

AGREEMENT BETWEEN DCPS AND MTF CHILDCARE LLC

This DCPS School Program Provider Agreement (“Agreement”) is entered into between the District of Columbia Public Schools (“DCPS”) and MTF CHILDCARE LLC (“Provider”), collectively referred to herein as the “Parties.” This Agreement sets forth the terms and conditions governing Provider furnishing DCPS students with the services described in Section 4 below while on DCPS property at particular DCPS schools or facilities (“Location” or “DCPS Location”). This Agreement is effective as of the final party signature (“Effective Date”). Providers shall only start services upon receipt of the signed, executed Agreement.

Now, therefore, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** This Agreement shall commence as of the Effective Date and shall terminate five (5) years from the Effective Date (the “Term”). The Parties may renew this Agreement for an unlimited number of additional two (2) year terms, or any fraction thereof, by written agreement signed by both Parties prior to expiration of the Term or any subsequent term agreed to pursuant to this provision and pursuant to Provider’s compliance with key terms under this Agreement. DCPS may terminate this Agreement prior to expiration of the Term or any subsequent term agreed to pursuant to this provision in accordance with Section 10 and Appendix A of this Agreement.
2. **Funding.** No funding commitment on behalf of DCPS shall be associated with the formation of or any of the obligations under this Agreement. Any activity for which Provider shall be compensated by DCPS must be outlined in a separate purchase order or agreement.
3. **Responsibilities of DCPS.** DCPS agrees to:
 - a. Subject to Provider obtaining any Use Agreement required by the Office of Realty in the Department of General Services, afford Provider the use of required DCPS facilities, custodial services and security.
4. **Responsibilities of the Provider.** Provider agrees to:
 - a. Provide the academic, wellness, and/or enrichment services and/or activities detailed in Section 4(c) of this Agreement and align the services with applicable DCPS standards, goals and priorities;
 - b. Use the space in the applicable DCPS Location in order to provide the services explained in Section 4(c) of this Agreement;
 - c. Provide the following services for DCPS:
 - i. Provider will provide enrichment programming and before and afterschool care to students through their MTF Flex and Little Medical School programs:

- i. MTF Flex: Provider of before care, aftercare, and enrichment programming with a large catalog of providers.
 - ii. Little Medical School: Program for students to participate in hands-on activities to learn more about science and animals (Little Vet School), while creating excitement around the medical field.
- d. Provide reasonable accommodations/modifications to allow students with disabilities to 1) gain equal access to and 2) participate effectively in the Program activities offered as required under Title II of the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Provider shall request the student's Individualized Education Plan or Section 504 plan (if applicable) and consult with DCPS on what reasonable accommodations/modifications may be necessary to best serve the student. Provider shall make a good faith effort to provide the necessary reasonable accommodations/modifications. If Provider can clearly demonstrate that a reasonable accommodation/modification would fundamentally alter the nature of the service, program, or activity it offers (under the ADA) and/or that it would cause an undue hardship to Provider (under Section 504), the Provider is not required to provide the reasonable accommodation/modification. Provider shall document related communication which shall be kept on file and shared promptly with DCPS upon request.
- e. Submit signed Use Agreements to the Office of Realty in the Department of General Services to ensure accurate billing for rental, custodial services, and security fees (if applicable).
- f. Comply with all applicable federal and local laws and regulations, as well as DCPS policies including, but not limited to, those related to discipline, sexual harassment, mandatory reporting, grievances, and school safety. Provider will allow DCPS unrestricted access to observe, monitor, and evaluate Provider's compliance with this Agreement, including during the provision of services described in Section 4(c) of this Agreement. DCPS may conduct such observation, monitoring, and evaluation through various measures including, but not limited to, conducting site visits, participating in informal check-ins, participating in formal meetings with Provider's staff or director(s), and/or administering an evaluation tool which may include reading and responding to end-of-year evaluations.
- g. Provide a copy of the Provider's program policies and procedures, upon request.
- h. Maintain an internal process for effectively handling incidents occurring during the provision of services under this Agreement, including any complaints from participating students' parents/family. Provider will immediately document any incidents occurring during the provision of services under Section 4(c) of this Agreement regarding the behavior, safety, or health of any DCPS student and/or any Provider Personnel (as defined in Section 6(a) of this Agreement) through the School Program Provider Incident Report Form, accessible at <https://forms.office.com/r/CRLhhE3Trm>. Provider shall also immediately notify the principal of the DCPS Location where the incident occurred AND the DCPS point of contact referenced in Section 14 of this Agreement. Provider will comply immediately with any requests made by DCPS to alter any student's programming based on the incident report including, but not limited to, replacement of Provider Personnel.
- i. Where providing in-person services, follow all DCPS policies and procedures related to social distancing, personal protective equipment ("PPE"), hygiene, and any other safety measures currently in place in response to the COVID 19 pandemic, regardless of the District of Columbia's status with respect to the relaxation of certain restrictions or the "re-opening" of certain societal aspects. DCPS shall make such policies available to Provider prior to the beginning of the program. Provider must identify potential compliance issues with this paragraph in advance and immediately notify the DCPS contact in Section 14. Provider agrees that DCPS staff may check on compliance with these policies and procedures at any time, and that DCPS reserves the right to immediately suspend program

services and/or terminate this Agreement pursuant to Section 10 for non-compliance with these policies and procedures.

- j. When providing virtual services via a web-based platform, ensure that all staff working with DCPS students is aware of and follows DCPS' [Virtual Learning Policies and Procedures](#), available at the following link: <https://bit.ly/DCPSVirtualPolicies>.

5. Confidentiality and Data Sharing

- a. Provider agrees to adhere to all District and federal laws and regulations pertaining to privacy and confidentiality of education records, including the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA").
- b. Provider will, upon request, share with DCPS its student-specific program records for the purpose of tracking the performance of those students enrolled in the Provider's program.
- c. Provider will follow the procedures established by the Office of Data and Technology (ODT) to request student-specific education records from DCPS or Location(s). Unless Provider presents DCPS with a valid FERPA authorization to disclose form signed by the relevant parent/guardian, Provider will be required to follow ODT data access instructions in order to receive any student-specific education records from DCPS or Location(s). Provider should contact ODT for a full description of these procedures if it will be requesting student-specific education records from DCPS or Location(s).
- d. Student-specific education records will only be released to Provider with parent/guardian's written consent, or the student's consent if over 18 years of age, or if otherwise authorized under FERPA.

6. Clearance Checks.

- a. Provider shall ensure all of its employees, contractors and volunteers providing services under this Agreement ("Provider Personnel") submit to all clearance checks required by the DCPS clearance process which may include, but may not be limited to, a tuberculosis screening; a criminal background check pursuant to the Criminal Background Checks for the Protection of Children Act of 2004 (the "Act") (D.C. Code § 4-1501.01, et seq. (2009)) and any rules promulgated thereunder, including D.C. Mun. Regs. Subt. 6-B, § 412, et seq. (2011); a review of applicable state and federal child protective and sex offender registries per D.C. Code § 38-951.03(a)(5) and 42 C.F.R. § 1302.90; and a drug test per D.C. Code § 1-620.32 and .36.
- b. Criminal background checks required under this section must be conducted by DCPS or another District government agency subject to the Act; DCPS will not accept the results of a background check administered outside of the District of Columbia government.
- c. Drug testing required under this section may be conducted by a DCPS contractor or a contractor hired by Provider with results submitted to DCPS at dcps.mdat@k12.dc.gov for review; provided, however, that any testing must follow the methodology outlined in D.C. Code § 1-620.34 and 6-B DCMR § 427. In accordance with D.C. Code § 1-620.36, Provider Personnel shall not be required to submit to a test for marijuana prior to providing services under this Agreement; DCPS will accept a four-panel test from an outside contractor provided a test is conducted for the same four substances tested by DCPS: opiates, methamphetamines, cocaine, and Phencyclidine (PCP). DCPS will review the results of all drug testing and will notify the individual and Provider of the results. Provider acknowledges that a positive drug test result, or failure or refusal of any Provider Personnel to submit to a required drug test, will result in that individual's disqualification from Program participation.
- d. Provider shall ensure that any Provider Personnel engaging in the transport of DCPS students under this Agreement consent and submit to a DCPS initiated traffic record check, in accordance with 6-B DCMR § 410, 419, and 420. DCPS reserves the right to deny any individual the ability to transport its students

under this Agreement based on its own review of the individual's traffic record and determination of whether, considering the totality of the circumstances, that individual is suitable to provide such services.

- e. Clearance checks must be completed by Provider employees, contractors and volunteers on a regular basis to ensure they are current during the Term of the Agreement. Upon request, Provider shall furnish proof of said clearance checks to DCPS.
 - f. Provider shall ensure that all Provider Personnel who have not yet passed all required components of the DCPS clearance process are restricted from providing services under this Agreement.
7. **Removal of Provider Personnel.** DCPS reserves the right to require removal of any individual Provider Personnel from this program at any time, for any reason, at its sole discretion including, but not limited to, based on information contained in any incident report submitted pursuant to Section 4(g) of this Agreement. At Provider's request, DCPS will confer with Provider to discuss the facts and circumstances leading to the removal of any Provider Personnel; however, such discussion shall not be required and Provider shall immediately prohibit the individual Provider Personnel from providing services under this Agreement when so required by DCPS.
 8. **Donation Process.** DCPS considers any in-kind services provided by Provider under this Agreement valuable to its authorized duties and responsibilities as a District of Columbia government agency. Where DCPS is not paying the services provided under this Agreement pursuant to some other agreement or purchase order as noted in Section 2 of this Agreement, then in accordance with D.C. Official Code § 1-329.01 and the District of Columbia Mayor's Memorandum #2015-001 (July 21, 2015), all such services must be donated to DCPS through the donation review process administered by Serve DC – The District of Columbia Mayor's Office on Volunteerism and Partnerships.
 9. **Compliance with Applicable Law.** Provider shall comply with all applicable laws, rules and regulations related to the program and its obligations under this Agreement whether now in force or hereafter enacted or promulgated. In addition, Provider shall at all times maintain any District of Columbia or federal license, registration or certification it is legally required to obtain, and provide a copy of such documentation to DCPS upon signing this Agreement. Provider shall ensure that at no time during the term of this Agreement it owes the District government more than \$100 in outstanding fines, penalties, past due taxes or interest, and that it is otherwise in compliance with all applicable laws, rules and regulations related to its operations.
 10. **Termination.** This Agreement may be terminated in accordance with the DCPS Provider Termination Policy attached hereto as Attachment A. DCPS may also terminate this Agreement following review of Provider's reapplication for continued collaboration with DCPS as referenced in Section 20 of this Agreement. This Agreement may be terminated at any time by the agreement of both parties.
 11. **Publicity.** Provider shall not use the logo of DCPS, the District government or any District agency in any way including, but not limited to, in any statement, promotional materials (including on Provider's website) or other published materials. In addition, Provider shall not use the name of DCPS, the District government or any District agency in any way including, but not limited to, in any statement, promotional materials (including on Provider's website) or other published materials in a manner which states or implies support for or an endorsement of Provider by DCPS. Further, Provider shall at all times obtain prior written approval from the DCPS contact listed in Section 14 of this Agreement before it makes any public statement, disseminates any promotional materials or issues any published materials bearing on the services it provides under this Agreement.
 12. **Media Consent Forms.** Provider and DCPS agree to work together to obtain fully executed version of any required media consent forms in advance of Provider's use of student images and recordings in any medium and for any purpose whatsoever. DCPS hereby issues a limited assignment to Partner of the rights granted to DCPS

by the parents/guardians of students participating in the Program through DCPS' general "Media Consent and Release Form" ("DCPS Media Consent"), where such parents/guardians have signed such form, solely for the purposes of providing services under this Agreement. Partner acknowledges that the DCPS Media Consent explicitly prohibits Partner from making public any biographical or other identifying information regarding the student, and that the form is valid only through the end of the school year for which it was signed.

13. **DCPS Field Trip Requirements.** Provider and DCPS agree to work together to obtain fully executed versions of any required field trip permission and waiver forms prior to students being taken on any program field trips. Both parties will collaborate to ensure that all children that require administration of medication during a program field trip have a Medication Plan on file with the Provider and the DCPS location, and that any and all medication administered during the trip is done so in accordance with the requirements of 22-B DCMR § 610. The parties will further collaborate to determine whether any students that wish to participate in a program field trip require accommodations, and to ensure that reasonable accommodations are secured prior to the start of the trip.

14. **Notices and Contact Persons**

Any inquiries under this Agreement shall be directed to the parties listed below. Any notices required under this Agreement shall be in writing sent by any recognized form of communication and by any recognized delivery method to the same parties.

For DCPS:

Katie Williams
Coordinator, Partnerships and Donations
District of Columbia Public Schools
1200 First Street, NE, 12th Floor
Washington, DC 20002
Email: DCPS.Partnerships@k12.dc.gov

For Provider:

Michael T. Fay
CEO
37220 Meadore Lane Geismar, LA 70734
Tel: 781-879-5660
Email: michael@flexacademies.com

These individuals are responsible for the management and coordination of the requirements for their respective agencies under this Agreement. Copies of correspondence related to modification, extension or termination of this Agreement, any legal matters concerning this Agreement or any other transactions stemming from this Agreement shall be furnished to these individuals with additional copies to:

Quinne Harris-Lindsey

General Counsel, District of Columbia Public Schools

1200 First Street NE, 10th Floor

Washington, DC 20002

Tel: (202) 442-5168

Fax: (202) 442-5098

Email: quinne.harris-lindsey@k12.dc.gov

- 15. Funding and Anti-Deficiency.** DCPS assumes no financial obligations of any kind under this Agreement. All funding necessary to provide any services under this Agreement shall be furnished by Provider and DCPS shall be under no obligation to provide funding to Provider. However, to the extent any DCPS responsibility under this Agreement requires a financial obligation, DCPS's duty to fulfill all responsibilities of any kind pursuant to any and all provisions of this Agreement, or any subsequent agreement entered into pursuant to this Agreement, are and shall remain subject to the provisions of (i) the federal Anti-Deficiency Act, 31 U.S.C. §§ 1341, 1342, 1349-1351 and 1511-1519 (2004), and D.C. Official Code §§ 1-206.03(e) and 47-105 (2001); (ii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01-355.08 (2004 Supp.); and (iii) Section 446 of the District of Columbia Home Rule Act, D.C. Official Code § 1-204.46 (2001), as the foregoing statutes may be amended from time to time, regardless of whether a particular obligation has been expressly so conditioned. Pursuant to the Anti-Deficiency Acts, nothing in this Agreement shall create an obligation on DCPS in anticipation of an appropriation by Congress for such purpose, and DCPS's legal liability for any obligations under this Agreement shall not arise or obtain in advance of the lawful availability of appropriated funds for the applicable fiscal year as approved by Congress.
- 16. Assumption of Risk, Indemnification and Waiver.** Provider hereby agrees that all of its property and activities of any kind or nature whatsoever in, upon, or about the designated space it utilizes at Location at any time during the Term or any renewal or extension hereof, shall be at the sole risk and hazard of Provider, with the exception of claims for damages or injury suffered by Provider or Provider Personnel while on DCPS property pursuant to this Agreement caused solely by the gross negligence or willful misconduct of DCPS employees, officers, agents, and volunteers acting on behalf of DCPS ("DCPS Personnel"). Moreover, Provider hereby agrees to defend, indemnify, and save harmless the District of Columbia government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers, against and from all penalties, claims, actions, damages, injuries, losses, and costs (including reasonable attorneys fees) of every nature resulting from, or in connection with, Provider and Provider Personnel's use and occupancy of Location under this Agreement, and in conducting activities under this Agreement. It is expressly understood that the District of Columbia Government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers shall not be liable to Provider for any accident, injury, loss, or damage suffered by Provider while Provider is on, upon, or about, or entering or leaving Location at any time during the term of this Agreement or any renewal or extension hereof, resulting from any cause whatsoever, with the exception of any such accident, injury, loss, or damage suffered by Provider as a result of the sole gross negligence or willful misconduct of DCPS Personnel. All claims, with the exception of such claims resulting from the sole gross negligence or willful misconduct of DCPS Personnel are hereby released to the District of Columbia Government, its agencies (including DCPS), elected/appointed officials, employees, agents, and volunteers, who may plead this release in bar thereof, in any and every suit, demand and claim for same. Provider's covenants, obligations, and liabilities under this section shall survive the expiration or earlier termination of this Agreement.

17. Insurance Requirement.

- A. **GENERAL REQUIREMENTS.** The Contractor at its sole expense shall procure and maintain, during the entire period of performance under this contract, the types of insurance specified below. The Contractor shall have its insurance broker or insurance company submit a Certificate of Insurance to the CO giving evidence of the required coverage prior to commencing performance under this contract. In no event shall any work be performed until the required Certificates of Insurance signed by an authorized representative of the insurer(s) have been provided to, and accepted by, the CO. All insurance shall be written with financially responsible companies authorized to do business in the District of Columbia or in the jurisdiction where the work is to be performed and have an A.M. Best Company rating of A- / VII or higher. Should the Contractor decide to engage a subcontractor for segments of the work under this contract and wish to propose different insurance requirements than outlined below, then, prior to commencement of work by the subcontractor, the Contractor shall submit in writing the name and brief description of work to be performed by the subcontractor on the Subcontractors Insurance Requirement Template provided by the CA, to the Office of Risk Management (ORM). ORM will determine the insurance requirements applicable to the subcontractor and promptly deliver such requirements in writing to the Contractor and the CA. The Contractor must provide proof of the subcontractor's required insurance prior to commencement of work by the subcontractor. If the Contractor decides to engage a subcontractor without requesting from ORM specific insurance requirements for the subcontractor, such subcontractor shall have the same insurance requirements as the Contractor.

General liability, commercial auto, workers' compensation and property insurance policies (if applicable to this agreement) shall contain a waiver of subrogation provision in favor of the Government of the District of Columbia.

The Government of the District of Columbia shall be included in all policies required hereunder to be maintained by the Contractor and its subcontractors (except for workers' compensation and professional liability insurance) as an additional insureds for claims against The Government of the District of Columbia relating to this contract, with the understanding that any affirmative obligation imposed upon the insured Contractor or its subcontractors (including without limitation the liability to pay premiums) shall be the sole obligation of the Contractor or its subcontractors, and not the additional insured. The additional insured status under the Contractor's and its subcontractors' Commercial General Liability insurance policies shall be effected using the ISO Additional Insured Endorsement form CG 20 10 11 85 (or CG 20 10 07 04 **and** CG 20 37 07 04) or such other endorsement or combination of endorsements providing coverage at least as broad and approved by the CO in writing. All of the Contractor's and its subcontractors' liability policies (except for workers' compensation and professional liability insurance) shall be endorsed using ISO form CG 20 01 04 13 or its equivalent so as to indicate that such policies provide primary coverage (without any right of contribution by any other insurance, reinsurance or self-insurance, including any deductible or retention, maintained by an Additional Insured) for all claims against the additional insured arising out of the performance of this Statement of Work by the Contractor or its subcontractors, or anyone for whom the Contractor or its subcontractors may be liable. These policies shall include a separation of insureds clause applicable to the additional insured.

If the Contractor and/or its subcontractors maintain broader coverage and/or higher limits than the minimums shown below, the District requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor and subcontractors.

B. INSURANCE REQUIREMENTS

1. Commercial General Liability Insurance ("CGL") - The Contractor shall provide evidence satisfactory to the CO with respect to the services performed that it carries a CGL policy, written on an occurrence (not claims-made) basis, on Insurance Services Office, Inc. ("ISO") form CG 00 01 04 13 (or another occurrence-based form with coverage at least as broad and approved by the CO in writing), covering liability for all ongoing and completed operations of the Contractor, including ongoing and completed operations under all subcontracts, and covering claims for bodily injury, including without limitation

sickness, disease or death of any persons, injury to or destruction of property, including loss of use resulting therefrom, personal and advertising injury, and including coverage for liability arising out of an Insured Contract (including the tort liability of another assumed in a contract) and acts of terrorism (whether caused by a foreign or domestic source). Such coverage shall have limits of liability of not less than \$1,000,000 each occurrence, a \$2,000,000 general aggregate (including a per location or per project aggregate limit endorsement, if applicable) limit, a \$1,000,000 personal and advertising injury limit, and a \$2,000,000 products-completed operations aggregate limit.

2. Automobile Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of commercial (business) automobile liability insurance written on ISO form CA 00 01 10 13 (or another form with coverage at least as broad and approved by the CO in writing) including coverage for all owned, hired, borrowed and non-owned vehicles and equipment used by the Contractor, with minimum per accident limits equal to the greater of (i) the limits set forth in the Contractor's commercial automobile liability policy or (ii) \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
3. Workers' Compensation Insurance - The Contractor shall provide evidence satisfactory to the CO of Workers' Compensation insurance in accordance with the statutory mandates of the District of Columbia or the jurisdiction in which the contract is performed.
4. Employer's Liability Insurance - The Contractor shall provide evidence satisfactory to the CO of employer's liability insurance as follows: \$500,000 per accident for injury; \$500,000 per employee for disease; and \$500,000 for policy disease limit.

All insurance required by paragraphs 1,2 and 3 shall include a waiver of subrogation endorsement for the benefit of Government of the District of Columbia.

5. Cyber Liability Insurance - The Contractor shall provide evidence satisfactory to the Contracting Officer of Cyber Liability Insurance, with limits not less than \$1,000,000 per occurrence or claim, \$1,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement and shall include, but not limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. Limits may not be shared with other lines of coverage. A copy of the cyber liability policy must be submitted to the Office of Risk Management (ORM) for compliance review.
6. Professional Liability Insurance (Errors & Omissions) - The Contractor shall provide Professional Liability Insurance (Errors and Omissions) to cover liability resulting from any error or omission in the performance of professional services under this Contract. The policy shall provide limits of \$1,000,000 per claim or per occurrence for each wrongful act and \$1,000,000 annual aggregate. The Contractor warrants that any applicable retroactive date precedes the date the Contractor first performed any professional services for the Government of the District of Columbia and that continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least ten years after the completion of the professional services. Limits may not be shared with other lines of coverage.
7. Sexual/Physical Abuse & Molestation - The Contractor shall provide evidence satisfactory to the Contracting Officer with respect to the services performed that it carries \$1,000,000 per occurrence limits; \$2,000,000 aggregate of affirmative abuse and molestation liability coverage. Coverage should include physical abuse, such as sexual or other bodily harm and non-physical abuse, such as verbal, emotional or mental abuse; any actual, threatened or alleged act; errors, omission or misconduct. This

insurance requirement will be considered met if the general liability insurance includes an affirmative sexual abuse and molestation endorsement for the required amounts. So called "silent" coverage or "shared" limits under a commercial general liability or professional liability policy will not be acceptable. Limits may not be shared with other lines of coverage. The applicable policy may need to be submitted to the Office of Risk Management (ORM) for compliance review.

8. Commercial Umbrella or Excess Liability - The Contractor shall provide evidence satisfactory to the CO of commercial umbrella or excess liability insurance with minimum limits equal to the greater of (i) the limits set forth in the Contractor's umbrella or excess liability policy or (ii) \$2,000,000 per occurrence and \$2,000,000 in the annual aggregate, following the form and in excess of all liability policies. **All** liability coverages must be scheduled under the umbrella and/or excess policy. The insurance required under this paragraph shall be written in a form that annually reinstates all required limits. Coverage shall be primary to any insurance, self-insurance or reinsurance maintained by the District and the "other insurance" provision must be amended in accordance with this requirement and principles of vertical exhaustion.

C. PRIMARY AND NONCONTRIBUTORY INSURANCE

The insurance required herein shall be primary to and will not seek contribution from any other insurance, reinsurance or self-insurance including any deductible or retention, maintained by the Government of the District of Columbia.

- D. DURATION. The Contractor shall carry all required insurance until all contract work is accepted by the District of Columbia and shall carry listed coverages for ten years for construction projects following final acceptance of the work performed under this contract and two years for non-construction related contracts.
- E. LIABILITY. These are the required minimum insurance requirements established by the District of Columbia. However, the required minimum insurance requirements provided above will not in any way limit the contractor's liability under this contract.
- F. CONTRACTOR'S PROPERTY. Contractor and subcontractors are solely responsible for any loss or damage to their personal property, including but not limited to tools and equipment, scaffolding and temporary structures, rented machinery, or owned and leased equipment. A waiver of subrogation shall apply in favor of the District of Columbia.
- G. MEASURE OF PAYMENT. The District shall not make any separate measure or payment for the cost of insurance and bonds. The Contractor shall include all of the costs of insurance and bonds in the contract price.
- H. NOTIFICATION. The Contractor shall ensure that all policies provide that the CO shall be given thirty (30) days prior written notice in the event of coverage and / or limit changes or if the policy is canceled prior to the expiration date shown on the certificate. The Contractor shall provide the CO with ten (10) days prior written notice in the event of non-payment of premium. The Contractor will also provide the CO with an updated Certificate of Insurance should its insurance coverages renew during the contract.
- I. CERTIFICATES OF INSURANCE. The Contractor shall submit certificates of insurance giving evidence of the required coverage as specified in this section prior to commencing work. Certificates of insurance must reference the corresponding contract number. Evidence of insurance shall be submitted to:

The Government of the District of Columbia
Conchita Hudson-Hall
Deputy Chief, Compliance and Policy
District of Columbia Public Schools
1200 First St, NW 9th Floor
Washington, DC 20002
(202) 907-8132
Conchita.Hudson-Hall@k12.dc.gov

The CO may request and the Contractor shall promptly deliver updated certificates of insurance, endorsements indicating the required coverages, and/or certified copies of the insurance policies. If the insurance initially obtained by the Contractor expires prior to completion of the contract, renewal certificates of insurance and additional insured and other endorsements shall be furnished to the CO prior to the date of expiration of all such initial insurance. For all coverage required to be maintained after completion, an additional certificate of insurance evidencing such coverage shall be submitted to the CO on an annual basis as the coverage is renewed (or replaced).

- J. **DISCLOSURE OF INFORMATION.** The Contractor agrees that the District may disclose the name and contact information of its insurers to any third party which presents a claim against the District for any damages or claims resulting from or arising out of work performed by the Contractor, its agents, employees, servants or subcontractors in the performance of this contract.
- K. **CARRIER RATINGS.** All Contractor's and its subcontractors' insurance required in connection with this contract shall be written by insurance companies with an A.M. Best Insurance Guide rating of at least A- VII (or the equivalent by any other rating agency) and licensed in the District.
18. **Liability.** Provider shall be solely liable for all property damage and bodily injury claims arising from or related to the services provided by Provider and Provider Personnel pursuant to this Agreement, with the exception of any such claims arising from the sole gross negligence or willful misconduct of DCPS Personnel. DCPS shall not be liable, whether by way of contribution or otherwise, for any damages incurred by Provider or Provider Personnel, or arising from any acts or omissions of Provider or Provider Personnel, in connection with the provision of services under this Agreement or the Program.
19. **Non-Discrimination.** Provider shall not discriminate against anyone participating in this program either directly or indirectly on the basis of gender, race, color, disability, religion, sexual orientation, nationality, age, marital status or any other designation set forth in any applicable law, including, but not limited to, the District of Columbia Human Rights Act, Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, and Section 504 of the Rehabilitation Act of 1973.
20. **Provider Reapplication.** Every year during the course of its relationship with DCPS, Provider must submit a registration confirmation through the [Partnerships Database](#) for review from the Office of Engagement and Partnerships (OEP). If OEP declines to approve the re-registration, DCPS may terminate this Agreement in accordance with Section 10 of this Agreement.
Partnerships Database: <https://octo.quickbase.com/db/bkan757d5>
21. **Modifications.** This Agreement may only be amended or modified by a written instrument signed by both Parties.
22. **Status of the Parties and Program Participants.** Nothing in this Agreement shall be deemed to constitute a partnership or joint venture between the Parties or constitute any Party to be the agent of the other Party for any purpose. No Party shall have any authority to act for or bind the other Party in any way, or to represent that it has such authority. Party personnel participating in the program are and shall remain employees of their

respective Parties for all purposes and shall not be deemed or considered employees or agents of the other Party.

23. **Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.
24. **Survival.** The obligations of the Parties under Sections 5, 11, 12, 15, 16, 17, 18, 22, 24, and 29 of this Agreement, as well as all other sections that are commonly understood to survive the expiration or earlier termination of an agreement, shall survive the expiration or earlier termination of this Agreement.
25. **Entire Agreement.** This Agreement, including any applicable exhibits and applicable purchase orders, contains the entire understanding of the Parties with respect to matters contained herein, and supersedes any and all other agreements between the Parties relating to the matters contained herein. No oral or written statements not specifically incorporated or referenced herein shall be of any force or effect. In the event of any conflict of terms between this Agreement and any purchase order issued pursuant to this Agreement, the terms of the purchase order prevail.
26. **Other Relationships or Obligations.** This Agreement shall not affect any pre-existing or independent relationships or obligations between the Parties.
27. **Non-Assignable Agreement.** This Agreement cannot be assigned by the Provider.
28. **Headlines; Counterparts.** The headings in this Agreement are for purposes of reference only and shall not limit or define the meaning of any provision hereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.
29. **Applicable Law.** This Agreement and all matters pertaining to this Agreement shall be governed by the law of the District of Columbia, including all applicable statutes, regulations, directives, and procedures of the District of Columbia and DCPS.
30. **Authority of the Parties.** By executing this Agreement, each Party represents to the other that it is authorized to enter into this Agreement and that the person executing this Agreement on its behalf is duly authorized to do so.

Executed by the Parties in Washington, DC on the dates indicated below their signatures.



Dr. Lewis D. Ferebee

Chancellor,
District of Columbia Public Schools

8/9/2023

Date



[Michael T Fay \(Jul 21, 2023 16:22 EDT\)](#)

Signature of School Program Provider

7/21/2023

Date

Attachment A

District of Columbia Public Schools Policy Regarding Termination for Cause of DCPS School Program Provider

The District of Columbia Public Schools (DCPS) is committed to ensuring that each DCPS School Program Provider (Provider) that has been reviewed by the DCPS Office of Engagement and Partnerships (OEP) and delivers high-quality programming to DCPS students. DCPS is committed to appropriately handling all Provider performance issues in a manner which ensures the safety and success of DCPS and its students. Accordingly, DCPS may terminate its agreement (Agreement) with any Provider for cause at any time.

Procedure

1. Depending on the cause for termination, DCPS will attempt to inform the Provider of its intent to terminate its Agreement with Provider thirty (30) calendar days prior to termination for cause. The notice will identify the condition that exists which is precipitating termination. Provider understands that DCPS may immediately terminate the Agreement without prior notice for any cause DCPS finds to be egregious, at DCPS' sole discretion.

Possible reasons for termination include, but are not limited to, the following:

- Breach of Provider's Agreement or other agreement with DCPS or any other District agency;
 - Suspension or loss of Provider's insurance liability coverage;
 - Provider's poor or inefficient organizational performance;
 - Grave misconduct, neglect of duty or incompetence of Provider personnel;
 - Fraud in securing OEP approval as a Provider or falsification of records submitted to DCPS by Provider;
 - Provider's failure to ensure its personnel working at DCPS sites have submitted to a DCPS background check;
 - Provider's failure to implement a policy requiring its personnel to notify Provider in the event of an arrest or conviction of any crime;
 - Upon Provider becoming aware of any of its personnel being arrested or convicted of a crime, Provider's failure to notify DCPS of any such arrest or conviction, including the facts and circumstances surrounding such arrest or conviction;
 - Provider's violation of any federal or local law, rule or regulation, including any applicable order or directive issued by DCPS; or
 - Any other cause for termination authorized by the laws of the District of Columbia and/or DCPS policies.
2. Depending on the cause for termination, DCPS may allow the Provider up to five (5) calendar days to respond to the notice with an explanation for how it will correct or has corrected the condition. In the event the Provider does not respond within this five (5) calendar day deadline or fails to correct the condition which prompted DCPS to send a termination notice, the Provider's Agreement shall be terminated immediately without further notice. Provider understands that it may not be given an opportunity to respond to the notice, depending on the cause for termination.
 3. If in addition to providing the termination notice explained in this section, DCPS undergoes an investigation of Provider for an allegation(s) DCPS deems to be potentially harmful to its program and/or its students, DCPS may temporarily remove Provider from its assigned school until the culmination of the investigation. In such a case, DCPS will give written notice to the Provider indicating the reason for Provider's temporary removal. If DCPS' investigation verifies the allegation(s) against Provider, Provider's removal will become permanent and its Agreement with DCPS will be terminated.

4. Notwithstanding the procedure described in Paragraph 1, DCPS may immediately remove Provider from its assigned school if DCPS determines in its sole discretion that such immediate removal is in the best interest of DCPS and/or its students and staff. In such a case, DCPS will give prior written notice to the Provider indicating the reason for Provider's immediate removal. Egregious conduct on the part of Provider or its staff (including, but not limited to, sexual or physical assault of a student or staff member, or theft from the school) may result in immediate removal. In such a case, DCPS will undergo an investigation into the allegation(s) leading to Provider's immediate removal from its assigned school; while the investigation is ongoing, Provider may be prohibited from providing services for DCPS students. If DCPS' investigation verifies the allegation(s) against Provider, Provider will not be allowed to return to its assigned school and Provider's Agreement with DCPS will be terminated immediately.