

Montgomery County Public Schools

INTENT

Montgomery County Public Schools (MCPS) is seeking proposals for the furnishing and delivery of Wireless Access Points (WAPs), routers, switches, associated cabling, wiring, installation services, Firewall Security Appliance, and Network Equipment Basic Maintenance Support for approximately 252 sites for an initial term of five years with the option for up to (5) one-year renewals. All quantities are approximate and subject to change. The specification, quantity, capacity, locations and count of services will vary over time due to fluctuations in the School District's needs.

The MCPS Wide Area Network (WAN) is made up of 200+ remote sites connected to a central site primarily via broadband and/or private fiber optic connections. These remote sites are connected in a hub and spoke configuration with the MCPS data center located at 45 West Gude Drive in Rockville, Maryland.

SPECIFICATIONS

Below are specifications related to WAPs, routers, switches, associated cabling, wiring, installation services, Firewall Security Appliances, and Network Equipment Basic Maintenance Support. The equipment and services include, but are not limited to, wireless access points, switches, routers, and associated cabling, wiring, and services for installation and support, and other miscellaneous items, and new, replacement, and successor products as they become available.

Wireless Access Points (WAPs)

Extreme: AH-AP-250-AC-FCC or equivalent, AP250 indoor plenum rated or equivalent, Cisco: EDU-CAP2702I-AK910 (10 pack) 802.11ac CAP 10APs w/CleanAir or equivalent; 3x4:3SS; Int Ant; A Domain, AIR-AP2802I-B-K9 or equivalent, C9120AXI-B-EDU or equivalent. Provide 802.11ac capability (with capabilities of handling 802.11 a/g/n, as well); provide network access via 2.4Ghz and 5Ghz frequencies; must be centrally configurable and manageable, while still functioning autonomously in the absence of a central configuration or management tool, and must conform to current management tools in use by MCPS.

- Must not require a central appliance or “controller” in order for all of the WAPs to function in any area of our network. Any central management is simply for management, configurations, and troubleshooting.
- WAPs must function within each school and must conform to current management tools in use by MCPS without a dependence on the wide-area network connection back to the data center (in other words, the school community's use of the wireless network must not be impacted by a WAN outage or WAN congestion, excluding access to network resources located outside of the school, such as email or the Internet. The school community must be able to access resources within the building via the wireless network.
- The wireless solution must allow standard encryption protocols, including but not limited to, WPA and WPA2 (allowing the use of either AES (Advanced Encryption Standard) or TKIP (Temporal Key Integrity Protocol)).
- The wireless solution must allow for the configuration of multiple SSIDs (or wireless networks) with unique configuration parameters allowed for each network.
- The wireless solution must allow multiple authentication types, including open authentication, shared key authentication, RADIUS/EAP, and MAC address. It should also allow these in various combinations depending on SSID or other distinguishable wireless features.

- The wireless network(s) must be configurable and maintainable through a central tool that allows various levels of troubleshooting, including but not limited to:
 - Coverage maps
 - Rogue wireless devices and networks
 - Congestion issues
 - Failed or failing WAP(s)
- Estimated quantities: 900 total per year (Extreme, Cisco or equivalent)

Switches

- Rack-mount edge/closet PoE switches: Provide port speeds up to 10Gbps; non-bladed chassis – minimum of 24 ports per switch; 802.1Q capable (allows for VLAN assignments) or equivalent; 802.1X capable (allows for network access control) or equivalent; trunking can be specified at every level on the switch down to the switch port; manageable switch; allows port security as a configurable option; allows Spanning Tree Protocol management; allows port mirroring; allows for redundant/hot swappable fans and power supplies; 802.11 capable (30w per port) or equivalent; Voice and Video QOS; Port-Channeling capable; at least 2 optical ports; capable of applying Access Control Lists; manageable via Telnet/SSH; SNMP or similar; Tacacs or some sort of centralized login solution. Cisco: C9200L-48P-4G-EDU or equivalent, C9200L-48P-4X-EDU or equivalent, C9300-48UN-EDU or equivalent, C9500-40X-EDU or equivalent.
 - Estimated quantities: 200 total per year

Routers

- Routers capable of handling a minimum of 1Gbps of bandwidth (Cisco ISR4451-X-SEC/K9 Sec bundle w/SEC license or equivalent). All routers require a minimum of two modular interface ports - capable of a fiber interface or an Ethernet interface (up to 10Gbps); capable of interfacing with VoIP (MITEL or Cisco VoIP); capable of a DMVPN tunnel back to a Cisco ASR; capable of accommodating two WAN connections in a BGP or redundant configuration; capable of serving DHCP. These routers primarily serve our high schools.
 - Estimated quantities: 10 total per year

Cabling, Wiring, Installation and Support Services

- Cabling, wiring and installations services associated with the installation of the WAPs, Routers, and Switches identified above are to be provided.
- Professional services for support for post installation support is required.
- The contractor shall provide evidence of its ability to perform building-wide wiring installations of Category 6, 10/100/1000/10000-Base-T unshielded twisted pair (UTP) cabling and 62.5/125 and 50/125pm multimode optical fiber cabling –including evidence of BICSI, CFOT, Corning and similar certified installers. The description shall include wiring closet installations, wiring types and cable routing and supporting electrical installations, if any.
 - Estimated quantities: 200 feet per installation per year

Firewall Security Appliances

MCPS requires a remote Firewall security appliance such as FortiGate 500E Series or equivalent and basic maintenance services for between 26 to 70 school sites that meet technical specifications to provide security policies at remote sites. The selected technology needs to accommodate Fortinet security policies, for the purpose of central management, from the central Fortinet firewalls located at the data center at 45 W. Gude, Rockville, Maryland. Basic Maintenance for the initial one year term of the agreement should be included in addition to any ongoing terms. The High Schools (including Thomas

Edison) will be first priority followed by Middle Schools. Each model/part number must be broken out to provide the Erate eligibility percentage.

Network Equipment Basic Maintenance Support

MCPS requires basic maintenance and technical support appropriate to maintain reliable operations, for eligible Extreme and Cisco wireless access points. Eligible Extreme devices are: approximately (4670) AP230, (2110) AP250, (50) AP1130, and (1000) AP410c. For Extreme WAPs a management tool for basic maintenance such as console XiQ or equivalent is required. Eligible Cisco devices are: approximately (110) WLC 5508, (4) WLC 9800, (4260) AP2600, (1350) AP2700, (1670) AP2800, (780) AP9100. For Cisco WAPs a central management tool for basic maintenance such as Cisco Prime or equivalent is required. Bidder must provide basic maintenance SKUs as well as Erate eligibility percentages.

Requested services include:

- Repair and upkeep of eligible hardware
- Wire and cable maintenance
- Configuration changes
- Basic technical support including online and telephone-based technical support
- Software upgrades and patches including bug fixes and security patches

MCPS shall not be obligated to purchase any specific quantities or dollar amount. The item quantities specified herein reflect estimated quantities that may be modified (increased or decreased). It is not the intention to purchase entire quantities shown at one time. Individual purchase orders will be issued to the successful vendor(s) as needs arise during the contract term. The quantities and associated dollar volume are subject to change and purchases are dependent upon the requirements of MCPS and on budgetary limitations. Orders will be placed from time to time throughout the contract term for delivery to MCPS locations.

MCPS School and Office Site Locations

Attachment A.

General Contract Articles

The MCPS General Contract Articles are incorporated herein and made a part of this Agreement as Attachment B. Any variances from or objections to the terms and conditions of the MCPS General Contracting Articles must be listed, including a justification for any such variances.

Proposals

All proposals to the Form 470 must be submitted in writing to Julie Johnson, CPPB, Buyer II, Montgomery County Public Schools, Procurement Unit, 45 W Gude Drive, Suite 3100, Rockville, MD 20850, via fax at 301-279-3173 or email to Julie_E.Johnson@mcpssmd.org no later than 2:00 p.m. Eastern time on September 19, 2022. The MCPS Procurement website address is www.montgomeryschoolsmd.org/departments/procurement/

To comply with regulations for securing E-rate funding, MCPS will be posting a Form 470 for these services simultaneously with the release of this proposal on the Universal Services Administrative Company (USAC) web site <http://www.universalservice.org/>

Questions

All questions must be emailed to Julie_E_Johnson@mcpssmd.org no later than 2:00 p.m. Eastern time on August 29 2022. The answers to the questions will be posted on MCPS' Procurement website www.montgomeryschoolsmd.org/departments/procurement/ no later than the close of business on September 2, 2022 Eastern time. MCPS will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS.

Disqualifications

Contact by respondents with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its response. Immediate disqualification shall include any questions or proposal received after the due date and time, incorrect/incomplete submission, irrelevant pricing, incorrect scope of work or no Service Provider Identification Number (SPIN) included.

Awards

It is the intention to award this contract to the bidder(s) submitting the most favorable unit prices with consideration being given to any previous performance for MCPS as to quality of service and acceptable merchandise, compatibility with the MCPS infrastructure and with regard to the bidder(s) ability to perform should it be awarded the contract. Price will be the most heavily weighted criteria. Different manufacturers may be selected depending on the schools' current infrastructure. However, MCPS reserves the right to make the awards according to the best interests of MCPS. In addition, MCPS reserves the right to remove or add additional items to the specifications as our requirements change, as well as, add suppliers throughout the contract term should a need arise that cannot be facilitated by an awarded supplier.

Attachment A

SITE	ADDRESS
Arcola ES	1820 Franwall Ave., Silver Spring 20902
Argyle MS	2400 Bel Pre Rd, Silver Spring, MD 20906
Ashburton ES	6314 Lone Oak Dr., Bethesda 20817
Baker MS	25400 Oak Dr., Damascus 20872
Banneker MS	14800 Perrywood Dr, Burtonsville, MD 20866
Bannockburn ES	6520 Dalroy Lane, Bethesda 20817
Barnsley ES	14516 Nadine Dr, Rockville, MD 20853
BCC HS	4301 East-West Hwy, Bethesda, MD 20814
Beall ES	451 Beall Ave, Rockville, MD 20850
Bel Pre ES	13801 Rippling Brook Dr., Silver Spring 20906
Bells Mill ES	8225 Bells Mill Rd., Potomac 20854
Belmont ES	19528 Olney Mill Rd, Olney, MD 20832
Bethesda ES	7600 Arlington Rd, Bethesda, MD 20814
Bethesda Maintenance Depot	10901 Westlake Drive, Rockville, MD 20852
Beverly Farms ES	8501 Postoak Rd., Potomac 20854
Blair Ewing Center (Mark Twain)	14501 Avery Road, Rockville, MD 20853
Blair Ewing Center- 1 satellite office	12920 Clover Leaf Drive, Germantown, MD 20874
Blair Ewing Center- 2 satellite office	12120 Plum Orchard Drive, Silver Spring, MD
Blair HS	51 University Blvd E, Silver Spring, MD 20901
Blake HS	300 Norwood Rd, Silver Spring, MD 20905
Bradley Hills ES	8701 Hartsdale Ave., Bethesda 20817
Briggs Chaney MS	1901 Rainbow Dr., Silver Spring 20905
Brooke Grove ES	2700 Spartan Rd., Olney 20832
Brookhaven ES	4610 Renn Street, Rockville, MD 20853
Brown Station ES	851 Quince Orchard Blvd., Gaithersburg, MD 20878
Burning Tree ES	7900 Beech Tree Rd., Bethesda 20817
Burnt Mills ES	11211 Childs St., Silver Spring 20901
Burtonsville ES	15516 Old Columbia Pike, Burtonsville, MD 20866
Cabin John MS	10701 Gainsborough Rd., Potomac 20854
Candlewood ES	7210 Osprey Dr., Rockville 20855
Cannon Rd ES	901 Cannon Rd., Silver Spring 20904
Carderock Springs ES	7401 Persimmon Tree Ln, Bethesda, MD 20817
Carl Sandburg School	1002 First Street, Rockville, MD 20850
Carl Sandburg Building	451 Meadow Hall Drive, Rockville, MD 20851
Cashell ES	17101 Cashell Rd., Rockville, MD 20853
Cedar Grove ES	24001 Ridge Rd., Germantown, MD 20876
CESC	850 Hungerford Drive, Rockville, MD 20850
Chevy Chase ES	4015 Rosemary St, Chevy Chase, MD 20815
Churchill HS	11300 Gainsborough Rd, Potomac, MD 20854
Clarksburg ES	13530 Redgrave Pl., Clarksburg, MD 20871
Clarksburg ES #9	22215 Dunlin Street, Clarksburg, MD 20841
Clarksburg HS	22500 Wims Rd, Clarksburg, MD 20871
Clarksburg Maintenance Depot	13100 Shawnee Ln, Clarksburg, MD 20871

Clearspring ES	9930 Moyer Rd., Damascus 20872
Clemente MS	18808 Waring Station Rd, Germantown, MD 20874
Clopper Mill ES	18501 Cinnamon Dr., Germantown 20874
Cloverly ES	800 Briggs Chaney Rd., Silver Spring 20905
Cold Spring ES	9201 Falls Chapel Way, Potomac 20854
College Garden ES	1700 Yale Pl., Rockville 20850
Concord Ctr/Central Records	7210 Hidden Creek Road, Bethesda 20817
Cresthaven ES	1234 Cresthaven Dr., Silver Spring 20903
Daly ES	20301 Brandermill Dr., Germantown 20876
Damascus ES	10201 Bethesda Church Rd., Damascus 20872
Damascus HS	25921 Ridge Rd, Damascus, MD 20872
Darnestown ES	15030 Turkey Foot Rd., Gaithersburg 20878
Diamond ES	4 Marquis Dr., Gaithersburg 20878
Drew ES	1200 Swingingdale Dr., Silver Spring 20905
Dufief ES	15001 DuFief Dr., Gaithersburg 20878
East Silver Spring ES	631 Silver Spring Ave., Silver Spring 20910
Eastern MS	300 University Blvd E, Silver Spring, MD 20901
Edison Center HS	12501 Dalewood Dr, Silver Spring, MD 20906
Einstein HS	11135 Newport Mill Rd, Kensington, MD 20895
Emory Grove	18100 Washington Grove Ln, Gaithersburg, MD 20877
English Manor	4511 Bestor Dr, Rockville, MD 20853
Fairland ES	14315 Fairdale Rd., Silver Spring 20905
Fairland Center	13313 Old Columbia Pike, Silver Spring, MD 20904
Fallsmead ES	1800 Greenplace Terr., Rockville 20850
Farmland ES	7000 Old Gate Rd., Rockville 20852
Farquhar MS	17017 Batchellors Forest Rd., Olney 20832
Fields Road ES	One School Dr., Gaithersburg 20878
Flora Singer ES	2600 Hayden Drive, Silver Spring, MD 20902
Flower Hill ES	18425 Flower Hill Way, Gaithersburg 20879
Flower Valley ES	4615 Sunflower Dr., Rockville 20853
Food & Nutrition Services	8401 Turkey Thicket Drive, Gaithersburg, MD 20878
Forest Knolls ES	10830 Eastwood Ave., Silver Spring 20901
Forest Oak MS	651 Saybrooke Oaks Blvd., Gaithersburg 20877
Fox Chapel ES	19315 Archdale Rd., Germantown 20876
Frost MS	9201 Scott Dr, Rockville 20850
Gaithersburg ES	35 N Summit Ave, Gaithersburg, MD 20877
Gaithersburg HS	101 Education Blvd, Gaithersburg, MD 20877
Gaithersburg MS	2 Teachers Way, Gaithersburg 20877
Galway ES	12612 Galway Dr., Silver Spring 20904
Garrett Park ES	4810 Oxford St., Kensington 20895
Georgian Forest ES	3100 Regina Dr., Silver Spring 20906
Germantown ES	19110 Liberty Mill Rd, Germantown, MD 20874
Gibbs ES	12615 Royal Crown Dr, Germantown, MD 20876
GlenAllan ES	12520 Heurich Rd, Silver Spring, MD 20902
Glen Haven ES	10900 Inwood Ave, Silver Spring, MD 20902
Goshen ES	8701 Warfield Rd, Gaithersburg, MD 20882
Great Seneca Creek ES	13010 Dairymaid Drive, Germantown, MD 20874
Greencastle ES	13611 Robey Road, Silver Spring, MD 20904

Greenwood ES	3336 Gold Mine Rd., Brookeville 20833
Grosvenor Center	5701 Grosvenor Ln, Bethesda, MD 20814
15 W. Gude	15 W Gude Dr, Rockville MD 20850
45 W. Gude	45 W Gude Dr, Rockville MD 20850
Hadley Farms	7401 Hadley Farms Drive, Gaithersburg, MD 20879
Hallie Wells MS	11701 Little Seneca Parkway, Clarksburg MD 20871
Harmony Hills ES	13407 Lydia Street, Silver Spring, MD 20906
Harriet R. Tubman ES	400 Victory Farm Drive, Gaithersburg, MD 20877
Highland ES	3100 Medway Street, Silver Spring, MD 20902
Highland View ES	9010 Providence Avenue, Silver Spring, MD 20901
Hoover MS	8810 Postoak Rd., Potomac 20854
Jackson Road ES	900 Jackson Road, Silver Spring, MD 20904
JoAnn Leleck ES	710 Beacon Rd., Silver Spring 20903
Jones Lane ES	15110 Jones Ln, Gaithersburg, MD 20878
Julius West MS	651 Great Falls Rd., Rockville 20850
Kemp Mill ES	411 Sisson Street, Silver Spring, MD 20902
Kennedy HS	1901 Randolph Rd, Silver Spring, MD 20902
Kensington Parkwood ES	4710 Saul Road, Kensington, MD 20895
Key MS	910 Schindler Dr., Silver Spring 20903
Kingsley Wilderness Ctr	23230 Whelan Lane, Boyds, MD 20841
Kingsview MS	18909 Kingsview Rd., Germantown 20874
Lake Seneca ES	13600 Wanegarden Dr., Germantown 20874
Lakelands Park MS	1200 Main St., Gaithersburg 20878
Lakewood ES	2534 Lindley Terrace, Rockville, MD 20850
Laytonsville ES	21401 Laytonsville Rd, Gaithersburg, MD 20882
Lincoln Center	580 N. STONESTREET AVENUE ROCKVILLE, MD 20850
Lincoln Center/Print shop	660 N. Stonestreet Avenue, Rockville 20850
Little Bennett ES	23930 Burdette Forest Rd., Clarksburg 20871
Loiderman MS	12701 Goodhill Rd., Silver Spring 20906
Longview	13902 Bromfield Rd, Germantown, MD 20874
Luxmanor ES	6201 Tilden Ln, Rockville, MD 20852
Lynnbrook Ctr/Interact	8001 Lynbrook Dr, Bethesda, MD 20814
MacDonald Knolls	10611 Tenbrook Drive, Silver Spring MD 20901
Magruder HS	5939 Muncaster Mill Rd, Rockville, MD 20855
Martin Luther King MS	13737 Wisteria Dr., Germantown 20874
Maryvale ES	1000 1st St, Rockville, MD 20850
Matsunaga ES	13902 Bromfield Rd, Germantown, MD 20874
McAuliffe ES	12500 Wisteria Drive, Germantown, MD 20874
McNair ES	13881 Hopkins Rd., Germantown 20874
Meadow Hall ES	951 Twinbrook Pkwy, Rockville, MD 20851
Mill Creek Towne ES	17700 Park Mill Drive, Rockville, MD 20855
Model Learning Academy	22880 Whelan Lane, Boyds MD 20841
Monocacy ES	18801 Barnesville Rd., Dickerson 20842
Montgomery Knolls ES	807 Daleview Dr., Silver Spring 20901
Montgomery Village MS	19300 Watkins Mill Rd., Montgomery Village 20886
Montrose Center	12301 Academy Way, Rockville, MD
Neelsville MS	11700 Neelsville Church Rd., Germantown 20876
New Hampshire Estates ES	8720 Carroll Avenue, Silver Spring, MD 20903

Newport Mill MS	11311 Newport Mill Rd., Kensington 20895
North Bethesda MS	8935 Bradmoor Dr., Bethesda 20817
North Chevy Chase ES	3700 Jones Bridge Rd, Chevy Chase, MD 20815
North Lake Center	15101 Bauer Dr, Rockville, MD 20853
Northwest HS	13501 Richter Farm Rd, Germantown, MD 20874
Northwood HS	919 University Blvd W, Silver Spring, MD 20901
Nuclear Regulatory Commission (NRC)	11555 Rockville Pike, Rockville, MD 20852
Oakland Terrace ES	2720 Plyers Mill Road, Silver Spring, MD 20902
Oakview ES	400 East Wayne Avenue, Silver Spring, MD 20901
Odessa Shannon MS	11800 Monticello Ave., Silver Spring 20902
Olney ES	3401 Queen Mary Drive, Olney, MD 20832
Page ES	13400 Tamarack Rd, Silver Spring, MD 20904
Paint Branch HS	14121 Old Columbia Pike, Burtonsville, MD 20866
Parkland MS	4610 West Frankfort Dr., Rockville 20853
Parkside	9500 Brunett Ave., Silver Springs MD
Pine Crest ES	201 Woodmoor Drive, Silver Spring, MD 20901
Piney Branch ES	7510 Maple Ave, Takoma Park, MD 20912
Poole MS	17014 Tom Fox Ave., Poolesville 20837
Poolesville ES	19565 Fisher Ave, Poolesville, MD 20837
Poolesville HS	17501 W Willard Rd, Poolesville, MD 20837
Potomac ES	10311 River Road, Potomac, MD 20854
Pyle MS	6311 Wilson Lane, Bethesda 20817
Quince Orchard HS	15800 Quince Orchard Rd, Gaithersburg, MD 20878
Rachel Carson ES	100 Tschiffely Square Rd, Gaithersburg, MD 20878
Radnor Center	7000 Radnor Road, Bethesda, MD 20817
Randolph Depot	1800 Randolph Rd, Silver Spring, MD 20902
Recovery Point Services (RPS)	20441 Century Blvd, Germantown, MD 20874
Redland MS	6505 Muncaster Mill Rd., Rockville 20855
Resnik ES	7301 Hadley Farms Dr, Gaithersburg, MD 20879
RICA	15000 Broschart Road, Rockville, MD 20850
Richard Montgomery HS	250 Richard Montgomery Drive, Rockville, MD 20852
Ridgeview MS	16600 Raven Rock Dr., Gaithersburg 20878
Ritchie Park ES	1514 Dunster Rd., Rockville 20854
Rock Creek Forest ES	8330 Grubb Rd., Chevy Chase 20815
Rock Creek Valley ES	5121 Russett Road, Rockville, MD 20853
Rock Terrace School	6300 Tilden Lane, Rockville, MD 20852
Rock Terrace Building	390 Martins Lane, Rockville, MD 20850
Rock View ES	3901 Denfeld Ave, Kensington, MD 20895
Rocking Horse Rd Center	4910 Macon Road, Rockville, MD 20852
Rockville HS	2100 Baltimore Rd, Rockville, MD 20851
Rockwell ES	24555 Cutsail Dr., Damascus 20872
Rocky Hill MS	22401 Brick Haven Way, Clarksburg 20871
Rolling Terrace ES	705 Bayfield Street, Takoma Park, MD 20912
Rosa M. Parks MS	19200 Olney Mill Rd., Olney 20832
Roscoe Nix ES	1100 Corliss St., Silver Spring 20903
Rosemary Hills ES	2111 Porter Road, Silver Spring, MD 20910
Rosemont ES	16400 Alden Ave, Gaithersburg, MD 20877
Rustin ES	332 West Edmonston Drive, Rockville, MD 20852

Sally Ride ES	21301 Seneca Crossing Dr., Germantown 20876
Sargent Shriver ES	12518 Greenly St, Silver Spring, MD 20906
Seneca Valley HS	19401 Crystal Rock Dr, Germantown, MD 20874
Sequoyah ES	17301 Bowie Mill Road, Derwood, MD 20855
Seven Locks ES	9500 Seven Locks Rd, Bethesda, MD 20817
Shady Grove MS	8100 Midcounty Hwy., Gaithersburg 20877
Shady Grove Depot	16651 CRABBS BRANCH WAY, Rockville, MD 20855
Sherwood ES	1401 Olney-Sandy Spring Rd, Sandy Spring, MD 20860
Sherwood HS	300 Olney Sandy Spring Rd, Sandy Spring, MD 20860
Silver Creek MS	3701 Saul Road Kensington, Kensington, MD 20895
Silver Spring International MS	313 Wayne Ave., Silver Spring 20910
Sligo Creek ES	500 Schuyler Road, Silver Spring, MD 20910
Sligo MS	1401 Dennis Ave., Silver Spring 20902
Smith Env Ed Center	5110 Meadowside Ln, Rockville, MD 20855
Snowden Farm ES	22500 Sweetspire Drive, Clarksburg, MD 20871
Somerset ES	5811 Warwick Place, Chevy Chase, MD 20815
South Lake ES	18201 Contour Rd., Gaithersburg 20877
Springbrook HS	201 Valley Brook Dr, Silver Spring, MD 20904
Spring Mill/MCPS Transition School	11721 Kemp Mill Road, Silver Spring, MD 20902
Stedwick ES	10631 Stedwick Road, Montgomery Village, MD 20886
Stephen Knolls	10731 St. Margaret's Way, Kensington, MD 20895
Stone Mill ES	14323 Stonebridge View Drive, N. Potomac, MD 20878
Stonegate ES	14811 Notley Road, Silver Spring, MD 20905
Strathmore ES	3200 Beaverwood Lane, Silver Spring, MD 20906
Strawberry Knoll ES	18820 Strawberry Knoll Road, Gaithersburg, MD 20879
Summit Hall ES	101 West Deer Park Road, Gaithersburg, MD 20877
Takoma Park ES	7511 Holly Ave., Takoma Park 20912
Takoma Park MS	7611 Piney Branch Rd., Silver Spring 20910
Taylor Science Center	19501 White Ground Road, Boyds, MD 20841
The Landing	640 E. Diamond Ave, Gaithersburg, MD 20877
Thurgood Marshall ES	12260 McDonald Chapel Drive, Gaithersburg, MD
Tilden MS	6300 Tilden Lane, Rockville, MD 20852
Travilah ES	13801 DuFief Mill Road, North Potomac, MD 20878
Twinbrook ES	5911 Ridgway Avenue, Rockville, MD 20851
Upcounty Center Germantown	12900 Middlebrook Road, Germantown, MD 20874
Upcounty Early Childhood Center	located at Emory Grove
Viers Mill ES	11711 Joseph Mill Road, Silver Spring, MD 20906
Walter Johnson HS	6400 Rock Spring Dr, Bethesda, MD 20814
Washington Grove ES	8712 Oakmont Street, Gaithersburg, MD 20877
Waters Landing ES	13100 Waters Landing Dr., Germantown 20874
Water Tower/Bethesda Bus Depot	7005 Radnor Rd, Bethesda, MD 20817
Water Tower/Clarksburg Bus Depot	19200 Jerusalem Rd, Poolesville, MD 20837
Water Tower/Randolph Bus Depot	12413 Georgia Ave, Silver Spring, MD 20906
Water Tower/Shady Grove Bus Depot	8620 Pleasant Road, Gaithersburg, MD
Water Tower/Westfarm Bus Depot	16000 New Hampshire Ave, Silver Spring, MD 20905
Watkins Mill ES	19001 Watkins Mill Road, Montgomery Village, MD
Watkins Mill HS	10301 Apple Ridge Rd, Gaithersburg, MD 20879
Wayside ES	10011 GLEN ROAD, Potomac, MD 20854

Weller Road ES	3301 Weller Rd, Silver Spring, MD 20906
West Farm Bus Depot	11920 Bournefield Way, Silver Spring, MD 20904
Westbrook ES	5110 Allan Terrace, Bethesda, MD 20816
Westland MS	5511 Massachusetts Ave., Bethesda 20816
Westover ES	401 Hawkesbury Lane, Silver Spring 20904
Wheaton HS	12401 Dalewood Dr, Silver Spring, MD 20906
Wheaton Woods ES	4510 Faroe Place, Rockville, MD 20853
Whetstone ES	19201 Thomas Farm Road, Gaithersburg, MD 20879
White Oak MS	12201 New Hampshire Ave., Silver Spring 20904
Whitman HS	7100 Whittier Blvd, Bethesda, MD 20817
Whittier Woods Center	7300 Whittier Blvd, Bethesda MD 20814
Wilson Wims ES	12520 Blue Sky Drive, Clarksburg, MD 20871
Wood Acres ES	5800 Cromwell Drive, Bethesda, MD 20816
Wood MS	14615 Bauer Dr, Rockville, MD 20853
Woodfield ES	24200 Woodfield Rd., Gaithersburg 20882
Woodlin ES	2101 Luzerne Avenue, Silver Spring, MD 20910
Woodward HS	11211 Old Georgetown Road, Rockville, MD 20852
Wootton HS	2100 Wootton Pkwy, Rockville, MD 20850
Wyngate ES	9300 Wadsworth Dr, Bethesda, MD 20817

ATTACHMENT B

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, if satisfactory to MCPS in its sole discretion, 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 that all of the Contractor's work shall be performed in a professional and workmanlike manner, through only qualified and appropriately trained personnel, and consistent with the highest industry standards in compliance with applicable federal, state, and county laws and regulations—it being understood that acceptance of the Contractor's work by MCPS shall not operate as a waiver or release of the Contractor's obligations.

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

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

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

ARTICLE 6. SUBCONTRACTORS

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

ARTICLE 7. FORCE MAJEURE

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

ARTICLE 8. PAYMENT TERMS AND CONDITIONS

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

- 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 OR ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY ONE AGAINST THE OTHER WITH RESPECT TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE CONTRACT, OR ANY RELATIONSHIP OF MCPS AND THE CONTRACTOR HEREUNDER.**

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

MCPS may, in its sole discretion, make the Contract publically available on the MCPS website or otherwise. 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; location 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 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 to provide the deliverables, products, and/or services set forth in the Contract, for the Contractor's lawful quality assurance, and for no other purpose; provided, however, that all direct and indirect personal identifiers are permanently removed and there is no reasonable basis to believe that the remaining information in the records can be used to successfully link the de-identified information to an

identifiable individual or to MCPS. Furthermore, the Contractor agrees not to: (i) attempt to re-identify de-identified Confidential Information; and/or (ii) transfer de-identified Confidential Information to any party unless that party agrees not to attempt to re-identify the de-identified Confidential Information and unless MCPS has provided written express consent of the transfer.

3. Neither the Contractor nor any of its employees, agents, affiliates, and subcontractors shall: (i) engage in targeted advertising to MCPS Users; (ii) engage in targeted advertising when the targeting of the advertising is based on Confidential Information; (iii) use Confidential Information to amass a profile about a MCPS User, except in connection with the Contractor's performance of its obligations under the Contract; (iv) sell Confidential Information; or (v) share with any individual or entity outside MCPS, without prior review and approval from MCPS, any report, data, or research findings that are based on Confidential Information or the use by MCPS or MCPS Users of the Contractor's deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.
4. To the extent that the Contract requires the Contractor to provide online or mobile services to MCPS that involve the collection, maintaining, or use of Confidential Information that includes Personally Identifiable Information regarding MCPS students, the Contractor warrants that it has signed-on to the *K-12 School Service Provider Pledge to Safeguard Student Privacy* (the "Student Privacy Pledge," available at www.studentprivacypledge.org) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

E. Security of Confidential Information

1. The Contractor shall implement and maintain a comprehensive data-security program in accordance with commercial best practices for the protection of Confidential Information, whether the Confidential Information is stored electronically and/or in hard copy. Such data-security program shall include, but is not limited to, the following:
 - a. Security policies for the Contractor's employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
 - b. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
 - c. Secure access controls to Confidential Information, including but not limited to passwords;
 - d. Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
 - e. Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
 - f. Protocols for regular backups that include retention of backup copies for such period of time as may be required by MCPS, or by federal, state, and county laws and regulations;

- g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
 - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.
3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS. The Contractor shall not permit Confidential Information to be maintained or stored on mobile computing devices (e.g. laptops or tablets), unless such device is being used in connection with the Contractor's backup and recovery procedures. In the event that such a device is being used in connection with the Contractor's backup and recovery procedures, the Contractor will ensure that such mobile computing devices are encrypted, centrally managed with respect to configuration updates and anti-virus, password protected, and that all such devices will be scanned at the expiration or termination of the Contract to ensure that no Confidential information remains stored on such mobile computing devices.
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 or data loss, 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 or data loss. If the Contractor becomes aware of a Data Security Breach or data loss, 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 or data loss, 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 or data loss. In addition, to the extent not prohibited, the Contractor agrees to notify MCPS of Data Security Breaches or data losses 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 or data loss 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 or data loss and to implement procedures to prevent the recurrence of a similar Data Security Breach or data loss.
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 (i) with respect to all intellectual property provided under the Contract, the Contractor possesses all right, title, and interest therein necessary for the Contractor to grant to MCPS the rights and licenses specified thereunder; and (ii) 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, copyrights, or other third-party intellectual property rights, 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, which deliverables and work product shall be deemed works made for hire as defined under U.S. Copyright law, and may license its use by others for a fee or without charge.
- B. The Contractor agrees that it shall not assert any ownership rights, property rights, or copyright to MCPS student work product, as defined in Md. Code Ann., Education § 4-130.

ARTICLE 20. MCPS PROPERTY

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

- A. The Contractor shall insure all MCPS property in its possession or control and shall be liable to MCPS for the fair market value of any damage or loss to MCPS property, aside from that incurred by normal wear and tear. The Contractor shall maintain the property in operating condition, with the cost being chargeable to the Contract.
- B. All MCPS property shall be returned promptly upon completion of the Contract or otherwise disposed of, as directed in writing by MCPS. All costs of shipment or disposal are a Contract cost.
- C. Unless stated otherwise in writing, MCPS property may be used only for the performance of the

Contract.

D. Title to all MCPS property shall remain in the hands of MCPS at all times. Title to the property acquired by the Contractor for use under the Contract shall vest in MCPS upon delivery to the Contractor. Title to property leased with a purchase option shall pass to MCPS even if the option date is later than the Contract period. Any payments required to acquire title are a Contract cost.

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

A. Prohibition against assigning registered sex offenders and individuals convicted of sexual offenses, child sexual abuse, and other crimes of violence to MCPS contracts:

1. Maryland Law requires that any person who enters into a contract with a county board of education “may not knowingly employ an individual to work at a school” if the individual is a registered sex offender. Under § 11-722 of the Criminal Procedure Article of the Maryland Code, an employer who violates this requirement is guilty of a misdemeanor and, if convicted, may be subject to up to five (5) years imprisonment and/or a \$5,000 fine.
2. Maryland Law further requires that a contractor or subcontractor for a local school system may not knowingly assign an employee to work on school premises with direct, unsupervised, and uncontrolled access to children, if the employee has been convicted of, or pled guilty or nolo contendere to, a crime involving:
 - a. A sexual offense in the third or fourth degree under § 3-307 or § 3-308 of the Criminal Law Article of the Maryland Code or an offense under the laws of another state that would constitute an offense under § 3-307 or § 3-308 of the Criminal Law Article if committed in Maryland;
 - b. Child sexual abuse under § 3-602 of the Criminal Law Article, or an offense under the laws of another state that would constitute child sexual abuse under § 3-602 of the Criminal Law Article if committed in Maryland; or
 - c. A crime of violence as defined in § 14-101 of the Criminal Law Article, or an offense under the laws of another state that would be a violation of § 14-101 of the Criminal Law Article if committed in Maryland, including: (1) abduction; (2) arson in the first degree; (3) kidnapping; (4) manslaughter, except involuntary manslaughter; (5) mayhem; (6) maiming; (7) murder; (8) rape; (9) robbery; (10) carjacking; (11) armed carjacking; (12) sexual offense in the first degree; (13) sexual offense in the second degree; (14) use of a handgun in the commission of a felony or other crime of violence; (15) child abuse in the first degree; (16) sexual abuse of a minor; (17) an attempt to commit any of the crimes described in items (1) through (16) of this list; (18) continuing course of conduct with a child under § 3-315 of the Criminal Law Article; (19) assault in the first degree; (20) assault with intent to murder; (21) assault with intent to rape; (22) assault with intent to rob; (23) assault with intent to commit a sexual offense in the first degree; and (24) assault with intent to commit a sexual offense in the second degree.
3. The Contractor is required to submit, following award of the Contract, documentation confirming that its direct employees and those of any subcontractors and/or independent contractors assigned to perform work in a MCPS school facility under the Contract meet this obligation. Additionally, the Contractor must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Contractor and/or its subcontractors use to perform the work required by the Contract.

B. Required criminal background check process for certain individuals in the Contractor’s

workforce:

1. Under § 5-551 of the Family Law Article of the Maryland Code, each contractor and subcontractor shall require that any individuals in its workforce must undergo a criminal background check, including fingerprinting, if the individuals will work in a MCPS school facility in circumstances where they have direct, unsupervised, and uncontrolled access to children. The term “workforce” in this and the preceding section refers to all of the Contractor’s direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Contractor uses to perform the work required by the Contract.
2. Fingerprinting for the criminal background check may be performed by the MCPS Office of Human Resources and Development, 45 W. Gude Drive, Rockville, MD 20850, or through another service approved by MCPS. Individuals fingerprinted by MCPS will be required to provide written consent, and MCPS will maintain copies of all records for criminal background checks performed by MCPS. If the Contractor uses another service approved by MCPS, the results of the criminal background check must be provided to MCPS for record keeping. A list of MCPS approved fingerprinting agencies is available at www.montgomeryschoolsmd.org/departments/procurement.
3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the Contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Contractor’s summary to determine whether to accept the Contractor’s recommendation, and the Contractor will be responsible for any consequences of a material misrepresentation in its written summary.
4. Once the Contract is awarded, the Contractor is responsible for implementing the background check process. An individual in the Contractor’s workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: www.montgomeryschoolsmd.org/childabuseandneglect/; and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Contractor will be required to return all badges at the conclusion of the Contract.
5. The criminal background check and badging process will be at the Contractor’s expense.

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

ARTICLE 22. INDEMNIFICATION AND LIABILITY

- A. The Contractor is responsible for any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including attorney’s fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor’s negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement. For purposes of this Article, the negligence

of employees, agents, affiliates, or subcontractors of the Contractor is deemed to be the negligence of the Contractor. In addition, the Contractor must defend, indemnify, and hold MCPS harmless from and against: (i) any claim (including but not limited to an enforcement action by any federal, state, or local agency) arising from or related to any loss, personal injury, death, cost, claim, damages (including but not limited to incidental and consequential damages), and other expenses (including but not limited to attorney's fees and litigation expenses) that may be suffered or incurred by reason of, or occasioned wholly or in part by, the Contractor's negligence, its performance or failure to perform any of its obligations under the Contract, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Contractor's failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Contractor of work, services, materials, or supplies in connection with or in support of the performance of the Contract; and (iii) any claim that the deliverables, products, and/or services delivered or otherwise provided to MCPS under the Contract infringe, violate, dilute, or misappropriate any patent, copyright, trademark, or other intellectual property right.

- B. In the event of any intellectual property infringement, violation, dilution, or misappropriation claim, or if the Contractor becomes aware of the possibility of such a claim, the Contractor shall, 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 Articles 22.A. or 22.B., 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. No waiver by either Party of any failure to observe or perform any term or condition of the Contract shall operate as a waiver of such term or condition or of any subsequent failure thereof.

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.

ARTICLE 30. NOTICE

Any notice by a Party under the Contract shall be in writing and either personally delivered, sent via email, a nationally recognized overnight delivery service (such as Federal Express), first class postage prepaid mail, or by fax, addressed to the other Party at the address specified in the Contract, or such other address of which either Party may from time to time notify the other. Notices shall be deemed given when received by the receiving Party. All notices to MCPS shall be sent to the MCPS Project Contact with copy to: Director, Department of Materials Management, 580 North Stonestreet Avenue, Rockville, MD 20850, 301-279-4998 (fax).

Revised March 1, 2019