



**MONTGOMERY COUNTY PUBLIC SCHOOLS**  
MARYLAND  
www.montgomeryschoolsmd.org



301-279-3090

July 24, 2018

RFP Number: 9145.1, Fresh Produce  
Due Date: August 23, 2018  
Open Time: 2:00 p.m.

To: Prospective Offerers

Montgomery County Public Schools (MCPS) is seeking proposals for Fresh Produce with the Division of Food and Nutrition Services. The information contained in the attached Request for Proposal (RFP) provides requirements.

Please respond according to the instructions provided. Proposals must be received on or before 2 p.m., on August 23, 2018. Proposals received after this date and time will not be considered. Proposals shall be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals shall be marked on cover pages with **“ORIGINAL BUSINESS”** or **“ORIGINAL COST PROPOSAL”** and **“COPIES”** and **“REDACTED”**. Proposals shall be delivered to Montgomery County Public Schools Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850.

The contractor must submit one (1) original and five (5) separate copies of the Business Proposal and one (1) original and five separate (5) copies of the Cost Proposal and one (1) Redacted copy. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit the district to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

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

Sincerely,

Kathleen Lazor, Director  
Department of Materials Management

KCL: tmb

Procurement Unit

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

**Request for Proposal No. 9145.1, Fresh Produce**

**1.0 INTENT**

The specifications contained herein are intended to cover the furnishing and delivery of fresh produce to the Montgomery County Public Schools (MCPS), Division of Food and Nutrition Services (DFNS) Warehouse, located at 8401 Turkey Thicket Drive, Gaithersburg, Maryland 20879 and other MCPS sites within Montgomery County, Maryland as scheduled. The goal of this RFP is to increase the variety of fresh fruits and vegetables that are locally sourced. Locally sourced items will decrease the distance that the fresh produce must be shipped between farm and the district. Locally sourced will be defined first within the State of Maryland and then the states of Virginia, West Virginia, Pennsylvania, New Jersey, Delaware, and North Carolina. It is the intention of the Division of Food and Nutrition Services to highlight the locally grown items that are on the menus, preferably with the name of the farm.

**2.0 INTRODUCTION**

Montgomery County Public School (MCPS) is the 14th largest school system in the United States, and the largest in the state of Maryland. During the 2017–2018 school year, MCPS serve more than 161,000 students from 157 countries speaking 150 languages. With a Fiscal Year (FY) 2018 Operating Budget of approximately \$2.52 billion, MCPS employs more than 23,000 employees. Among the 205 schools that MCPS operates, 39 are National Blue-Ribbon schools. Six MCPS high schools rank in the top 200 of *The Washington Post's* 2015 High School Challenge, and all 25 MCPS high schools appear on this list, which only includes the top 11 percent of high schools in the country. MCPS has one of the highest graduation rates among the nation's largest school districts, according to an *Education Week* report. In 2010, MCPS was the recipient of the Malcolm Baldrige National Quality Award, the highest presidential honor given to American organizations for performance excellence. The student demographics of MCPS in 2017 are as follows:

White: 28.3%  
Hispanic/Latino: 32.3%  
Black or African American: 21.4%  
Asian: 14.4%  
Two or more races: ≤ 5.0%  
American Indian or Alaskan Native: ≤ 5.0%  
Native Hawaiian or other Pacific Islander: ≤ 5.0%  
Students receiving Free and Reduced-price Meals System (FARMS): 35.1%  
Students ever receiving FARMS: 35.1%  
English for Speakers of Other Languages (ESOL): 17.5%  
Students receiving special education services: 11.7%

### 3.0 SCOPE OF SERVICES

MCPS intends on placing an order each business day (Monday through Friday) with the awarded vendor. The successful respondent shall be required to deliver two working days after an order is placed (i.e., orders placed on Wednesday shall be delivered on Friday). MCPS reserves the right to require a re-delivery on the same day if an essential item is shorted, missing, or rejected for cause. MCPS reserves the right to add or subtract from the list of schools for direct delivery. Direct delivery sites will require 1-2 deliveries per week. Produce must be delivered in refrigerated trucks. The current locations are listed below and are subject to change;

- DFNS WAREHOUSE
- Ashburton ES
- Blair HS
- Broad Acres ES at Leleck
- Burning Tree ES
- Café 45 at 45 West Gude Drive
- CESC Cafeteria
- Clarksburg HS
- Cloverly ES
- Gibbs ES
- Harmony Hills ES
- Kensington Parkwood ES
- Jones Lane ES
- Oakland Terrace ES
- Maryvale ES
- New Hampshire Estates ES
- North Chevy Chase ES
- Rock Creek Forest ES
- Rock View ES
- Rocky Hill MS
- Rolling Terrace ES
- Smith Center
- Stonegate ES
- Stone Mill ES
- Neelsville MS
- Redland MS
- Sherwood HS
- Westland MS
- Wheaton HS
- Walt Whitman HS
- Wayside ES
- Wood Acres ES

**The successful respondent shall notify MCPS in advance of anticipated shortages to determine if substitution is required. If a substitution is required, the substitution in quality or quantity will only be accepted with prior approval from the Division of Food and Nutrition Services. If the substitution is unavoidable, the substituted item will be an equivalent at no additional cost to MCPS.**

The successful respondent and the DFNS Warehouse shall establish a mutually agreeable “standing delivery appointment” for the delivery of fresh produce daily, to the MCPS Division of Food and Nutrition Services (DFNS) warehouse. The standing appointment can be arranged by calling the DFNS Warehouse at (301) 284-4990. In addition, twice per week direct deliveries shall be made to two office building cafeteria locations, the Carver Educational Services Center located at 850 Hungerford Dr. Rockville, MD 20850 and Café 45 located at 45 West Gude Dr., Rockville, MD 20850. There are approximately 25 elementary schools with salad bars who require twice weekly direct delivery. This number is expected to increase over the life of the contract. The respondent will serve as a resource for suggestions for more unusual fresh fruits and vegetables that are economically feasible.

Deliveries to the DFNS warehouse shall be no later than 6:00 a.m., Monday through Friday, except school holidays or days closed due to inclement weather. Deliveries to school locations shall be no earlier than 7:00 am. The vendor shall be responsible for keeping informed of holidays and emergency closings. The successful respondent shall contact the DFNS Warehouse on the days that schools and/or offices are closed to determine whether the standing delivery appointment shall be cancelled. MCPS shall not be liable for deliveries when schools and/or offices are closed.

## SCOPE OF SERVICES (CONT'D)

Merchandise delivered by truck must be on 48" x 40", four-way entry pallets acceptable to the DFNS Warehouse. All acceptable pallets will be exchanged evenly, or the merchandise must be placed by the driver in an acceptable pattern on MCPS pallets upon delivery. Any physical handling of the product required during delivery will be the responsibility of the driver. Invoices accompanying deliveries must be in the same product sequence as is listed on the MCPS order document.

All vehicles shall comply with Federal and Maryland sanitation codes.

Any exception to the delivery conditions specified must be clearly identified as an alternate proposal. Alternate proposals for delivery will be considered, but only on an individual item basis, and only awarded if in the best interest of the Board of Education. Such quotation may be made in addition to the delivery requirements set forth as part of these conditions.

### 4.0 BUY AMERICAN REQUIREMENT

The National School Lunch Act (NSLA) mandates that school districts use federal funds to purchase only food produced in the United States. Accordingly, the products supplied by the successful respondent must be a domestic food commodity or a domestic food product, as these terms are defined within NSLA regulations. Exceptions for products such as bananas, will be requested from Maryland State Department of Education for an annual term. Other exceptions must be documented on an as needed basis. Documentation for all requests should be on letter head with the details for the exception, such as availability and or cost.

A domestic food commodity is an agricultural commodity (for example, red meat, chicken, fruit, vegetable or grain) that is produced in the United States. A domestic food product as defined by federal regulations is a product processed in the United States "substantially" using domestic agricultural commodities. Substantially means that over 51 percent (51%) of the processed food comes from American-produced products.

### 5.0 FOOD SAFETY AND RECALLS

Ensuring the safety of the food supply is critical to MCPS. Manufacturers and distributors are expected to comply with all federal, state, and local laws and regulations. If manufacturers and distributors do not comply with mandated laws and regulations, they will be held liable. Recalls are an effective method of removing or correcting consumer products that are in violation of laws administered by the Food and Drug Administration. The respondent shall have a process in place to effectively respond to a food recall which should include the following;

- a. Provide accurate and timely communication to MCPS regarding a food recall.
- b. Ensure that unsafe products are removed from school sites in an expedient, effective, and efficient manner.
- c. Streamline the process for reimbursement of recalled product.
- d. Submit a one-page summary of their recall policy and procedures.

(See Attachment F)

## 6.0 EDUCATIONAL SUPPORT

MCPS is seeking educational projects that are a collaboration between awarded respondent(s) and our schools. Our stakeholders believe in the importance of increasing the awareness for our students of where our food is grown and who is growing it. School and class visits from local farmers are essential to this process with the intent to increase student nutrition and increase their awareness regarding the role of fresh fruits and vegetables in a healthy lifestyle. This initiative will also serve as a support for our local farmers.

Examples of collaborative efforts may include school visits from local farmers and educational resources associated with their crops.

## 7.0 PROVISION FOR PRICE ADJUSTMENT

Recommendations for awards shall be made based on the original RFP submission only. Subsequent to contract award, the unit prices quoted herein are subject to price adjustment upward or downward in accordance with increases or decreases announced by the producer(s). The successful respondent must notify the director of the Food and Nutrition Services of any announced producer's price reductions and give immediate benefit to MCPS in a proportionate amount.

Price increases for service fees or fixed cost shall not be considered during the original contract term. Thereafter, if the contract is extended, the successful respondent must submit a written request for price relief. The request for a price increase shall include documentation from the producer to verify the basis for such request. MCPS reserves the right to accept or reject the request as may be determined to be in the best interest of MCPS. If a price increase is accepted, a contract amendment shall be issued authorizing the change. Any orders received prior to a request for a price increase shall be honored at the original contract price.

## 8.0 COMMUNICATION OF MARKET CONDITIONS

The successful respondent(s) shall serve as the school system's "produce buyer" making recommendations on a regular basis as to which items and qualities are the best buys for the intended usage. For example, in the event of significant price escalations the supplier shall be prepared to offer substitutions of equal or superior quality that would be considered better values under the current market condition. All substitutions must be approved in advance by the director of the Division of Food and Nutrition Services.

## 9.0 SAMPLES

Samples will be required if selected for evaluation subsequent to the Request for Proposal opening. Samples requested shall be forwarded to the Division of Food and Nutrition Services, Attention: Ms. MaryAnn Gabriel, 8401 Turkey Thicket Drive, Gaithersburg, Maryland, 20879. The outside packaging of samples shall be clearly marked "Samples" with the RFP number affixed to the packaging. Samples shall be required within two (2) business days of request. Failure to provide samples as required may result in RFP disqualification of the RFP submission.

Samples shall be of sufficient quantity to allow thorough testing of the product. Each individual sample submitted shall bear the name of the respondent, RFP number, and item number and shall be carefully tagged or marked in a substantial manner. If samples are not properly marked, the samples may not be considered.

## 10.0 DEVIATIONS

All responses meeting the intent of the request for proposal will be considered for award. Respondent(s) offering and quoting on substitutions or who are deviating from the terms, conditions, and/or specifications shall list such and explain in entirety on a separate sheet and submitted with its response. The absence of such sheet shall indicate that the respondent has taken no exception and shall be held responsible for performing in accordance with the terms, conditions, and specifications as stated herein.

## 11.0 PRICING AND QUOTATIONS

MCPS is seeking proposals based on either a fixed service fee for items that are market sensitive or a fixed price for pre-packaged value added items. Respondent shall enter a fixed service fee or fixed price for each item on the attached specification sheet.

If awarded, prices shall be submitted the Wednesday prior to the start of the week by 10:00 am to the designated DFNS staff on a spreadsheet for items that are floating. Price is then firm for one calendar week. The fixed price markup shall remain the same for the term of the contract. The unit prices submitted shall be based upon the distributors landed costs and markup dollar amount. Respondent shall clearly indicate when a price is a service fee or fixed cost.

Vendor's cost shall be determined as the Freight on Board (FOB) price, vendor's dock, less any applicable or accrued trade discounts. The fixed service fee shall cover vendor's delivery costs and profits to transport product FOB to the DFNS Warehouse.

Emailed proposals will not be accepted at this time. Respondent(s) shall enter the information on the Item Specification Sheet pages included in the RFP package.

## 12.0 QUALITY

All product is to be US grown (when available and economically feasible) and US #1 grade or better. The successful Respondent(s) will be able to supply information to document their process for certifying domestic origin for all products throughout the supply chain. All value-added items will have a best by date of at least 10 days from the date of delivery. All packaging and packing will be in accordance with Good Commercial Practice. The successful Respondent(s) will be able to provide documentation to support their HAACP, GMP, and /or SQF certification ratings.

## 13.0 QUANTITIES

The quantities listed on the Item Specification represent the estimated yearly usage and are subject to change. MCPS shall not be obligated to purchase any specific quantity. MCPS reserves the right to add and/or delete items during the contract term. The successful respondent is encouraged to present and/or demonstrate new items or concepts to Susan McCarron, Director of the Division of Food and Nutrition Services at [Susan\\_H\\_Mccarron@mcpsmd.org](mailto:Susan_H_Mccarron@mcpsmd.org).

## 14.0 USE OF PRESERVATIVES AND PESTICIDES

No sulfite preservatives are permitted. Produce certified free from pesticide residues is preferred when available and competitively priced.

**15.0 LOCALLY-GROWN PRODUCE**

Locally grown produce is the preference for DFNS purchases as often as seasonally and financially feasible. When locally grown is available it will be identified on the menus. In accordance with “Buy America” provision, all produce shall be first obtained from “local area” growers when in season and available, then American grown produce. If US grown produce is not available in sufficient quantities to provide affordability, then only produce inspected by the USDA is acceptable. The successful respondent(s) shall obtain all produce from “local area” growers when in season and available. The director of the Division of Food and Nutrition Services shall be notified when locally grown product is available and shall be provided samples for approval. Locally grown product must meet all specifications as indicated in the RFP.

The respondent shall list the names of Maryland Farmers and the products purchased from them in the past 12 months.

**16.0 SUMMER OPERATION**

Produce is delivered 2-5 days per week during the summer. Quantities and items purchased during the summer may be different from that purchased during the school year, i.e. cantaloupe, watermelon, etc., may be purchased in significantly larger quantities during the summer.

**17.0 PRODUCT PROTECTION GUARANTEES**

School districts have “automatic” product protection recourse against respondent(s) for product safety. According to Federal regulations, the respondent whose name and address appear on the package is the responsible party. Respondent(s) are expected to take immediate action to correct any situation in which product integrity is violated.

**18.0 SUBMITTAL OF SAMPLE INVOICE AND DOCUMENTATION OF VENDOR COST**

Respondent(s) must include with their proposal two (2) sample invoices showing cost plus service fee for the following items for the periods of January 9-13, 2018 and January 23-27, 2018:

1 case Apples	1 case Tossed Salad mix
1 case Slicing Tomatoes	1 case Broccoli Florets
1 case Baby Carrots	1 bag Chopped Romaine
1 case Oranges	1 bag Baby Spinach

Documentation of respondent(s) cost shall also be provided which must clearly show the respondent(s) actual costs during the periods indicated and correspond to the package sizes and descriptions listed in the attached Item Specification.

**19.0 INVOICES AND RECORDS**

Duplicate invoices (in MCPS order document sequence) must accompany each delivery. The successful respondent(s) shall honor requests for credit based on managers notification that product was unusable. Monthly statements and credit slips within two (2) weeks of request from the DFNS. MCPS also reserves the right to review actual respondent(s) costs for any given period of the contract. Documentation of respondent(s) costs must be provided within two weeks of request. In addition, the

## **INVOICES AND RECORDS (CONT'D)**

successful respondent must be able to provide quarterly reports regarding the type, amount, and source of local produce to the Director of the Division of Food and Nutrition Services.

### **20.0 TRACEABILITY**

The successful vendor will provide quarterly reports regarding the type, amount, and source of local produce to the Director of Food and Nutrition Services. The system that will be used to identify the source for the produce should be listed. Each case/box should be labeled with the product and dated either for the pack date or best buy date. The district reserves the right to request documentation to verify the traceability information.

### **21.0 PURVEYOR OF DEFAULT**

In case of default or failure to deliver product by the time specified, MCPS, after due notice, reserves the right to procure from other sources and hold the vendor responsible for any excess costs.

### **22.0 CONTRACT TERM**

The initial term of contract shall be for two (2) years as stipulated on the RFP. However, the contract may not begin until one day after approval by the Montgomery County Board of Education and will conclude as stated under the contract term. MCPS reserves the right to extend this contract at existing prices, terms, and conditions for up to three (3) additional terms for one (1) year each. Written notice indicating MCPS' intention to pursue the extension of the contract will be issued to the successful respondent (s) 90 days prior to the expiration of the original contract. The respondent(s) shall have ten (10) days from the date of notification to return the notice acknowledging its intent to accept or reject the extension.

Once all responses are evaluated, MCPS staff may make a recommendation to the Board of Education.

### **23.0 CONTRACT TERMINATION**

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

### **24.0 REFERENCES**

All respondents shall include a list of a minimum of three references, including local purchases who use the respondent's services who can attest to their quality of work and, if possible, shall include school districts of comparable size to MCPS that have utilized the Respondents' services. Include names of client, contact person, email address and phone number of all references. Also, as an attachment, contracts shall include a list of all current school district clients. References may or may not be reviewed or contacted at the discretion of MCPS. Typically, only references of the top ranked short-listed respondents are contacted. MCPS reserves the right to contact references other than, and/or in addition to, those furnished by a Contractor.



**REFERENCES (CONT'D)**

<u>Company Name &amp; Address</u>	<u>Contact Person</u>	<u>Phone Number</u>
1. _____		
Email _____		
2. _____		
Email _____		
3. _____		
Email _____		

**25.0 FORMAT OF RESPONSE**

- 26.1 Response to this RFP shall be submitted in the same order as the RFP and provide an individual response to each RFP specification.
- 26.2 Respondent(s) shall include all statements and representations made within its proposal in the contract for services with the MCPS. This includes, but is not limited to, the respondent(s) point-by-point response to this RFP. If the respondent(s) responds as “Understand and comply,” it is assumed that the respondent(s) complies with MCPS’ understanding of the requirement.
- 26.3 MCPS shall not be responsible nor be liable for any costs incurred by the respondent(s) in the preparation and submission of their proposals and pricing.
- 26.4 A pricing proposal shall be submitted as a separate document

**26.0 MANDATORY SUBMISSIONS**

Each respondent(s) must submit a complete proposal including all required information and attachments. The response shall address each paragraph in the same order as the RFP and provide an individual response to each RFP specification. All proposals must be presented using the same numbering sequence and order used in this RFP document or as otherwise specified by MCPS. One (1) original and three (3) copies, as well as one (1) electronic version on CD or flash drive of the response, and one (1) redacted copy, as well as one (1) electronic version on CD or flash drive of the redacted response must be sent by mail, courier, or hand-delivery to the address below. Responses shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the Table of Contents. No faxes or electronic submission of proposals will be accepted. **Proposals are to be received no later than 2:00 p.m. on August 23, 2018.** Submit responses of the entire RFP proposal to:

Montgomery County Public Schools  
 Procurement Unit  
 Attn: Tina Marie Booth  
 45 West Gude Drive, Suite 3100  
 Rockville, MD 20850

**MANDATORY SUBMISSIONS (CONT'D)**

Submissions will become the property of MCPS.

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

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

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

**Complete Response must include:**

Failure to include the following required submissions may render the proposal non-responsive as determined by the director of the Department of Materials Management.

- Point-by-point Response to each section of the RFP
- A list of at least three (3) references including contact persons and telephone numbers must be submitted, See 24.0 References.
- Respondent's annual fiscal report to demonstrate the respondent's financial stability (If desired, the Respondent also may include any other financial documents that the Respondent wishes to include regarding respondent's financial condition).
- Equal Opportunities Certification (Attachment A)
- Certification of Non-segregated Facilities (Attachment B)
- Minority Business Enterprise (Attachment C)
- Non-Debarment Acknowledgement (Attachment D)
- Mid-Atlantic Purchasing Team Rider Clause (Attachment E)
- Hold-Recall Contact Form (Attachment F), see section 5.0 Food Safety and Recalls
- Current Form W-9
- A redacted copy of the Respondent's proposal as specified in Sections 27 and 28.
- Cost proposal (Attachment G)

All of these written deliverables described above shall be submitted in electronic format (MS Word) with at least five (5) hard copies. Absent good cause, payment for items shall be contingent upon meeting the mutually agreed-upon deadlines.

It is the intention to award to the most favorable respondent(s) based on the evaluation criteria in Section 29.0. However, the Board reserves the right to make awards according to the best interest of MCPS. This request for proposals may result in multiple awards for different components of the scope of services.

**MANDATORY SUBMISSIONS (CONT'D)**

In determining the qualifications of a respondent, MCPS will consider the respondent(s) record and performance of any prior contracts with MCPS, federal departments or agencies, or other public bodies, including but not limited to the respondent(s) record providing such detailed programs/services as described in Section 3.0 to MCPS or other schools or school districts. MCPS expressly reserves the right to reject the proposal of any respondent if the investigation discloses that the respondent, in the opinion of MCPS, has not properly performed such prior contracts or has habitually and without just cause neglected the payment of bills or has otherwise disregarded its obligations'.

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

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

**MCPS reserves the right to add or delete respondent(s), as needed, should our requirements change during the contract term.**

**27.0 TREATMENT OF TECHNICAL DATA IN PROPOSAL**

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

Provided, that respondent marks the cover sheet of the proposal with the following legend, specifying the pages of the proposal which are to be restricted in accordance with the conditions of the legend:

Technical data contained in pages of this proposal shall not be used or disclosed, except for evaluation purposes."

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

MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable. Price and cost data concerning salaries, overhead, and general

## TREATMENT OF TECHNICAL DATA IN PROPOSAL (CONT'D)

and administrative expenses are considered proprietary information and will not be disclosed, if marked in accordance with the instructions in Section 28.

### 28.0 PROPRIETARY AND CONFIDENTIAL INFORMATION

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

### 29.0 EVALUATION CRITERIA

MCPS reserves the right to ask clarifying questions about submitted proposals. Respondent(s) also may ask questions that they may have related to this RFP prior to submitting their responses. See Section 30.0, Schedule of Events. Only proposals received by the deadline will be considered. Proposals will be screened down to several finalists.

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

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

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

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

29.1.1. Completeness of Response

**EVALUATION CRITERIA (CONT'D)**

29.1.2. Product line and quality available, product availability, vendor capability, and proposed plans. It must be clear to MCPS that the respondent is capable of consistently delivering high-quality products promptly and can acquire, within short notice, any additional items which may be required.

29.1.3. Reliability, related experience, references, and past performance. MCPS staff reserves the right to tour a respondent(s) facility and verify references accompanying the RFP. Respondent(s) must have a proven record of service, particularly concerning delivering all items on a regularly scheduled basis. A respondent may be deemed unacceptable if the requirements listed herein were previously violated, or if the respondent demonstrates an inability or unwillingness to communicate openly and/or to fully adhere to making "produce buyer" recommendations.

29.1.4 Facilities, Equipment and Sanitation. Respondent must have adequate warehouse space and refrigerated delivery equipment suitable for dock unloading for supplying products under this contract. Conditions and storing chilled products must be as recommended by the Refrigerated Research Foundations. Delivery temperatures of chilled product shall be in accordance with the Association of Food and Drug Officials of the United States (AFDOUS) code as recommended by the Federal Food and Drug Administration. MCPS reserves the right to inspect vendor's facilities prior to award and throughout the contract period.

29.1.5. Prices and Financials

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

**30.0 SCHEDULE OF EVENTS**

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

**RFP issued: July 23, 2018**  
**Questions Due: August 2, 2018 by 4:00pm**  
**Answers Posted: August 7, 2018**  
**Proposals Due: August 23, 2018**  
**Anticipated award date: October 9, 2018**

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

**31.0 ADDENDA/ERRATA**

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the contractor's responsibility to check the MCPS website under "Event Calendar" <http://coldfusion.mcps.k12.md.us/cfms/webteam/calendar/calendar.cfm?calendarID=mcpsbids> or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued.

In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Respondent(s) must acknowledge

**ADDENDA/ERRATA (CONT'D)**

receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

**32.0 eMARYLAND MARKETPLACE**

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

**33.0 MULTI-AGENCY PARTICIPATION**

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

**34.0 INQUIRIES**

Inquiries regarding this solicitation must be submitted in writing to Tina Marie Booth, Buyer MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or email to [tinamarie\\_M\\_booth@mcpsmd.org](mailto:tinamarie_M_booth@mcpsmd.org). Responses will be posted on eMaryland Marketplace and on MCPS' Procurement website. The Board will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS. Any binding information given to a respondent in response to a request will be furnished to all respondent(s) as addenda/errata, if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed respondent(s). Only such addenda/errata, when issued by MCPS, will be considered binding on MCPS.

**Contact by respondent(s) with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair**

**INQUIRIES (CONT'D)**

**advantage and result in non-consideration of its RFP response.** The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).

**35.0 UNNECESSARILY ELABORATE BROCHURES**

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

**36.0 PROTESTS**

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

**37.0 CONTRACT**

MCPS plans to enter a contractual agreement with Respondent(s) to whom the award is made and intends to make MCPS General Contract Articles, attached hereto and incorporated herein as part of the contractual agreement, except and unless modified by MCPS. In addition, the respondent will abide by the provisions of the MCPS General Contract Articles. Proposals must clearly identify any variances from or objections to the specifications in this RFP and the terms and conditions of the MCPS General Contract Articles. Lacking any response to the contrary, MCPS will infer that the Respondent agrees to the specifications of this RFP and each term and condition of the MCPS General Contract Articles. Respondents should note that any variance may provide a basis for MCPS to reject the proposal.

**38.0 NOTICE TO RESPONDENTS**

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

(See Next Page)

**I. Respondent Information:**

As appropriate, check and/or complete one of the items below.

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

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

**II. Respondent Contact Information:** This will be filed as your permanent contact information.

- 1. Company Name \_\_\_\_\_
- 2. Address \_\_\_\_\_
- 3. Representative's Name \_\_\_\_\_
- 4. Phone Number/Extension \_\_\_\_\_
- 5. Fax Number \_\_\_\_\_
- 6. Toll Free Number \_\_\_\_\_
- 7. Email Address \_\_\_\_\_
- 8. Website \_\_\_\_\_

**III. Respondent Certification:**

Upon notification of award, this document in its entirety is the awarded respondent(s) contract with MCPS. By signing below, the undersigned acknowledges that he/she is entering into a contract with MCPS.

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

By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_



Attachment A

Equal Opportunity Certification

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

( ) Yes ( ) No

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

( ) Yes ( ) No

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

( ) Yes ( ) No

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

( ) Yes ( ) No

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

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

\_\_\_\_\_ (1)\* (2)\*\* (3)\*\*\*  
(Subcontractor's Name)

\_\_\_\_\_ ( ) Yes ( ) Yes ( ) Yes  
(Street)

\_\_\_\_\_ ( ) No ( ) No ( ) No  
(City) (State)

\_\_\_\_\_ (1)\* (2)\*\* (3)\*\*\*  
(Subcontractor's Name)

\_\_\_\_\_ ( ) Yes ( ) Yes ( ) Yes  
(Street)

\_\_\_\_\_ ( ) No ( ) No ( ) No  
(City) (State)

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

## **Attachment B**

### **Certification of Nonsegregated Facilities**

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

#### **Notice to Prospective Subcontractors of**

#### **Requirement for Certifications of**

#### **Nonsegregated Facilities**

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

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

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

**Attachment C**

**Minority Business Enterprise**

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

Check the appropriate box below.

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

**Attachment D**

**NON-DEBARMENT ACKNOWLEDGEMENT**

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

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

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

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

By (Signature) \_\_\_\_\_

Name and Title \_\_\_\_\_

Witness Name and Title \_\_\_\_\_

**Mid-Atlantic Purchasing Team  
Rider Clause**

RFP #9145.1, Fresh Produce

USE OF CONTRACT(S) BY MEMBERS COMPRISING Mid –Atlantic Purchasing Team COMMITTEE

**Extension to Other Jurisdictions**

The [issuing jurisdiction] extends the resultant contract (s), including pricing, terms and conditions to the members of the Mid-Atlantic Purchasing Team, as well as all other public entities under the jurisdiction of the United States and its territories.

**Inclusion of Governmental & Nonprofit Participants (Optional Clause)**

This shall include but not be limited to private schools, Parochial schools, non-public schools such as charter schools, special districts, intermediate units, non-profit agencies providing services on behalf of government, and/or state, community and/or private colleges/universities that required these good, commodities and/or services.

**Notification and Reporting**

The Contractor agrees to notify the issuing jurisdiction of those entities that wish to use any contract resulting from this solicitation and will also provide usage information, which may be requested. The Contractor will provide the copy of the solicitation and resultant contract documents to any requesting jurisdiction or entity.

**Contract Agreement**

Any jurisdiction or entity using the resultant contract (s) may enter into its own contract with the successful Contractor (s). There shall be no obligation on the party of any participating jurisdiction to use the resultant contract (s). Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction Including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue.

Authorization to Extend Contract: **RFP # 9145.1, Fresh Produce**

	Yes	No		Yes	No		Yes	No
Alexandria, Virginia			Gaithersburg, Maryland			Rockville, Maryland		
Alexandria Public Schools			Greenbelt, Maryland			Spotsylvania County		
Alexandria Sanitation Authority			Harford County			Spotsylvania County Gov & Schools		
Annapolis City			Harford County Schools			Stafford County, Virginia		
Anne Arundel County			Howard County			Takoma Park, Maryland		
Anne Arundel Schools			Howard County Schools			Upper Occoquan Service Authority		
Arlington County, Virginia			Herndon, Virginia			Vienna, Virginia		
Arlington County Public Schools			Leesburg, Virginia			Washington Metropolitan Area Transit Authority		
Baltimore City			London County, Virginia			Washington Suburban Sanitary Commission		
Baltimore County Schools			Loudoun County Public Schools			Winchester, Virginia		
Bladensburg, Maryland			Loudoun County Water Authority			Winchester Public Schools		
Bowie, Maryland			Manassas City Public Schools					
Carroll County			Manassas Park, Virginia					
Carroll County Schools			Maryland DGS Purchasing					
Charles County Government			Maryland-National Capital Park & Planning Commission					
City of Fredericksburg			Metropolitan Washington Airport Authority					
College Park, Maryland			Metropolitan Washington Council of Government					
District of Columbia Government			Montgomery College					
District of Columbia Water & Sewer Auth.			Montgomery County, Maryland					
District of Columbia Public Schools			Montgomery County Public School					
Fairfax, Virginia			Northern Virginia Community College					
Fairfax County, Virginia			Prince George's Community College					
Fairfax County Water Authority			Prince George's County, Maryland					
Falls Church, Virginia			Prince George's Public Schools					
Fauquier County Schools & Government			Prince William County, Virginia					
Frederick, Maryland			Prince William County Public Schools					
Frederick County, Maryland			Prince William County Service Author					

**Attachment F**

**Hold-Recall Contact Form**

**Please complete and return. Notify Montgomery County Public Schools immediately as changes occur to MaryAnn Gabriel, Supervisor, Maryann\_E\_Gabriel@mcpsmd.org, Division of Food and Nutrition Services, 301-284-4943.**

School District \_\_\_\_\_

**PROCESSOR HOLD and RECALL CONTACT INFORMATION**

Name of Processor \_\_\_\_\_

**Primary Contact**

Name \_\_\_\_\_  
Office Number \_\_\_\_\_  
Mobile Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_

**Back-up Contact**

Name \_\_\_\_\_  
Office Number \_\_\_\_\_  
Mobile Number \_\_\_\_\_  
Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_

## Appendix A

### MCPS GENERAL CONTRACT ARTICLES

#### **ARTICLE 1. DESCRIPTION AND GENERAL INTENT**

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

#### **ARTICLE 2. MCPS PROJECT CONTACT**

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

#### **ARTICLE 3. INDEPENDENT CONTRACTOR**

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

#### **ARTICLE 4. KEY CONTRACTOR PERSONNEL**

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

#### **ARTICLE 5. CONTRACTOR RESPONSIBILITY**

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



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

- B. The Contractor acknowledges and agrees that time is of the essence with respect to its obligations under the Contract and that prompt and timely performance of all such obligations, including conformance with all timetables and other requirements of the Contract, is strictly required.
- C. The Contractor shall obtain any licenses or permits necessary for performance of the work required under the Contract. In the event the work to be performed by the Contractor must by law or regulation be provided by individuals who are licensed and/or certified to provide certain Professional Services, the Contractor shall only assign individuals to perform work under the Contract who are licensed and/or certified in accordance with applicable law, and all such individuals shall maintain their license and/or certification in good standing (not under review or subject to suspension) during the entire term of the Contract. "Professional Services" for the purpose of the Contract shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Contractor shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under the Contract are properly licensed and/or certified.
- D. Any performance or bid bond obligations of the Contractor will be as described in the RFP or solicitation.
- E. Whenever the Contractor has knowledge that any actual or potential situation (including, but not limited to, labor disputes) delaying or threatening to delay the timely performance of the work under the Contract or a force majeure event as described in Article 7, the Contractor shall immediately give written notice, including all relevant information, to the DMM Director.
- F. The Contractor shall comply with all applicable federal, state, and county laws and regulations, as well as all applicable safety requirements, Board of Education policies, and MCPS regulations issued by the Superintendent of Schools. Board of Education policies and MCPS regulations are available at this link: [www.montgomeryschoolsmd.org/departments/policy/](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