

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this “Agreement”) is entered into this 10th day of January 2019 (the “Effective Date”) by and between THE BOARD OF EDUCATION OF MONTGOMERY COUNTY, which operates a system of public schools commonly known as Montgomery County Public Schools (hereinafter referred to as “MCPS”), and MCGRAW-HILL EDUCATION, INC. D/B/A MCGRAW-HILL SCHOOL EDUCATION, LLC (hereinafter referred to as the “Contractor”), each referred to individually as a “Party” and collectively as the “Parties.”

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCPS and the Contractor agree as follows:

### **ARTICLE I. STATEMENT OF WORK**

- A. The Contractor agrees to provide the following English Language Arts curricular and instructional materials for Grade 6 – Grade 8 in accordance with MCPS Request for Proposals No. 4478.1 (the “RFP”).
  - 1) StudySync: A comprehensive 6–12 Core English Language Arts curriculum that combines digital instruction with targeted print to ensure success for today’s teachers and students. Research-based and built to the Common Core, StudySync prepares all students, including English Language Learners, struggling readers, and beyond-grade level learners for the rigorous expectations of the four main areas of the Common Core State Standards: Reading, Writing, Speaking/Listening, and Language. By leveraging engaging multimedia and an ever-growing Library of resources, StudySync facilitates a classroom environment in which students are engaged and motivated to access complex texts.
- B. In particular, the Contractor warrants that it is providing deliverables, products, and/or services in compliance with the requirements set forth in Section 3.0 (Scope of Services) of the RFP. The Contractor’s Best and Final Offer and additional Contractor Documents are attached hereto and incorporated herein as Attachment A.
- C. The Contractor agrees that any substantive changes to the Contractor’s deliverables, products, and or services that affect classroom instruction shall not be instituted during a school year. The Contractor agrees to provide MCPS with written notice of any such changes at least three months in advance of the beginning of any school year.

### **ARTICLE II. TERM**

This Agreement shall be for a period of performance beginning on the Effective Date indicated above and continue until June 30, 2022 (the “Term”), unless sooner terminated or extended as provided in the MCPS General Contract Articles (as referenced in Article VI below). MCPS may extend the Term for three additional terms of one year each. Any pilot use of the Contractor’s deliverables, products, and/or services by MCPS Users (as defined in Article 18 of the MCPS

General Contract Articles) or any training or implementation services provided by the Contractor to MCPS prior to the Effective Date shall be governed by this Agreement and the MCPS General Contract Articles.

### **ARTICLE III. PROJECT CONTACTS**

The designated MCPS Project Contact who will oversee and coordinate the Contractor's work shall be:

Scott Murphy  
Director, Department of Secondary Curriculum and Districtwide Programs  
Office of Curriculum and Instructional Programs  
850 Hungerford Drive, Room 254  
Rockville, MD 20850  
(240) 740-4000  
[Scott\\_W\\_Murphy@mcpsmd.org](mailto:Scott_W_Murphy@mcpsmd.org)

The designated Contractor Project Contact(s) shall be:

Heather Mooney  
Sr. Sales Representative  
McGraw-Hill School Education LLC  
8787 Orion Place  
Columbus OH 43240  
[heather.mooney@mheducation.com](mailto:heather.mooney@mheducation.com)  
Cell: 240-281-1293

Each Party may change its designated project contact by giving written notice to the other Party.

### **ARTICLE IV. PAYMENTS**

The total cost for the deliverables, products, and/or services to be provided under this Agreement shall not exceed \$3,594,309 over the three year Term and shall not exceed \$705,688.88 for the first year of the Term as approved by the Board of Education on January 8, 2019, unless otherwise agreed to by a written amendment duly executed by the Parties. The price per student for the Term is [REDACTED] and [REDACTED] for any additional renewal term. The Contractor shall be paid in accordance with Article 8 of the MCPS General Contract Articles.

### **ARTICLE V. LICENSE TO USE CONTRACTOR'S DELIVERABLES, PRODUCTS, AND/OR SERVICES**

- A. Availability. Subject to the terms of Addendum 1, the Contractor will ensure that the deliverables, products, and/or services are available to MCPS twenty-four (24) hours per day, seven (7) days per week, and otherwise in accordance with this Agreement, as applicable.
- B. License Grant. In furtherance of MCPS' public purpose, the Contractor hereby grants to

MCPS a non-exclusive, royalty-free, non-transferable, worldwide right and license, exercisable by and through its MCPS Users, to the Contractor's deliverables, products, and/or services during the term of the Agreement as set forth in Article I.

- C. The Contractor acknowledges that MCPS may disclose reports or information generated through the Contractor's deliverables, products, and/or services to MCPS Users, consistent with applicable law.
- D. Prior to allowing any MCPS User access to the Products and Services, MCPS will ensure that such MCPS Users are notified of the rules and requirements for MCPS network usage, including but not limited to MCPS Regulation IGT-RA, *Use Responsibilities for Computer Systems, Electronic Information, and Network Security*, and MCPS agrees to reasonably enforce such requirements against such MCPS Users.
- E. Copyright and Proprietary Rights. MCPS agrees that the Contractor's deliverables, products, and/or services and the content contained therein are the sole property of the Contractor and its licensors and are protected by United States and International Copyright laws. All copyright, trademark, and other proprietary rights in the Contractor's deliverables, products, and/or services, including but not limited to text, graphics, images, code, illustrations, designs, icons photographs, video clips, and written and other materials are reserved by the Contractor and its licensors. MCPS agrees that it will not, and will make reasonable efforts to ensure that MCPS Users will not, use the Contractor's deliverables, products, and/or services in any manner that infringes the proprietary rights of the Contractor or its licensors.
- F. License Restrictions.
  - 1) MCPS agrees that it will not and will make reasonable efforts to ensure that MCPS Users do not: (a) re-sell, rent or lease the Contractor's deliverables, products, and/or services or any part of them; (b) create or enable the creation of derivative works, modifications, or adaptations of the Contractor's deliverables, products, and/or services; (c) copy any part of the Contractor's deliverables, products, and/or services, except where specifically indicated otherwise or for back-up purposes; (d) reverse engineer, decompile, or disassemble the Contractor's deliverables, products, and/or services or convert them into any other format or medium; (e) use more copies of the Contractor's deliverables, products, and/or services, or deploy the Contractor's deliverables, products, and/or services on more devices or at more sites than authorized by the Contractor; (f) distribute or disclose the Contractor's deliverables, products, and/or services to third parties; (g) remove or modify any proprietary marking or restrictive legends placed on the Contractor's deliverables, products, and/or services; (h) use any robot, spider, other automatic device or program or manual process to monitor, copy, or reproduce the Contractor's deliverables, products, and/or services; or (i) sub-license the Contractor's deliverables, products, and/or services except as permitted by the Contractor.
  - 2) MCPS agrees to use the Contractor's deliverables, products, and/or services in compliance with all applicable laws, rules, and regulations, and Contractor's policies,

set forth in Article VIII below, to the extent that such Contractor's policies are not in conflict with this Agreement.

## **ARTICLE VI. GENERAL CONTRACT ARTICLES**

The MCPS General Contract Articles are incorporated herein and made a part of this Agreement as Attachment B.

- A. As stated in the RFP, 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 Contractor shall not assess MCPS with any additional charge, fee, or price for the use of these electronic payment methods.
- B. With regard to Article 18.D.4. of the MCPS General Contract Articles, the Contractor shall sign the Student Privacy Pledge by June 30, 2019.
- C. With regard to Article 18.D.5. of the MCPS General Contract Articles, the Contractor shall make commercially reasonable efforts to develop a mechanism to suppress the click-through process for the Contractor's Terms of Use applicable for MCPS Users who are teachers or other staff members, as soon as feasible. Once the Contractor's and MCPS' systems are fully integrated, MCPS Users shall not encounter any click-through process for the Contractor's Terms of Use. For any MCPS staff who may require earlier access, the Parties will provide notice that this Agreement supersedes the Contractor's Terms of Use, as discussed further in Article VIII below.
- D. Article 18.H. is amended by adding "Within 30 days of receipt of written request by MCPS" to the beginning of Paragraph 1.
- E. As stated in the RFP, as a note of clarification, Article 19 of the MCPS General Contract Articles applies to any deliverables, products and/or services that the Contractor develops specifically for MCPS pursuant to the RFP, not to the Contractor's existing off-the-shelf products and/or services. MCPS understands and acknowledges that the Contractor retains all intellectual property rights to its existing off-the-self products and/or services.

## **ARTICLE VII. DATA SHARING AND STUDENT PRIVACY REQUIREMENTS**

The following provisions, in addition to and consistent with the data collection and confidential information provisions set forth in Article 18 of the MCPS General Contract Articles, shall together constitute the data sharing agreement between the Parties as required by MCPS Regulation AFA-RA, *Research and Other Data Collection Activities in Montgomery County Public Schools*.

### **A. Purpose and Scope**

- 1) For the use of the Contractor's deliverables, products, and/or services for the purposes set forth in Article I, MCPS and/or MCPS Users are required to provide certain personally identifiable information (as defined in Article 18 of the MCPS General

Contract Articles) to the Contractor. Personally identifiable Confidential Information of MCPS Users that MCPS will provide to the Contractor and/or that MCPS Users will input into the Contractor's deliverables, products, and/or services include the data elements listed in Attachment C.

- 2) Other than the personally identifiable Confidential Information indicated in Attachment C, no other personally identifiable information shall be provided by MCPS or by MCPS Users.

B. Use of Confidential Information

- 1) The Contractor acknowledges that for the purposes of this Agreement, it will be designated as a "school official" with "legitimate educational interests" in MCPS education records, as those terms have been defined under FERPA and its implementing regulations, and the Contractor agrees to abide by the FERPA limitations as well as those limitations established by state law and regulation, including Code of Maryland Regulations (COMAR) 13A.08.02, and requirements imposed on school officials. The Contractor will use Confidential Information only for the purpose of fulfilling its duties under this Agreement for MCPS' benefit, and will not share such data with or disclose it to any third party except as provided for in this Agreement, required by law, or authorized in writing by MCPS.
- 2) MCPS hereby consents to Contractor's use of BookheadEd Learning, LLC (StudySync), Amazon Web Services, ATOS, and Rackspace as subcontractors and/or third party service providers provided that the Contractor and its subcontractors and/or third party service providers abide by this Agreement and follow the non-disclosure requirements set forth in Article 18.C.6. of the MCPS General Contract Articles.

C. Data Retention and Destruction

- 1) The Contractor agrees to either (1) perform any MCPS requests to create, manually upload, and delete Confidential Information in Contractor's deliverables, products, and/or services on a per-MCPS User basis or (2) provide access for MCPS to perform such actions.
- 2) Following the expiration or earlier termination of the Agreement, at MCPS' option and upon its written request, the Contractor agrees to, at MCPS' reasonable expense, migrate Confidential Information to the information technology infrastructure, including the computers, software, databases, electronic systems (including database management systems), and networks, of MCPS or any of its designees (collectively, "MCPS Systems"), taking all steps required or reasonably requested to make an orderly transition of the Confidential Information to the MCPS Systems and to assist MCPS and any of MCPS' designees in migrating such Confidential Information to the MCPS Systems in both Contractor's data format and a platform-agnostic format.
- 3) Upon completion of the services described in Article VII.C.2. above, or confirmation by MCPS that it has decided not to exercise its option to request the services set forth

therein, and prior to destroying or permanently deleting Confidential Information pursuant to Article 18.H. of the MCPS General Contract Articles, the Contractor, upon request by MCPS, shall provide MCPS with either (1) files of raw data, summary data, and reports of such Confidential Information, or (2) access to the Contractor's deliverables, products, and/or services for MCPS to generate and export such files.

**D. Contractor's Security of Confidential Information**

- 1) The Contractor shall not permit Confidential Information to be maintained or stored on mobile computing devices (e.g. laptops or tablets), unless such device is being used in connection with the Contractor's backup and recovery procedures. In the event that such a device is being used in connection with the Contractor's backup and recovery procedures, the Contractor will ensure that such mobile computing devices are encrypted, centrally managed with respect to configuration updates and anti-virus, password protected, and that all such devices will be scanned at the expiration or termination of the Agreement to ensure that no Confidential Information remains stored on such mobile computing devices.
- 2) Encryption. The Contractor assures MCPS that the Contractor's deliverables, products, and/or services are only accessible via https and all public network traffic is encrypted with industry standard encryption. Encryption of data at rest will be implemented for all stored data.
- 3) MCPS Users will require usernames and passwords to access the Contractor's deliverables, products, and/or services. MCPS understands that MCPS Users are responsible for the integrity and security of usernames and passwords.

E. To the extent that the Contractor conducts business in states other than Maryland that by law require further protections of student information than as described in this Agreement, the Contractor agrees that MCPS will receive the benefit of such protections.

**ARTICLE VIII. OTHER PROVISIONS**

- A. The deliverables, products, and/or services to be delivered or performed by the Contractor shall be in accordance with the following documents in the order of precedence listed:
  - 1) This Agreement and Addendum 1 (Service Level Agreement);
  - 2) The MCPS General Contract Articles;
  - 3) The RFP; and
  - 4) The Contractor's Best and Final Offer and the Contractor Documents (inclusive of the Contractor's Terms of Service, Terms of Use, Data Privacy Guidelines and Security Guidelines, and End User Privacy Notice).
- B. The Contractor agrees to notify the MCPS Project Contact in writing of any changes to the Contractor Documents at least 30 days in advance. Any changes that are inconsistent with this Agreement or materially alter the obligations of the Parties under this Agreement shall not apply to MCPS Users, without MCPS' express written consent. In no case will the

Contractor alter how Confidential Information is collected, used, or shared under the terms of this Agreement without 180 days advance notice and express written consent from MCPS.

- C. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Contractor's Terms of Service attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that the two introductory paragraphs, and sections 1, 2, 5, 6, 8-10, and 12-16 of the Terms of Service are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the Terms of Service:
- 1) Section 11 (Effect of Termination or Expiration): The second sentence is hereby deleted.
- D. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Contractor's Terms of Use attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that the three introductory paragraphs and Sections 2-5, 7, 9, 10, and 12-14 of the Terms of Use are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the Terms of Use:
- 1) Section 1 (Proprietary Services for Registered users): The last sentence is hereby deleted.
  - 2) Section 6 (Community Guidelines): This section is amended as follows:
    - (i) The first sentence is hereby deleted.
    - (ii) The word "terminate" is deleted from the third sentence and replaced with "suspend" in lieu thereof.
  - 3) Section 8 (External Websites): For clarification, External Websites does not include third-party providers described in Art. VII.B.2. above.
- E. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Contractor's Data Privacy and Security Guidelines attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that Sections 2-7 of the Data Privacy and Security Guidelines are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles. The Parties also acknowledge the following changes to the Data Privacy and Security Guidelines:
- 1) Introductory Paragraph: The second sentence is amended by deleting, "the parties agree that the DPSG will supersede and prevail," and replacing it with the following in lieu thereof: "the parties agree that the Agreement will supersede and prevail."

2) Section 1 (Definitions): Subsection d. is hereby deleted in favor of the definition for personally identifiable information set forth in Article 18.C.2. of the MCPS General Contract Articles.

F. For the avoidance of doubt, with respect to certain inconsistencies between this Agreement and the Contractor's End User Privacy Notice attached hereto and incorporated herein as part of Attachment A, the Parties acknowledge that the following sections of the End User Privacy Notice are entirely superseded by the terms of this Agreement and the MCPS General Contract Articles: *When do we share your PII with third parties?; What rights do you have?; How do we protect your PII?; How long do we retain your data?; and When do we store, transfer or process PII internationally?*

The Parties also acknowledge the following changes to the End User Privacy Notice:

1) Introduction:

(i) The last sentence of the first paragraph is hereby deleted in its entirety.

(ii) For clarification, the Parties agree that the provisions of the third paragraph are subject to and must be implemented in alignment with Article 18 of the MCPS General Contract Articles. Moreover, the Parties agree that the usage of "aggregated de-identified end user PII" as set forth in the sixth sentence are not inconsistent with Article 18.D.2. of the MCPS General Contract Articles provided that MHE's usage of such "aggregated de-identified end user PII" otherwise complies with all the terms of Articles 18.D.2. and 18.D.3. and does not involve or contemplate any form of marketing, advertising, or research studies.

2) *What PII do we collect?:* For clarification, the Parties acknowledge and agree that this section is subject to Article 18 of the MCPS General Contract Articles and Attachment C (List of Data Elements) of the Agreement for Professional Services.

3) *We automatically collect computer metadata and content to provide, improve, and maintain our products and services:* For clarification, the Parties acknowledge and agree that this section is subject to Article 18 of the MCPS General Contract Articles.

4) *How do we use PII and on what legal basis?:* The Parties acknowledge and agree that the second paragraph is subject to Article 18.D. of the MCPS General Contract Articles.

G. With respect to 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 Parties acknowledge that COPPA permits MCPS, acting in the role of "parent," to provide required consents regarding personal information of students who are under the age of 13, where such consent is limited to the collection of personal information from students for the educational use and benefit of MCPS and does not extend to any commercial purpose. The Parties acknowledge that the Contractor, an "operator" under COPPA, relies on this form of consent for such MCPS Users under this Agreement. The Contractor will provide MCPS all notices required under COPPA, to ensure that MCPS, in providing its COPPA consent, has full information and assurance that the Contractor's practices comply with COPPA.



- H. Any notice by a Party under this Agreement shall be in writing and either personally delivered, sent via email, a nationally recognized overnight delivery service (such as Federal Express), first class postage prepaid mail, or by fax, addressed to the other Party at the address specified in this Agreement, or such other address of which either Party may from time to time notify the other. Notices shall be deemed given when received by the receiving Party. All notices to Contractor shall be sent to: Kimberly Harvey, Sr. Director, RFP, Bids & Contracts, McGraw-Hill School Education, LLC, 8787 Orion Place, Columbus, OH 43240, [BidsandContracts@mheducation.com](mailto:BidsandContracts@mheducation.com), 800-848-1567 with a copy to McGraw-Hill Education, 2 Penn Plaza, 20th Floor, New York, NY 10121, Attn: General Counsel. All notices to MCPS shall be sent to the MCPS Project Contact with copy to: Director, Department of Materials Management, 580 North Stonestreet Avenue, Rockville, MD 20850, 301-279-4998 (fax).
- I. Waiver. No waiver by either Party of any failure to observe or perform any term, condition, or covenant of this Agreement shall operate as a waiver of such term, condition, or covenant, or of any subsequent failure thereof.
- J. Third Party Beneficiaries. The provisions of this Agreement are for the sole purpose of setting forth the respective rights and obligations of the Parties. None of the provisions of this Agreement are intended for the benefit of any third party, and no such third party shall have the right to enforce the provisions of this contract.
- K. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, OR THE RELATIONSHIP OF MCPS AND THE CONTRACTOR HEREUNDER.
- L. The Contractor agrees to provide MCPS with a redacted version of this Agreement with proprietary and competitively sensitive portions removed consistent with the Maryland Public Information Act such that it may be made publically available on MCPS' website or otherwise in MCPS' sole discretion.
- M. The Parties' obligations under Articles VII, as well as any other of the Parties' obligations and warranties herein or in the MCPS General Contract Articles, which directly or indirectly are intended by their nature or by implication to survive the Parties' performance, shall survive the expiration, cancellation, or earlier termination of this Agreement.
- N. This Agreement may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile or Adobe Portable Document Format (PDF) signature pages as if such facsimile or PDF signature pages were originals.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the last signature below.

WITNESS:

BOARD OF EDUCATION OF  
MONTGOMERY COUNTY operating  
MONTGOMERY COUNTY PUBLIC SCHOOLS

*Dana Muddelund*

By: *Shebra L. Evans*  
Shebra L. Evans  
President

Date: 1.31.2019

*Barbara L. Tapscott*

By: *Jack R. Smith*  
Jack R. Smith, Ph.D.  
Superintendent of Schools

Date: 1/31/19

WITNESS:

MCGRAW-HILL EDUCATION, INC. D/B/A  
MCGRAW-HILL SCHOOL EDUCATION, LLC

*Kimberly A. Harvey*

By: *Brian Joniak*  
Brian Joniak  
Senior Director, Controller

Date: January 10, 2019

ATTACHMENT A  
(Contractor's Best and Final Offer and Contractor's Documents)



Jason Shilt  
Vice President, Central Atlantic  
School Group  
816-585-4992  
Jason.shilt@mheducation.com

January 2, 2019

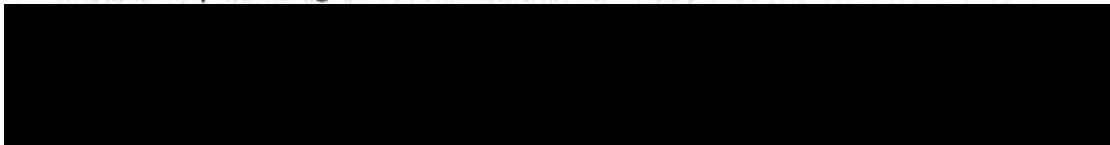
Dear Montgomery County Schools:

Thank you for the opportunity to submit our revised proposal based on additional request to the Middle School English Language Arts portion of the Montgomery County Public Schools' (MCPS) Request for Proposal (RFP) 4478.1 for English Language Arts and Mathematics Curricular and Instructional Materials for Elementary and Middle Schools. In response to your request, McGraw-Hill will agree to an all-in, inclusive price that includes PD, unitized student interactive text, teacher materials, and PD of [REDACTED] per student as a 3-year bundle ([REDACTED] per student per year). We also have a single volume option that can reduce the cost to MCPS to [REDACTED] per student as a 3-year bundle. McGraw-Hill Education additionally will provide at the beginning in year one complete digital teacher access for up to 760 subscriptions. As such, we are outlining what will be included in each year of the 3-year implementation below.

**Year 1/3-year Licenses** [REDACTED]

**STUDYSYNC ELA – STUDENT AND TEACHER MATERIALS AND DIGITAL WORKSPACE**

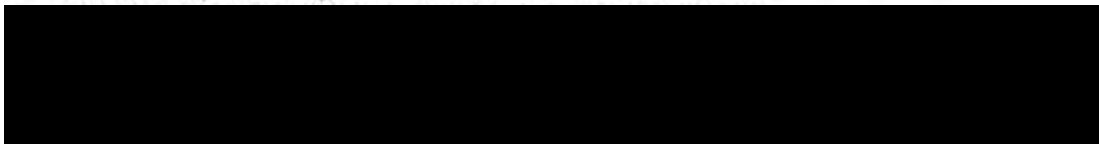
- **7,500** Grade 6 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
- Includes all printed digital teacher materials on a 1:50 ratio.



**Year 2/3-Year Licenses** [REDACTED]

**STUDYSYNC ELA – STUDENT AND TEACHER MATERIALS AND DIGITAL WORKSPACE**

- **4,900** Grade 6 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
- **7,500** Grade 7 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
- **7,500** Grade 8 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
- Includes all printed digital teacher materials on a 1:50 ratio.



**Year 3/3-Year Licenses** [REDACTED]

**STUDYSYNC ELA – STUDENT AND TEACHER MATERIALS AND DIGITAL WORKSPACE**

- **300** Grade 6 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
  - **5,200** Grade 7 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
  - **5,300** Grade 8 Student Reading and Writing Companion Consumable Interactive Text (replaced at no cost years 2 and 3)
  - Includes all printed digital teacher materials on a 1:50 ratio.
- [REDACTED]

**Years 4-6**, 1-year bundles available at a price of [REDACTED] - *when purchasing for district-wide renewal implementation for years 4 through 6*. The pricing for renewal (1-year Bundles) only includes the student interactive consumable text, student digital subscription, teacher digital subscription and shipping.

**STUDYSYNC ELA – PROFESSIONAL DEVELOPMENT**

McGraw-Hill agrees that professional development is organized as follows:

- One session of professional development serves 30 participants;
- One session of professional development constitutes one full-day of instruction.

Based on the level of implementation outlined above, McGraw-Hill will provide professional development at no additional cost:

- **Implementation Training -Trainers for up to [REDACTED] to be utilized throughout the 6 years of implementation per a mutually agreed upon plan between MCPS and MHE.**
- [REDACTED]

- **Executive Planning:** [REDACTED] of planning and implementation guidance for district leaders to be utilized throughout the 6 years of implementation per a mutually agreed upon plan between MCPS and MHE.
- **Author and Advisor Thought Leader Workshops:** [REDACTED] of Thought Leader Workshops to be utilized throughout the 6 years of implementation at MCPS' discretion. Number of participants per session depends on venue.
- **Virtual Courses:** On Demand 24/7

Professional development requested in excess of the days outlined above will be at the rate of \$2,500 per day.



We look forward to our furthered partnership with Montgomery County Schools.



If you are outside the United States and access MHE products or services serving regions outside the United States, please go to our [Terms of Service for International Platforms](#).

## McGraw-Hill Education Terms of Service

THESE TERMS OF SERVICE, together with the [Terms of Use](#) and the [Privacy Notice](#), form a legal agreement (the "Agreement") between McGraw-Hill Global Education Holdings, LLC or its applicable subsidiaries or affiliates ("MHE", "we" or "us") for the Services defined below and the educational institution, company, or organization ("You" or the "Subscriber") entering into this Agreement and identified on the registration page of Your subscription contract for the Services (the "Registration Page"), where applicable. This Agreement also governs Your use of the Solution (as defined below).

These Terms of Service apply after clicking "I accept" in any available checkbox, by placing an order and paying for the Solution, by registering to use and then using the Solution, and/or by executing the Registration Page, where applicable. By accepting these Terms of Service, You affirm that You are at least 18 years of age, that You agree to these Terms of Service, the Terms of Use, and Privacy Notice and You will comply with such terms in connection with Your use of the Solution. You agree that (i) You are an employee, director, or agent of Subscriber; (ii) You have confirmed that Subscriber has agreed to be bound to these Terms of Service, the Terms of Use, and Privacy Notice; and (iii) Subscriber has authorized You to use the Solution on its behalf.

- 1. THE SOLUTION.** MHE has developed a web-based solution (the "Solution") that enables users to access certain online products and services ("Services") and related courses, content and information (together with the Services, the "MHE Content") offered by MHE through our website (the "Website") by purchasing a subscription. MHE hereby grants Subscriber a non-exclusive, non-transferable license to access and use the Solution, and allow each administrator, faculty member, and student enrolled by Subscriber (each a designated "End User") to access and use the Solution, through the Website, solely for educational purposes. End Users may access the Solution and the MHE Content in accordance with an access method offered by MHE and selected by Subscriber. All End Users other than K-12 students will be required to agree to the [Terms of Use](#) in order to access the Solution and the MHE Content. Payments of applicable fees to MHE are due within thirty (30) days of the date of invoice unless otherwise agreed to in writing.
- 2. ADDITIONAL TERMS.** All use of the Solution and MHE Content is subject to this Agreement and any additional terms agreed to by the parties in connection with the Solution and MHE Content, including, without limitation, any prohibitions on distribution of the MHE Content to students or third parties. Subscriber is responsible for its End Users' use of the Solution and the MHE Content.
- 3. ADDITIONAL SERVICES.** MHE may enhance and/or expand the features of the Solution from time to time at no additional cost to Subscriber, or may provide additional content, performance or features that may, but are not required to, be added by Subscriber at additional cost to Subscriber. Any professional services to be provided by MHE to Subscriber in connection with the Solution shall be set forth in a separate Professional Services Agreement between MHE and Subscriber.

4. **APPLICABLE PRIVACY LAW.** Subscriber is familiar with and agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 ("COPPA"), the Family Educational Rights and Privacy Act and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, "FERPA"); and all other applicable country and state laws, rules or regulations concerning the collection, use, and disclosure of Personally Identifiable Information about End Users accessing the Services that are the subject of this Agreement (collectively, "Applicable Privacy Law"). "Personally Identifiable Information", or "PII", shall mean any information relating to an identified or identifiable natural person (a "data subject") including personal data as defined under applicable local law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. MHE acknowledges that in the course of Subscriber's use of the Services, End Users' Personally Identifiable Information may be disclosed to MHE. MHE agrees that it will comply with the requirements of Applicable Privacy Law concerning the confidentiality and release of Personally Identifiable Information. MHE acknowledges that it will be considered a "School Official" (as that term is used in FERPA) and agrees that it will comply with the requirements in FERPA concerning the confidentiality and release of Personally Identifiable Information. Per such requirements, MHE agrees that under Applicable Privacy Law, officers, employees, and agents of MHE who access Personally Identifiable Information may use such data only for the purposes for which such data has been made available to MHE. MHE and its contractors, suppliers and licensors shall only use Personally Identifiable Information for the purpose of facilitating the performance, delivery or use of the Services. MHE shall enable Subscriber to maintain compliance with Applicable Privacy Law in connection with Subscriber's use of the Solution. For further information about MHE's data privacy and security practices, please read our Privacy Notice.
5. **SUBSCRIBER DATA.** All information concerning Subscriber ("Subscriber Data") and Personally Identifiable Information concerning End Users shall belong to Subscriber and shall be considered Confidential Information of Subscriber subject to the terms and conditions of this Agreement. Subscriber assumes sole responsibility for: (a) providing any notices and obtaining any consent needed to the extent required under COPPA or other Applicable Privacy Law in connection with the collection, use and/or disclosure of Personally Identifiable Information from End Users; (b) providing a reasonable means for End Users or End Users' parents, as applicable, to review Personally Identifiable Information provided by End Users to the extent required by COPPA or other Applicable Privacy Law; and (c) establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of the Personally Identifiable Information.
6. **MHE USE OF SUBSCRIBER DATA.** As a service provider to Subscriber, MHE will establish and maintain reasonable procedures in accordance with its policies and practices and Applicable Privacy Law to protect the confidentiality, security, and integrity of Personally Identifiable Information and Subscriber Data received by MHE in connection with provision of the Solution to Subscriber. Subscriber acknowledges and agrees that MHE has the right to use the Personally Identifiable Information and Subscriber Data collected in connection with provision of the Solution for (a)



purposes of performing its obligations under this Agreement, and (b) for research purposes in connection with quality control and the development of revised or new products or services ("Research Purposes"), provided that such Personally Identifiable Information and Subscriber Data will be used by MHE for Research Purposes only in the aggregate and so that the privacy of the individual's Personally Identifiable Information will be maintained.

7. **LOCATION OF SERVICES.** We own, control and operate the Solution from our offices in the United States. We do not represent that materials on the Solution or the Website are appropriate or available for use in other locations. Subscribers who access the Solution from outside the U.S. are responsible for compliance with local laws, if and to the extent local laws are applicable.
8. **OWNERSHIP.** No intellectual property rights of any kind are assigned or transferred to Subscriber under this Agreement. Subscriber is permitted to access and use the Solution, MHE Content and any other materials provided hereunder only as expressly set forth in these Terms of Service. Subscriber is not permitted and shall have no right to use the Solution or MHE Content for any purpose other than as set forth herein. Subscriber shall not challenge, or assist any person or entity in challenging, MHE's right, title, and interest in the Solution and MHE Content.
  - A. Before using any content or materials in the Solution or MHE Content designated as "open", OER, or available for public use, you should review the governing licensing restrictions associated with such content or materials. No rights of any kind are granted by MHE to use such content or materials outside of the Solution.
  - B. If the Solution permits you to upload third-party content for use with your use of the Services granted herein, you represent and warrant that prior to performing any such upload you will secure all necessary rights to grant and will grant MHE the right to make such third-party content available to End Users in the same manner and to the same extent as the MHE Content provided in the Solution, and that such third-party content will not infringe any intellectual, proprietary or other rights of third parties. Additional terms and options may be presented through the user upload interface available on the Solution which shall be in addition to, and not in lieu of, these Terms of Service.
9. **RESTRICTIONS ON USE.** Subscriber shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Solution or MHE Content; (b) decompiling, reverse engineering or disassembling the Solution or MHE Content, (c) distributing or disclosing the Solution or MHE Content to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Solution or MHE Content; or (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Solution or MHE Content.
10. **TERM AND TERMINATION.** This Agreement shall remain in full force and effect unless and until terminated earlier as provided in these Terms of Service. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations, for which MHE may terminate this Agreement immediately), MHE may terminate this Agreement on five (5)

business days' prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. Subscriber may terminate this Agreement by (a) providing MHE with no less than thirty (30) days' prior written notice or (b) ceasing all access to the Solution for six (6) months or longer. No sooner than one (1) year after Subscriber accepts these Terms of Service, MHE may terminate this Agreement on at least sixty (60) days prior written notice.

11. **EFFECT OF TERMINATION OR EXPIRATION.** Subscriber's permission to use the Solution and MHE Content shall end immediately upon any termination or expiration of this Agreement, and Subscriber shall immediately cease any use of the Solution or MHE Content upon such termination. The following provisions shall survive any termination or expiration of this Agreement: Section 8 ("Ownership"), Section 9 ("Restrictions on Use"), this Section 11 ("Effect of Termination or Expiration"), Section 12 ("Confidentiality"), Section 13 ("Representations and Warranties; Disclaimer"), Section 14 ("Liability"), 15 ("Indemnification") and Section 16 ("Miscellaneous").
12. **CONFIDENTIALITY.** The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). Personally Identifiable Information of End Users is considered Confidential Information of Subscriber. At all times the Receiving Party shall: (i) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (ii) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (iii) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as expressly permitted below), and (iv) only disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know" basis; provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.
13. **REPRESENTATIONS AND WARRANTIES; DISCLAIMER.** Each party represents and warrants that this Agreement constitutes its valid and binding obligation and is enforceable against it in accordance with its terms. MHE DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SOLUTION, THE MHE CONTENT OR ANY OTHER MATERIALS PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. MHE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, MHE MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF SUBSCRIBER, (ii) THE MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY MHE, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY

OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that MHE may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

14. **LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM SUCH PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF SERVICE AND IN NO EVENT SHALL THE LIABILITY OF MHE OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MATERIALS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, MHE's liability in such case will be limited to the greatest extent permitted by law.
15. **INDEMNIFICATION.** MHE shall indemnify, defend and hold harmless Subscriber from and against any and all liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of any claim by a third party that the technology platform underlying the Solution infringes or misappropriates the intellectual property rights of such third party. To the extent permitted by law, Subscriber shall indemnify, defend and hold harmless MHE and its parent, affiliates, successors and assigns and their respective officers, employees and agents from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of use of the Solution by Subscriber, except to the extent that such claim is subject to indemnification by MHE hereunder.
16. **MISCELLANEOUS.** The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto; provided, however, that if Subscriber has entered into a separate written agreement with MHE regarding the subject matter hereof, that agreement will supersede this Agreement to the extent of any conflict. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable

provision that as nearly as possible effects the parties' intent. Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of MHE, which consent MHE may grant or withhold in its sole and absolute discretion. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.

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# Terms of Use

If you are outside the United States and access MHE products or services serving regions outside the United States, please go to our [Terms of Use for International Platforms](#).

If you are an MHCampus user, please go to our [MHCampus Terms of Use](#).

**If you are using MHE products or services as a member of an educational institution or business that has a separate written agreement with MHE, that agreement will govern your use of the products or services and these terms and conditions as written below do not apply to you.**

## McGraw-Hill Education Terms of Use

*(Last updated: May 2018)*

These terms and conditions (the "Terms of Use") apply to all web sites (the "Sites") owned and operated by McGraw-Hill Global Education Holdings, LLC or one of our affiliated companies ("MHE" or "us" or "we"). By signing up or otherwise using any of our Sites or Services (as defined below), or accessing any content or material that we make available through the Services or Sites, you are entering into a binding contract with MHE that consists of these Terms of Use and the [Privacy Notice](#) which is hereby incorporated by reference (collectively, this "Agreement"). We reserve the right, at our discretion, to change any of these terms in the future.

If you do not agree to this Agreement, you may not access or otherwise use the Sites or the Services.

You may use the Services only if you have reached the age of majority or legal age in your jurisdiction (generally 18 or older) and can form legally binding contracts under applicable law or, if you are under the age of majority, your educational institution, parent or guardian agrees to these Terms of Use on your behalf.

### **1. PROPRIETARY SERVICES FOR REGISTERED USERS.**

MHE operates electronic platforms/systems including mobile applications that enable students, instructors, and administrators of educational institutions to access and use certain online products and services offered by MHE (the "Services") through our Sites. The material on our Sites include general non-proprietary information available to all users of our Sites, but in order to access and use the Services you will be required to register on our Sites or through your educational institution. If you register to use the Services on behalf of your educational institution, you will be required to agree to additional terms and conditions in connection with the registration process (the "Terms of Service").

### **2. USER INFORMATION, COPPA.**

During the course of your use of the Services, you may be asked to provide certain personal information to us in order to provide you with the Services. Our

information collection and use policies with respect to the privacy of such personal information are set forth in our Privacy Notice. You acknowledge and agree that between you and MHE, you are solely responsible for the accuracy and content of your personal information, and you agree to keep it up to date.

In accordance with the Federal Children's Online Privacy Protection Act of 1998 (COPPA), we will never knowingly solicit, nor will we accept, personally identifiable information from users known to be under thirteen (13) years of age without the consent of their educational institution or the child's parent or guardian. If an educational institution with students that are under thirteen (13) years of age uses our Services, the educational institution may also provide us with personally identifiable information about its students. We use student information to provide the Services to the educational institution and its students, consistent with our Privacy Notice.

### **3. INTELLECTUAL PROPERTY.**

Solely to the extent necessary for your own internal use of the Services for educational purposes during the term of your applicable license for Services, subject to the payment of any fees in any applicable subscription agreement and in accordance with the terms of such agreement or any other agreement governing your use of the Services and these Terms of Use, MHE grants you a limited, non-exclusive and non-transferable license to access and use the Services over the Internet via the Site provided for the Services. MHE is the owner and/or authorized user of all trademarks, logos, service marks and trade names (collectively the "Trademarks") on our Sites and is the owner or licensee of the content and/or information on our Sites. Except as otherwise expressly provided herein, or pursuant to the Terms of Service, your use of our Sites does not grant to you a license to any content or materials you may access on our Sites. Nothing contained on our Sites should be construed as granting any license or right to use any Trademark displayed on our Sites without our written permission or that of the third-party rights holder.

### **4. ACCESS TO MHE CONTENT.**

We may provide you with access to content and information related to the Services (the "MHE Content"). All use of the MHE Content is subject to the terms herein as well as any additional terms agreed to by the parties in connection with such MHE Content and/or posted on the Site for such MHE Content, including, without limitation, any prohibitions on distribution of the MHE Content to students or third parties. You may not share or distribute to a third party any screen name or password for accessing the Services or the MHE Content. You may access and use materials from the Services and/or the MHE Content for your own research or study only. You agree that you will not otherwise copy, transmit, rent, forward, lend, sell, or modify any materials from the Services and/or the MHE Content or modify or remove any proprietary notices contained therein, or create or enable the creation of derivative works based thereon. You may not use any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Services or the MHE Content. You may not engage in systematic



retrieval of content from the Services or the MHE Content to create or compile, directly or indirectly, a collection, compilation, database or directory. You may not disseminate any portion of the Services or the MHE Content through electronic means, including mail lists or electronic bulletin boards. Except for the limited access license granted you, all rights in the MHE Content are reserved by MHE, and you acquire no right, title or interest in any such content.

## 5. COMMUNICATIONS TO MHE.

Although we encourage you to e-mail us, you should not e-mail us anything that contains confidential information or personally identifiable information. Please refer to the Privacy Notice with regard to how we handle your personal information. By e-mailing us or otherwise providing content to us or posting content to the Sites or the Services including but not limited to feedback, questions, comments, suggestions, and the like ("User Content"), you agree to be bound by our [User Content Submission Agreement](#) and we shall be free to use any non-personally identifiable ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production and marketing of products and services that incorporate such information. You own the rights to anything you post to the Sites or the Services, including text and photographs. You do, however, grant us an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license to use, modify, copy, distribute, publish, perform, sublicense, and create derivative works from all non-personally identifiable submissions you provide to us, in any media now known or hereafter devised.

If the Site or Services permit you to upload third-party content for use with the Service ("Service Uploads"), you represent and warrant that prior to performing any such upload you will secure all necessary rights to grant and will grant MHE the right to make your Service Uploads available to end users with active licenses to use the Services in the same manner and to the same extent as the MHE Content provided in the applicable Service, and that such Service Uploads will not infringe any intellectual, proprietary or other rights of third parties. Additional terms and options for Service Uploads may be presented through the applicable upload interface available on the Site offering the Service which shall be in addition to, and not in lieu of, these Terms of Use.

## 6. COMMUNITY GUIDELINES.

In using the Sites or Services, you agree you will not: (a) submit material that is unlawful, obscene, lewd, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, excessively violent, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate or objectionable; (b) post advertisements or solicitations of business; (c) impersonate another person; (d) submit material that is copyrighted, protected by trade secret or otherwise subject to third party intellectual property or proprietary rights, including privacy and publicity right, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant MHE all of the license rights granted herein; or (e) submit material that is unsuitable for minors in any country.

MHE does not and cannot review all User Content or Service Uploads, and is not in any manner responsible for such content. MHE reserves the right, but not the obligation, to refuse to post, block or remove communications or materials for any reason in its sole discretion and to terminate your access to our Sites and/or the Services to prevent further posting or distribution of any such communications or materials, and MHE may, but is not obligated to, report any of your communications or materials to your educational institution.

**7. NO WARRANTIES.**

WE AND OUR SERVICE PROVIDERS MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONTENTS OF OUR SITES, MHE CONTENT OR THE SERVICES. WE SHALL NOT BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF OUR SITES OR THE SERVICES FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SITES, THE MHE CONTENT, AND THE SERVICES AT YOUR OWN RISK. OUR SITES, MHE CONTENT AND THE SERVICES MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS OR OMISSIONS. MHE IS NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS. MHE RESERVES THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO OUR SITES, MHE CONTENT AND THE SERVICES AT ANY TIME WITHOUT NOTICE.

**8. EXTERNAL WEBSITES.**

Our Sites may contain links to third-party applications or websites ("External Websites"). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Websites. When you access an External Website, MHE has no control over its content, applications, or services. We do not make any representations regarding the accuracy or quality of such content or the accessibility of such External Websites and the materials contained therein, and we disclaim all liability for any errors, omissions, violation of third-party rights or illegal conduct arising from such External Websites.

**9. INDEMNIFICATION.**

You agree to defend, indemnify, and hold us and our officers, directors, employees, successors, licensees, service providers, and assignees harmless from and against any claims, actions, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable legal and accounting fees, arising from or relating to your breach of this Agreement or your access to, use, or misuse of the MHE Content, our Sites, or the Services. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

**10. LIABILITY.**



IN NO EVENT WILL MHE OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MHE CONTENT, SITES, THE SERVICES, OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF USE AND IN NO EVENT SHALL THE LIABILITY OF MHE OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MHE CONTENT, THE SITES, OR THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, MHE's liability in such case will be limited to the greatest extent permitted by law.

#### **11. INFRINGEMENT NOTIFICATION.**

We respect the intellectual property rights of others, and require that the people who use our Sites do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please send notifications of the claimed infringement to: Legal Department, McGraw-Hill Education, 2 Penn Plaza, New York 10121. Notices of the claimed infringement should include the following information: (a) your address, telephone number, and email address; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the alleged infringing material is located, with a link if possible; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

#### **12. COMPLIANCE WITH APPLICABLE LAWS.**

We control and operate our Sites from our offices in the United States of America. We do not represent that materials on our Sites are appropriate or available for use in other locations. Persons who choose to access our Sites from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable. All parties to these terms and conditions waive their respective rights to a trial by jury.

#### **13. TERMINATION OF THE AGREEMENT.**

We reserve the right in our sole discretion, to restrict, suspend, or terminate the use or access to the Services and our Sites and/or discontinue any portion, feature, or content of the Services, MHE Content, our Sites, or this Agreement at any time and for any reason without prior notice or liability. If you violate these Terms of Use MHE may, but is not obligated to, report any such violation of these Terms of Use to your educational institution. When reasonably feasible, we will make reasonable

efforts to provide notice of significant changes to the Services to end users with active licenses to use the Services.

#### 14. MISCELLANEOUS.

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction or terminated in accordance with the "Termination of the Agreement" provision above, the invalidity or termination of such provision shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: "Intellectual Property," "Communications to MHE," "No Warranties," "Indemnification," "Liability," "Compliance With Applicable Laws," "Termination of the Agreement," and "Miscellaneous." Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

Click here to view [Terms of Service](#).

Click here for the Spanish language version of the [Terms of Use](#).

Click here to view [Return Policy](#). [Purchase Order](#)

**McGraw-Hill School Education, LLC**  
**Data Privacy and Security Guidelines**

This Data Privacy and Security Guidelines (“DPSG” or “Security Guidelines”) document sets forth the duties and obligations of MHE (defined below) with respect to Personally Identifiable Information (defined below). In the event of any inconsistencies between the DPSG and the Agreement (defined below), the parties agree that the DPSG will supersede and prevail. Capitalized terms not defined herein shall have the meaning ascribed to them in the Agreement.

1. Definitions.

- a. **"Agreement"** means the Agreement between the McGraw-Hill Education entity (“MHE”) and Subscriber to which these Security Guidelines are referenced and made a part thereof
- b. **"Applicable Laws"** means federal, state and international privacy, data protection and information security-related laws, rules and regulations applicable to the Services and to Personally Identifiable Information
- c. **"End User Data"** means the data provided to or collected by MHE in connection with MHE’s obligations to provide the Services under the Agreement
- d. **"Personally Identifiable Information"** or **"PII"** means information provided to MHE in connection with MHE’s obligations to provide the Services under the Agreement that (i) could reasonably identify the individual to whom such information pertains, such as name, address and/or telephone number or (ii) can be used to authenticate that individual, such as passwords, unique identification numbers or answers to security questions or (iii) is protected under Applicable Laws. For the avoidance of doubt, PII does not include aggregate, anonymized data derived from an identified or identifiable individual
- e. **"Processing of PII"** means any operation or set of operations which is performed upon PII, such as collection, recording, organization, storage, use, retrieval, transmission, erasure or destruction
- f. **"Third Party"** means any entity (including, without limitation, any affiliate, subsidiary and parent of MHE) that is acting on behalf of, and is authorized by, MHE to receive and use PII in connection with MHE’s obligations to provide the Services
- g. **"Security Incident"** means the unlawful access to, acquisition of, disclosure of, loss, or use of PII
- h. **"Services"** means any services and/or products provided by MHE in accordance with the Agreement

2. Confidentiality and Non-Use; Consents.

- a. MHE agrees that the PII is the Confidential Information of Subscriber and, unless authorized in writing by Subscriber or as otherwise specified in the Agreement or this DPSG, MHE shall not Process PII for any purpose other than as reasonably necessary to provide the Services, to exercise any rights granted to it under the Agreement, or as required by Applicable Laws.
- b. MHE shall maintain PII confidential, in accordance with the terms set forth in this Security Guidelines and Applicable Laws. MHE shall require all of its employees authorized by MHE to access PII and all Third Parties to comply with (i) limitations consistent with the foregoing, and (ii) all Applicable Laws.
- c. Subscriber represents and warrants that in connection with any PII provided directly by Subscriber to MHE, Subscriber shall be solely responsible for (i) notifying End Users that MHE will Process their PII in order to provide the Services and (ii) obtaining all consents and/or approvals required by Applicable Laws.

3. Data Security.

MHE shall use commercially reasonable administrative, technical and physical safeguards designed to protect the security, integrity, and confidentiality of PII. MHE's security measures include the following:

- a. Access to PII is restricted solely to MHE's staff who need such access to carry out the responsibilities of MHE under the Agreement
- b. Access to computer applications and PII are managed through appropriate user ID/password procedures
- c. Access to PII is restricted solely to Subscriber personnel based on the user role they are assigned in the system (provided, however, that it is the Subscriber's responsibility to ensure that user roles match the level of access allowed for personnel and that their personnel comply with Applicable Law in connection with use of such PII)
- d. Data is encrypted in transmission (including via web interface) at no less than 128-bit level encryption
- e. MHE or an MHE authorized party performs a security scan of the application, computer systems and network housing PII using a commercially available security scanning system on a periodic basis

4. Data Security Breach.

- a. In the event of a Security Incident, MHE shall (i) investigate the Security Incident, identify the impact of the Security Incident and take commercially reasonable actions to mitigate the effects of any such Security Incident, (ii) timely provide any notifications to Subscriber or individuals affected by the Security Incident that MHE is required by law, subject to applicable confidentiality obligations and to the extent allowed and/or required by and not prohibited by Applicable Laws or law enforcement.
- b. Except to the extent prohibited by Applicable Laws or law enforcement, MHE shall, upon Subscriber's written request, provide Subscriber with a description of the Security Incident and the type of data that was the subject of the Security Incident.

5. Security Questionnaire.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, MHE shall respond to security questionnaires provided by Subscriber, with regard to MHE's information security program applicable to the Services, provided that such information is available in the ordinary course of business for MHE and it is not subject to any restrictions pursuant to MHE's privacy or data protection or information security-related policies or standards. Disclosure of any such information shall not compromise MHE's confidentiality obligations and/or legal obligations or privileges. Additionally, in no event shall MHE be required to make any disclosures prohibited by Applicable Laws. All the information provided to Subscriber under this section shall be Confidential Information of MHE and shall be treated as such by the Subscriber.

6. Security Audit.

Upon written request by Subscriber, which request shall be no more frequently than once per twelve (12) month period, MHE's data security measures may be reviewed by Subscriber through an informal audit of policies and procedures or through an independent auditor's inspection of security methods used within MHE's infrastructure, storage, and other physical security, any such audit to be at Subscriber's sole expense and subject to a mutually agreeable confidentiality agreement and at mutually agreeable timing, or, alternatively, MHE may provide Subscriber with a copy of any third party audit that MHE may have commissioned .

7. Records Retention and Disposal.

- a. MHE will use commercially reasonable efforts to retain End User Data in accordance with MHE's End User Data retention policies.
- b. MHE will use commercially reasonable efforts to regularly back up the Subscriber and End User Data and retain any such backup copies for a minimum of 12 months.



## McGraw-Hill School Education, LLC

### End User Privacy Notice

Effective Date: May 22, 2018

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#### Introduction

As a global leader in providing digital learning systems for educators and students, McGraw-Hill Education ("MHE") is deeply committed to protecting the privacy of our end users. Whether you are using Connect, ConnectEd, Engrade or any of our other solutions, we collect Personally Identifiable Information that we use to provide, maintain and improve the solution. We are providing the below information so that you can understand how we protect and use your information. If you are under 18, we suggest that you review this information with your parents.

This information applies to all end users of our digital learning system. Since McGraw-Hill Education is a service provider to your institution, your institution Educational institutions are best able to provide you with a full understanding of their privacy practices and more information on how their end user's Personally Identifiable Information (PII) is collected, shared, and used. To obtain more detailed information about how PII is collected, used, and shared by your educational institution, please contact the appropriate individual at that institution.

In limited circumstances, end users may also be customers of MHE and MHE may market to them as a customer. For example, end users may purchase products or create personal accounts in our web sites. In these circumstances, they would be treated as a customer. For more information on how your data is used as a customer, please review the Customer Data Privacy Notice. By contrast, this End User Data Privacy Notice applies to end users with respect to the information collected and processed as part of a course of instruction within the digital learning solution as determined by their educational institution or employer. Aggregated de-identified end user PII is leveraged by MHE to improve existing or develop new educational products and services.

MHE is a global organization. We follow privacy laws and regulations that are applicable to our company and our services in the areas where we do business. Should our privacy practices change, we will update it here, but more importantly, we will notify your educational institution in writing and obtain their consent before implementing any material impact to your privacy rights.

#### Questions? Contact us:

Any questions or complaints regarding this notice or the collection, use, disclosure, or transfer of PII collected by your educational institution through our digital learning systems should be directed to the appropriate representative at your educational institution.

Otherwise, if you have purchased or received an MHE product outside of an educational institution, please direct any questions or complaints to the MHE Data Protection Officer by emailing [privacy@mheducation.com](mailto:privacy@mheducation.com) or calling +1-646-766-3199. If applicable, you may choose to lodge a complaint with your national data protection authority at any time. For local privacy contact information, please see [McGraw-Hill Education's Local Privacy Official](#).

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#### ***What is personally identifiable information (PII)?***

Personally identifiable information, or PII, is any information relating to an identified or identifiable natural person ("data subject") including personal data as defined under applicable local law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the

physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

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***What PII do we collect?***

***We collect PII, such as contact information and education details, in order to provide you with the product and/or service requested.***

We only collect the information required to provide, maintain and improve the digital learning solution you use. When you register, or are registered within one of our digital learning solutions, we collect your name, school, instructor, class, and login information. Once you begin using one of our solutions, we collect your input to questions, technical specifications, and other information about how you use the solution. You are not required to provide PII; however, in order to use certain services, we may need to collect certain PII for that service to function properly or for us to provide you with requested information.

Depending on the product, the PII we collect includes information from the following categories:

1. Name, initials, and personal or business-related contact information
  - a. For our digital learning systems, we collect your name/initials and contact information when you create an account. However, we collect additional PII, or confirm existing PII, if you contact customer service with an issue or question.
2. Education & professional information
  - a. For some digital learning systems, we collect PII related to your position as an educator or student. This includes the state, district, name of school, courses, etc.
3. In some instances, we collect PII from third parties who provide single-sign-on functions via Learning Management Systems or related tools.

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***We automatically collect computer metadata and content to provide, improve, and maintain our products and services.***

When you use our digital learning systems, we automatically collect certain information from you through the use of cookies, web beacons or other tracking mechanisms. This includes information about your experience such as your IP address, operating systems, pages viewed, and time spent.

Third parties also collect information automatically from you across websites and over time through the use of their own cookies, web beacons, and tracking mechanisms. This information is used to enable the functions of the digital learning system, as well as customize, maintain, and improve our digital learning systems. You may disable cookies via your browser or third party mechanisms. However, some features of our digital learning systems may not function properly without them. Third party cookies that we use include Google Analytics and Webtrends.

If you choose to communicate with or receive communications through our services via phone, text, chat, email, or any other platform for technical support, customer service, or other assistance, those interactions may be recorded and monitored to deliver the solution or information requested by you.

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***How do we use PII and on what legal basis?***

As mentioned above, we use your information to provide you with the digital learning solution on behalf of your school, in order to meet our contractual obligation to you or your school with respect to the service. For example, to assist with identifying users across products and providing consistent service and to enable sharing of data between our products and your school's learning management system.



We will also process your PII to meet our legitimate interests, for example to improve the quality of services and products.

Except as described in this notice, we limit the use, collection, and disclosure of your PII to the minimum level necessary to deliver the service or information requested by you or your institution. We do not collect, use, or disclose PII that is not reasonably related to a legitimate business purpose necessary to serve you. Your information may also be used in order to maintain and/or improve our services.

Some of our digital learning solutions will use your previous responses to customize your learning experience. This customization is designed to ensure the best possible learning environment for a student without directly driving any determinative outcome.

Provision of your PII may be necessary in order to use the chosen digital learning solution. Failure to provide us with your PII may preclude you from using the digital learning solution.

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***Do we sell or use your PII to market to you?***

**We will not sell end user PII or use information from educational records for marketing purposes.**

We will not sell PII to other organizations, nor will we market to students using the information from their educational records (education records are defined as records directly related to a student and maintained by an educational agency or institution, or by a party acting for the agency or institution).

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***When do we share your PII with third parties?***

***In general, we only share your PII in order to provide, maintain, or improve our products or services, or respond to legal requests.***

1. Co-branded/Other Web Sites and Features – We may share your PII with third-party business partners for the purpose of providing the service to you. These third-party business partners include cloud service providers, learning management systems (LMS), other educational software providers, etc. These business partners will be given limited access to the PII that is reasonably necessary to deliver the service, and we will require that such third parties follow the same privacy and security practices as MHE.
2. Business Transfer – In the event of a sale, merger or acquisition, we will be able to transfer your PII to a separate entity. We will use commercially reasonable efforts to require this entity to use your PII only for authorized purposes and by authorized persons in a manner consistent with the choices end users have made under this notice, and that security, integrity, and privacy of your PII is maintained.
3. Agents/Service providers – We hire other companies to perform certain business-related functions on our behalf and according to our instructions. For example, we provide your PII to service providers that host our platform data in the cloud (e.g., AWS).
4. Affiliates – McGraw-Hill Education is a global corporation that consists of multiple organizations. We share your PII between organizations within McGraw-Hill Education to provide, maintain, and improve our products and services. A list of the companies within the MHE group is available [here](#).
5. Educational Institutions – As we provide products and services to your school, we share your data with approved individuals at your school, such as administrators or educators.
6. Law Enforcement – In the event that McGraw-Hill Education receives a legal demand for end user data from a law enforcement agency, that request will only be honored if:
  - a. The request complies with all laws and clearly establishes the legal need for disclosure.



- b. The request is related to a specific investigation and specific user accounts are implicated in that investigation.
- c. Whenever legally permissible, users shall receive notice that their information is being requested.

MHE reserves the right to disclose to third parties non-personally identifiable information about our users and their use of the MHE services. For example, MHE may disclose aggregate data about the overall patterns or demographics of the users of the MHE products or services.

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### ***What rights do you have?***

***As a user, you have the rights to access, export, be informed about, rectify, object to the further processing of, restrict the processing of, withdraw consent to the processing of, and erase your PII.***

***If you are a student at an educational institution using an MHE product, you should direct any requests to exercise your data subject rights to the appropriate representative at your institution. If you are an educator or administrator you may reach out to MHE directly on the requests below:***

1. Access and rectification – We strive to ensure that the PII we have about you is accurate and current. You may obtain confirmation as to whether or not PII concerning you exists, regardless of whether PII has already been recorded, and be communicated such information in a readily understandable form.
2. Choice & Objection to processing – With limited exceptions, you may choose to change how we use your PII at any time. However, if the PII is required in order to provide you with the service or process a transaction, you may not be able to opt-out without canceling the transaction or service. You may object, in whole or in part, on legitimate grounds, to the processing of your PII, even where such processing is relevant to the purpose of the collection. Please know that if we do receive a request to objection to the further processing of your information, you may no longer be able to access or use the digital learning solution.
3. Withdraw consent – Your educational institution is responsible for obtaining your consent, where required. MHE obtains consent from your institution to collect, process, and store your PII.
4. Restriction of processing: In specific cases (e.g., if you challenge the accuracy of the PII, while this is being checked), you can request a restriction on the processing of your PII, which can only be processed to file or defend claims.
5. Information – You have the right to be informed a) of the source of the PII; b) of the purposes and methods of the processing; c) of the logic applied to the processing, if processing is carried out with the help of electronic means; d) of the identity of the data controller and data processors; and e) of the entities or categories of entities to whom the PII may be communicated and who may have access to such PII in their capacity as data processor(s) or person(s) in charge of the processing.
6. Data portability – You have the right to export your PII from our systems in a readily accessible file type.
7. Erasure – You may request erasure, anonymization or blocking of a) PII that have been processed unlawfully; b) PII whose retention is unnecessary for the purposes for which it has been collected or subsequently processed. You can obtain certification to the effect that such operations, as well as their contents, have been notified to the entities to whom the data were communicated, unless this requirement proves impossible or involves a manifestly disproportionate effort. Since your educational institution has hired us to manage this information for them, we ask that you or your parent make any request to delete your information directly to your school. Please know that if we do receive a request to delete your information, you may no longer be able to access or use the digital learning solution.

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***How do we protect your PII?***

***Our IT security team has established industry standard security measures to protect your PII from unauthorized access and use.***

MHE takes reasonable precautions to protect your information. When you submit PII via the digital learning system, your information is protected both online and off-line. MHE utilizes reasonable security measures to protect the security and confidentiality of your PII from unauthorized access and use.

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***How long do we retain your data?***

We will retain your data for the minimum amount of time necessary to accomplish the purpose for which it was collected, and thereafter no longer than is permitted under MHE's data retention policies. We will retain and use your data as necessary to comply with our obligations, resolve disputes and enforce agreements.

For information on the retention period that applies, reach out to the Privacy Office by emailing [privacy@mheducation.com](mailto:privacy@mheducation.com) or calling +1-646-766-3199.

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***When do we store, transfer or process PII internationally?***

***McGraw-Hill Education is a global organization. Depending on your location, and the product or service, your information may be stored and processed within secure data centers at one or many of our locations. MHE has committed to meeting the requirements of local data protection laws, including EU law, to the extent required. If your data is stored locally, then your local laws prevail.***

We recognize and acknowledge current data protection laws in the European Union, Switzerland, and around the world. To comply with privacy laws in the European Union, we have implemented appropriate contracts for the international transfer of PII, on the basis of the standard contractual clauses approved by the European Commission and other international models as required by local law, to provide a legal mechanism for transferring data to MHE locations globally. For more information on the aforementioned model contracts and how to obtain a copy of the contract, please contact the Privacy Office at [privacy@mheducation.com](mailto:privacy@mheducation.com) or +1-646-766-3199.

ATTACHMENT B  
(MCPS General Contract Articles)

## **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/](http://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](http://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](http://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/](http://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 C**  
**(List of Data Elements)**

Category of Data	Elements*
Application Technology Meta Data (All users)	IP Addresses of users, Use of cookies etc.
Application Use Statistics (All users)	Meta data on user interaction with application
Assessments (Students)	<ul style="list-style-type: none"> <li>• In-program formal assessment scores</li> <li>• Teacher, peer, and self-scored rubrics</li> <li>• Assignment performance data</li> </ul>
Communications (MCPS Staff)	Online communications that are captured (emails, blog entries)
MCPS Staff Information	First and Last Name
	Username
	Password
	Email
	Role (district administrator/school administrator/teacher)
	Teacher – Grade Level Taught
	Teacher – Name of Class
	Teacher created assessments, polls, or other content created for students.
	Nickname - Optional
Demographics (Student)	Date of Birth - Optional
	Place of Birth - Optional
	Gender - Optional
	Ethnicity or race - Optional
	Residency status - Optional
Enrollment (Student)	Student school enrollment
	Student grade level - Optional
	Specific curriculum programs
Schedule (Student)	Student scheduled courses
	Teacher names
Student Contact Information	Email - Optional
	Phone - Optional
Student Identifiers	Local (School district) ID number
	Vendor/App assigned student ID number
	Student app username
	Student app passwords

Category of Data	Elements*
Student Name	First and/or Last
Student In App Performance	Program/application performance (typing program-student types 60 wpm, reading program-student reads below grade level)
Student Survey Responses	Student responses to surveys or questionnaires: Blast feature contains a poll question that is related to the academic subject at hand. The teacher has full control over the assignment of a Blast and can determine whether a Blast question which includes a poll question is visible and assigned to students.
Student work	Student generated content; writing, pictures etc.
Transcript (Student)	Student course grades
	Student course data
	Student course grades/performance scores
Other (Student)	<ul style="list-style-type: none"> <li>• ELL status (student proficiency level)</li> <li>• Student nicknames</li> <li>• color theme preferences</li> <li>• Native language in order to provide the summary texts which also helps activate some additional scaffold options.</li> </ul>

\*All elements are required unless otherwise noted.

ADDENDUM 1  
SERVICE LEVEL AGREEMENT

This Service Level Agreement (the “SLA”) sets forth MHE’s service level obligations with respect to the Services provided pursuant to the Agreement for Professional Services by and between McGraw-Hill School Education, LLC (“MHE”) and the Board of Education of Montgomery County (“Subscriber”) dated 1/10/19 (the “Agreement”).

1. Definitions. Unless otherwise defined in this SLA, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

1.1 “Availability”/ “Available” shall mean the time in which there are no Outages.

1.2 “Average Aggregate Response Time” means the total amount of time (measured in milliseconds) to complete a user inquiry transaction, measured from the receipt of the user inquiry.

1.3 “Incident” shall mean a problem with the MHE ConnectED Services as more fully described in Section 4 below, to the extent such problem is not caused by an event or effect that cannot be reasonably foreseen or controlled by MHE or a breach of the Agreement by Subscriber.

1.4 “Outage” means the occurrence and period of time of any Priority 1 Incident (each as defined in the Section entitled Incident Management Procedure below) immediately following the Initial Response SLA until such Incident is resolved. For the avoidance of doubt, an Outage shall exclude Scheduled Downtime.

1.5 “Scheduled Downtime” shall mean the scheduled and approved time described in Section 2.2 below during which the Services are non-operational during a Standard Maintenance Period.

1.6 “Standard Maintenance Period” shall mean the regularly scheduled maintenance period during which MHE performs maintenance on the Services.

1.7 “Total Minutes” shall mean the total number of actual minutes in a calendar month.

2. Availability SLA

2.1 Service Availability. The Services will be Available for access by end users 99.9% of each calendar month during the term of the Agreement. Compliance with the Availability SLA will be measured on a calendar month basis. Availability will be calculated by dividing (i) the total number of minutes of Availability, by (ii) the Total Minutes in such month, and then multiplying that amount (the quotient) by 100. In event that the Availability SLA falls below 99.9% or MHE fails to meet a Response Time Service Level (as described in Section 4) in any given month, MHE agrees to provide the

Subscriber a credit in the amount of 1/12<sup>th</sup> of the total annual amount of fees to be paid by the Subscriber to MHE for the currently applicable year under the Agreement.

2.2 Scheduled Downtime shall include:

- A monthly window for software maintenance with no or minimal disruption of the Service. MHE will provide advanced notification to Subscriber for planning and customer notification purposes.
- Planned downtime for scheduled maintenance on Saturdays between the hours of 4:00 a.m. and 8:00 a.m. EST.

3. **Average Aggregate Response Time.** The average response time will be less than five (5) seconds during any 1-hour period for MHE server response to an inquiry to access the Service.

4. **Incident Management Procedure.** MHE shall respond to Incidents in accordance with time intervals and other requirements corresponding to the applicable Incident Priority Levels set forth in the below table (each, an “Incident Response SLA”). Incident Priority Levels will be reasonably determined by MHE in a manner consistent with the below descriptions. Subscriber shall provide commercially reasonable assistance to MHE in connection with MHE’s efforts to respond to an Incident, including, but not limited to providing log files and reports to enable MHE to replicate the Incident.

Incident Priority	Incident Description	Response Time Service Level
Priority 1:	<ul style="list-style-type: none"> <li>• Service is down or unavailable; or</li> <li>• Service function is so severely impacted that there is, or if the Incident is not resolved there will likely be, a halt to Subscriber’s business; or</li> <li>• &gt;95% of the end users at a school are unable to access or use the Service.</li> </ul>	<p>Provided that MHE receives initial notification of the Priority 1 Incident during its Hours of Operation, MHE will respond to and MHE’s engineers will commence efforts to fix Priority 1 Incident within 2 hours after such notification of such Incident. MHE shall acknowledge receipt of Subscriber’s initial notification of a Priority 1 Incident within 1 hour, and shall provide status updates thereafter.</p>
Priority 2:	<ul style="list-style-type: none"> <li>• Service functionality is substantially impacted or significant Service performance degradation is experienced with high impact to Subscriber’s business operations affecting 75% to 95% of the end users at a school.</li> </ul>	<p>Provided that MHE receives initial notification of the Priority 2 Incidents during its Hours of Operation, MHE will respond to and MHE’s engineers will commence efforts to fix Priority 2 Incidents no later than 12 hours after Subscriber’s initial notification of such Incident. MHE shall acknowledge receipt of Subscriber’s initial notification of a Priority 2 Incident within 2 hours, and shall provide status updates thereafter.</p>

Incident Priority	Incident Description	Response Time Service Level
Priority 3:	<ul style="list-style-type: none"> <li>• There is a partial, non-critical impact to Service functionality or Service performance degradation with medium to low impact to Subscriber's business operations at a school.</li> </ul>	<p>Provided that MHE receives initial notification of Priority 3 Incidents during its Hours of Operation, MHE will respond to Priority 3 Incidents no later than 48 hours after Subscriber's initial notification of such Incident, during MHE's Hours of Operation (or on the next business day, if the Incident is reported outside of MHE's Hours of Operation). MHE shall acknowledge receipt of Subscriber's initial notification of a Priority 3 Incident within 12 hours (or on the next business day, if the Incident is reported outside of MHE's Hours of Operation), and shall provide status updates thereafter.</p>
Priority 4:	<ul style="list-style-type: none"> <li>• Requests involving routine technical issues; or</li> <li>• Inquiries regarding Service capabilities; or</li> <li>• Notice of minor Service performance issues for which a fix or work around is available.</li> </ul>	<p>As may be available or as may be included in a future update or version.</p>

5. **Help Desk Services.** MHE shall provide to Subscriber unlimited telephone and email support during the hours of operation set forth below (the "Hours of Operation") with respect to technical issues arising out of the Services, and to accept initial notifications and to respond to Incident related requests from Subscriber (the "Help Desk Services"). MHE shall also be available to accept initial notifications and Incident related requests from Subscriber with respect to Priority 1 Incidents outside of MHE's Hours of Operation by way of email.

<p>Hours of Operation</p> <ul style="list-style-type: none"> <li>• 7:00 a.m. to 8:00 p.m. Eastern time, Monday through Friday</li> </ul>	<p>Hotline Number and Incident Reporting Portal</p> <ul style="list-style-type: none"> <li>• Online Help: <a href="http://mheducation.force.com/CustomerSupport">mheducation.force.com/CustomerSupport</a></li> <li>• Phone: (800) 437-3715</li> <li>• Email: <a href="mailto:epgtech@mheducation.com">epgtech@mheducation.com</a></li> </ul>
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