

April 22, 2022

RFP Number: 9218.1  
Prebid Conference: May 5, 2022  
Due Date: May 18, 2022  
Open Time: 2:00 p.m.

To: Prospective Offerors:

Montgomery County Public Schools (MCPS) is soliciting proposals from qualified vendors for the provision and implementation of an integrated web-based indoor air quality monitoring system.

A virtual pre-proposal conference will be held at 8:30a.m. EST on May 5, 2022 via WebEx. Information to access the WebEx is contained in the RFP, Section 14.0. Questions regarding the RFP must be submitted by the close of business, 4:00 p.m., on April 29, 2022.

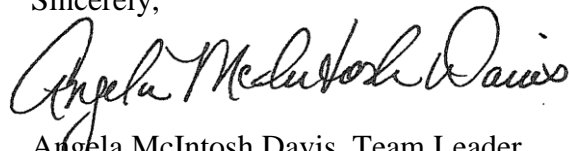
Please respond according to the instructions provided in the attached. Proposals must be received on or before 2:00 p.m., on May 18, 2022. Proposals received after this date and time will not be considered. Proposals shall be delivered in a sealed opaque envelope with the RFP number, opening date and opening time indicated in the lower left corner of the envelope. Proposals shall be delivered to MCPS Procurement Unit, 45 West Gude Drive, Suite 3100, Rockville, Maryland 20850.

The offeror must submit one (1) original, one (1) redacted copy, one (1) electronic version on flash drive and three (3) separate copies of the proposal. The proposal must be signed by an official having authority to contract with MCPS. The firm and official's name shall be used. This solicitation does not commit MCPS to pay any costs incurred in the submission of proposals or guarantee that an award will be made.

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

AMD  
Enclosure

Sincerely,



Angela McIntosh Davis, Team Leader  
Procurement Unit

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

**Request for Proposal #9218.1**  
**Indoor Air Quality Monitoring for Montgomery County Public Schools**

**1.0 INTENT**

Montgomery County Public Schools (MCPS) is soliciting proposals from qualified vendors for the provision and implementation of an integrated web-based indoor air quality monitoring system that efficiently manages the collection, centralization, and reporting of the air quality in classrooms throughout the district.

- a) To contract for the provision and implementation of a solution that efficiently manages deployed monitoring devices through web-based transactions for the collection and reporting of environmental data.
- b) The proposed system shall provide a secure on-line, user-friendly monitoring and reporting system that allows MCPS to monitor air quality measurements (current and historical).
- c) The proposed system shall provide the ability for MCPS staff to define subsets of data for public publishing through a Web interface.
- d) The proposed application shall seamlessly integrate and automate workflows based upon MCPS business rules, allowing for automated public report generation.

**2.0 INTRODUCTION**

Montgomery County Public Schools (MCPS) is the 14th largest school system in the country serving more than 165,000 students from 157 countries speaking 150 languages in 209 schools and 8 other centers/schools that serve students. The school district has approximately more than 24,000 employees with an annual operating budget of \$2.6 billion. All of this is housed in approximately 240 schools and support facilities.

With a Fiscal Year (FY) 2021 Operating Budget of approximately \$2.76 billion, MCPS employs more than 24,000 employees. Among the 209 schools that MCPS operates, 42 are National Blue-Ribbon schools. Five MCPS high schools rank in the top 200 of *The Washington Post's* 2017 High School Challenge, and all 25 MCPS high schools appear on this list, which only includes the top 11 percent of high schools in the country. MCPS has one of the highest graduation rates among the nation's largest school districts, according to an *Education Week* report. In 2010, MCPS was the recipient of the Malcolm Baldrige National Quality Award, the highest presidential honor given to American organizations for performance excellence. The student demographics of MCPS in 2020 are as follows:

Hispanic/Latino: 32.4%  
White: 26.9%  
Black or African American: 21.4%  
Asian: 14.1%

Two or more races:  $\leq 5.0\%$   
American Indian or Alaskan Native:  $\leq 5.0\%$   
Native Hawaiian or other Pacific Islander:  $\leq 5.0\%$   
Students receiving free & reduced-price meals (FARMS): 3.3%  
English for speakers of other languages (ESOL): 18.2%  
Students receiving special education services: 11.7%

MCPS is soliciting proposals from qualified firms to provide WiFi Indoor Air Quality (IAQ) monitoring equipment and related data services for approximately 10,000 classrooms, media centers, and cafeterias/all-purpose rooms, etc. The IAQ monitoring equipment must be accessible by remote WiFi methods and its data also accessible through a web-based system. Data must be rolled up to one or more MCPS web pages in a dashboard using formatting approved by MCPS.

The Office of Technology and Innovation (OTI) supports the systems and technical infrastructure of the school system and ensures that day-to-day operations function optimally. Any solution proposed by a prospective vendor must operate optimally as part of the MCPS infrastructure. Some relevant characteristics of the MCPS infrastructure are as follows:

- SAML or OpenID authentication for SSO is required for MCPS internal staff.
- The standard operating system for centrally managed server applications is Windows Server 2019 or higher (if hosted on premises.)
- MCPS uses both Microsoft SQL Server 2019 and Oracle 12 as the standard for enterprise database management.
- Web applications are typically served using Microsoft Internet Information Server (IIS).
- Web applications are typically load balanced using an F5 BigIP load balancing appliance.
- The MCPS standard software development platform is Microsoft .NET (C# and ASP.NET) for custom development and integration.
- All schools have a minimum of 1 Gbps download speeds and 1 Gbps upload speeds to the MCPS data center and the internet.
- All MCPS workstations have a minimum configuration of a 250 GB hard drive, 4 GB RAM and a 2.8 GHz processor. These desktop computers use the Windows 10 operating system.
- Supported Browsers:
  - Chrome – computers are set to auto-update, currently the lowest version (on older Chromebook devices) is 74; newer devices are at 87.
  - Edge – computers are set to auto-update, now a Chrome-based browser, version numbers are similar to Chrome's, currently at version 87.
  - Use of HTML5/CSS3/JS over Java/Flash/Silverlight is preferable (including other “sunsetting” plugin technologies.)
- The minimum IOS (Apple) and android devices supported are iPhone 6s and Samsung Galaxy S6.
- MCPS develops any out-of-band reporting with Microsoft Power BI or SSRS.

### 3.0 SCOPE OF SERVICES

#### Technical Requirements

1. Operating Environment
  - a. The system must integrate optimally into the MCPS technical infrastructure outlined in this RFP.
2. System Security Administration
  - a. The system shall integrate with Microsoft Identity Manager, should user identity provisioning be needed.
  - b. The system shall integrate with Azure Active Directory for user authentication utilizing SAML or OpenID.
  - c. The system shall allow management of authentication and authorization for all sites centrally.
  - d. The system shall apply changes to permissions and authorization levels in real time, at a minimum sync of once per hour.
  - e. The system shall retain logs of unsuccessful login attempts.
  - f. The system shall support expiration of cookies at end of a session (by both logging out of the system or closing the browser).
  - g. The system shall provide the ability to modify the session timeout length due to system inactivity by a user.
3. User Permissions Management
  - a. The system shall distinguish roles with differing degrees of authority in the system including, such as but not limited to the following capabilities:
    - i. "System Administration/Configuration"
      1. Install and update the system
      2. Configure roles, users, and system-wide settings
      3. All abilities of Power User role
    - ii. "Power User"
      1. Ability to audit usage of the system
      2. Ability to create and participate in workflows for all sites
      3. Ability to create and modify reports for all sites
      4. All abilities of Site Administrator role.
    - iii. "User"
      1. Ability to create, read, update, and delete data for a specified site.
      2. Ability to participate in a workflow for a specific site.
      3. Ability to view reports for a specific site.
    - iv. "Read-Only" (public facing)
      1. Ability to view specific aggregated data and graphics
4. Environment
  - a. The system shall provide 256-bit secure socket layer (SSL) encryption or other industry standard secure data transmission protocol for each user session.
  - b. The system shall support or provide a secure database environment protected from unauthorized access or update.

- c. The system shall support the "most restrictive" level of security based on the roles a user has been assigned.
- d. The system shall detect and display potential security issues and provide a mechanism to report on and resolve all issues appropriately.
- e. The system shall provide functionality for the System Administrator to view security reports including authorized system use, unauthorized access attempts, and security profiles of users.
- f. The system shall provide the ability to view log files for all changes, deletions, and additions including date/time, user id, and workstation or other input device identifying information (e.g. name, type, IP address, etc.).
- g. MCPS will use our own Service-Level agreement (**see attached sample Appendix B**)

### **Operational Requirements**

All data shall be viewed by users through a single web-based interface housed in the web-based system. The following features are desired:

1. Be menu-driven, allowing the user, as appropriate to their role(s), to enter, edit, store and back up data, and produce monthly, year-to-date, and annual reports.
2. The software shall have a high degree of usability, meaning it must be easy to navigate, be "user friendly," and minimize the need to know technical terms, keystroke combinations, etc.
3. The solution needs to be mobile device compatible.
4. Email alerts need to use the MCPS email system
5. Email alerts need to use a service account to send emails
6. Emails are required to utilize username and password when sending messages either via SMTP, SOAP, EWS (Exchange Web Services API)
7. Identify methods for MCPS project managers to report issues and/or obtain help desk support.

### **Indoor Air Quality Requirements**

The proposing firm shall meet the following minimum criteria:

1. The IAQ monitoring platform should be able to collect Indoor Air Quality (IAQ) data as defined below. *As the health and wellness initiative behind the IAQ monitoring will evolve over time, please detail the capacity of the proposed IAQ monitoring platform to expand to collect other types of data such as energy, HVAC equipment performance, occupancy, etc.*
2. The offeror shall have at least five years of experience performing IAQ monitoring for a school system, university, large corporation, and/or retail establishments with multiple sites. *The proposing firm shall provide at least three references from contracts of a similar size and scope.*
3. The provided IAQ monitoring units shall be composed of a singular enclosed, tamper/vandal resistant unit, which includes the following IAQ sensors: Temperature, Relative Humidity, Dew Point Temperature, Carbon Dioxide (CO<sub>2</sub>), Carbon Monoxide (CO), and Particulate Matter (PM) 1.0, 2.5, & 10. *Please detail options for adding Total Volatile Organic Compounds (TVOC), Ozone (O<sub>3</sub>) and potentially other sensors to the IAQ monitoring units.*

- a) The Temperature sensor shall have an accuracy of +/- 0.3°C and the Relative Humidity sensor shall have an accuracy of +/- 2% RH.
  - b) The CO<sub>2</sub> sensor shall utilize Nondispersive Infrared (NDIR) technology and offer readings between at least 400ppm and 5000ppm and have an accuracy of +/- 40ppm or 10% Reading.
  - c) The PM sensor shall offer readings from 0 to 1000 µg/m<sup>3</sup> with a minimum accuracy of +/- 10 µg/m<sup>3</sup> for PM<sub>2.5</sub>. ***For PM 1.0, describe whether readings are the result of estimates based on extrapolation or sub-micron particle detection.***
  - d) The provided monitor shall include tamper/vandal resistant power supply. If battery powered, the minimum acceptable operation period must be 1 year. ***Please describe power supply options, including advantages and limitations; and the maintenance/support for battery lifecycle/replacement.***
4. The offeror shall be responsible for ensuring that the sensors in the IAQ monitoring units provide accurate sensing for the duration of the contract. ***Describe the assurance program implemented by the offeror to ensure ongoing calibration of the sensors for the duration of the contract, include factory calibration and a schedule calibration needed after deployment and appropriate/expected replacement of defective equipment.*** role
  5. The offeror shall provide implementation setup and configuration services to ensure successful deployment of the IAQ program. This consultation shall include, but not be limited to, location and placement of IAQ monitors, effective presentation of data for public display as well as data analysis tools, including but not limited to: report configurations at the sensor location and school wide level, calculation of air changes per hour using steady-state CO<sub>2</sub> and CO<sub>2</sub> decay methods, a “zoom” tool searching and selecting data, customizable alerts when parameters meet user defined conditions, summary/descriptive statistics, etc. ***Describe similar tools built by the proposing firm to support similar data management systems.***
  6. The provided IAQ monitoring equipment shall become the property of MCPS immediately upon delivery and acceptance.
  7. The offeror shall supply all mounting hardware and equipment necessary to properly mount and install IAQ monitoring units.
  8. The offeror shall warranty all IAQ monitoring units in its entirety, including but not limited to all sensors for the duration of the contract.
  9. If IAQ monitoring units do not rely on local WiFi, please ***describe preferred and alternative options for data transmittal.*** MCPS expects any alternative remote communication system, if necessary, be provided at no additional charge.
  10. The offeror shall provide a web-based management system designed for assessing and managing real-time environmental data and analytics for all MCPS educational facilities. The web-based management system shall include the following features:

- a) Collect real-time environmental data, providing anytime, anywhere access of collected environmental data via an Internet or cellular connection. ***Describe ability to collect environmental data more frequently than 5-minute data collection intervals.***
- b) Provide dashboards that show instantaneous readings, rolling averages over selected periods of time, sensor power/battery status and fault, and alarm thresholds for each IAQ metric. ***Describe ability and method to provide public-facing dashboards to the MCPS community. Describe method (i.e. same tool or exporting the data to surface to a separate tool via data extract or API tie-in to allow public viewing? Example, iDashboards.) that will be used.***
- c) Provide unlimited storage for all collected data, analytics and reports for the entirety of the contract. ***Describe ability to compute real-time metrics, analytics or KPIs based on collected environmental data.***
- d) Provide online access to current network operational status of IAQ monitoring units across MCPS educational facilities with text and email alerts for unit disconnection, errors or outages.
- e) Provide real-time text and email alerts for IAQ monitoring data alarm threshold exceedances.
- Alerts need to use the MCPS email system
  - Alerts need to use a service account to send emails
  - Emails are required to utilize username and password when sending messages either via SMTP, SOAP, EWS (Exchange Web Services API)
- f) Provide User Management with permission-based roles and notifications.
- g) Enhanced security.
- Role-based access
  - SSL encryption of at 4096 bit
  - SSO integration utilizing SAML or OpenID
  - Publicly accessible reports, as identified and indicated by MCPS staff
- h) The software product should have the ability to integrate with other systems using Application Programming Interface (API), depending on proposed solution equipment and design.
- i) Compatible with all major operating systems platforms (i.e. Windows, Mac OS, iOS, Android, etc.) and browsers (Chrome, Edge, Safari, Firefox)
- j) Compatible with the network environment available in MCPS facilities

11. The offeror shall provide any needed technical support for all monitors and software for the duration of the contract.

12. All offerors shall make available a comprehensive list of “out-of-the-box” functions, features, and capabilities for all components of the proposed solution architecture.

13. All offerors shall also provide listing of any minimum requirements and/or specifications that MCPS must meet to successfully deploy. This shall include but is not limited to hardware devices, peripherals, network, power/environment, and the software solution.

14. All items listed are assumed to be included in the proposed cost. Any extra or additional features not included in the base cost proposal are to be clearly identified, with their associated costs.

#### **4.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS**

To enable MCPS to conduct a uniform review of all proposals submitted in response to this solicitation, components of the proposal shall be submitted as set forth below. MCPS reserves the right to reject submittals that do not follow the requested format.

Proposals must be limited to **25 pages**. This does not include cover pages, cover letters, dividers, tables of contents, title pages, spec sheets or required forms or resumes.

The “technical proposal” is the main element of your response to this RFP. For the technical proposal, we are looking for the following proposal requirements:

1. **COVER LETTER & EXECUTIVE SUMMARY** - On the cover or the first page of your proposal, please provide contact information, including name, title, address, email and phone number. Please tell us about your company and how you plan to be a good partner throughout this project.
2. **COMPANY PROFILE AND CAPABILITIES** –
  1. Competitive Differentiation – articulate three (3) differentiators that your solution provides to its customers against the competitive landscape.
  2. Core Capabilities – information centered on your proposed IAQ monitoring program as well as future options for expansion to collect other types of data such as energy, HVAC equipment performance, occupancy, etc.
  3. Hardware Sensors – (a) technical specifications; (b) power/connectivity requirements; (c) certifications; (d) useful life; (e) communication and security protocols; and (f) ongoing sensor accuracy assurance program.
3. **RESPONSE TO SCOPE OF WORK** - In this section, please tell us how your software/hardware meets and/or exceeds our needs, as described in the preceding sections of this RFP. Include a narrative description of how your solution or services would meet our needs as outlined in Section 2 (Scope of Work). This section is a critical component of the proposal and should include a detailed description of your work plan and project organization. Cut sheets and details on the IAQ monitoring units being proposed should be included.



4. **EXPERIENCE / STAFFING & SUPPORT PLAN** - Please share your staffing plan for this project and include background information on key staff and their experience on similar projects. Describe in detail your plan for responding to user and software issues during regular business hours and off-hours. Describe the proposed schedule and process for routine maintenance and software updates. Include relevant experience that will ensure a successful implementation with MCPS.
5. **REFERENCES** - Please provide three (3) references, including their contact information and details on your history with them. Customer references should be preferably similar in size, scope and complexity to the scope of work with MCPS. Please also provide web addresses to any public facing portals similar to this RFP.
6. **PHASED DEPLOYMENT TIMEFRAME** - All bid responses shall include a detailed schedule showing milestones throughout the process including:
  - Pre-Award: Demonstration
  - Phase 1
    - Hardware delivery
    - Installation
    - Software Build / Dashboard set up
    - Platform training
  - Phase 2 - Ongoing support and maintenance for devices and software updates, etc.

## 5.0 CONTRACT TERM

The term of the contract shall be an initial two (2) years with four (4) one (1) year renewal options at the discretion of MCPS.

## 6.0 CONTRACT TERMINATION

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

## 7.0 REFERENCES

All offerors shall include a list of a minimum of five references who can attest to the offeror's quality of work and, if possible, shall include school districts of comparable size to MCPS that have utilized the offeror's services. Include names of client, contact person, email address and phone number of all references. Also, as an attachment, offerors shall include a list of all current school district clients.

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

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

**8.0 FORMAT OF RESPONSE**

**8.1** Response to this RFP shall be submitted as indicated in section 4.0

**8.2** Contractors shall include any and all statements and representations made within its proposal in the contract for services with the MCPS. This includes, but is not limited to, the vendors’ s point-by-point response to this RFP. If the vendor responds only “Understand and comply,” it is assumed that the vendor complies with MCPS’ understanding of the requirement.

**8.3** MCPS shall not be responsible nor be liable for any costs incurred by the vendor in the preparation and submission of their proposals and pricing.

**8.4** Pricing proposal shall be submitted as a separate document.

**9.0 MANDATORY SUBMISSIONS**

Each offeror must submit a complete proposal including all required information and attachments. Offerors may use the Microsoft Word version posted on the MCPS RFP webpage to help in preparing the response. One (1) original and three (3) copies as well as one (1) electronic version on flash drive and one (1) redacted copy of the responses must be sent by mail, courier or hand-delivery and shall be in binders with tabs identifying each section. A table of contents should be included and all pages numbered as referenced in the Table of Contents. **No faxes or electronic submission of proposals will be accepted.** Proposals are to be received no later than 2:00pm EST on **Wednesday, May 18, 2022.** Submit responses of the entire RFP proposal to:

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

Submissions will become the property of MCPS.

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

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

Offerors must include any and all statements and representations made within its proposal in the contract for services with MCPS unless otherwise agreed upon by MCPS and offeror during negotiations.

**Complete Response must include:**

- All requirements in Section 4.0.
- Pricing Proposal see 12.2
- References, see 7.0 References.
- Vendor's annual fiscal report in order to demonstrate the vendor's financial stability (If desired, the vendor may also include any other financial documents that vendor wishes to include regarding vendor's financial condition. This documentation is not mandatory.)
- Equal Opportunities Certification (Attachment A)
- Certification of Non-segregated Facilities (Attachment B)
- Minority Business Enterprise (Attachment C)
- Non-Debarment Acknowledgement (Attachment D)
- Mid-Atlantic Purchasing Team Rider Clause
- Current Form W-9
- A list of any variances from or objections to the terms and conditions of the MCPS General Contract Articles (Appendix A), as well as a justification for any such variances or objections.
- A redacted copy of offeror's proposal as specified in Sections 10.0 and 11.0.

**10.0 TREATMENT OF TECHNICAL DATA IN PROPOSAL**

The proposal submitted in response to this request may contain technical data which the offeror does not want used or disclosed for any purpose other than evaluation of the proposal. The use and

disclosure of any such technical data, subject to the provisions of the Maryland Public Information Act, may be so restricted:

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

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

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

MCPS assumes no liability for disclosure or use of unmarked technical data or products and may use or disclose the data for any purpose and may consider that the proposal was not submitted in confidence and therefore is releasable. Price and cost data concerning salaries, overhead, and general and administrative expenses are considered proprietary information and will not be disclosed, if marked in accordance with the instructions in Section 11.0.

## **11.0 PROPRIETARY AND CONFIDENTIAL INFORMATION**

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

## **12.0 EVALUATION CRITERIA / METHOD OF AWARD**

This RFP will be scored by the evaluation committee composed of various members from departments within MCPS and by the below criteria.

1. **Proposal Quality** – Proposals will be evaluated for their completeness, clarity, organization and what seems the most advantageous or meets the needs and goals of MCPS.
2. **Cost Proposal** – Total cost proposed for the design and installation of each project. The lowest cost proposal may be judged on the basis of price, conformance to specifications, adequacy of

the equipment, and any other criteria as may be set forth by MCPS in this RFP, as applicable, that pertains to the contract.

3. **Response to Scope of Work** - Evaluated to see that proposed equipment meets or exceeds nearly all the requirements listed in the scope of work. It is intuitive, user-friendly - the software should make it easy for any MCPS employee to track, review data and communicate with school system stakeholders.
4. **Experience** - Staffing and Support Plan - winning proposals will have a team with extensive experience implementing this type of hardware/software, company experience supporting customer success, and three references relevant to this project.

Evaluations will be based upon the written Responses provided to MCPS for the Solicitation. After all Responses have been evaluated, the Committee may invite a limited number of the highest scoring Responses to demonstrate their products (sensor and software). The number of Vendors who are invited to participate in a demonstration will be determined by the Committee after all the written Responses have been collected and evaluated.

### **12.1 Demonstration**

After initial evaluation, selected offerors will be asked to give a live demonstration of their software and hardware solution to MCPS staff, in person and on MCPS infrastructure. Demonstrations should be tailored to the scope of work in this RFP and designed to fit within a 1.5-hour window (including a question and answer period).

Finalists will be asked to send a device and/or make a site visit to install a device at a school as “proof of concept” to connect to their test environment and demonstrate the ability to use a web browser to access the data from that device.

Any and all equipment and software used in the demonstration shall be the same version, capacity, specifications, and features to be implemented by the awardee for MCPS. MCPS requires a sensor from the offeror, as configured and described both herein and in offeror’s response, to test for compatibility by MCPS’ Office of Technology and Innovation engineering staff.

Please include any other components and functions that you think are best suited to the overall goals of MCPS. Be prepared to answer questions about your experience and solution during the demonstration.

### **12.2 Price Proposal**

List all costs associated with your proposal, using the template below. If your proposal includes other costs that do not fit in this template, please attach supplemental information describing those costs, the basis for your pricing, and any assumptions you made in filling out the template. Understanding the level of effort and cost for each deliverable will help MCPS better understand the structure of the proposed work.

All bid responses shall include:

- an itemized proposal for the installation of all supplied units (base 10,000 units.)

- an itemized proposal to supply and provide consultation to install additional units up to 2,000, if necessary with all the specifications mentioned above.
- costs for the second- and third-years' continued services in its proposal.

Item A. 10,000 IAQ monitors equipped with IAQ sensors (Hardware component): Temperature, Relative Humidity, Carbon Dioxide (CO2), Carbon Monoxide (CO), Particulate Matter (PM) 1, 2.5, & 10. Dew point temperatures should be provided. Cost should include software, required calibrations and any subscription service (Software/subscription component).

Item B. Up to an additional 2,000 IAQ monitors equipment equipped with the same sensors as listed in Item A, above. Offerors should include all costs associated with items in item A.

Please note:

- All prices are inclusive of travel. No additional charges, including travel lodging, subsistence, miscellaneous (ad-hoc) expenses and other expenses, will be allowed.
- Cost proposals must include any additional expenses including but not limited to travel, lodging, per diem. No additional expenses outside the contract shall be permitted.
- The total cost that is quoted in this Proposal will be considered a best and final offer.
- The Proposer will bear the onus of any errors made in pricing the services (e.g., omitting a component of the services).

Item	Hardware cost per unit (including installation & any calibration)	Software/Subscription cost per unit (first year)	Total Cost Year 1	Annual Maintenance Service cost year 2 and beyond	Annual Software Subscription cost per unit, year 2 and beyond
Item A. 10,000 monitors installed					
Item B. 50 additional new installed monitors (at one site)					
Item C. Single new installed monitor (various sites)					
Item D. Single new unit					

### 13.0 SCHEDULE OF EVENTS

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

<b>RFP issued:</b>	<b>April 22, 2022</b>
<b>Questions Due:</b>	<b>April 29, 2022 by 4:00 p.m.</b>
<b>Prebid Conference (Virtual):</b>	<b>May 5, 2022 at 8:30 a.m</b>
<b>Proposals Due:</b>	<b>May 18, 2022 at 2:00 p.m.</b>
<b>Demonstrations:</b>	<b>Tentatively the week of May 6, 2022</b>

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

### 14.0 VIRTUAL PRE-PROPOSAL CONFERENCE

**A virtual Pre-Proposal Conference for prospective offerors will be held on May 5, 2022 at 8:30 a.m. via WebEx.** Attendance at this conference is encouraged, but is not mandatory. Questions to this RFP are due by **4:00 p.m. on April 29, 2022** so that responses can be prepared prior to the pre-proposal conference. The purpose of the pre-proposal conference will be to allow prospective offerors the opportunity to obtain clarification of the RFP and ask questions directly of MCPS staff to assist them in the preparation of their proposal responses.

The following information is provided for vendors who wish to participate in the pre-proposal conference:

**Meeting link:**

<https://mcps.webex.com/mcps/j.php?MTID=m0b46a0fd0f35ac74659bcea0e82363df>

**Meeting number:** 2427 732 9948

**Password:** eBP9FbS4Ma6

### 15.0 ADDENDA/ERRATA

Changes and addenda to a solicitation may occur prior to the solicitation opening date and time. It is the offeror's responsibility to check the MCPS website under "Event Calendar" <https://www.montgomeryschoolsmd.org/calendar/mcpsbids.aspx> or contact the Procurement Unit at 301-279-3555 to verify whether addenda/errata have been issued. In the event that MCPS issues addenda/errata, all terms and conditions will remain in effect unless they are specifically and explicitly changed by the addenda/errata. Offerors must acknowledge receipt of such addenda/errata by returning one signed copy of each of the addenda/errata with its proposal. Failure to provide the signed acknowledgement of the addenda/errata may result in a bid being deemed non-responsive.

### 16.0 eMARYLAND MARKETPLACE ADVANTAGE (EMMA)

As of June 1, 2008, Maryland law requires local and state agencies to post solicitations on eMaryland Marketplace Advantage (EMMA). Registration with EMMA is free. It is recommended that any interested supplier register at [procurement.maryland.gov](http://procurement.maryland.gov) regardless of the award outcome for this

procurement as it is a valuable resource for upcoming bid notifications for municipalities throughout Maryland.

## 17.0 MULTI-AGENCY PARTICIPATION

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

## 18.0 INQUIRIES

Inquiries regarding this solicitation must be submitted in writing to Angela McIntosh Davis, CPPB, Team Leader, MCPS Procurement Unit, 45 W. Gude Drive, Suite 3100, Rockville, MD 20850, or email to Angela\_S\_McIntosh-Davis@mcpsmd.org. Questions are due **4:00 p.m. on April 29, 2022**. Responses will be posted on MCPS' Procurement website by May 4, 2022. The MCPS Board of Education will not be responsible for any oral or telephone explanation or interpretation by any agent or employee of MCPS. Any binding information given to an offeror in response to a request will be furnished to all offeror as addenda/errata, if such information is deemed necessary for the preparation of proposals, or if the lack of such information would be detrimental to the uninformed offerors. Only such addenda/errata, when issued by MCPS, will be considered binding on MCPS.

**Contact by offerors with any other MCPS employee regarding this solicitation until the contract is awarded by MCPS will be considered by MCPS as an attempt to obtain an unfair advantage and result in non-consideration of its RFP response. The MCPS Procurement website address is [www.montgomeryschoolsmd.org/departments/procurement/](http://www.montgomeryschoolsmd.org/departments/procurement/).**

## 19.0 UNNECESSARILY ELABORATE BROCHURES

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the offeror's lack of



cost consciousness. Elaborate art work and expensive visual and other presentation aids are neither necessary nor wanted.

## **20.0 BID PROTESTS**

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

## **21.0 CONTRACT**

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

## **22.0 OFFEROR INFORMATION**

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

[See next page.]

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

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

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

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

1. Company Name \_\_\_\_\_
2. Address \_\_\_\_\_
3. Bid Representative's Name \_\_\_\_\_
4. Phone Number/Extension \_\_\_\_\_
5. Email Address \_\_\_\_\_
6. Website \_\_\_\_\_

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

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

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

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

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

# **APPENDIX A**

## MCPS GENERAL CONTRACT ARTICLES

### ARTICLE 1. DESCRIPTION AND GENERAL INTENT

For the purposes of these MCPS General Contract Articles, “MCPS” refers to the Board of Education of Montgomery County, which operates a system of public schools commonly known as Montgomery County Public Schools, and “Contractor” refers to the entity awarded a Contract pursuant to authorization by MCPS in accordance with applicable laws, Board of Education policies, and MCPS regulations. Together MCPS and the Contractor are collectively referred to as the “Parties” and each individually as a “Party.” The term “Contract” refers to these MCPS General Contract Articles and any other contract documents duly executed by the Parties that expressly incorporate these MCPS General Contract Articles by reference, as well as any request for proposals (RFP) or solicitation by MCPS, the Contractor’s proposal or bid in response, 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/](http://www.montgomeryschoolsmd.org/departments/policy/). This obligation includes but is not limited to Board of Education Policy ACA, *Nondiscrimination, Equity, and Cultural Proficiency* ("Board Policy ACA"), which prohibits discrimination based on actual or perceived personal characteristics, including race, ethnicity, color, ancestry, national origin, religion, immigration status, sex, gender, gender identity, gender expression, sexual orientation, family/parental status, marital status, age, physical or mental disability, poverty and socioeconomic status, language, or other legally or constitutionally protected attributes or affiliations. Consistent with Board Policy ACA and applicable federal, state, and county laws and regulations, the Contractor will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to these actual or perceived personal characteristics. In addition, the Contractor agrees to provide such accommodations as are required under federal, state, and county laws and regulations, including but not limited to the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973.
- G. The Contractor shall provide a drug-free workplace in accordance with the Drug-Free Workplace Act of 1988 and its implementing regulations, Board of Education Policy IGN, *Preventing Alcohol, Tobacco, and other Drug Abuse in Montgomery County Public Schools*, and MCPS Regulation COF-

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

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

**ARTICLE 6. SUBCONTRACTORS**

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

**ARTICLE 7. FORCE MAJEURE**

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

**ARTICLE 8. PAYMENT TERMS AND CONDITIONS**

- A. The Contractor certifies that all information the Contractor has provided or will provide to MCPS is true and correct and can be relied upon by MCPS in awarding, modifying, making payments, or taking any other action with respect to the Contract including resolving disputes. Any false or misleading information is a ground for MCPS to terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy. The Contractor certifies that the Contractor's accounting system conforms to generally accepted accounting principles, is sufficient to comply with the Contractor'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](http://www.studentprivacypledge.org)) and agrees to manage such Confidential Information in a manner consistent with the Student Privacy Pledge; provided, however, that if any statement of the Student Privacy Pledge is inconsistent with the requirements set forth herein, these MCPS General Contract Articles shall govern.
5. The Contractor acknowledges that there are no user agreements (whether electronic, click-through, verbal or in writing) in existence or contemplated between the Contractor and any MCPS Users in connection with their access and use of the Contractor's deliverables, products, or services, and this Contract shall supersede any user agreements that may be adopted during the term of the Contract.

#### E. Security of Confidential Information

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

- g. Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
    - h. A process for reviewing policies, procedures, and security measures, as well as training on security policies for employees who have access to Confidential Information, at least annually.
  - 2. The Contractor certifies that it has implemented policies, procedures, and security measures to protect against reasonably foreseeable unauthorized access to, or disclosure of, Confidential Information, and to prevent other reasonably foreseeable events that may result in substantial harm to MCPS. In addition, the Contractor shall not maintain or store Confidential Information outside of the United States. To the extent that the Contractor uses cloud computing services, all Confidential Information provided by MCPS or MCPS Users shall be securely stored with a commercially reasonable third-party vendor using physical servers located solely within the United States and subject to network security measures consistent with industry standards. The Contractor will confirm to MCPS that the third-party vendor agrees to the non-disclosure agreement terms described in Article 18.C.6.
  - 3. Access to the Contractor's server(s) hosting Confidential Information shall be limited to the Contractor's operations employees, agents, affiliates, or subcontractors who: (i) have access to Contractor's access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Contractor's deliverables, products and/or services.
  - 4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the Contract, is maintained shall have anti-virus, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing. Such computer, server, or databases shall be password protected and securely stored at all times with proper authentication and authorization procedures and with access limited to the Contractor's operations personnel and personnel directly involved in implementing the Contract. The Contractor shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS. 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](http://www.montgomeryschoolsmd.org/departments/procurement).
  3. The Contractor must take appropriate steps to promptly follow up on information identified in the criminal background check related to any sexual offenses, child sexual abuse offenses, and crimes of violence enumerated above, as well as any information regarding offenses involving distribution of drugs or other controlled substances, or any other criminal information identified by MCPS as warranting further explanation insofar as it may significantly affect the safety and security of MCPS students. If, after following up, the Contractor believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Contractor will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Contractor’s summary to determine whether to accept the Contractor’s recommendation, and the Contractor will be responsible for any consequences of a material misrepresentation in its written summary.
  4. Once the Contract is awarded, the Contractor is responsible for implementing the background check process. An individual in the Contractor’s workforce may not begin work in a MCPS school facility on an assignment where the individual will have direct, unsupervised, and uncontrolled access to children, until: (i) the background check results for that individual have been received by MCPS; (ii) the Contractor certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: [www.montgomeryschoolsmd.org/childabuseandneglect/](http://www.montgomeryschoolsmd.org/childabuseandneglect/); and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Contractor will be required to return all badges at the conclusion of the Contract.
  5. The criminal background check and badging process will be at the Contractor’s expense.
- C. Violation of this Article constitutes a breach of contract for which MCPS may terminate the Contract pursuant to Article 13 and/or pursue any other appropriate remedy.

**ARTICLE 22. INDEMNIFICATION AND LIABILITY**

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

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

## APPENDIX B

### SERVICE LEVEL AGREEMENT

This Service Level Agreement (“SLA”) between the [Service Provider] and Montgomery County Public Schools (“MCPS”) governs the use of the [Service Provider] in accordance with the Agreement with MCPS. If there is any conflict between the Agreement and this SLA, the Agreement shall govern.

#### 1. Availability Service Level

##### 1.1. Definition.

“Availability” shall mean the availability of the [Product] for use by the MCPS to view and download content. The Digital Content Provider shall use commercially reasonable efforts to make the [Product] available with a Monthly Uptime Percentage of at least 99.9% during any calendar month. Subject to the SLA Exclusions, if the [Service Provider] does not meet the Service Level Commitment, MCPS will be eligible to receive a Service Credit. Any unavailability of the [Product] resulting from scheduled maintenance for which [Service Provider] provided notice under Section 3 of this SLA will not be deemed to be non-Availability, except to the extent such scheduled maintenance time is in excess of four (4) hours in the applicable calendar month.

##### 1.2. Measurement.

Availability measurements of the [Product] shall be performed by the [Service Provider].

##### 1.3. Service Level Commitment.

During each calendar month, the [Service Provider] shall provide an average combined Availability of no less than 99.9%.

##### 1.4. Incident Management Procedure.

The [Service Provider] shall respond to an incident resulting in MCPS’s loss of use or functionality of the [Product] (“Incidents”) in accordance with time intervals and other requirements corresponding to the applicable Incident priority levels set forth in the below table. Incident priority levels will be reasonably determined by the [Service Provider] in a manner consistent with the below descriptions. MCPS shall provide commercially reasonable assistance to the [Service Provider] in connection with the [Service Provider]’s efforts to respond to an Incident.

Incident Priority	Incident Description	Response Time Service Level*
Priority 1:	<ul style="list-style-type: none"><li>• Service is down or unavailable; or</li><li>• Service function is so severely impacted that there is, or if the Incident is not resolved there will likely be, a halt to MCPS’s business; or</li></ul>	The [Service Provider] will respond to and commence efforts to fix a Priority 1 Incident within 2 hours after notification of such Incident from MCPS. The [Service Provider] shall acknowledge receipt of MCPS’s initial notification of a Priority 1 Incident

Incident Priority	Incident Description	Response Time Service Level*
	<ul style="list-style-type: none"> <li>• &gt;95% of the end users at a school are unable to access or use the service.</li> </ul>	within 1 hour, and shall provide status updates thereafter.
Priority 2:	<ul style="list-style-type: none"> <li>• Service functionality is substantially impacted or significant service performance degradation is experienced with high impact to MCPS's business operations affecting 75% to 95% of the end users at a school.</li> </ul>	The [Service Provider] will respond to and commence efforts to fix a Priority 2 Incident no later than 12 hours after notification of such Incident from MCPS. The [Service Provider] shall acknowledge receipt of MCPS's initial notification of a Priority 2 Incident within 2 hours, and shall provide status updates thereafter.
Priority 3:	<ul style="list-style-type: none"> <li>• There is a partial, non-critical impact to service functionality or service performance degradation with medium to low impact to MCPS's business operations at a school.</li> </ul>	The [Service Provider] will respond to Priority 3 Incidents no later than 48 hours after notification of such Incident from MCPS. The [Service Provider] shall acknowledge receipt of MCPS's initial notification of a Priority 3 Incident within 12 hours, and shall provide status updates thereafter.
Priority 4:	<ul style="list-style-type: none"> <li>• Requests involving routine technical issues; or</li> <li>• Inquiries regarding service capabilities; or</li> <li>• Notice of minor service performance issues for which a fix or work around is available.</li> </ul>	As may be available or as may be included in a future update or version.

\*In the event that MCPS reports an Incident outside of the [Service Provider]'s normal business hours, the respective time for the [Service Provider] to respond to such Incident shall carry over to the next business day.

### 1.5. Sole Remedy.

Unless otherwise mutually agreed upon by the parties, MCPS's sole and exclusive remedy for any unavailability, non-performance, or other failure by the [Service Provider] to provide the [Service Provider] is the receipt of a Service Credit (if eligible) in accordance with the terms of this SLA. MCPS shall be entitled to a Service Credit applied against future payments due from MCPS to the [Service Provider]. In event that the Availability falls below 99.9%, or the [Service Provider] fails to meet a Response Time Service Level (as described in Section 1.4 above) in any given month, the [Service Provider] agrees to provide MCPS a credit in the amount of 1/12th of the total annual amount of fees to be paid by MCPS to the [Service Provider] for the currently applicable year under the Agreement. Unless otherwise mutually agreed upon by the parties, the foregoing remedy is MCPS's sole and exclusive remedy, and the [Service Provider]'s sole and exclusive obligation, for any failure to meet any service level commitment. Such remedies may not be aggregated.



## **2. Conditions**

### **2.1. Notification.**

To receive credit for a non-Availability incident that has not been acknowledged by the [Service Provider], MCPS must notify the [Service Provider] within ten (10) business days after the end of the calendar month in which the non-Availability incident occurred and include therein the dates and times of each such incident. The [Service Provider] shall make available to MCPS monthly uptime data for MCPS to determine whether an unacknowledged non-Availability incident has occurred in the previous calendar month.

### **2.2. Amounts.**

Any and all remedies stated herein for any particular month shall not exceed the amount of the license fee applicable for such month. Any credits provided by the [Service Provider] against future payments shall not affect MCPS's obligation to pay to the [Service Provider] amounts already due and payable.

### **2.3. Credits.**

In all places where the term "credit" is used in this SLA, the parties acknowledge and agree that such term shall be understood to mean a credit that is to be applied against future amounts that become due and owing from MCPS to the [Service Provider].

### **2.4. Exclusions.**

The service level commitments stated herein shall not apply under any of the following circumstances: (i) any usage by MCPS of the [Product] that violates the Agreement or this SLA; (ii) failure of any components or systems that are supplied by MCPS; (iii) force majeure events; (iv) MCPS's negligent, reckless, or intentional acts or omissions, or the negligent, reckless, or intentional acts or omissions of others authorized by MCPS to use the [Product]; (v) delays caused by MCPS, MCPS facilities, or MCPS equipment, or lack of access to facilities due to MCPS's acts or omissions; and (vi) downtime arising from service and maintenance activities performed by or for the [Service Provider] that occur during normal service periods.

## **3. Notifications**

The [Service Provider] shall provide MCPS at least twenty-four (24) hours advance notification of scheduled maintenance to the [Product]. Notwithstanding the foregoing, the [Service Provider] agrees that scheduled maintenance shall not occur Monday through Friday between 7:00 a.m. and 6:00 p.m.