



Monterey County Office of Education

Dr. Nancy Kotowski
County Superintendent of Schools

MEMORANDUM OF UNDERSTANDING

Between North Monterey County Unified School District and the Monterey County Office of Education Regarding *BrightBytes*

This Memorandum of Understanding establishes an AGREEMENT between the *North Monterey County Unified School District*, hereafter referred to as AGENCY, and the Monterey County Office of Education, hereafter referred to as MCOE to provide for services as defined in this agreement.

In order to meet the requirements of this agreement, the MCOE and AGENCY agree to the following:

1.0 PURPOSE

This AGREEMENT provides AGENCY with access to the BrightBytes Clarity platform to provide evidence-based, research-driven recommendations for technology resources to enhance learning. MCOE, grants licensing to AGENCY in accordance with the payment terms stated in this agreement and in return for AGENCY securing participation of staff and students at a statistically significant level as determined by BrightBytes on a school-by-school basis. Although parental participation is encouraged, their participation will not materially affect the terms of this AGREEMENT.

2.0 EFFECTIVE DATE AND TERM

This agreement is executed as of the date of last signature and is effective through June 30, 2017, at which time it will expire. The AGREEMENT is also subject Section 6.0 Termination. Future AGREEMENTS for this service shall be provided at a cost based upon the overall Monterey County level of district participation in terms of total enrollment and made available to AGENCY should it choose to continue participation.

3.0 DEFINITIONS

BrightBytes – A team of researchers and statisticians that assist schools in analyzing data to make informed decisions with the assistance of their platform called Clarity.

Clarity – business intelligence and decision support platform providing schools with research-based tools for evaluating technology investments with respect to educational outcomes.

Statistically Significant – the likelihood that a result or relationship is caused by something other than mere random chance.

4.0 SERVICES

BrightBytes Clarity MOU

The primary service provided under this AGREEMENT is the BrightBytes Clarity platform's Technology solution. The following sections highlight the aggregate services that are provided as part of this primary service and detail how additional services may be requested and added under this AGREEMENT.

4.1 Services Performed

MCOE agrees to provide AGENCY the following services in satisfaction of the purpose of this AGREEMENT as outlined in Section 1.0 Purpose.

- 4.1.1** Access and use of the BrightBytes Clarity platform's Technology and Learning application based on a student enrollment of 4632.
 - 4.1.1.1** Licensing through the end of the fiscal year ending June 30, 2017 for the BrightBytes Clarity platform's Technology solution.
 - 4.1.1.2** Up to 4 questionnaire links per site for different audiences (elementary student, middle school student, high school student, staff, and parents) for a pre-determined survey window.
 - 4.1.1.3** Coordination with BrightBytes to provide guidance based upon best practices for data collection.
 - 4.1.1.4** Dashboards populated by BrightBytes soon after survey closure.
 - 4.1.1.5** Coordination with BrightBytes to provide tools and training for data interpretation.

4.2 Additional Services

In the event either Party requires services from the other Party in addition to those set forth in this Agreement, the Party requiring additional services shall compensate the other Party for costs incurred by those additional services. If either Party believes that additional services are necessary or desirable, that Party shall submit a written description of the additional services to the other Party, along with the reasons the additional services are required or reasonable, and the specific cost of the additional services. Such services shall be performed only after both Parties agree in writing to proceed with the additional services.

5.0 RESPONSIBILITIES

5.1 MCOE Responsibilities

- 5.1.1** MCOE shall ensure that AGENCY has access to the BrightBytes Clarity platform's Technology solution for the duration of this AGREEMENT.
- 5.1.2** MCOE shall act as a liaison with BrightBytes on behalf of AGENCY in the event there are any implementation issues including but not limited to access, platform performance, and program coordination.
- 5.1.3** MCOE shall manage the long-term relationship with BrightBytes, including negotiation of fees, service levels, and service improvements.

5.2 AGENCY Responsibilities

BrightBytes Clarity MOU

- 5.2.1** AGENCY shall provide to BrightBytes a primary contact for coordination of activities and distribution of questionnaires.
- 5.2.2** AGENCY shall ensure that the primary contact participates in planning and training sessions provided by BrightBytes consultation staff.
- 5.2.3** AGENCY shall ensure a statistically significant participation level for both students and staff at each school site based on the number of completed surveys as a portion of the total and as calculated by BrightBytes Clarity using a 95% confidence level and a 15% margin of error.
- 5.2.4** AGENCY shall provide student and staff counts for all participating schools to BrightBytes.
- 5.2.5** AGENCY shall assume sole responsibility for distributing questionnaire links to staff, students, and parents and ensuring collection.
- 5.2.6** AGENCY shall provide feedback to MCOE regarding the Clarity Platform based upon their experience to assist with future countywide planning efforts.

6.0 TERMINATION

There shall be no termination of this AGREEMENT for any reason other than non-performance. In the event AGENCY seeks termination, MCOE, at its discretion, may impose final costs equal to the pro-rated amount of county licensing cost associated with the AGENCY enrollment stated in Section 4.1.1 above.

- 6.1** In the event that the MCOE fails to perform on a material term of this AGREEMENT, AGENCY has the right to terminate the AGREEMENT upon thirty (30) days written notice and retain all other rights and remedies available to it at law and equity.
- 6.2** In the event that AGENCY fails to perform on a material term of this AGREEMENT, then the MCOE shall have the right to terminate the AGREEMENT upon thirty (30) days written notice and retain all other rights and remedies available to it at law and equity, including the imposition of final costs equal to the pro-rated amount of county licensing cost associated with the AGENCY enrollment stated in Section 4.1.1 above.

7.0 PAYMENT

There is a reduced charge for the term of this AGREEMENT as MCOE agrees to pay down the full licensing fee on behalf of AGENCY. MCOE grants licensing to AGENCY for access to the BrightBytes Clarity platform's Technology and Learning application in exchange for payment of \$4,585.68 at a rate of \$0.99 per student enrollment. Participation in the program in subsequent years will be at the discretion of AGENCY and will result in an annual fee based on AGENCY enrollment. The per-enrollment amount of associated fees shall be determined in negotiation with BrightBytes and based upon total countywide participation.

8.0 BUDGET TRANSFER

The CLIENT shall complete this section thereby providing MCOE Business Services with the necessary information for completing the Inter-program budget transfer upon invoicing from the providing program.

The AGENCY authorizes a transfer of funds as follows:

Fund	Resource	Yr	Goal	Function	Object	School	Local	Manager	Amount
									4,585.68

The MCOE providing department requests the transfer be reflected as follows:

Fund	Resource	Yr	Goal	Function	Object	School	Local	Manager	Amount
01	0000	0	0000	0000	8689-00	000	0760	0105	4,585.68

9.0 INDEMNIFICATION

Both parties agree to indemnify, defend, and hold harmless, the officers, agents and employees of the other party against any claim, liability, loss, injury or damage imposed arising out of the performance of responsibilities for this Agreement, except for liability resulting from the negligent or willful misconduct of either party, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless either party under this Agreement, both parties shall reimburse the non-negligent party for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. Both parties shall seek the approval of any settlement that could adversely affect the other party, its officers, agents or employees.

10.0 INSURANCE

10.1 Each party shall obtain, pay for and maintain in effect during the life of this Agreement a Commercial General Liability insurance policy that includes coverage for Premises Operations, Products/Completed Operations, Contractual, Independent Contractors, Broad Form Property Damage, and Personal Injury; with a minimum combined single limit of not less than \$1,000,000 for Bodily injury and Property Damage (each occurrence) and a \$2,000,000 aggregate.

10.2 Nothing in this Insurance section shall reduce a party's liabilities or obligations under the Indemnification section of this Agreement.

10.3 Upon request, each Party shall provide proof of said insurance to the other Party.

11.0 ARBITRATION

11.1 The Parties agree that should any controversy or claim arise out of or relating to this Agreement, they will first seek to resolve the matter informally for a reasonable period not to exceed thirty (30) days. If the dispute remains, it shall be subject to mediation with a mediator agreed to by both parties and paid for by both parties, absent an agreement otherwise. If after mediation there is no resolution of the dispute, the parties agree to resolve the dispute by binding arbitration administered by the American Arbitration Association (“AAA”) in accordance with its Commercial Arbitration Rules, and judgment on an arbitrator’s award may be entered in any court having jurisdiction thereof.

11.1.1 The Parties shall select one arbitrator pursuant to the AAA’s Commercial Arbitration Rules.

11.1.2 The arbitrator shall present a written, well-reasoned decision that includes the arbitrator’s findings of fact and conclusions of law. The decision of the arbitrator shall be binding and conclusive on the Parties.

11.1.3 The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party’s actual damages, except as may be required by statute. The arbitrator shall have no authority to award equitable relief. Any arbitration award initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to either Party other than the direction to pay a monetary amount. As determined by the arbitrator, the arbitrator shall award the prevailing Party, if any, all of its costs and fees. The term “costs and fees” includes all reasonable pre-award arbitration expenses, including arbitrator fees, administrative fees, witness fees, attorney’s fees and costs, court costs, travel expenses, and out-of-pocket expenses such as photocopy and telephone expenses. The decision of the arbitrator is not reviewable, except to determine whether the arbitrator complied with sections 11.1.1 and 11.1.2 of this paragraph.

12.0 NON-DISCRIMINATION

MCOE and AGENCY agree that they will not engage in unlawful discrimination of persons because of race, color, religious creed, national origin, ancestry, physical handicap, medical condition, marital status, or sex of such persons. All nondiscrimination rules and regulations required by law to be included in this AGREEMENT are incorporated by this reference.

13.0 GOVERNING LAW

The terms and conditions of this AGREEMENT shall be governed by the laws of the State of California, with venue in Monterey County, California and no other place.

14.0 COMPLIANCE WITH LAWS

The Parties shall, at their own cost and expense, comply with all local, state, and federal ordinances, regulations, and statutes now in force and which may hereafter be enacted that affect this AGREEMENT.

15.0 ASSIGNMENT OF RIGHTS

Unless authorized in writing by both Parties, neither Party shall assign or transfer any rights or obligations covered by this AGREEMENT. Any unauthorized assignment or transfer shall constitute grounds for termination by the other Party.

16.0 NOTICE

All notices or demands to be given under this AGREEMENT by either party to the other shall be in writing and given either by: i) Personal service, or ii) U.S. Mail, mailed either by registered or certified mail, return receipt requested, with postage prepaid. Service shall be considered given when received if personally served or, if mailed, on the third (3rd) day after deposit in any U.S. Post Office. The address to which notices or demands may be given by either party may be changed by written notice given in accordance with the notice provisions of this section. As of the date of this AGREEMENT the addresses of the parties are as follows:

North Monterey County USD

8142 Moss Landing Rd

Moss Landing CA 95039

Attn: Kari Yeater

Phone: (831) 633-3343 ext 140

MONTEREY COE

901 Blanco Circle

Salinas, CA 93901

Attn: Dave Paulson

Phone: (831) 755-0324

17.0 SEVERABILITY

If any term, condition or provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

18.0 AMENDMENT

This AGREEMENT may only be altered, amended, or modified by written instrument executed by both Parties. The Parties agree to waive any right to claim, contest, or assert that this Agreement was modified, canceled, superseded, or altered by oral agreement, course of conduct or waiver.

19.0 WAIVER OF DEFAULT

No delay or failure to require performance of any provision of this AGREEMENT shall constitute a waiver of that provision as to that instance or any other instance. Any waiver must be in writing and shall only apply to that instance.

20.0 CONFLICT OF INTEREST

The AGENCY represents that it presently has no interest, which would conflict in any manner or degree with the performance of Services contemplated by this AGREEMENT.

BrightBytes Clarity MOU

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed.

NORTH MONTEREY COUNTY
UNIFIED SCHOOL DISTRICT

MONTEREY COUNTY OFFICE
OF EDUCATION

BY: Kari Yeater
Authorized Signature

BY: _____
Authorized Signature

PRINT NAME: Kari Yeater

Garry Bousum

TITLE: Superintendent

Associate Superintendent, Business & Finance

DATE: 9/29/16

DATE: _____