**Memorandum of Understanding**

**Between Provider Name and Montgomery County Public Schools**

This document serves as a Memorandum of Understanding (“MOU”) entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2023 (the “Effective Date”), by and between MONTGOMERY COUNTY PUBLIC SCHOOLS, a system of public schools operated by the Board of Education of Montgomery County (collectively referred to as “MCPS”) and PROVIDER NAME, which is duly authorized to conduct business in the state of Maryland (hereinafter referred to as the “Provider”), each referred to individually as a “Party” and collectively as the “Parties.” In collaboration with MCPS, the Provider agrees to implement PROGRAM NAME/ SERVICE, as set forth below.

**RECITALS**

WHEREAS, MCPS has received a proposal for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ services;

WHEREAS, Provider Namehas agreed to perform the required services for MCPS;

WHEREAS, MCPS desires Provider to provide its deliverables, products, and/or services, on the terms and conditions herein set forth, and the Provider is competent, ready, and willing to provide such deliverables, products, and/or services; and

WHEREAS, the Parties have set forth their understandings in this Agreement and the attachments included herein and made a part of this Agreement;

NOW THEREFORE, in consideration of the foregoing recitals, which are expressly incorporated herein, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MCPS and the Provider agree as follows:

1. **TERM**

This MOU shall become effective as of the Effective Date, and it shall continue until END DATE (the “Term”), unless extended by mutual agreement of the Parties. The MOU may be terminated in whole or in part by either party if the Party determines that such a termination is in its best interest. Any such termination shall be affected by delivery of a notice of termination to the other Party’s Project Contact, at least [90] 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. Any pilot collaboration between the Parties prior to the Effective Date shall be governed by this MOU.

1. **COST**

The cost for Provider’s services under this agreement are $####.

1. **STATEMENT OF THE WORK AND REQUIREMENTS**

The Provider agrees to provide the deliverables, products, and/or services set forth in the Statement of Work referenced and attached herein as **Attachment A**, attached hereto and incorporated herein. In addition, the Provider agrees to comply with the following terms:

1. Student Behavior. The Provider’s expectations for students’ conduct and disciplinary practices will be consistent with the restorative justice philosophy set forth in Board of Education Policy JGA, *Student Discipline*, and the MCPS Student Code of Conduct. These documents and all other MCPS policies, regulations, and other documents identified in this Agreement are available on MCPS’ website.
2. Employee Conduct. The Provider will require its employees to adhere to the standards and expectations that apply to MCPS employees who work with students, including, for example, pages 3–8 in the MCPS Employee Code of Conduct and other applicable policies and regulations, such as Board of Education Policy JHC, *Child Abuse and Neglect*, and MCPS Regulation JHC-RA, *Reporting and Investigating Child Abuse and Neglect*.
3. Visitors. All visitors to a school site will be required to sign-in and the Provider agrees to follow MCPS procedures governing visitors to schools in accordance with MCPS Regulation ABA-RB, *School Visitors*.
4. **PROJECT CONTACTS**

The designated MCPS Project Contact(s) who will oversee and coordinate the MOU shall be:

NAME:

TITLE:

OFFICE:

ADDRESS:

PHONE:

EMAIL:

The designated Provider Project Contact(s) shall be:

NAME:

TITLE:

ADDRESS:

PHONE:

EMAIL:

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

1. **PURPOSE AND BACKGROUND**

**[**Insert brief and basic background of contractor, anticipated service, and benefit to MCPS.]

1. **RESPONSIBILITIES**

[Please describe the overall goal of the program; details about what the program actually is; what format the program will take; the financial details of the program; what is provided for participating schools; what participating schools must provide for the program; and what procedures must be followed for students to participate in the program.]

1. **PARTICIPATING SCHOOLS**

[Provide details on the criteria for selections of the program’s staff and volunteers, the obligations all staff must fulfill (included below in template), and procedures for raising concerns over the staff (included below in template)

OR “No schools will be participating.”]

1. **STAFFING**

The Provider is the sole provider of the program. No additional staff or volunteers will be needed in order to implement the Provider’s program.

1. The Provider will ensure that all such individuals, including but not limited to any Provider employees, contractors, subcontractors, and volunteers (hereinafter “Provider Staff”) involved in the provision of services through the Message Delivery Training for MCPS, will comply with the following requirements:
   1. The obligations regarding criminal records set forth in **Attachment B** for all Provider Staff assigned to work in MCPS facilities to implement the [PROGRAM] for MCPS or otherwise implement this MOU and who will have direct, unsupervised, and uncontrolled access to MCPS students; provided, however, that except as mutually agreed by the Parties in writing, Provider Staff shall not engage directly with MCPS students unless a MCPS staff member is present. The Provider shall be responsible for all costs and fees related to the completion of criminal background checks and badging of its workforce in accordance with the provisions.
   2. All Provider Staff assigned to work in MCPS facilities to facilitate/implement the [PROGRAM] for MCPS or otherwise implement this MOU shall:
      1. Provide written affirmation that they have completed the MCPS online child abuse training for contractors, volunteers, and other partners as well as any other applicable MCPS online compliance training, as specified by MCPS;

* + 1. Provide written affirmation that they will adhere to the same standards and expectations that apply to MCPS employees who work with students, including, for example, pages 3 – 8 in the MCPS Employee Code of Conduct and other applicable policies and regulations, including but not limited to Board Policy JHC, *Child Abuse and Neglect*, and MCPS Regulation JHC-RA, *Reporting and Investigating Child Abuse and Neglect*, as well as the professional ethics standards articulated in Board of Education Policy BBB, *Ethics*, and MCPS Regulation, GCA-RA, *Employee Conflict of Interest*, and the MCPS Employee Code of Conduct; and
    2. Provide written affirmation that they will adhere to the data-sharing provisions of this MOU including those incorporated herein and made a part of this MOU as **Attachment C**, as well as all laws and regulations governing student privacy.

1. For each Provider Staff member who provides services pursuant to this MOU, the Provider will obtain written consent for the Provider to provide MCPS with notification of any termination, dismissal, or non-renewal of the Provider Staff member, as well as any placement on administrative leave.
2. The Provider will not employ, contract, or accept voluntary services from any individual whose certificate or license has been suspended or revoked by the Maryland State Department of Education or any other licensing board or agency on the grounds of unethical or immoral behavior, including but not limited to improper sexual or physical conduct with children or students.
3. In the event that MCPS has concerns regarding the performance or conduct of any of the Provider’s Staff, MCPS will raise the issue with the Provider, which shall promptly address the issue, including but not limited to reassignment of the Provider Staff member, provided, however, that nothing in this Section or elsewhere in this MOU shall limit the discretion of the Provider to make decisions regarding employment matters.
4. Provider Staff will be clearly classified as employees, independent contractors, or volunteers of the Provider and shall not be deemed to be employees of MCPS for any purposes, including but not limited to wages, payroll taxes, benefits, worker’s compensation, unemployment compensation, Social Security, retirement, or minimum wage laws.
5. The Provider shall not subcontract any services provided as part of the [PROGRAM] for MCPS without advance written approval of the MCPS Project Contact; nor shall any substitution of subcontractors be made without such advanced approval in writing. If MCPS provides advanced written approval as indicated above, the Provider shall include provisions in its subcontracts requiring its subcontractors to comply with this MOU, to indemnify, defend, and hold harmless MCPS, and to provide insurance coverage for the benefit of MCPS, in a manner consistent with this MOU. The Provider also shall cause its employees, agents, affiliates, subcontractors, and volunteers to comply with this MOU and adopt such review, audit, and inspection procedures as are necessary to assure such compliance.
6. **DOCUMENTATION AND COPYRIGHT**

The Provider warrants that any services provided by the Provider through this MOU will not infringe any valid patents or copyrights existing at the time the deliverables, products, and/or services are made available to MCPS, provided however, that this warranty does not extend to any infringement arising out of the use of such deliverables, products, and/or services in combination with other systems, equipment, or platforms not supplied by the Provider. 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 this MOU and may license its use by others for a fee or without charge. The Provider 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.

1. **CONFIDENTIAL DATA** 
   1. **Confidential Data**

No student information (de-identified or otherwise) will be collected or shared in order to implement the Provider’s program. In the event data is collected or shared, the following will apply to the Parties:

* 1. **Data Responsibilities**
     1. Any sharing of data between the Parties is contingent upon: (i) review, approval, and ongoing monitoring by MCPS; and (ii) compliance with all applicable federal, state, and local laws, policies, regulations, and ordinances including but not limited to the Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232, and its implementing regulations (34 C.F.R. § 99.30, et seq.), the Children’s Online Privacy Protection Act (“COPPA”), 15 U.S.C. § 6501-6505, its implementing regulations (16 C.F.R. § 312, *et seq.*), the Protection of Pupil Rights Amendment (“PPRA”), 20 U.S. Code § 1232h, 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*, MCPS Regulation JFF-RA, *Federal Requirements for Use of Protected Student Information*, and other legal requirements regarding data privacy, security, and confidentiality.
     2. The Provider will take steps as set forth in this MOU to safeguard data files and any confidential or sensitive information received from MCPS (the “Confidential Data”) at all times. The Provider shall utilize the Confidential Data only for purposes consistent with the purposes and scope as set forth in this MOU and will undertake any analysis of the Confidential Data provided pursuant to this MOU only in furtherance of the purposes set forth herein and not for any other purpose. Other than the Confidential Data expressly identified in this MOU, no other confidential or sensitive information will be provided by either Party to the other. The disclosure of Confidential Data from one Party to the other shall not be construed as a grant of any right of license with respect to the information other than for the purposes set forth in this MOU.
     3. The Provider shall exercise due care in safeguarding the Confidential Data against loss, theft, or other inadvertent disclosure and shall take all reasonable steps necessary to establish safeguards that are consistent with all applicable federal, state, and local law, and Board of Education policies and MCPS regulations relating to security for all Confidential Data and other sensitive information, including but not limited to, FERPA.
     4. The Provider will limit any internal access to and disclosure of Confidential Data solely to employees and contractors with legitimate interests in the Confidential Data and on a need-to-know basis (the “Authorized Representative(s)”). Each Authorized Representative will be a person who requires the Confidential Data to develop, exchange, maintain, analyze, and evaluate information for purposes set forth in this MOU. Authorized Representatives shall only use the Confidential Data identified in this MOU for the purposes set forth herein and for no other purpose. Additions, deletions, or changes to an Authorized Representative may be made with prior written notice to and approval by MCPS. Authorized Representatives shall receive a copy of this MOU and agree in writing to be bound by it. The Provider shall deliver signed statements from Authorized Representatives to MCPS prior to any sharing of Confidential Data. The Provider agrees to remind any Authorized Representative who ceases working with the Provider of his or her non-disclosure obligations at the time of departure and will terminate such Authorized Representative’s network access at the time of separation. In the event data is shared, the Provider must complete the following chart and ensure that no Confidential Data will be accessible to any other employees, contractors, or any other individuals, other than these individuals:

|  |  |  |
| --- | --- | --- |
| Name: | Title: | Purpose for Accessing Confidential Data: |
|  |  |  |
|  |  |  |
|  |  |  |

* + 1. The Provider agrees to implement and maintain reasonable physical, technical, and administrative safeguards to protect Confidential Data from unauthorized access, acquisition, destruction, use, modification, or disclosure. Such physical, technical, and administrative safeguards shall include organization of information security, asset management, human resources security, physical and technical access controls, data recovery procedures, incident response processes, and business continuity process and procedures.
    2. The Provider agrees that any electronic files of Confidential Data, or any analysis conducted pursuant to this MOU, shall be stored only on computers, servers, or databases on which the Confidential Data or analysis, shall have anti-virus, intrusion detection, configuration control, monitoring/alerting, automated backups, and regular vulnerability testing, and shall be encrypted and password protected at all times and securely stored in a location that is physically secure at all times with access limited to Authorized Representatives. All physical media backups (CD, tape, or otherwise) will also be encrypted and password protected and will be housed in a secure locked facility located at the Provider’s location, also with the same limited access. The Provider shall not permit Confidential Data to be maintained or stored on any unencrypted portable memory device, such as thumb drives or portable hard drives.
    3. The Provider may not hire contractors or other third-party service providers to perform services under this MOU on its behalf unless MCPS provides express written consent. If MCPS consents to the Provider utilizing a third party service provider to perform services under this MOU, the Provider shall execute a confidentiality agreement with such service provider prior to permitting access to Confidential Data, and the confidentiality agreement between the Provider and the service provider will (A) prohibit the service provider from using any Confidential Data for any purpose other than providing the contracted service to, or on behalf of the Provider; (B) prohibit the service provider from disclosing any Confidential Data provided by the Provider to subsequent third parties; (C) require the service provider to implement and maintain the security procedures and practices as provided in this MOU, and (D) require the service provider to promptly notify the Provider if the service provider becomes aware of any unlawful access to any Confidential Data stored on its equipment or facilities resulting in loss, disclosure, or alteration of Confidential Data.
    4. To the extent that the Provider uses cloud computing services, all Confidential Data provided by MCPS shall be securely stored with a commercially reasonable third-party cloud computing vendor using physical servers located solely within the United States. The Provider will confirm that the third-party vendor implements network security measures consistent with industry standards. Access to the server(s) hosting Confidential Data shall be limited to the Provider’s operations personnel specifically trained to manage and secure data and personnel directly involved in implementing this MOU.
    5. The Provider agrees to conduct periodic risk assessments and remediate identified security vulnerabilities in a timely manner. The Provider further agrees to share with MCPS copies of relevant portions of audits of the security of the Provider’s computers, computing environment, and physical data conducted by the Provider or on behalf of the Provider by third parties. The Provider agrees that MCPS may request additional follow-up information in connection with the relevant portions of audits, regarding the security of the Provider’s computers, computing environment, and physical data that the Provider uses to process Confidential Data.
    6. The Provider shall return to MCPS and/or destroy all Confidential Data obtained from MCPS, and any copies thereof, when the Confidential Data is no longer needed for the purposes of this MOU, or upon the termination or expiration of this MOU, whichever is earlier, unless otherwise agreed to by the Parties in writing and consistent with FERPA and other applicable laws. In fulfillment of this obligation, all such Confidential Data shall be purged from the Provider’s computer systems, and physical data centers, and such destruction shall be certified in writing by an officer of the Provider to MCPS. The Provider agrees to require all employees, contractors, or agents of any kind using the Confidential Data to comply with this provision. No other entity is authorized to continue using the Confidential Data obtained under this MOU upon its termination or otherwise.
    7. The Provider acknowledges and consents to comply with the re-disclosure limitations set forth under FERPA, including in 34 C.F.R. § 99.33, and shall not directly or indirectly release or otherwise reveal the Confidential Data to any other staff members other than the Authorized Representatives or to any third party for any purpose without prior written agreement of MCPS, which MCPS may grant, condition, or withhold in its sole discretion, except as otherwise provided by law, regulation, or judicial or administrative process.
    8. In the event that the Provider is required by law, regulation, or judicial or administrative process to disclose the Confidential Data provided by MCPS, the Provider 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 confidential status of any Confidential Data be disputed, the Parties agree to work in good faith to reach a mutually satisfactory disposition.
    9. The Provider shall not engage in targeted advertising when the targeting of the advertising is based on the Confidential Data received from MCPS; use the Confidential Data to amass a profile about any MCPS student except in connection with the Parties’ performance of their obligations under this MOU; or sell the Confidential Data.
    10. The Provider will notify MCPS immediately of any unauthorized access or suspected unauthorized access (a “Data Security Breach”) to the Confidential Data no later than 24 hours after the Provider learns of the Data Security Breach. For purposes of this MOU, a Data Security Breach is any instance in which the Provider has actual knowledge or a reasonable basis on which to conclude that there has been an unauthorized release or access of Confidential Data, regardless of whether the Provider 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 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. The Parties agree to work together to determine an appropriate notification plan for students, parents/guardians, staff, and/or stakeholders regarding any such Data Security Breach to the extent required. If the Provider becomes aware of a Data Security Breach, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Provider shall be responsible for performing an analysis to determine the cause of the Data Security Breach, and for producing a remediation plan. MCPS reserves the right to adjust this plan, in its sole discretion. The Provider shall provide notice to MCPS within 24 hours of notice or service on the Provider, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Provider’s handling of the Confidential Data, failure to follow security requirements, and/or failure to safeguard the Confidential Data. The Provider shall also cooperate with MCPS to communicate to parties affected by the Data Security Breach by affording MCPS prior review of press releases and any communications to be sent to affected parties.
    11. Neither the Provider nor any of its employees or contractors shall release any reports, information based on the Confidential Data, or results of any study to the public, any other government agency, or outside stakeholders, including the Rales Foundation, or as part of grant funding applications, except as required by law, without prior written approval from MCPS, and any such release shall be consistent with the terms of this MOU. Any reports, information based on the Confidential Data, or results of any study shall be reviewed by MCPS to ensure that the privacy and confidentiality of students and their parents/guardians are protected and comply with MCPS standard rules for redaction of student information. Any such reports or publications shall be in a manner that does not permit the identification directly or indirectly of individual students or parents. Publications documenting cooperative efforts may be prepared by either Party, or jointly, provided that both Parties have an opportunity to review the reports prior to publication.
    12. Obligations to comply with FERPA and other related legal requirements and its data handling responsibilities under this MOU will survive the termination or expiration of this MOU.

1. **EVALUATION**

The Provider agrees to seek input from MCPS regarding the scope and methodology for any survey, evaluation, or assessment instruments regarding the implementation of this MOU; in such evaluations or assessments, the Provider shall not use any Confidential Information provided by MCPS or its employees, students, or their parents/guardians, except as specified in this MOU or a separate data-sharing agreement mutually agreed upon in writing by the parties. In accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g(b)(1)(F)), any information shared for evaluation will not contain any Personally Identifiable Information of MCPS students or their parents/guardians, and will be destroyed when no longer needed for evaluation purposes. The Provider shall not publish or disseminate the results of any evaluation or assessment without prior approval by MCPS, subject to the terms and conditions of this MOU.

[INSERT ADDITIONAL PROGRAM RELATED REPORTS/SURVEYS/EVALUATIONS ON MEASURABLE GOALS OR OUTCOMES IF APPLICABLE]

1. **PUBLICITY**

The Provider 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 MOU or any results achieved pursuant to the MOU (hereinafter “Publication”); or (ii) use any names, trademarks, or logos of MCPS, except as necessary to implement the MOU. To the extent that MCPS agrees to any such Publication regarding the MOU, the Provider shall abide by the following terms:

* The primary purpose shall be to disseminate information about the work rather than to promote the Provider’s accomplishments or knowledge.
* 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.
* The Provider shall abide by the data-sharing provisions in **Attachment C** of this MOU and any other data-sharing agreement between the Parties.

Provided that the Provider complies with the foregoing provisions and provides MCPS with the opportunity to review prior to dissemination, the Provider may utilize aggregated de-identified data in program evaluation reports to funders, annual reports, grant applications, and grant reports.

1. **TERMINATION**

Either Party may terminate this MOU in its sole discretion upon 30 days written notice to the other. The notice of termination shall specify the extent to which performance shall be terminated and the date upon which such termination becomes effective. Any Confidential Data in use at the time of termination must be returned to the respective Party or destroyed, unless otherwise agreed to by the Parties in writing with assurances for consistency with FERPA and other applicable laws.

1. **COMPLIANCE**
2. The Provider 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 Regulation IRB-RA, *Volunteers in Schools*,and 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 Provider will not discriminate against any of its employees or applicants for employment because of the actual or perceived personal characteristics listed above. The Provider 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 Provider 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, and Section 504 of the Rehabilitation Act of 1973.
3. The Provider will comply with the data-sharing and student privacy requirements made a part of this MOU as **Attachment C**.
4. The Provider 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*.
5. The Provider agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* (“Board Policy BBB”). In addition, the Provider shall have an affirmative obligation to disclose in writing to MCPS any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Provider nor any of its officers, directors, partners, employees, agents, affiliates, or subcontractors shall take any action that they know would violate Board Policy BBB. The Provider will abide by the provisions regarding ethics and conflicts of interest incorporated herein and made a part of this MOU as **Attachment E**.
6. The Provider shall obtain any licenses or permits necessary for performance of the work required under this MOU. The Provider shall only assign individuals to perform work under this MOU 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 this MOU. “Professional Services” for the purpose of this MOU shall mean any service provided by a licensed, certified, or otherwise documented professional. Upon request by MCPS, the Provider shall promptly submit documentation to the MCPS Project Contact that the individuals assigned to provide Professional Services under this MOU are properly licensed and/or certified.
7. **OTHER PROVISIONS**
8. The Provider shall abide by the indemnification, liability, and insurance provisions incorporated herein and made a part of this MOU as **Attachment D**.
9. The Parties agree that the Provider is an independent contractor under the MOU and will in no way be considered to be an agent, partner, or employee of, or joint venture with, MCPS.
10. The Parties’ obligations and warranties herein, which directly or indirectly are intended by their nature or by implication to survive the Parties’ performance, shall survive the expiration, cancellation, or earlier termination of this MOU.
11. The MOU 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 MOU shall be in an appropriate state or federal court located in Maryland.
12. The MOU is binding between the Parties and constitutes the entire understanding between the Parties regarding the subject matter of the MOU 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 MOU. 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. In the event any terms of this MOU are inconsistent with any terms of use or other Provider documents sent or received by MCPS and/or MCPS students, parents/guardians, or employees as part of any activities implemented pursuant to this MOU or posted publicly by the Provider, the terms of this MOU shall prevail, unless otherwise agreed to in an amendment to this MOU, duly executed by the Parties.
13. The provisions of this MOU are for the sole purpose of setting forth the respective rights and obligations of the Parties. None of the provisions of this MOU are intended for the benefit of any third party, and no such third party shall have the right to enforce the provisions of this MOU. Neither Party shall subcontract, assign, or transfer responsibilities undertaken in this MOU to another person or entity, without the express, written consent of the other Party.
14. Should any portion of the MOU be found illegal, the remainder shall remain in full force and effect and shall be binding on both Parties.
15. This MOU and all of its provisions shall apply to and bind the successors and assigns of the Parties. No assignment or transfer of the MOU or any part hereof, rights hereunder, or interest herein by the Provider 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 MCPS Project Contact(s), an assignment does not release the Provider from responsibility for performance of this MOU.
16. This MOU may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each Party may rely on facsimile or Adobe Portable Document Format (PDF) signature pages as if such facsimile or PDF signature pages were originals.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the 11th day of April, 2023.

WITNESS: MONTGOMERY COUNTY PUBLIC SCHOOLS, a system of public schools operated by the Board of Education of Montgomery County Maryland

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Monifa B. McKnight, Ed.D.

Superintendent of Schools

WITNESS: CATHERINE ANN MCLEAN

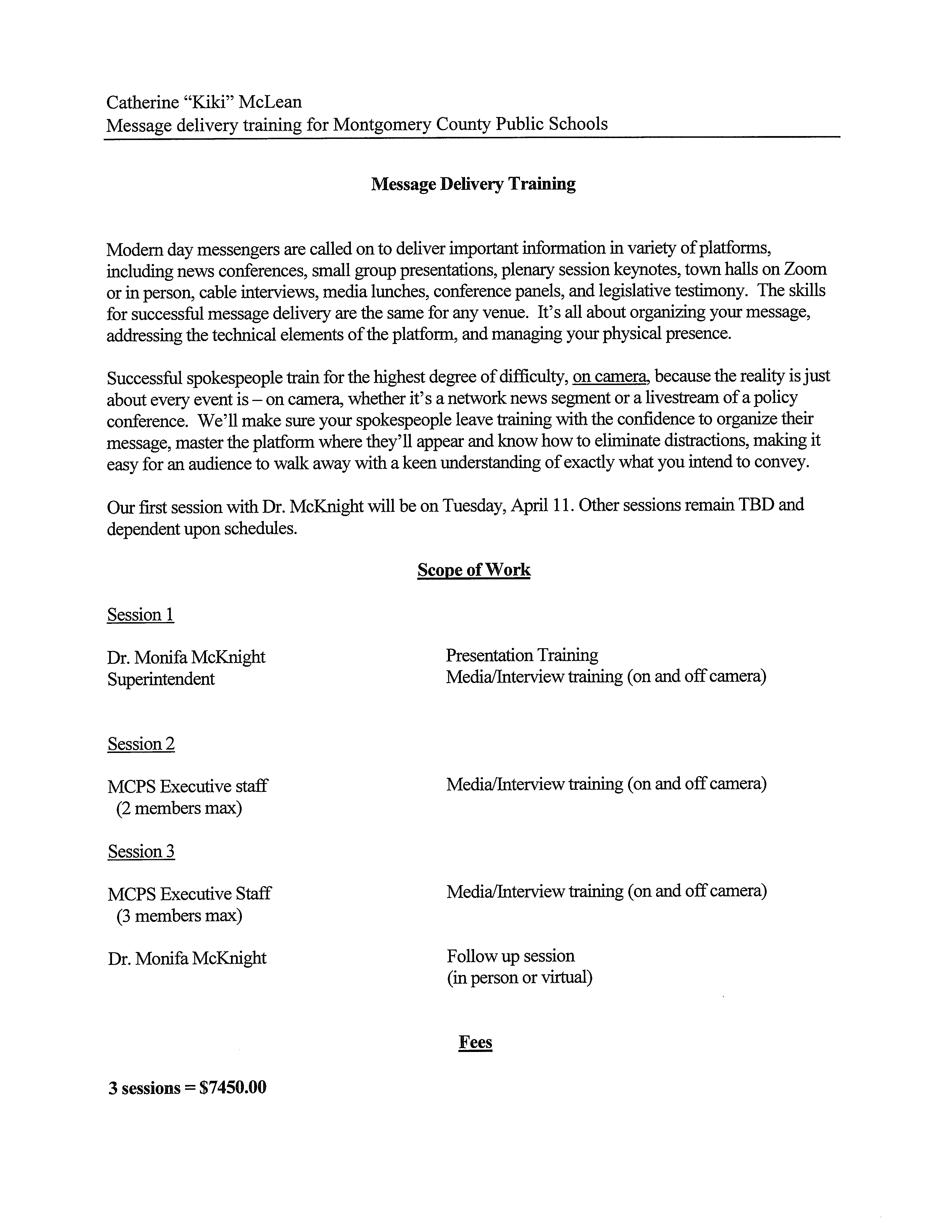
By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Catherine Ann McLean

Owner

**ATTACHMENT A**

(Statement of Work)



**ATTACHMENT B**

**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 agreements:**

* + 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:
       1. 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;
       2. 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
       3. 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 Provider is required to submit, following execution of the MOU, 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 MOU meet this obligation. Additionally, the Provider must confirm that it continues to meet this obligation on an annual basis and/or when there are changes in its workforce that the Provider and/or its subcontractors use to perform the work required by the MOU.

**B. Required criminal background check process for certain individuals in the Provider’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 Provider’s direct employees, subcontractors and their employees, and/or independent contractors and their employees that the Provider uses to perform the work required by the MOU.

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 Provider 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](file:///C:\Users\CIVINJOS\AppData\Local\Microsoft\Windows\Temporary%20Internet%20Files\Content.Outlook\SPFHN7R4\www.montgomeryschoolsmd.org\departments\procurement).

3. The Provider 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 Provider believes that the individual is qualified and should be assigned to work (or continue to work) in a MCPS school facility, then the Provider will provide a written summary to MCPS justifying its recommendation. MCPS will rely on the Provider’s summary to determine whether to accept the Provider’s recommendation, and the Provider will be responsible for any consequences of a material misrepresentation in its written summary.

* + 1. Once the MOU is executed, the Provider is responsible for implementing the background check process. An individual in the Provider’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 Provider certifies to MCPS that the individual has completed the online training regarding recognizing, reporting, and preventing child abuse and neglect, available on the MCPS website at: www.montgomeryschoolsmd.org/childabuseandneglect/; and (iii) the individual obtains a MCPS identification badge. The badge will be issued by the MCPS Department of Safety and Security, 850 Hungerford Drive, Room 131, Rockville, MD 20850. Appointments are made by calling 301-279-3066. The Provider will be required to return all badges at the conclusion of the MOU.
    2. The criminal background check and badging process will be at the Provider’s or its sub-contractor’s expense.
    3. Violation of the provisions set forth in this Attachment constitutes a breach of contract for which MCPS may terminate the MOU and/or pursue any other appropriate remedy. Notwithstanding anything in the MOU to the contrary, the provisions set forth in this Attachment shall survive the expiration or earlier termination of the MOU.

**ATTACHMENT D**

**INDEMNIFICATION, LIABILITY, AND INSURANCE**

1. Each Party shall be 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 by the Party’s negligence, its performance or failure to perform any of its obligations under the MOU, or its violation of any applicable legal requirement. In addition, the Provider 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 Provider’s negligence, its performance or failure to perform any of its obligations under the MOU, or its violation of any applicable legal requirement; (ii) any claims, costs, and/or losses whatsoever occurring or resulting from: (a) the Provider’s failure to pay any such compensation, wages, benefits, or taxes; and/or (b) the supplying to the Provider of work, services, materials, or supplies in connection with or in support of the performance of the MOU; and (iii) any claim of infringement or misappropriation of any patent, copyright or other intellectual property right. For purposes of this Attachment, the negligence of employees, agents, affiliates, or subcontractors of the Provider is deemed to be the negligence of the Provider.
2. In any action or proceeding brought against MCPS by reason of the foregoing, the Provider must reimburse MCPS the cost of defending such action or proceedings, or upon MCPS’ written demand and at the Provider’s sole cost and expense, the Provider must defend such action and proceeding by counsel approved by MCPS.
3. For the purposes of this Attachment, MCPS includes the Board of Education of Montgomery County, and its officers, officials, agents, and employees. Nothing herein or any other provision of the MOU 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 MOU 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 Provider. The Provider expressly understands and agrees that any performance bond or insurance protection required by the MOU, or otherwise provided by the Provider, shall in no way limit its responsibility under the MOU to defend, indemnify, and hold harmless MCPS.
4. NO PARTY SHALL BE LIABLE FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE MOU, THE PROVIDER’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 PROVIDER UNDER THE MOU.
5. The Provider 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 Provider 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 MOU.
     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 MOU, either directly or indirectly, involve or require Professional Services.
6. The minimum limits of coverage listed above shall not be construed as the maximum as required by the MOU or as a limitation of any potential liability on the part of the Provider; nor shall failure by MCPS to request evidence of this insurance in any way be construed as a waiver of the Provider’s obligation to provide the insurance coverage specified. The Provider must keep this insurance in full force and effect during the term of the MOU, 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.
7. 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 MCPS. The Provider’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 Provider in connection with the MOU. The Provider’s insurance shall apply separately to each insured against whom a claim is made and/or a lawsuit is 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 Provider’s insurance or benefit the Provider in any way.
8. The Provider 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 Provider must provide MCPS at least thirty (30) days written notice of a cancellation of, or a material change to, an insurance policy. The Provider must provide the certificates of insurance before commencing the work covered by the MOU.
9. Violation of the provisions set forth in this Attachment constitutes a breach of contract for which MCPS may terminate the MOU and/or pursue any other appropriate remedy. Notwithstanding anything in the MOU to the contrary, the provisions of this Attachment shall survive the expiration or earlier termination of the MOU.

**ATTACHMENT E**

**INTEGRITY, ETHICS, AND CONFLICTS OF INTEREST**

1. The Provider is prohibited from using the services of MCPS employees or officials (including Board of Education members) in implementing this MOU. 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 Provider 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.

1. No official or employee of Maryland, Montgomery County, or MCPS shall benefit from or receive any money as a result of the MOU. This prohibition does not apply to contracts with MCPS employees or officials who contracted in their own name.
2. The Provider hereby declares and affirms that, to its best knowledge, none of its officers, directors, partners, employees, agents, affiliates, volunteers, 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.
3. The Provider agrees to review and at all times abide by the Board of Education Policy BBB, *Ethics* (“Board Policy BBB”). In addition, the Provider shall have an affirmative obligation to disclose in writing to the MCPS Project Contact any actual or potential conflicts of interest as identified in Board Policy BBB, and neither the Provider nor any of its officers, directors, partners, employees, agents, affiliates, volunteers, 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.
4. Violation of the provisions set forth in this Attachment constitutes a breach of contract for which MCPS may terminate the MOU and/or pursue any other appropriate remedy. Notwithstanding anything in the MOU to the contrary, the provisions set forth in this Attachment shall survive the expiration or earlier termination of the MOU.

**ATTACHMENT C**

**DATA COLLECTION AND CONFIDENTIAL INFORMATION**

A. The Provider shall comply with all federal, state, and county laws and regulations applicable to the MOU 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 *Health Insurance Portability and Accountability Act* (HIPAA), 42 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C. § 1320d et seq., and its implementing regulations (45 C.F.R. Parts 160 & 164); 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 MOU 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

To assist the Provider in its work under the MOU, MCPS may disclose to the Provider, either in writing or orally, records or information which MCPS deems to be proprietary and/or confidential (hereinafter, “Confidential Information”). For purposes of the MOU, Confidential Information is any information or data labeled or identified as confidential in the MOU or at the time of disclosure. This definition and the obligations of this Article shall not extend to any information that: (i) the Provider possesses prior to acquiring it from MCPS; (ii) becomes available to the public or trade through no violation by the Provider; or (iii) is developed by the Provider independently of and without reliance on confidential or proprietary information provided by MCPS.

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 Provider’s deliverables, products, and/or services (e.g., log-in information or responses to assessment questions), as well as “Metadata.” Metadata includes but is not limited to: information about how long a MCPS User took to perform a task; information about how long a MCPS User’s mouse hovered over an item; keystroke data; or other data about the MCPS User’s use of the Provider’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:

* + - 1. A student’s name;
      2. The name of the student’s parent/guardian or other family members;
      3. The address of the student or student’s family;
      4. A personal identifier, such as the student’s social security number, student number, or biometric record;
      5. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
      6. 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
      7. Information requested by a person, who is not an authorized representative of the educational agency and who MCPS and/or the Provider reasonably believes knows the identity of the student to whom the education record relates.

3. Confidential Information shall be maintained in confidence during the MOU 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 Provider shall use the Confidential Information solely for the purposes of the MOU. The Provider 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 Provider uses to protect is own confidential information. The Provider 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 MOU including but not limited to the requirements listed above.

4. The Provider 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 MOU including but not limited to the requirements listed above.

5. In the event that the Provider is required by law, regulation, or judicial or administrative process to disclose any Confidential Information, the Provider 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. The Provider agrees to comply with the re-disclosure limitations set forth in FERPA, including in 34 C.F.R. § 99.33, and shall not authorize access to Confidential Information that includes Personally Identifiable Information to any of its employees, agents, affiliates, and subcontractors, or to any auditor, unless such employee, agent, affiliate, subcontractor, or auditor (i) requires such access in order to allow the Provider to provide the deliverables, products, and/or services set forth in the MOU or to fulfill the Provider’s obligations under the MOU; and (ii) has signed a non-disclosure agreement no less restrictive than the terms of the MOU 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 Provider; (b) prohibit the individual or entity from disclosing any Confidential Information provided by the Provider 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 Provider 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 Provider agrees to remind (in writing) individuals or entities who cease working with the Provider 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 MOU, 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 Provider, nor any successor or entity to which the Provider’s assets are sold, acquires rights in the Confidential Information, other than the rights MCPS grants to the Provider to perform the work contemplated in the MOU. If the Provider becomes subject to dissolution or insolvency, MCPS’ and MCPS Users’ Confidential Information will not be considered an asset or property of the Provider. 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 Provider 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 MOU.

D. Use of Confidential Information

1. The Provider shall collect, use, and store only such Confidential Information that is necessary in connection with the Provider’s obligations under the MOU.

2. The Provider may collect and use aggregated de-identified Confidential Information as set forth in this MOU 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 Provider 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 Provider 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 Provider’s performance of its obligations under the MOU; (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 Provider’s deliverables, products and/or services and that could be linked to an identifiable MCPS User, stakeholder, school, or the district.

E. Security of Confidential Information

1. The Provider 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:

* + - * Security policies for the Provider’s employees, agents, affiliates, and subcontractors related to the storage, access, retention, transportation, and disposition of data containing Confidential Information;
      * Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
      * Secure access controls to Confidential Information, including but not limited to passwords;
      * Procedures for data recovery, incident response and processes, and business continuity processes and procedures;
      * Encryption of Confidential Information in accordance with industry standard encryption when it is stored or transmitted electronically;
      * 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;
      * Audit logs of its system on a secured server with restricted access to prevent tampering or altering of audit data; and
      * 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 Provider 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 Provider shall not maintain or store Confidential Information outside of the United States. To the extent that the Provider 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 Provider 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 Provider’s server(s) hosting Confidential Information shall be limited to the Provider’s operations employees, agents, affiliates, or subcontractors who: (i) have access to the Provider’s access keys and are specifically trained to manage and secure data; and/or (ii) are involved in providing the Provider’s deliverables, products and/or services.

4. Any computer, server, or database on which Confidential Information, or any analysis conducted pursuant to the MOU, 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 Provider’s operations personnel and personnel directly involved in implementing the MOU. The Provider shall not permit Confidential Information to be maintained or stored on any portable memory device, such as thumb drives or portable hard drives, without the express written consent of MCPS.

5. The Provider 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 Provider will remove Confidential Information from backups in a manner consistent with technology best practices and industry standards for secure data disposal methods. If the Provider 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 Provider at its sole expense to ensure compliance with the provisions of this Attachment. The Provider shall reasonably cooperate in the performance of such audits. The Provider also will conduct regular internal monitoring and vulnerability assessments of the computers, computing environment, servers, and physical data centers that the Provider 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 Provider shall review audit findings and will implement recommended security program changes and enhancements where practical and appropriate. The Provider will provide MCPS, upon request, summary data of the above audits, scans, and tests. The Provider 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 Provider 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 Provider 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 Provider shall notify the MCPS Project Contact immediately of any Data Security Breach, and inform MCPS (to the extent known) what data has been compromised, but in no event later than twenty-four (24) hours after the Provider learns of the Data Security Breach. If the Provider becomes aware of a Data Security Breach, it shall cooperate with MCPS regarding recovery, remediation, and the necessity to involve law enforcement, if any. The Provider shall be responsible for performing an analysis to determine the cause of the Data Security Breach, and for producing a remediation plan in consultation with MCPS. MCPS and the Provider agree to work together to determine an appropriate notification plan to any MCPS Users of the Provider’s deliverables, products and/or services regarding any such Data Security Breach. In addition, to the extent not prohibited, the Provider agrees to notify MCPS of Data Security Breaches that affect its customers generally.

3. In addition to any other remedies available to MCPS, at law or in equity, the Provider will reimburse MCPS in full for all costs incurred by MCPS in investigating and remediating any Data Security Breach caused in whole or in part by the Provider or its employees, agents, affiliates, or subcontractors. The Provider shall use commercially reasonable efforts to mitigate any negative consequences caused to MCPS, or to a MCPS User, as the result of a Data Security Breach and to implement procedures to prevent the recurrence of a similar Data Security Breach.

4. The Provider shall provide notice to MCPS within twenty-four (24) hours of notice or service on the Provider, whichever occurs first, of any lawsuits resulting from, or government investigations of, the Provider’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 Provider shall upon the termination or expiration of the MOU, upon cessation or dissolution of the Provider’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 Attachment shall supersede in any manner the Provider’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 MOU including but not limited to the requirements listed above, or the provisions of the MOU concerning the Provider’s obligations to MCPS.

J. Violation of the provisions set forth in this Attachment constitutes a breach of contract for which MCPS may terminate the MOU and/or pursue any other appropriate remedy. Notwithstanding anything in the MOU to the contrary, the provisions set forth in this Attachment shall survive the expiration or earlier termination of the MOU.