


Bullitt County Public Schools

1040 Highway 44 East
Shepherdsville, Kentucky 40165

502-869-8000
Fax 502-543-3608
www.bullittschools.org

MEMORANDUM

TO: Jesse Bacon, Superintendent
Becky Sexton, Assistant Superintendent for Support Services

FROM: Jennifer Wooley, Director of Human Resources 

DATE: July 5, 2018

RE: Request to Utilize Virtual Learning for Unfilled Vacancies if Needed

Please see the attached contract for Proximity Learning. If we have difficulty filling teaching vacancies this year, Proximity Learning can provide us with certified teachers who will teach our students virtually. We utilized Proximity Learning during the 2015-2016 school year for a Spanish teacher at MWMS.

The Education Professional Standards Board (EPSB) verified that virtual learning is acceptable for instructional purposes. If we must utilize this option, then we will place a certified substitute teacher in the classroom on a daily basis for supervision purposes as well as instructional purposes.

Funding is available through the general fund. If you need additional information, please let me know.

Attachments:

Proximity Learning Contract
Data Security and Break Protocols

Equal Education and Employment Institution

**Service Agreement
Between
Bullitt County Public Schools
And
Proximity Learning Inc.**

This Service Agreement (Agreement) is made between Bullitt County Public Schools (BCPS or the District) and Proximity Learning Inc. (Independent Contractor).

BCPS and Independent Contractor agree as follows:

Article 1. SCOPE OF SERVICES

At the request of BCPS, Independent Contractor agrees to implement the online instructional program in BCPS based on pricing as detailed on Exhibit A, which is attached and incorporated by reference. BCPS will be able to add and drop instructors throughout the year based on school need. BCPS will be billed monthly after services have been rendered. There will be a two-month minimum.

BCPS will request a quote for services from PLI based on pricing provided in Exhibit A each time a teacher is requested by a school. Each quote must be signed and sent to PLI for services to be rendered.

Article 2. CONTACTS

The Independent Contractor's contact person is Evan Erdberg at 800-524-8570.

The District's contact person is Jennifer Woolley, Dir. of HR.

Article 3. TERM/TERMINATION

- 3.1 **Term.** The term of this Agreement (Term) shall begin on 7-30-2018 and end on June 30, 2019 unless terminated earlier in accordance with the terms and conditions set forth below.
- 3.2 **Termination without Cause.** The District reserves the right to terminate the Agreement without cause by giving the Independent Contractor thirty days written notice after the two-month minimum has been met. Unless instructed otherwise by the District, Independent Contractor will cease work immediately upon receipt of the notice. Upon submission of an invoice, Independent Contractor will be compensated for work performed in good faith prior to its receipt of the notice.
- 3.3 **Termination with Cause.** Either party reserves the right to terminate this Agreement immediately if the other party fails to comply with any terms or conditions of this Agreement and such failure continues for twenty days following receipt of written notice from the objecting party. The Independent Contractor will be compensated for those services satisfactorily provided through cure date end.

- 3.4 **Return of Documentation.** Upon the expiration or termination of this Agreement, the Independent Contractor shall, at the option of the District, deliver all finished or unfinished documents, data, studies, reports, and like documents generated by the Independent Contractor.

Article 4. APPROVAL CONDITIONS

- 4.1 **Executed Agreement.** This Agreement will not become effective until an understanding is reached between the parties and the Agreement has been fully-executed.
- 4.2 **Employment Eligibility** Independent contractor must be enrolled and participate in a federal work authorization program with respect to the employees working in connection with the contracted services to be provided, to the extent allowed by the E-Verify Work Authorization Program of the United States (E-Verify). A business entity must affirm the same through sworn affidavit and provision of documentation, as well as sign an affidavit that it does not knowingly employ any person who is an unauthorized alien in connection with the services to be provided.

Article 5. COMPENSATION

- 5.1 **Fee.** BCPS agrees to pay Independent Contractor for services provided for the term of this Agreement. Refer to Exhibit A.
- 5.2 **Expenses.** The Independent Contractor understands and agrees that the above compensation is inclusive of all expenses.
- 5.3 **Payment and Invoice Procedures.** The District will provide payment to the Independent Contractor within thirty days of receipt of a properly submitted invoice. The invoice must be an itemized billing statement with a unique invoice number showing the description, location, time, and date of services, and should be sent to:

Human Resources Department

Name: Jennifer Woolley

Title: Dir of HR

Address: 1640 Hwy 44E

Shepherdsville, KY 40165

- 5.4 **Billing Dispute.** In the event of a dispute over the amount billed, the disputed amount will not be paid until the dispute is resolved and there is an agreed-upon amount that is owed to the Independent Contractor. If there is an undisputed amount under said invoice, it shall be paid in accordance to the provisions provided pursuant to this article.

Article 6. INDEPENDENT CONTRACTOR

- 6.1 **Independent Contractor Status.** The parties agree the terms of this Agreement do not constitute a formation of a partnership, joint venture, employer-employee,

or other relationship and no form of agency exist between the parties. The Independent Contractor represents and warrants that it is now and shall remain a separate and independent entity from the District.

- 6.2 **Submission of Forms W-9.** If it has not already done so, the Independent Contractor will submit a completed Form W-9 entitled “Request for Taxpayer Identification Number and Certification” with the correct social security number or federal identification number, as well as a completed Vendor Registration Form.

Article 7. INDEPENDENT CONTRACTOR’S PERSONNEL

- 7.1 **Assignment of the Independent Contractor’s Personnel.** The Independent Contractor will employ and assign qualified (Certified teacher in the contracted subject and grade level) Personnel to the District’s account in a sufficient number in order to provide and successfully complete the services contemplated under this Agreement.
- 7.2 **Control of Personnel and Work.** The Independent Contractor understands and agrees that it is solely responsible for the selection, qualification, performance, workmanship, quality of services, licensing, and compliance with the terms and conditions hereunder for all Personnel providing services relevant to this Agreement and that it shall have sole control over the means and details of performing the services.

Article 8. OWNERSHIP

- 8.1 **District-Owned Property.** All equipment, materials, drawings, software, or data of every description (Property) that the Independent Contractor receives directly or indirectly from the District or from a third party on behalf of the District or that is paid for, in whole or in part, by the District, is the Property of the District. The Independent Contractor must safeguard all said Property throughout the duration of this Agreement and must return all Property to the District upon the District’s request or upon the termination or expiration of this Agreement, whichever is earlier.

Article 9. INDEPENDENT CONTRACTOR’S REPRESENTATIONS AND WARRANTIES

- 9.1 **State Registration.** The Independent Contractor shall be properly registered with the Secretary of State if requested.
- 9.2 **Service Warranty.** All Personnel assigned to provide services under this Agreement will have the relevant expertise, skills, training, professional education, certification, and licensing to perform the services in a professional manner.
- 9.3 **Non-Discrimination.** During the performance of its obligations under this Agreement, the Independent Contractor agrees that it will not discriminate against any person on the basis of sex, race, religion, color, national origin, ancestry, age, disability, sexual orientation or any other factor prohibited by law.

9.4 **Compliance with Laws.** During the performance of its obligations under this Agreement, the Independent Contractor agrees to conduct its activities in strict compliance with all applicable federal, state, and local laws, as well as the policies and procedures of the District.

9.5 **No Enticement.** Neither the Independent Contractor nor any of the Independent Contractor's Personnel has offered or given anything of value to District employees to secure this Agreement.

Article 10. SUBCONTRACTS

10.1 **Use of Subcontractors.** The Independent Contractor may not subcontract any portion of the services without the District's prior written consent.

Article 11. RECORDS, ACCOUNTING, AND EVALUATIONS OF SERVICES

11.1 **Maintenance of Books and Records.** Upon receipt of written notice by the District, the Independent Contractor shall allow the District access to the books and records as may be reasonably required to verify services provided under this Agreement. The Independent Contractor understands that such records must be maintained for at least three years after the termination or expiration of the Agreement.

Article 12. CONFIDENTIALITY

12.1 **District/Student Information.** The Independent Contractor agrees to keep confidential and not to disclose to third parties any information provided by the District pursuant to this Agreement without the District's prior written consent. Any access to the confidential information of any District student shall be in compliance with the Federal and Kentucky Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA). This provision shall survive expiration or termination of this Agreement.

12.2 **Return of Confidential Information.** After expiration or termination of this Agreement, the Independent Contractor must return all confidential information given to or generated by the Independent Contractor.

Article 13. INSURANCE

Independent Contractor shall maintain such insurance as will protect it from claims which may arise out of or result from its obligations under this Agreement as follows:

13.1 **Workers' Compensation.** The Independent Contractor agrees to maintain workers' compensation insurance throughout the term of this Agreement for its employees as statutorily required.

- 13.2 **General Liability.** The Independent Contractor agrees to maintain general liability insurance throughout the term of this Agreement with the following minimum limits of liability: \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- 13.3 **Professional Liability.** If applicable, the Independent Contractor agrees to maintain professional liability insurance throughout the term of this Agreement with the following minimum limits of liability: \$1,000,000 per claim and \$2,000,000 in the aggregate.
- 13.4 **No Waiver.** The foregoing provisions shall not be deemed a relinquishment or waiver of sovereign immunity available to any of the parties under applicable state governmental immunities law.
- 13.5 **Proof of Insurance.** The Independent Contractor will provide proof of insurance prior to services being performed, with a certified Declaration indicating the District is an "Additional Insured". Failure by the Independent Contractor to provide any insurance as requested under this article will not relieve it of any contractual obligation or responsibility. BCPS shall receive thirty (30) days prior written notice of any cancellation, non-renewal, or reduction of coverage of any of the policies.

Article 14. INDEMNIFICATION

- 14.1 **Indemnification.** To the fullest extent allowed by law, Independent Contractor agrees to indemnify and hold harmless the District, its officers, agents and employees from and against all claims or losses including reasonable attorneys' fees, arising out of or resulting from the negligence or omissions of the Independent Contractor, its employees or agents, in the provision of services under this Agreement.

Article 15. NOTICE

Communications relating to this Agreement should be sent to the following:

District:

Bullitt County Public Schools

Human Resources Department

Name: Jennifer Woolley

Title: Dir of HR

Address: 1040 Hwy 44E

Shepherdsville, KY 40165

Also Copy

Purchasing Services

Name: Lisa Lewis

Title: Dir of Finance

Address: same as above

Independent Contractor:

Proximity Learning Inc.
Attention: Evan Erdberg
600 Congress Ave., Floor 14
Austin, TX 78701
Telephone: (800)524-8570

Article 16. GENERAL

- 16.1 **Successors and Assignments.** The Independent Contractor and its partners, successors, executors, administrators, and representatives are bound to the District in respect to all terms, covenants, agreements, and obligations. This Agreement shall not be assigned by either party without the prior written consent of the other party.
- 16.2 **Governing Law.** This Agreement is governed by and construed in accordance with the laws of the state of Kentucky. Venue for any and all legal action regarding or arising out of the transactions covered herein shall be solely in the appropriate court in and for **Bullitt County, State of Kentucky.**
- 16.3 **Force Majeure.** Neither party shall be liable if the performance of any part or all of this Agreement is prevented, delayed, hindered, or otherwise made impracticable or impossible by reason of any strike, flood, riot, fire, explosion, war, act of God, sabotage, accident, or any other casualty or cause beyond either party's control and which cannot be overcome by reasonable diligence and without unusual expense.
- 16.4 **Amendments.** The Agreement may be altered, amended, changed, or modified only by written agreement executed by authorized representatives of the parties.
- 16.5 **No Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the parties to this Agreement.
- 16.6 **Survival.** All representations, warranties, and statements of indemnification shall survive termination or cancellation of the Agreement.
- 16.7 **Entire Agreement.** This Agreement and any exhibits constitute the entire understanding of the parties and supersedes all prior agreements, discussions and correspondence.

Article 17. IMPLEMENTATION

- 17.1 **Implementation of Program.** Independent Contractor will train BCPS Principals on the implementation plan. Exhibit B
- 17.2 **Continuous Staffing Teacher.** BCPS will be able to have rolling staffing, which allows teachers to be placed in and out of classrooms as needed and will be pro-

rated based on pricing in Exhibit A and will be required to provide the information in Exhibit C.

- 17.3 **Minimum.** For long term teachers, there is a minimum of 1 month
- 17.4 **Daily Staffing.** Daily teachers can be provided via our substitution system
- 17.5 **Facilitators.** Independent Contractor will properly train the district assigned facilitators on how to be an effective classroom manager to ensure success of the program.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed and do each represent that their respective signatory whose signature appears below is authorized to execute this Agreement.

BULLITT COUNTY PUBLIC SCHOOLS

By: _____

Name: _____

Title: _____

Date: _____

PROXIMITY LEARNING INC.

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Live Class Sessions

- Prices will be pro-rated based on the start and end date of the “live” instruction required (ex. Teacher is only in the classroom August – October, you would only be charged for 3 months)

# of Live Sections (45-55 Min per session)	Semester	Annual
1 day	\$ 1,995.00	\$ 3,800.00
2day	\$ 3,950.00	\$ 7,700.00
3day	\$ 4,650.00	\$ 8,800.00
4day	\$ 5,250.00	\$ 9,900.00
5day	\$ 5,750.00	\$ 11,000.00
Sped	\$ 31,500.00	\$ 63,000.00
Speech	\$ 45,000.00	\$ 75,000.00

Per Classroom Technology Set up fee Includes: <ul style="list-style-type: none"> - Individualized school setup- up to two one-hour sessions - Uploading of student roster and providing access - Dedicated Support team available from 8am-7pm - Up to 30 headphones with - microphones provided per Class (Become District Property) 	\$250
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Blended Learning Classes with Instructor (Credit Recovery and High School Credit)

Product: Non-reusable/single licenses	Annual Cost	Notes
1-500 Students	\$599.00	Per student cost
500-1000 Students	\$250.00	Per student cost
1000-1250 Students	\$175.00	Per student cost
1250-1500 Students	\$125.00	Per student cost
1500 + students	\$99.00	Per student cost
Product: Reusable licenses, One course at a time	Annual Cost	Notes
1-500 Students	\$1,199.00	Per student cost
500-1000 Students	\$799.00	Per student cost
1000-1250 Students	\$699.00	Per student cost
1250-1500 Students	\$499.00	Per student cost
1500 + students	\$399.00	Per student cost
Product: Reusable licenses, Multiple Courses	Annual Cost	Notes
1-500 Students	\$1,299.00	Per student cost
500-1000 Students	\$899.00	Per student cost
1000-1250 Students	\$799.00	Per student cost
1250-1500 Students	\$699.00	Per student cost
1500 + students	\$499.00	Per student cost

Blended Learning Classes Curriculum Only

Product: Non-reusable/single licenses	Annual Cost	Notes
1-500 Students	\$175.00	Per student cost
500-1000 Students	\$100.00	Per student cost
1000-1250 Students	\$75.00	Per student cost
1250-1500 Students	\$50.00	Per student cost
1500 + students	\$35.00	Per student cost
Product: Reusable licenses, One course at a time	Annual Cost	Notes
1-500 Students	\$249.00	Per student cost
500-1000 Students	\$200.00	Per student cost
1000-1250 Students	\$150.00	Per student cost
1250-1500 Students	\$100.00	Per student cost
1500 + students	\$65.00	Per student cost
Product: Reusable licenses, Multiple Courses	Annual Cost	Notes
1-500 Students	\$349.00	Per student cost
500-1000 Students	\$299.00	Per student cost
1000-1250 Students	\$199.00	Per student cost
1250-1500 Students	\$125.00	Per student cost
1500 + students	\$85.00	Per student cost

Elementary World Language (Includes Live instruction & printable handouts, no grading)

- Up to 60 Min once a month

# of Classes		
1-8	\$800	Up to 40 students
9-20	\$775	Up to 40 students
21-50	\$750	Up to 40 students
50+	\$700	Up to 40 students

- Up to 60 Min once a week

# of Classes		
1-8	\$3,200	Up to 40 students
9-20	\$3,000	Up to 40 students
21-50	\$2,800	Up to 40 students
50+	\$2,500	Up to 40 students

- Up to 60 Min twice a week

# of Classes		
1-8	\$6,400	Up to 40 students
9-20	\$5,900	Up to 40 students
21-50	\$5,400	Up to 40 students
50+	\$4,900	Up to 40 students

Exhibit B

Implementation Guide

1. HR determines that Proximity Learning is the Staffing Option for Existing Vacancy
2. HR notifies School and Proximity Independent Contractor
(Jim Frenchak, jfrenchak@proxlearn.com or 804-739-0728)
3. School requests new Long Term Substitute to serve as classroom facilitator
4. HR hires Long Term Substitute to serve as classroom facilitator
5. School sends Proximity Learning information to Parents (Link to download: <https://www.dropbox.com/s/2fqqlxslpg1c65v/From%20District%20to%20Parent.docx?dl=0>)
6. Implementation Call (Implementation can take 2-4 weeks)
 - a. Attendees
 - i. Proximity Learning Contact
 - ii. District Proximity Learning Liaison
(Name: Kara Deschenes 813-794-2150)
 - iii. School Facilitator (Assistant Principal or Principal)
 - iv. Area Executive Director (optional)
 - v. Staffing Director (optional)
 - b. Discussion Topics:
 - i. Scheduling of Parent Demonstration/Information Session
 - ii. Role Designation
 - iii. Q&A
7. Proximity Learning sends enrollment template to school for completion
 - a. School Will Provide the Following:
 - i. Class/student rosters (30 student max per class)
 - ii. Calendars, dates, and bell(s) schedule
 - iii. Course Names
 - iv. Technical Support Point of Contact (School/LC Tech Specialist)
 - v. Grading Weights for Course
 - vi. Grading Period Dates
 - b. District will Provide the Following.
 - i. Course curriculum standards
8. School Completes Enrollment Information to Proximity Learning (Five Business Days)

9. Proximity Learning Begins Staffing Position
10. Proximity Learning Conducts Training for Long Term Substitute
 - a. One online session (three hours)
 - b. One face-to-face session
11. Proximity Learning and School Technical Support Point of Contact Conduct Online Systems Test and Technical Confirmation
12. School hosts Parent Demonstration/information Session Students begin Proximity Learning Course

Exhibit C

School and District Tech Contact -- Please provide us with an IT contact at both the school and district level. We will need to run initial systems test before classes can start. We also will need someone at the school to contact should the class have any technical issues during the school day. Computer systems update a lot - typically overnight - and if there are any issues, we want to make sure we can resolve them quickly.

School Level Contact -- Please provide the name and contact information of the person at the school who will be coordinating all daily substitutes. This may be an office manager, front desk receptionist, or an on-campus HR coordinator. We will need to be able to contact them should there be any questions or problems, including missing lesson plans or classroom disruptions.

School Administrator -- Please provide us with contact information for an administrator in the building. Should there be an emergency or we have any problems, we will reach out directly to them for immediate resolution.

Exhibit D

Proximity Learning Inc. Terms of Service

I. Parties to the Agreement / Terms of Service

A. Proximity Learning, Inc. ("Proximity")

B. Participating school, district, institutional client, or individual customer

("Customer") II. Purpose

These Terms of Service (the "Agreement") take effect on the date ("Effective Date") that the Customer signs or otherwise accepts a price quote or other proposal provided by Proximity.

Customer and Proximity (each a "Party" and, collectively, the "Parties") wish to enter into this Agreement whereby Customer shall purchase, and Proximity shall provide, e-learning solutions for instruction in world languages or other subjects areas, or other products and services agreed upon by the Parties.

III. Term

The term of this Agreement (Term) shall begin on July-30,-2018 and end on June 30, 2019 unless terminated earlier in accordance with the terms and conditions set forth below.

IV. Proximity Obligations

Proximity shall render Products and Services to the Customer under this Agreement as described in Section VI. Such Products and Services shall cover components that are provided by Proximity, which may include such elements as e-learning platform, instruction, curriculum, and technical support. All Proximity instructors shall hold all necessary certifications required by applicable laws, regulations, and Customer policies. Proximity shall work in good faith to facilitate interaction between the Customer and Proximity instructors at remote locations.

V. Customer Obligations

The Customer shall provide a venue to facilitate the Products and Services described in Section VI. At the Customer's option, students shall be allowed to take the classes described herein at a location of their choosing not controlled by the Customer (e.g. home, library, etc.). If classes are provided at Customer's location, Customer shall also provide individuals qualified under applicable laws, regulations, and Customer policies ("Individuals") to facilitate the Products and Services described in Section VI. Such Individuals shall be physically present to oversee classroom based e-learning activities and shall provide periodic feedback to Customer and Proximity regarding service/instruction quality. The Customer understands and agrees that if classes are

conducted at the Customer's location, it must provide computer systems and other hardware and equipment that meet the specifications provided in Section VII.

VI. Products and Services

Proximity shall provide e-learning solutions for world language instruction or other subject areas as enumerated in the quote or proposal provided to the Customer. Unless otherwise specified, e-learning solutions and services provided by Proximity will include all required online platforms, curriculum, materials, etc., as well as instruction provided by qualified teachers if applicable.

Proximity will also provide technical and implementation support for systems provided by or maintained by Proximity. Customer will be responsible for providing necessary venues, equipment, adequate Internet access and bandwidth, technical support, etc. as described in Section V and Section VII.

VII. Equipment to be Provided by Customer

If classes are conducted at the Customer's location, Customer shall provide, solely at its own expense, the equipment necessary for Proximity to provide the Products and Services described in this Agreement. Such equipment shall include Internet connectivity with sufficient bandwidth, computers, Web cameras, two-way headsets, computer software and any other equipment required at the Customer's location and in each venue in which instruction shall be delivered. If classes are conducted at a location not under the Customer's control, such as the home of the student, then the student or parent shall be responsible for meeting the requirements of this Section VII.

VIII. Reimbursement of Expenses

During the term of the Agreement, the Customer shall, within forty-five (45) days after its receipt of appropriate documentation from Proximity, reimburse Proximity for certain reasonable and necessary out-of-pocket expenses, which are approved in writing in advance by the Customer, properly documented, and incurred by Proximity in connection with the Products and Services rendered hereunder, which are beyond the scope of this Agreement. Such reimbursement shall only be for the actual cost incurred by Proximity. If prior written approval is not obtained, Customer will not be responsible for reimbursement.

IX. Invoicing/Payment of Fees

Proximity shall bill monthly the fee for core Products and Services unless client requests modified billing upon receipt of a signed/accepted quote, valid Purchase Order (the "PO") or other valid form of authorization from the Client. Customer shall pay each invoice for Products and Services in full, within thirty (30) days of invoice date.

X. Payment Terms

During the first thirty (30) days of each course the Customer may add or drop students without penalty. After the thirty (30) day period, the Customer is responsible for all

tuition and payments for all currently enrolled students or the number of enrollments agreed upon by the Customer and Proximity, as well as any fees for other services provided by Proximity at the Customer's request. Customer is responsible for notifying Proximity of additional enrollments or dropped students before the thirty (30) day period is complete, or the Customer will be charged for the current student enrollment as of day twenty-nine (29). Customer agrees to remit payment to Proximity within thirty (30) days of invoice date. Proximity may offer to the Customer, at Proximity's sole discretion, alternative payment terms to be agreed upon in writing.

XI. Independent Contractor

The Parties acknowledge that Proximity is a skilled e-learning solutions provider who will be rendering professional services pursuant to this Agreement. Proximity will use professional judgment and expertise to accomplish the details of the work. Proximity is, and shall for all purposes be considered, an independent contractor, and nothing in this Agreement shall be deemed to create or imply an agency or employment relationship between Proximity and the Customer (or any affiliate of the Customer). In this respect, Proximity acknowledges and agrees that they shall have no right or authority to commit or obligate the Customer in any way to any third party or parties unless specifically authorized to do so by an authorized officer of the Customer.

The Parties acknowledge that Proximity is free to perform services for other persons or entities and that this agreement is not an exclusive arrangement for the services of Proximity. The Parties also acknowledge that, at the time of entering this agreement and during the Contract Term, or any renewal period, Proximity is or may be engaged to perform services for any other Customer, organization or individual without the permission of the Customer.

Further, Proximity acknowledges and agrees that they will not be entitled to any benefits generally provided by the Customer to its employees (including, without limitation, health insurance, retirement, severance, vacation, and disability) or any compensation other than what is set forth in Section VII above.

XII. Confidentiality and Work Product

(a) Subject to state and/or federal laws related to public records/ information, and subject to (b), without the prior written consent of Proximity, Customer specifically agrees that they will not at any time during or after the term of this Agreement divulge any confidential information (information not available to the public or which would be generally known by knowledgeable individuals in the industry who do not work for the Customer) obtained by Customer during the Contract Term, including, but not limited to, Proximity's methods of operation, designs, concepts, processes, instructional methods, new developments, cost data, price data, trade secrets, formulas, financial condition, or any other information which came to Customer's attention by reason of Proximity's performance hereunder.

(b) Any and all work product, inventions, discoveries, formulas, patterns, devices, compilations, codes, moral rights, developments, trade secrets, know-how, show-how, mask work right, patents, copyrights, trade or service marks, trade names, work made for hire, presentations, seminars, compliance material, position papers, contract forms, document forms, or intellectual property protection or intangible legal rights or interests, developed or acquired in the course of providing Products and Services pursuant to this Agreement, shall be the property of Proximity, and Proximity shall have the right to use such information or rights freely without the permission of or compensation to the Customer.

XIII. Customer Property

Other than property and rights covered by Section XII, the Customer and Proximity understand and agree that all Customer records, files, documents, drawings, specifications, equipment, books and other similar items relating, in any manner whatsoever, to the business of the Customer shall remain the exclusive property of the Customer. All such books, records, data, logs, programs and records in Proximity's possession or under Proximity's control belonging to the Customer shall be immediately returned by Proximity to the Customer upon any termination of this Agreement or upon any request for such documents and materials by the Customer.

To the extent that such books, records, data, logs, programs and records in Proximity's possession or under Proximity's control belonging to the Customer also represent a work product of Proximity, as defined in this Agreement, Proximity may keep a copy of such items, subject to the restrictions and rights of the Proximity and the Customer as provided in Section XII this Agreement.

XIV. Notice

Any notice provided or permitted to be given under this Agreement must be in writing, but may be served by deposit in the mail, addressed to the party to be notified, postage prepaid, and registered or certified, with a return receipt requested. Notice given by registered mail shall be deemed delivered and effective on the date of delivery shown on the return receipt. Notice may be served in any other manner, including e-mail, fax, etc., but shall be deemed delivered and effective as of the time of actual delivery. For purposes of notice the addresses of the parties shall be as follows:

If to the Customer, to:

Customer's published address, or other address provided to Proximity by the Customer.

If to Proximity, to:

Manager

Proximity Learning, Inc.

900 S. Capital of Texas Hwy.

Suite 350

Austin, TX 78746

Such addresses may be changed from time to time, by written notice to the other party.

XV. Disclaimer of Warranty

The courses, services and all materials are provided “as is” and “as available.”

XVI. Force Majeure

Proximity shall not be liable in damages, and the customer shall not have the right to terminate this Agreement, for any delay or default in performing the obligations enumerated in this agreement if such delay or default is caused by conditions beyond the Proximity's control. Such conditions may include, but are not limited to Acts of God, Government restrictions (including the denial or cancellation of any necessary license), wars, insurrections, extreme weather, foreign currency exchange fluctuations, political upheaval, and/or any other cause beyond the reasonable control of the Party whose performance is affected.

XVII. Administration

This agreement shall be administered by, and all orders shall be placed, with Proximity.

XVIII. Assignment

Proximity may assign this Agreement, and this Agreement shall inure to the benefit of, and be binding upon, Proximity, its successors and assigns, including without limitation any entity which may acquire substantially all of Proximity's assets and business, or with or into which Proximity may be consolidated or merged. The Customer is not permitted to assign this Agreement without the express written consent of Proximity.

Proximity will provide thirty (30) days' written notice of any assignment or transfer of this agreement.

XIX. Termination

The Parties acknowledge that e-learning operations may be affected by numerous factors such as damage, loss, malfunction, or destruction of equipment outside of Proximity's control. As such, in the event Proximity is unable to perform under this Agreement due to a condition beyond its reasonable control, Proximity shall give notice within 24 hours of decision to the Customer and shall have the right to terminate this Agreement. In the event of termination, the Customer shall receive a refund for any unused courses, or unused portions of courses already in progress.

XX. Mediation

The Parties agree to make a good faith effort to resolve any and all disagreements through voluntary, non-binding mediation before seeking any legal remedies against the other party.

The Parties shall share the cost of the mediation equally.

XXI. Miscellaneous

a. Governing Law

This agreement shall, for all purposes, be governed by and interpreted and enforced in accordance with the laws of the State of Kentucky.

b. Severability

The provisions of this Agreement are severable only through mutual written consent of both Parties. The invalidity or unenforceability of one or more of the provisions herein shall not have any effect upon the validity or enforceability of any other provision.

c. No Coercion

The Parties acknowledge they have entered into this Agreement as a free and voluntary act and not as the result of coercion of any kind.

d. Amendments or Modifications

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Services, products, pricing, fees, etc. enumerated in a quote or proposal provide by Proximity and signed or otherwise accepted by the Customer shall not be changed, waived, discharged, or terminated except by written agreement signed by both Parties.

e. Headings

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

f. Ambiguities

In the event that it shall be determined that there is any ambiguity contained herein, such ambiguity shall not be construed against either party hereto as a result of such party's preparation of this Agreement but shall be construed in light of all of the facts, circumstances and intentions of the parties at the time this Agreement is entered into.

g. Counterparts

This Agreement and any related quotes, proposals, etc. may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

h. Entire Agreement

This Agreement contains and constitutes the entire Agreement between the Parties and supersedes and cancels any prior agreements, representations, warranties, or communications, whether oral or written, between the Parties relating to any of the transactions contemplated by this Agreement.



Bullitt County Public Schools

1040 Highway 44 East
Shepherdsville, Kentucky 40165

502-869-8000
Fax 502-543-3608
www.bullittschools.org

Data Security and Breach Protocols

Vendors that receive Personal Information as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by an agency;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" means "any person or entity that has a contract or agreement with the Commonwealth and receives (accesses, collects or maintains) personal information from the Commonwealth pursuant to the contract or agreement."

The vendor hereby agrees to cooperate with Bullitt County Public Schools and the Commonwealth of Kentucky in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, the contracting agency, the Commissioner of the Kentucky State Police, the Auditor of Public Accounts, and the Commonwealth Office of Technology of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)2 applies and the vendor abides by the requirements set forth in that exception. If the agency is a unit of government listed in KRS 61.931(1)(b), the vendor shall notify the Commissioner of the Department of Local Government in the same manner as above. If the agency is a public school district listed in KRS

Equal Education and Employment Institution

61.931(1)(d), the vendor shall notify the Commissioner of the Department of Education in the same manner as above. If the agency is an educational entity listed under KRS 61.931(1)(e), the vendor shall notify the Council on Post-secondary Education in the same manner as above. Notification shall be in writing on a form developed by the Commonwealth Office of Technology.

The vendor hereby agrees to report, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site

- to the Superintendent or designee, Associate Commissioner, and
- to Bullitt County Public Schools for whom I/we perform work under the contract with Bullitt County Public Schools.

The vendor hereby agrees that Bullitt County Public Schools may withhold payment(s) owed to the vendor for any violation of the Identity Theft Prevention Reporting Requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

Upon conclusion of an investigation of a security breach of Personal Information as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a) the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth Office of Technology:

<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>

Student Data Security

Pursuant to KRS 365.734 (House Bill 232 (2014)), if contractor is a known cloud computing service provider (as defined in KRS 365.734(1)(b) as “any person or entity other than an educational institution that operates cloud computing services”), or, through service to agency, becomes the equivalent of a cloud computing service provider, contractor does further agree that:

- Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student’s parent. The contractor shall work with the student’s school and district to determine the best method of collecting parental permission. KRS 365.734 defines “process” and “student data”.
- With a written agreement for educational research, contractor may assist an educational institution to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C.sec.1232g.
- Pursuant to KRS 365.734, contractor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, contractor shall not sell, disclose, or otherwise process student data for any commercial purpose.

- Pursuant to KRS 365.734, contractor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Certificate of Compliance

Evan Erdberg hereby certifies that we are in compliance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

Name of Company: Proximity Learning Inc.

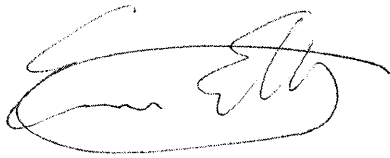
Primary company business address: 600 Congress ave., Floor 14
Austin, TX 78701

Company Phone number: 956-633-1511

Date: 7-12-18

Name of individual signing on behalf of the company:

Evan Erdberg



Signature: _____