items below must be completed as part of the RFP. Failure to comply may disqualify your bid. Type or print legibly in ink.

I. OFFEROR INFORMATION: As appropriate, check and/or complete one of the items below.

- 1. Legal name (as shown on your income tax return) _____
- 2. Business Name (if different from above) _____
- 3. Tax Identification Number _____

A copy of your W-9 must be submitted with this bid response.

II. OFFEROR'S CONTACT INFORMATION: This will be filed as your permanent contact information.

- 1. Company Name _____
- 2. Address _____
- 3. Bid Representative's Name _____
- 4. Phone Number/Extension _____
- 5. Fax Number _____
- 6. Toll Free Number _____
- 7. E-mail Address _____
- 8. Website _____

III. OFFEROR'S CERTIFICATION: Upon notification of award, this document in its entirety is the awarded Offeror's contract with MCPS. By signing below, the undersigned acknowledges that he/she is entering into a contract with MCPS.

- A. The undersigned proposes to furnish and deliver supplies, equipment, or services, in accordance with specifications and stipulations contained herein, and at the prices quoted. This certifies that this bid is made without any previous understanding, agreement or connection with any person, firm, or corporation making a bid for the same supplies, materials, or equipment, and is in all respects fair and without collusion or fraud.
- B. I hereby certify that I am authorized to sign for the bidder and that all statements, representations, and information provided in this response to the Request for Proposals, including but not limited to the Non-Debarment Acknowledgement, are accurate.

By (Signature) _____
 Name and Title _____
 Witness Name and Title _____

Solicitation #4181.1

Metropolitan Washington Council of Governments
Rider Clause

USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.

- A. If authorized by the bidder(s), resultant contract(s) will be extended to any or all of the listed members as designated by the bidder to purchase at contract prices in accordance with contract terms.
B. Any member utilizing such contract(s) will place its own order(s) directly with the successful contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
C. A negative reply will not adversely affect consideration of your bid/proposal.
D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

In pricing section of contract:

BIDDER'S AUTHORIZATION TO EXTEND CONTRACT:

YES NO JURISDICTION

- Alexandria, Virginia
Alexandria Public Schools
Alexandria Sanitation Authority
Arlington County, Virginia
Arlington County Public Schools
Bowie, Maryland
Charles County Public Schools
College Park, Maryland
Culpeper County, Virginia
District of Columbia
District of Columbia Courts
District of Columbia Public Schools
District of Columbia Water & Sewer Auth.
Fairfax, Virginia
Fairfax County, Virginia
Fairfax County Water Authority
Falls Church, Virginia
Fauquier County Schools & Government, Virginia
Frederick County
Gaithersburg, Maryland
Greenbelt, Maryland
Herndon, Virginia
Loudoun County, Virginia
Manassas, Virginia
Manassas Public Schools

YES NO JURISDICTION

- Maryland-National Capital Park & Planning Comm.
Metropolitan Washington Airports Authority
Metropolitan Washington Council of Governments
Montgomery College
Montgomery County, Maryland
Montgomery County Public Schools
Prince George's County, Maryland
Prince George's Public Schools
Prince William County, Virginia
Prince William County Public Schools
Prince William County Service Authority
Rockville, Maryland
Spotsylvania County Schools
Stafford County, Virginia
Takoma Park, Maryland
Vienna, Virginia
Washington Metropolitan Area Transit Authority
Washington Suburban Sanitary Commission
Winchester Public Schools

Vendor Name

MCPS GENERAL CONTRACT ARTICLES

<u>No.</u>	<u>Title</u>
1	Description and General Intent
2	MCPS Project Contact
3	Independent Contractor
4	Key Contractor Personnel
5	Contractor Responsibility
6	Subcontractors
7	Force Majeure
8	Payment Terms and Conditions
9	Changes
10	Audit and Document Retention
11	Term of Contract
12	Termination for Convenience
13	Termination for Cause
14	Non-Appropriation
15	Disputes
16	Contractor Integrity, Ethics and Conflicts of Interest
17	Publication and Publicity
18	Data Collection and Confidential Information
19	Documentation and Copyright
20	MCPS Property
21	Obligations Regarding Criminal Records of Individuals Assigned to Work in MCPS Facilities
22	Indemnification and Insurance
23	Insurance
24	Order of Precedence
25	Severability
26	Governing Law and Jurisdiction
27	Entire Contract
28	Successors and Assigns
29	Guarantee

Appendix A

MCPS GENERAL CONTRACT ARTICLES

ARTICLE 1. DESCRIPTION AND GENERAL INTENT

For the purposes of these MCPS General Contract Articles, "MCPS" refers to the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools, and "Contractor" refers to the entity awarded a Contract pursuant to authorization by MCPS in accordance with applicable laws, Board of Education policies, and MCPS regulations. Together MCPS and the Contractor are collectively referred to as the "Parties" and each individually as a "Party." The term "Contract" refers to these MCPS General Contract Articles and any other contract documents duly executed by the Parties that expressly incorporate these MCPS General Contract Articles by reference, as well as any request for proposals (RFP) or solicitation by MCPS, the Contractor's proposal or bid in response, and any Contract award notification issued by MCPS.

ARTICLE 2. MCPS PROJECT CONTACT

The MCPS Project Contact is responsible for the technical and programmatic aspects of the Contract and is the technical and programmatic liaison with the Contractor. The MCPS Project Contact is responsible for the review and approval of any and all deliverables, products, and/or services, and such other responsibilities as may be specified in the Contract. The MCPS Project Contact is not authorized to make any commitments, otherwise obligate MCPS, or make any changes which affect the Contract price, terms, or conditions. Any Contractor requests for changes to the Contract price, terms, or conditions shall be referred to the Director of the MCPS Department of Materials Management or designee (DMM Director). No such changes shall be made without the written authorization of the DMM Director. The MCPS Project Contact may be changed at any time, provided that notification of the change, including the name and address of the successor MCPS Project Contact, is provided to the Contractor in writing. Any written notice by the Contractor to MCPS required under the Contract shall be provided to the DMM Director, with a copy to the MCPS Project Contact, using contact information available on the MCPS website.

ARTICLE 3. INDEPENDENT CONTRACTOR

The Parties agree that the Contractor is an independent contractor under the Contract and will in no way be considered to be an agent, partner, or employee of, or joint venture with, MCPS. Neither the Contractor nor its employees, agents, affiliates, or subcontractors will be entitled to any benefits, coverage, or other privileges made available to MCPS employees.

ARTICLE 4. KEY CONTRACTOR PERSONNEL

Any of the Contractor's key personnel, identified as such in the Contract, are considered to be essential to the work being performed under the Contract. Prior to diverting any such key personnel to other programs, the Contractor shall notify the MCPS Project Contact reasonably well in advance and submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the Contract. No diversion shall be made by the Contractor without the written consent of the MCPS Project Contact. Failure to obtain the approval of the MCPS Project Contact as required or to propose replacement personnel acceptable to the MCPS Project Contact may be cause for termination pursuant to Article 13. MCPS reserves the right to require that the Contractor replace any key personnel or any individual charged to the Contract at any point during the Contract term if MCPS determines that this action is in its best interests.

ARTICLE 5. CONTRACTOR RESPONSIBILITY

- A. The Contractor shall furnish all personnel, materials, products, tools, services, and facilities necessary to perform the requirements set forth in the Contract. All deliverables, products, and/or services required by the Contract shall be submitted to the MCPS Project Contact according to the kinds and

dates indicated in the Contract. MCPS has relied upon the professional ability and training of the Contractor as a material inducement to enter into the Contract. The Contractor hereby agrees and warrants that all of the Contractor's work shall be performed in a professional and workmanlike manner, through only qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with applicable federal, state, and county laws and regulations—it being understood that acceptance of the Contractor's work by MCPS shall not operate as a waiver or release of the Contractor's obligations.

- B. The Contractor acknowledges and agrees that time is of the essence with respect to its obligations under the Contract and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Contract, is strictly required.
- C. The Contractor shall obtain any licenses or permits necessary for performance of the work required under the Contract. In the event the work to be performed by the Contractor must by law or regulation be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Contractor shall only assign individuals to perform work under the Contract who are licensed and/or certified in accordance with applicable law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Contract. "Professional Services" for the purpose of the Contract shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Contractor shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under the Contract are properly licensed and/or certified.
- D. Any performance or bid bond obligations of the Contractor will be as described in the RFP or solicitation.
- E. Whenever the Contractor has knowledge that any actual or potential situation (including, but not limited to, labor disputes) delaying or threatening to delay the timely performance of the work under the Contract or a force majeure event as described in Article 7, the Contractor shall immediately give written notice, including all relevant information, to the DMM Director.
- F. The Contractor shall comply with all applicable federal, state, and county laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools. Board of Education policies and MCPS regulations are available at this link: www.montgomeryschoolsmd.org/departments/policy/. This obligation includes but is not limited to Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Consistent with Board Policy ACA and applicable federal, state, and county laws and regulations, the Contractor will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Contractor agrees to provide such accommodations as are required under federal, state, and county laws and regulations, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.
- G. The Contractor shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, Board of Education Policy IGN, *Preventing Alcohol, Tobacco, and other Drug Abuse in Montgomery County Public Schools*, and MCPS Regulation COF-

RA, Alcohol, Tobacco, and other Drugs on Montgomery County Public Schools Property.

- H. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 6. SUBCONTRACTORS

Work performed under the Contract shall not be subcontracted without advance written approval of the DMM Director; nor shall any substitution of subcontractors be made without such advanced approval in writing. The Contractor shall include provisions in its subcontracts requiring its subcontractors to comply with the Contract, to indemnify, defend, and hold harmless MCPS, and to provide insurance coverage for the benefit of MCPS, in a manner consistent with the Contract. The Contractor also shall cause its employees, agents, affiliates, and subcontractors to comply with the Contract and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.

ARTICLE 7. FORCE MAJEURE

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic event. Should there be such an occurrence that impacts the ability of either Party to perform its responsibilities under the Contract, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance. If the DMM Director determines that a failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of MCPS to invoke Articles 12 and 13.

ARTICLE 8. PAYMENT TERMS AND CONDITIONS

- A. The Contractor certifies that all information the Contractor has provided or will provide to MCPS is true and correct and can be relied upon by MCPS in awarding, modifying, making payments, or taking any other action with respect to the Contract including resolving disputes. Any false or misleading information is a ground for MCPS to terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contract's obligations, and produces reliable financial information.
- B. The prices, rates and other compensation for work performed is as described in the Contract.
- C. The Contractor's invoices shall be approved for payment by the MCPS Project Contact only after the MCPS Project Contact is satisfied that the Contractor is performing the work and has prepared the invoice as required by the Contract. Prior to approving any Contractor invoices for payment, MCPS, through any authorized representative, has the right at all reasonable times to inspect, or otherwise evaluate, the work performed or being performed at the premises on which it is being performed. If any inspection or evaluation is made by MCPS on the premises of the Contractor or any of its subcontractors, the Contractor shall provide and shall require its subcontractors to provide all reasonable facilities and assistance for the safety and convenience of MCPS representatives in the performance of their duties. All inspections and evaluations shall be performed so that they will not unduly delay the work.
- D. Within thirty (30) days after receipt of each invoice and accepting the work, MCPS shall, except as provided in the Contract, pay for the work performed when approved by the MCPS Project Contact. A payment schedule will be jointly developed between MCPS and the Contractor.
- E. Regardless of any other provisions of the Contract, failure of the Contractor to submit required reports when due or failure to perform or deliver acceptable work, deliverables, products, or services will result

in MCPS withholding payments under the Contract unless such failure arises pursuant to Article 7 and without the fault or negligence of the Contractor. MCPS shall promptly notify the Contractor of its intention to withhold payment of any invoice submitted.

- F. MCPS is tax exempt as a governmental entity. The Contractor shall be responsible for all federal and/or state tax, and Social Security liability that may result from the performance of and compensation for its work. MCPS assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by, or on behalf of the Contractor, its employees, agents, affiliates, and/or subcontractors by reason of the Contract.
- G. If at any time MCPS determines that a cost for which payment has been made is a disallowed cost, such as overpayment, MCPS shall notify the Contractor in writing of the disallowance or claim for unallowable costs. MCPS shall also state the means of correction, which may be, but shall not be limited to, adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

ARTICLE 9. CHANGES

The DMM Director may, at any time, make non-material changes that are within the original general scope of the Contract and the RFP or solicitation in any one or more of the following: (i) specifications or statement of work, and (ii) place of performance or delivery. If any such changes cause an increase or decrease in the cost of or the time required for the performance of the Contract, whether changed or not changed by any such order, an equitable adjustment shall be made: (i) in the Contract price or time of performance or both; and/or (ii) in such other provisions of the Contract as may be so affected; and the Contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this Article must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change, however, if the DMM Director decides that the facts justify such action, the DMM Director may receive and act upon any such claim asserted at any time prior to final payment under the Contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of Article 15.

ARTICLE 10. AUDIT AND DOCUMENT RETENTION

During the term and for three (3) years thereafter, the Contractor shall: (i) maintain complete and accurate books and records regarding its business operations relevant to the calculation of amounts payable under the Contract and any other information relevant to the Contractor's compliance with the terms and conditions of the Contract; and (ii) upon MCPS' request, make such books and records, as well as any of its employees, agents, affiliates, or subcontractors who might reasonably have information related to such records, available during normal business hours for inspection and audit by MCPS or its authorized representative, provided that MCPS shall: (a) provide the Contractor with reasonable prior notice of any audit; (b) undertake an audit no more than once per calendar year, except for good cause shown; and (c) conduct or cause to be conducted such audit in a manner designed to minimize disruption of the Contractor's normal business operations.

ARTICLE 11. TERM OF CONTRACT

Unless otherwise specified in the Contract, the term of Contract shall be for one year, provided that the Contract is not terminated pursuant to Article 12, 13, or 14. After the initial term, MCPS, in its sole discretion, reserves the right to extend the Contract if agreed to by both Parties.

ARTICLE 12. TERMINATION FOR CONVENIENCE

The Contract may be terminated in whole or in part by MCPS whenever the Superintendent of Schools, or an authorized designee, determines that such a termination is in MCPS' best interest. Any such termination shall be effected by delivery of a notice of termination to the Contractor, at least ten (10) business days prior to the

termination date. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective. The Contractor shall be entitled to receive just and equitable compensation for any work completed, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work. In the event of such termination, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.

ARTICLE 13. TERMINATION FOR CAUSE

A. Termination for Cause by MCPS

1. If, through any cause (other than as set forth in Article 7), the Contractor fails to fulfill in a timely manner its obligations under the Contract, or if the Contractor violates any of the covenants, agreements or stipulations of a Contract (hereinafter a "Default"), MCPS shall have the right to terminate the Contract, in addition to MCPS' remedies in the Contract and all other rights available at law or in equity. Such termination shall be effected by MCPS delivering a written notice of termination to the Contractor, which notice may, in the sole discretion of MCPS, provide for a period of up to thirty (30) days for the Contractor to cure the Default. If MCPS provides for an opportunity to cure the Default and the Default is not remediated within the specified period, as determined by MCPS, MCPS shall issue a final notice of termination specifying the effective date of such termination.
2. A Contractor bankruptcy or bankruptcy event shall be deemed grounds for a termination for cause.
3. In the event of such termination for cause, all finished and unfinished deliverables, documents, data, studies, surveys, drawings, maps, models, and reports prepared by the Contractor under the Contract shall become the property of MCPS.
4. A termination for cause is a termination for convenience if the termination for cause is later found to be without justification.
5. The Contractor shall be entitled to receive just and equitable compensation for any work completed prior to termination, as determined by MCPS, but no amount shall be allowed for anticipated profit on unperformed work.
6. Notwithstanding the foregoing provisions, the Contractor shall not be relieved of liability to MCPS for damages sustained by MCPS by virtue of any breach of Contract by the Contractor for the purposes of set off, until the exact amount of said damages is ascertained.

B. Termination for Cause by the Contractor

1. If, through any cause (other than as set forth in Article 7), MCPS is in breach of the Contract and has not cured such breach within thirty (30) days of written notice from the Contractor specifying the same, the Contractor shall have the right to immediately terminate the Contract. Such termination shall be effected by delivering a notice of termination to the DMM Director specifying the effective date of such termination.

ARTICLE 14. NON-APPROPRIATION

If the term of the Contract, or any Contract extension, extends beyond the end of the MCPS fiscal year (July 1 to June 30) in which the Contract was awarded or extended, and the approved MCPS budget for the subsequent fiscal year does not appropriate sufficient funds that may be utilized for the Contract, the Contract shall no longer be in force and effect upon the expiration of the current fiscal year funding. In this event, upon expiration of the

current fiscal year funding, MCPS shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other consideration under the Contract, and the Contractor shall not be obligated to perform any further work under the Contract. If the approved MCPS budget for the subsequent fiscal year reduces funding available for the Contract, MCPS shall have the option, in its sole discretion, to cancel the Contract with no liability occurring to MCPS, or offer a Contract amendment to the Contractor reflecting the reduced amount, which the Contractor may accept in lieu of termination.

ARTICLE 15. DISPUTES

The Parties shall collaborate to resolve any disputes arising under the Contract. In the event that the Parties are not able to resolve a dispute concerning a question of fact arising under the Contract, the dispute shall be submitted in writing to the DMM Director for a determination. The Contractor may appeal the decision of the DMM Director in writing to the Superintendent of Schools, whose decision shall be final. This Article does not preclude consideration of questions of law arising under the Contract, provided that nothing in the Contract shall be construed as making final the decision of any MCPS official, representative, or the Board of Education on a question of law. The Parties specifically agree that no dispute or cause of action arising out of the Contract shall be submitted to arbitration or mediation, and the Parties waive any right to a jury trial in any court of competent jurisdiction.

ARTICLE 16. CONTRACTOR INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST

- A. The Contractor is prohibited from using the services of MCPS employees or officials (including Board of Education members) in performing the Contract. Former employees or officials may be used, provided that a 12-month period has elapsed since their last employment at MCPS. A former MCPS employee or official, may not assist or represent the Contractor for compensation in any case, controversy, dispute, contract, or other specific matter involving MCPS, if that case, controversy, dispute, contract, or other specific matter is one in which the former employee or official significantly participated as an employee or official.
- B. No official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of the Contract. This prohibition does not apply to contracts with MCPS employees or officials who contracted in their own name.
- C. The Contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, or subcontractors directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, and county laws and regulations.
- D. The Contractor agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* ("Board Policy BBB"). In addition, the Contractor shall have an affirmative obligation to disclose in writing to the DMM Director any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Contractor nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know or should have reason to know would result in any MCPS official or employee violating Board Policy BBB.
- E. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.
- F. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 17. PUBLICATION AND PUBLICITY

The Contractor shall not, without consultation and consent by MCPS, (i) originate any report, publication, presentation, publicity, news release, or other announcement, written or oral, relating to the Contract or any results achieved pursuant to the Contract (hereinafter "Publication"); or (ii) use any names, trademarks, or logos of MCPS, except as necessary to perform the work of the Contract. To the extent that MCPS agrees to any such Publication regarding the Contract, the Contractor shall abide by the following terms:

- A. The primary purpose shall be to disseminate information about the work rather than to promote the Contractor's accomplishments or knowledge.
- B. Such Publication shall prominently display or acknowledge MCPS support and include the following disclaimers: (i) the contents of this publication do not necessarily reflect the views or policies of MCPS; and (ii) the mention of trade names, commercial products, or organizations does not imply endorsement by MCPS.
- C. The Contractor shall abide by the provisions of Article 18 and any other data-sharing agreement between the Parties.

ARTICLE 18. DATA COLLECTION AND CONFIDENTIAL INFORMATION

- A. The Contractor shall comply with all federal, state, and county laws and regulations applicable to the Contract regarding data collection, privacy, and security, including but not limited to the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its implementing regulations (34 C.F.R. part 99), the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. § 6501-6505, and its implementing regulations (16 C.F.R. § 312, et seq.), the Protection of Pupil Rights Amendment, (PPRA) 20 U.S.C. § 1232(h) and its implementing regulations (34 C.F.R. § 98.1 et seq.), the Maryland Student Privacy Act of 2015, Md. Ed. Code Ann., §4-131, Code of Maryland Regulations (COMAR) 13A.08, as well as applicable Board of Education policies and MCPS regulations, including but not limited to MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*, MCPS Regulation JOA-RA, *Student Records*, and MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*.
- B. Questionnaires, survey instruments, or any other form of data collection from MCPS students, staff, parents/guardians or others pursuant to the Contract or otherwise must be reviewed and approved by the MCPS Office of Shared Accountability prior to use as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.
- C. Access to Confidential Information
 1. To assist the Contractor in its work under the Contract, MCPS may disclose to the Contractor, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, "Confidential Information"). For purposes of the Contract, Confidential Information is any information or data labeled or identified as confidential in the Contract or at the time of disclosure. This definition and the obligations of this Article shall not extend to any information that: (i) the Contractor possesses prior to acquiring it from MCPS; (ii) becomes available to the public or trade through no violation by the Contractor; or (iii) is developed by the Contractor independently of and without reliance on confidential or proprietary information provided by MCPS.
 2. Confidential Information also includes any and all "Personally Identifiable Information" regarding MCPS students, parents/guardians, employees, or others in any medium, including but not limited to any user-generated content that MCPS students, parents/guardians, employees, or others ("MCPS

Users”) input to access or use the Contractor’s deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as “Metadata.” Metadata includes but is not limited to: information about how long a MCPS User took to perform a task; information about how long a MCPS User’s mouse hovered over an item; keystroke data; or other data about the MCPS User’s use of the Contractor’s deliverables, products, and/or services that has not been stripped of all direct and indirect identifiers. With respect to MCPS students, Personally Identifiable Information, as defined under applicable law, includes:

- a. A student’s name;
 - b. The name of the student’s parent/guardian or other family members;
 - c. The address of the student or student’s family;
 - d. A personal identifier, such as the student’s social security number, student number, or biometric record;
 - e. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
 - f. Other information (including but not limited to Metadata) that, alone or in combination, is linked or linkable to a specific student or family that would allow a reasonable person in the MCPS community, who does not have personal knowledge of the relevant circumstances, to identify the student or family with reasonable certainty; or
 - g. Information requested by a person, who is not an authorized representative of the educational agency and who MCPS and/or the Contractor reasonably believes knows the identity of the student to whom the education record relates.
3. Confidential Information shall be maintained in confidence during the Contract and thereafter, except to the extent that it is required to be either disclosed or protected from disclosure by law, regulation or judicial or administrative process. The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall protect the Confidential Information from any Data Security Breach (as defined below), loss, theft, or disclosure using a commercially reasonable care commensurate with the sensitivity of the Confidential Information that in no circumstances is less than the degree of care that the Contractor uses to protect its own confidential information. The Contractor agrees to assist MCPS in maintaining the privacy of Confidential Information as may be required by all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 4. The Contractor shall not permit unauthorized access to the Confidential Information to any individual or entity at any time or provide Confidential Information to any person, party, or organization ineligible or prohibited from receiving such information pursuant to any federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above.
 5. In the event that the Contractor is required by law, regulation, or judicial or administrative process to disclose any Confidential Information, the Contractor will promptly notify MCPS in writing, if permitted by law, prior to making any such disclosure in order to facilitate MCPS’ seeking of a protective order or other appropriate remedy from the appropriate body. Should the proprietary or confidential status of any such information be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.

6. To the extent that Confidential Information includes Personally Identifiable Information regarding MCPS Users, MCPS may require additional data sharing protocols, as agreed in writing by the Parties, prior to its disclosure to the Contractor. The Contractor also agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information that includes Personally Identifiable Information to any of its employees, agents, affiliates, and subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Contractor to provide the deliverables, products, and/or services set forth in the Contract or to fulfill the Contractor's obligations under the Contract; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the Contract that will (a) prohibit the such individual or entity from using any Confidential Information for any purpose other than providing the contracted service to, or on behalf of the Contractor; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Contractor to third parties; (c) require the individual or entity to implement and maintain strict security procedures and practices that, at a minimum, comply with industry standards for data security; and (d) require the individual or entity to promptly notify the Contractor if the individual or entity becomes aware of any unlawful access to any Confidential Information stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Information.. Such non-disclosure agreements shall be made available for inspection, upon demand, to MCPS. The Contractor agrees to remind (in writing) individuals or entities who cease working with the Contractor of their non-disclosure obligations at the time of departure, and to terminate the network access of such individuals or entities at the time of separation.
7. Notwithstanding any other provision of the Contract, MCPS and/or MCPS Users, as appropriate, retain all right, title, and interest in and to the Confidential Information provided by MCPS and/or MCPS Users. Neither the Contractor, nor any successor or entity to which the Contractor's assets are sold, acquires rights in the Confidential Information, other than the rights MCPS grants to the Contractor to perform the work contemplated in the Contract. If the Contractor becomes subject to dissolution or insolvency, MCPS' and MCPS Users' Confidential Information will not be considered an asset or property of the Contractor. MCPS reserves the right to demand the prompt return of any Confidential Information at any time and for any reason whatsoever. The disclosure of Confidential Information to the Contractor shall not be construed as a grant of any right or license with respect to the information other than for the purposes set forth in the Contract.

D. Use of Confidential Information

1. The Contractor shall collect, use, and store only such Confidential Information that is necessary in connection with the Contractor's obligations under the Contract.
2. The Contractor may collect and use aggregated de-identified Confidential Information for the Contractor's lawful quality assurance and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an identifiable individual or to MCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless MCPS has provided written express consent of the transfer.
3. Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to MCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a MCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual

or entity outside MCPS, without prior review and approval from MCPS, any report, data, or research findings that are based on Confidential Information or the use by MCPS or MCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.

4. To the extent that the Contract requires the Contractor to provide online or mobile services to MCPS that involve the collection, maintaining, or use of Confidential Information that includes Personally Identifiable Information regarding MCPS students, the Contractor warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at www.studentprivacypledge.org) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

E. Security of Confidential Information

1. The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
 - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
 - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - c. Secure access controls to Confidential Information, including but not limited to passwords;
 - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
 - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
 - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal, state, and county laws and regulations;
 - g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
 - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm

to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.

3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS.
5. The Contractor will regularly backup or cause to be backed up all Confidential Information under its control and will securely store and retain backups for such period of time as may be required by federal or state law or regulation, or by MCPS. The Contractor will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Contractor is required to restore any materials from its backups, it will purge all personally identifiable Confidential Information not currently in use in the production systems from the restored backups.

F. MCPS reserves the right in its sole discretion to perform audits of the Contractor at its sole expense to ensure compliance with this Article. The Contractor shall reasonably cooperate in the performance of such audits. The Contractor also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Contractor uses to collect, process, maintain, or store MCPS' Confidential Information that includes Personally Identifiable Information regarding MCPS Users, and to hire a third party to conduct no less than annual security audits, which includes penetration testing. The Contractor shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Contractor will provide MCPS, upon request, summary data of the above audits, scans, and tests. The Contractor will take reasonable measures, including maintaining audit trails, to protect Confidential Information against deterioration or degradation of data quality and authenticity.

G. Data Security Breach

1. A "Data Security Breach" is any instance in which the Contractor has actual knowledge or a reasonable basis on which to suspect or conclude that there has been an unauthorized release or access of Confidential Information, regardless of whether the Contractor stores and manages data directly or through a contractor such as a third-party cloud computing vendor. A Data Security Breach may take various forms, including but not limited to: hackers gaining access to data through a malicious attack; lost, stolen, or temporarily misplaced data or equipment (e.g., mobile computing devices or portable memory devices); employee negligence (e.g., leaving a password list in a publicly-accessible location, technical staff misconfiguring a security service or device); or policy and/or system failure.

2. The Contractor shall notify the MCPS Project Contact immediately of any Data Security Breach, and inform MCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Contractor learns of the Data Security Breach. If the Contractor becomes aware of a Data Security Breach, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Contractor shall be responsible for performing an analysis to determine the cause of the Data Security Breach, and for producing a remediation plan in consultation with MCPS. MCPS and the Contractor agree to work together to determine an appropriate notification plan to any MCPS Users of the Contractor's deliverables, products and/or services regarding any such Data Security Breach. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches that affect its customers generally.
 3. In addition to any other remedies available to MCPS, at law or in equity, the Contractor will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any Data Security Breach caused in whole or in part by the Contractor or its employees, agents, affiliates, or subcontractors. The Contractor shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a MCPS User, as the result of a Data Security Breach and to implement procedures to prevent the recurrence of a similar Data Security Breach.
 4. The Contractor shall provide notice to MCPS within twenty-four (24) hours of notice or service on the Contractor, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Contractor's handling of Confidential Information, failure to follow security requirements, and/or failure to safeguard confidential information of any third party.
- H. Except as specifically set forth by MCPS in writing, or as required by federal, state, and county laws and regulations, the Contractor shall upon the termination or expiration of the Contract, upon cessation or dissolution of the Contractor's business operations, or upon request by MCPS:
1. Erase, destroy, permanently delete, and render unreadable all Confidential Information in its paper files, computers, computing environment, systems, equipment, servers, and physical data centers; or, upon MCPS' request to ensure the integrity of MCPS operations, transfer/migrate such Confidential Information to MCPS or its designated third party;
 2. Certify in writing that the actions set forth in this subsection have been completed on or before agreed-upon deadlines;
 3. Ensure that any transfer/migration uses facilities and methods that are compatible with the relevant systems of MCPS or its designated third party; and
 4. To the extent technologically possible, ensure that MCPS will have access to the Confidential Information during any transfer/migration.
- I. Nothing in this Article shall supersede in any manner the Contractor's obligations or the obligations of its employees, agents, affiliates, or subcontractors pursuant to all federal, state, and county laws and regulations applicable to the Contract including but not limited to the requirements listed above, or the provisions of the Contract concerning the Contractor's obligations to MCPS.
- J. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. Notwithstanding anything in the Contract to the contrary, the provisions of this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 19. DOCUMENTATION AND COPYRIGHT

- A. The Contractor warrants that any deliverables, products, and/or services provided by the Contractor to MCPS through the Contract, as delivered by the Contractor for MCPS' normal use, will not infringe any valid patents or copyrights existing at the time the deliverables, products, and/or services are made available to MCPS, provided however, that this warranty does not extend to any infringement arising out of the use of such deliverables, products, and/or services in combination with other systems, equipment, or platforms not supplied by the Contractor. Notwithstanding the foregoing, collected data, analyses, and any analytical processes, programs, files, reports, and other deliverables developed as a contractual requirement are the sole property of MCPS. MCPS may waive title to any portion or to all data and analyses. MCPS has the sole right to copyright any deliverable or product developed for MCPS purposes under the Contract and may license its use by others for a fee or without charge.
- B. The Contractor agrees that it shall not assert any ownership rights, property rights, or copyright to MCPS student work product, as defined in Md. Code Ann., Education § 4-130.

ARTICLE 20. MCPS PROPERTY

The use of MCPS property, including but not limited to equipment and technology, must be approved in advance by the DMM Director. If the DMM Director has agreed to the Contractor's use of MCPS property, the following provisions shall apply:

- A. The Contractor shall insure all MCPS property in its possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The Contractor shall maintain the property in operating condition, with the cost being chargeable to the Contract.
- B. All MCPS property shall be returned promptly upon completion of the Contract or otherwise disposed of, as directed in writing by MCPS. All costs of shipment or disposal are a Contract cost.
- C. Unless stated otherwise in writing, MCPS property may be used only for the performance of the Contract.
- D. Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the Contractor for use under the Contract shall vest in MCPS upon delivery to the Contractor. Title to property leased with a purchase option shall pass to MCPS even if the option date is later than the Contract period. Any payments required to acquire title are a Contract cost.

ARTICLE 21. OBLIGATIONS REGARDING CRIMINAL RECORDS OF INDIVIDUALS ASSIGNED TO WORK IN MCPS FACILITIES

- A. **Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:**
 - 1. Maryland Law requires that any person who enters into a contract with a county board of education "may not knowingly employ an individual to work at a school" if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five (5) years imprisonment and/or a \$5,000 fine.
 - 2. Maryland Law further requires that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo

contendere to, a crime involving:

- a. A sexual offense in the third or fourth degree under § 3–307 or § 3–308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3–307 or § 3–308 of the Criminal Law Article if committed in Maryland;
 - b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
 - c. A crime of violence as defined in § 14–101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14–101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.
3. The Contractor is required to submit, following award of the Contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the Contract meet this obligation. Additionally, the Contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Contractor and/or its subcontractors use to perform the work required by the Contract.

B. Required criminal background check process for certain individuals in the Contractor's workforce:

1. Under § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term "workforce" in this and the preceding section refers to all of the Contractor's direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Contractor uses to perform the work required by the Contract.
2. Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the Contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies is available at www.montgomeryschoolsmd.org/departments/procurement.
3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as

warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the Contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Contractor's summary to determine whether to accept the Contractor's recommendation, and the Contractor will be responsible for any consequences of a material misrepresentation in its written summary.

4. Once the Contract is awarded, the Contractor is responsible for implementing the background check process. An individual in the Contractor's workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: www.montgomeryschoolsmd.org/childabuseandneglect/; and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Contractor will be required to return all badges at the conclusion of the Contract.
 5. The criminal background check and badging process will be at the Contractor's expense.
- C. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

ARTICLE 22. INDEMNIFICATION AND LIABILITY

- A. The Contractor is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement. For purposes of this Article, the negligence of employees, agents, affiliates, or subcontractors of the Contractor is deemed to be the negligence of the Contractor. In addition, the Contractor must defend, indemnify, and hold MCPS harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Contractor of work, services, materials, or supplies in connection with or in support of the performance of the Contract; and (iii) any claim of infringement or misappropriation of any patent, copyright or other intellectual property right.
- B. In the event of any intellectual property infringement or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor may, in its discretion, within sixty (60) days: (a) furnish MCPS with non-infringing replacement of its deliverables, products, and/or services which are functionally equivalent in all material respects to MCPS' satisfaction; (b) modify the applicable deliverables, products, and/or services so that they become non-infringing but functionally equivalent in all material respects to MCPS' satisfaction; (c) obtain for MCPS the right to use such deliverables, products, and/or services upon commercially reasonable terms, subject to adjusted payment obligations on the part of MCPS if such terms differ from those set forth in the Contract; or (d) if and only if (a) – (c) are commercially impracticable, terminate the Contract in whole or in part and

refund to MCPS the fees received for such deliverables, products, and/or services that are the subject of such a claim.

- C. In any action or proceeding brought against MCPS by reason of the foregoing, the Contractor must reimburse MCPS the cost of defending such action or proceedings, or upon MCPS' written demand and at the Contractor's sole cost and expense, the Contractor must defend such action and proceeding by counsel approved by MCPS.
- D. For the purposes of this Article, MCPS includes the Board of Education of Montgomery County, and its officers, officials, agents, and employees. Nothing herein or any other provision of the Contract shall be construed to abrogate, impair, or waive any defense, liability or damages limitation, or governmental immunity of MCPS pursuant to Maryland law, or otherwise. In addition, nothing herein or any other provision of the Contract shall be construed to require MCPS to defend, hold harmless, indemnify, or pay any expenses (including but not limited to attorney's fees and litigation expenses) to the Contractor. The Contractor expressly understands and agrees that any performance bond or insurance protection required by the Contract, or otherwise provided by the Contractor, shall in no way limit its responsibility under the Contract to defend, indemnify, and hold harmless MCPS.
- E. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE CONTRACT, THE CONTRACTOR'S DELIVERABLES, PRODUCTS, SERVICES, AND/OR OTHER ITEMS PROVIDED HEREUNDER; HOWEVER, THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY TO THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE. NO OTHER DISCLAIMER OR LIMITATION OF LIABILITY SHALL BE APPLICABLE TO THE DELIVERABLES, PRODUCTS, AND/OR SERVICES, OR WORK PROVIDED BY THE CONTRACTOR UNDER THE CONTRACT.
- F. Notwithstanding anything in the Contract to the contrary, this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 23. INSURANCE

- A. The Contractor shall be solely responsible for any insurance, including, but not limited to, general comprehensive liability, worker's compensation, professional liability insurance, and business automobile insurance. The Contractor agrees to provide MCPS with certificates of insurance verifying the following minimum coverage:
 - 1. Comprehensive General Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for claims arising out of bodily injuries or death, and property damages, subject to a minimum limit of Three Million Dollars (\$3,000,000.00) aggregate. Such insurance shall include contractual liability insurance.
 - 2. Comprehensive Business Automobile Liability Insurance: Liability limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for all claims arising out of bodily injuries or death and property damages. The insurance shall apply to any owned, non-owned, leased, or hired automobiles used in the performance of the Contract.
 - 3. Worker's Compensation Insurance: Statutory coverage as required by federal, state, and county laws and regulations.
 - 4. Professional Liability, Errors, and Omissions Insurance: Liability limit of not less than One Million Dollars (\$1,000,000.00) in the event the deliverables, products, and/or services delivered pursuant to the Contract, either directly or indirectly, involve or require Professional Services.

- B. The minimum limits of coverage listed above shall not be construed as the maximum as required by the Contract or as a limitation of any potential liability on the part of the Contractor; nor shall failure by MCPS to request evidence of this insurance in any way be construed as a waiver of the Contractor's obligation to provide the insurance coverage specified. The Contractor must keep this insurance in full force and effect during the term of the Contract, including all extensions. If coverage is written on a claims made basis, the policy shall be endorsed to provide at least a three-year extended claims reporting provision.
- C. Insurance is to be placed with insurers licensed/approved to do business in the State of Maryland with a Best's rating of no less than A:VII, or if not rated with Best's, with a minimum surplus the equivalent of Best's surplus size VII, unless otherwise approved by the DMM Director. The Contractor's insurance coverage shall be primary. The Board of Education of Montgomery County and its officers, officials, agents, and employees shall be covered by endorsement, as additional insureds with respect to liability arising out of activities performed or to be performed by or on behalf of the Contractor in connection with the Contract. The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit brought. Any insurance and/or self-insured program maintained by the Board of Education of Montgomery County or its officers, officials, agents, and employees shall not contribute to the Contractor's insurance or benefit the Contractor in any way.
- D. The Contractor shall provide MCPS with certificates of insurance within ten (10) days of execution of the Contract evidencing the coverage required above. The certificates shall confirm that the Board of Education of Montgomery County and its officers, officials, agents, and employees have been made additional insureds under the respective insurance policies. The Contractor must provide to MCPS at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Contractor must provide the certificates of insurance before commencing the work covered by the Contract.

ARTICLE 24. ORDER OF PRECEDENCE

Unless expressly agreed in writing by the Superintendent of Schools, these MCPS General Contract Articles shall take precedence over, supersede, and void any other provision of the Contract to the extent such other provision is contrary to or inconsistent with the MCPS General Contract Articles. For avoidance of doubt, to the extent that any provision of the Contract provides MCPS with additional or greater rights than those provided in the MCPS General Contract Articles, or any other provision of the Contract imposes requirements on the Contractor in addition to those set out in the MCPS General Contract Articles, such other provision shall be deemed to be supplemental to, and not contrary to or inconsistent with, the MCPS General Contract Articles.

ARTICLE 25. SEVERABILITY

Should any portion of the Contract be found illegal, the remainder shall remain in full force and effect and shall be binding on both Parties.

ARTICLE 26. GOVERNING LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with the laws of Maryland, without regard to conflicts of law provisions. Sole and exclusive jurisdiction for any action or proceedings arising out of or related to the Contract shall be in an appropriate state or federal court located in Maryland.

ARTICLE 27. ENTIRE CONTRACT

The Contract is binding between the Parties and constitutes the entire understanding between the Parties regarding the subject matter of the Contract and supersedes all prior or contemporaneous statements,

understandings and contracts, whether oral or written, between the Parties with respect to the subject matter of the Contract. Any changes and additions hereto shall not become binding upon any Party unless they are incorporated into a written contract amendment signed by the Parties.

ARTICLE 28. SUCCESSORS AND ASSIGNS

The Contract and all of its provisions shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of the Contract or any part hereof, rights hereunder, or interest herein by the Contractor shall be valid unless and until it is approved in writing by MCPS and made subject to such reasonable terms and conditions as MCPS may impose. Unless performance is expressly waived in writing by the DMM Director, an assignment does not release the Contractor from responsibility for performance of the Contract.

ARTICLE 29. GUARANTEE

- A. The Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the RFP or solicitation, all deliverables, products, and/or services, including those used in the course of providing the deliverables, products, and/or services. This includes a guarantee that all such deliverables, products, and/or services carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the RFP or solicitation. The Contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing (or replacing with new items or new materials, if necessary) any such defect at no cost to MCPS and to MCPS' satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by MCPS of the deliverables, products, and/or services.
- D. Deliverables, products, and/or services provided under the Contract must be of first quality, latest model, and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by MCPS.

Revised September 1, 2017

Attachment A

Equal Opportunity Certification

1. Are you participating in any contractual agreement which contains the Equal Employment Opportunity Clause prescribed in Executive Order 11246, as amended?

() Yes () No

2. Name and address of Federal "Compliance Agency," if known:

("The Rules and Regulations of the Office of Federal Contract Compliance Programs, U.S. Department of Labor, define the term Compliance Agency as the agency designated by the Director, of CCP, to conduct compliance reviews and to undertake such other responsibilities assigned.")

3. Are you required to maintain a written affirmative action plan according to 41 CFR 60-2 and 60-1 (a)(4)?

() Yes () No

4. Has the "Compliance Agency" required you to correct deficiencies in your affirmative action plan or your employment policies and practices?

() Yes () No

5. Are you required to submit an annual compliance report as described in 41 CFR 60-17 (a)?

() Yes () No

If the answer to "5" is yes, enclose a copy of your latest compliance report.

Data on Subcontractors. (Use supplementary sheets where required.)

_____ (1)* (2)** (3)***
(Subcontractor's Name)

_____ () Yes () Yes () Yes
(Street)

_____ () No () No () No
(City) (State)

_____ (1)* (2)** (3)***
(Subcontractor's Name)

_____ () Yes () Yes () Yes
(Street)

_____ () No () No () No
(City) (State)

*(1) Previously held contracts subject to EQ 10925, 11114, and 11246, as amended.
**(2) Previously filed certificate of nonsegregated facilities.
***(3) Previously filed annual (EE0-1, EEO-4, or EEO-6) compliance report.

Attachment B

Certification of Nonsegregated Facilities

By submission of this offer, the Offeror or subcontractor certifies that there is not maintained or provided for employees any segregated facilities and that employees will not be permitted to perform their services at any location, under the Offeror's control, where segregated facilities are maintained. The Offeror, or subcontractor, agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "Segregated Facilities" means any rooms, work areas, restrooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin because of habit, local custom, or otherwise. The Offeror further agrees that except where there has been obtained identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause that there will be forwarded the following notice to such proposed subcontractors except where the proposed subcontractors have submitted certifications for specific time period:

**Notice to Prospective Subcontractors of
Requirement for Certifications of
Nonsegregated Facilities**

A Certification of Nonsegregated Facilities, as required by the May 9, 1967, order (32 F.R. 7439, May 19, 1967) on Elimination of Segregated Facilities by the Secretary of Labor, must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause.

The certification may be submitted either for each subcontract or for all subcontracts during a period, i.e., quarterly, semiannually, or annually.

NOTE: Failure of an Offeror to agree to the Certification of Nonsegregated Facilities shall render its offer nonresponsive.

Attachment C

Minority Business Enterprise

The Offeror () is () is not a minority business enterprise. A minority business enterprise is defined as a "business at least 50 percent of which is owned by minority group members or, in case of publicly owned businesses, at least 51 percent of the stock is owned by minority group members." For the purpose of this definition, minority group members are African Americans, Hispanic Americans, Asian Americans, and American Indians.

Check the appropriate box below.

- | | | | |
|-------------------------------------------|-----------------------------------------|-----------------------------------|------------------------------------------|
| <input type="checkbox"/> African American | <input type="checkbox"/> Asian American | <input type="checkbox"/> Hispanic | <input type="checkbox"/> Native American |
| <input type="checkbox"/> Female | <input type="checkbox"/> Disabled | <input type="checkbox"/> None | |

Attachment D

NON-DEBARMENT ACKNOWLEDGEMENT

_____ I acknowledge that my firm has NO pending litigation and/or debarment from doing business with the State of Maryland or any of its subordinate government units and/or federal government within the past five (5) years.

_____ I acknowledge that my firm has pending litigation or has been debarred from doing business with the State of Maryland or any of its subordinate government units and/or federal government, within the past five (5) years. If so, please provide an attachment describing the pending litigation or debarment.

_____ I acknowledge none of this company's officers, directors, partners, or its employees have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or federal government; and that no member of the Board of Education of the Montgomery County Public Schools, Administrative or Supervisory Personnel, or other employees of the Board of Education has any interest in the bidding company except as follows

As the duly authorized representative of the Offeror, I hereby certify that the above information is correct and that I will advise Montgomery County Public Schools should there be a change in status.

By (Signature) _____

Name and Title _____

Witness Name and Title _____