

**JEFFERSON COUNTY PUBLIC SCHOOLS
CONTRACT FOR THE PROCUREMENT OF PROFESSIONAL SERVICES**

THIS CONTRACT FOR PROCUREMENT OF PROFESSIONAL SERVICES (hereinafter “Contract”) is entered into between the JEFFERSON COUNTY BOARD OF EDUCATION (hereinafter “Board”), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Savvas Learning Company, LLC (hereinafter “Contractor”), with its principal place of business at 15 E. Midland Avenue, Suite 502, Paramus, New Jersey 07652.

WITNESSETH:

WHEREAS, the Board desires to procure the particular services of Contractor, which are more fully defined below; and

WHEREAS, Contractor has held itself out to be competent and capable of performing the services contracted for herein;

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the Board and Contractor (hereinafter “Parties”) agree as follows:

ARTICLE I

Entire Agreement; Amendments

This Contract is the entire agreement between the Parties and supersedes any and all agreements, representations and negotiations, either oral or written, between the Parties before the effective date of this Contract. This Contract may not be amended or modified except in writing as provided in Article VIII. This Contract is supplemented by the Board’s Procurement Regulations currently in effect (hereinafter “Regulations”) that are incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of this Contract and any provisions of the Regulations, the Regulations shall prevail.

ARTICLE II

Services

Contractor agrees to perform the following services (hereinafter “Services”) of a quality and in a manner that is within the highest standards of Contractor’s profession or business. The Services are as follows:

Contractor shall provide textbooks, access to digital online products and professional development services from time to time pursuant to purchase orders issued to Contractor by each participating school from time to time. Contractor’s terms for the purchase of physical products, licenses to digitally-delivered products, and professional services as set forth on Exhibit A attached hereto are incorporated into this Contract; provided, however, that in the event of a conflict between any provision in Exhibit A and the other terms of this Contract, the terms of this Contract shall prevail.

Contractor agrees that they will not operate a motor vehicle in the performance of this Contract. The Contract Administrator hereby waives the insurance requirement for automobile liability insurance. If during the terms of this Contract, Contractor is not required by Kentucky law to maintain workers compensation insurance, then the Contract Administrator hereby waives the requirement for workers compensation insurance contained in Article V. All other provisions of Article V shall remain the same.

ARTICLE III
Compensation

The Board shall pay Contractor the total amount stated below (hereinafter “Contract Amount”). The Contract Amount shall be paid in a lump sum upon completion of the Services, unless a schedule of progress payments is stated below. The Contract Amount shall be for total performance of this Contract and includes all fees, costs and expenses incurred by Contractor including but not limited to labor, materials, taxes, profit, overhead, travel, insurance, subcontractor costs and other costs, unless otherwise stated below. To receive payment, Contractor must submit an itemized invoice or invoices. If progress payments are authorized, each invoice must specify the actual work performed. If payment of costs or expenses is authorized, receipts must be attached to the invoice.

Contract Amount:	Not to exceed \$7,900,000
Progress Payments (if not applicable, insert N/A):	Each participating school will submit invoices after license is purchased and will be paid for by the school.
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	\$4,963,180 - CARES funding, Not to exceed \$2,936,820 - from various school budgets

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on September 2, 2020 and shall complete the Services no later than June 30, 2021, unless (i) this Contract is modified as provided in Article VIII, or (ii) Contractor has further delivery obligations in connection with a digital subscription or the provision of additional print materials (such as consumables) in connection with a particular order.

ARTICLE V
Performance of Services by Contractor

The Services shall be performed by Contractor, and in no event shall Contractor subcontract with any other person to aid in the completion of the Services without the prior written approval of the Contract Administrator defined below. As of the date of this Agreement, approved subcontractors include Amazon Web Services (hosting provider for many Contractor’s digital solutions) and Sykes Enterprises, Incorporated (provider of first-level support for a variety of Contractor’s products). Contractor acknowledges and agrees that it is fully responsible for its subcontractors’ compliance with



all applicable terms of this Agreement in the same manner as if such services were provided by Contractor directly.

Contractor shall appoint one person who shall be responsible for reporting to the Board on all Services performed under the terms of this Contract and who shall be available for consultation with the Contract Administrator.

Contractor is an independent contractor, not an employee. Contractor is responsible for the payment of all federal, state and local payroll taxes and providing unemployment insurance and workers compensation coverage to Contractor's employees. Contractor shall provide all equipment, materials and supplies necessary for the performance of the Services.

Contractor shall at all times during the term of this Contract comply with all applicable laws, regulations, rules and policies. Contractor shall obtain and keep in force all licenses, permits and certificates necessary for the performance of the Services.

Contractor agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, in connection with the performance of this Contract. Notwithstanding the foregoing, Contractor's indemnification obligations under the preceding two sentences shall apply only to the extent that the claims or losses are attributable to the negligence or willful misconduct of Contractor or its employees or agents. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all claims or losses incurred by any supplier, contractor, or subcontractor furnishing work, services, or materials to Contractor in connection with the performance of this Contract. This provision survives termination of this Contract.

Unless waived in writing by the Contract Administrator, Contractor shall maintain during the term of this Contract policies of primary insurance covering the following risks and in at least the following amounts: commercial general liability, including bodily injury, property damage, personal injury, products and completed operations, and contractual, \$1,000,000; and automobile liability, \$1,000,000. Contractor shall furnish to the Contract Administrator certificates of insurance evidencing this coverage and naming the Board as an additional insured. Additionally, Contractor shall maintain workers compensation coverage with limits required by law; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

During the performance of this Contract, Contractor agrees that Contractor shall not discriminate against any employee, applicant or subcontractor because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, disability, or limitations related to pregnancy, childbirth, or related medical conditions. If the Contract Amount is paid from federal funds, this Contract is subject to Executive Order 11246 of September 24, 1965 and in such event the Equal Opportunity Clause set forth in 41 Code of Federal Regulations 60-1.4 is hereby incorporated by reference into this Contract as if set forth in full herein.

ARTICLE VII
Prohibition of Conflicts of Interest

It shall be a breach of this Contract for Contractor to commit any act which is a violation of the provisions of Article XI of the Regulations entitled “Ethics and Standards of Conduct,” or to assist or participate in or knowingly benefit from any act by any employee of the Board which is a violation of such provisions.

ARTICLE VIII
Changes

The Board and Contractor may at any time, by mutual agreement set forth in a written addendum, make changes in the definition of the Services; the scope of the Services; and the Contract Amount. The Contract Administrator and Contractor may, at any time, by mutual agreement set forth in a written addendum, make changes in the time within which the Services are to be performed; the schedule of Progress Payments; and mutual Termination of the Contract.

ARTICLE IX
Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination. For the avoidance of doubt, Contractor will not be obligated to refund any amounts already paid in the event of a termination of convenience.

ARTICLE X
Termination for Default

The Board may, by written notice of default to Contractor, terminate the whole or any part of this Contract, if Contractor breaches any provision of this Contract, or so fails to make progress as to endanger performance of this Contract, and in either of these circumstances, does not cure the breach or failure within a period of thirty (30) days after receipt of notice specifying the breach or failure. In the event of termination for breach, Contractor will refund pre-paid fees for any remaining portion of a product subscription term after the termination date. The rights and remedies of the Board provided in this Article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

Any differences or disagreements arising between the Parties concerning the rights or liabilities under this Contract, or any modifying instrument entered into under Article VIII of this Contract, shall be resolved through the procedures set out in the Regulations.

ARTICLE XI
Contractor’s Work Product

Unless waived in writing by the Contract Administrator, the Board shall retain ownership in and the rights to any reports, research data, creative works, designs, recordings, graphical representations or other works of a similar nature (hereinafter “Works”) produced or delivered by Contractor under this Contract. Contractor agrees that the Works are “works for hire” and Contractor assigns all right, title and interest in the Works to the Board.

Any reports, information, data, etc. given to or prepared or assembled by Contractor under this Contract shall not be made available to any individual or organization by Contractor without the prior written approval of the Board. Provided, nothing in this Article may be used to violate the provisions of any Kentucky or Federal statute or regulation which requires reporting of information.

ARTICLE XII Contract Administrator

The Board shall appoint a Contract Administrator for the purposes of daily administrative decision-making pertaining to the Contract. If Contractor and the Contract Administrator disagree on any circumstance or set of facts pertaining to the administration or execution of this Contract, the Board shall resolve the matter after notification by either the Contract Administrator or the Contractor in the manner prescribed by the Regulations. If the Board fails to give notice to Contractor of the appointment of a Contract Administrator, the Contract Administrator shall be the Board's Chief Financial Officer. Notwithstanding the foregoing, nothing in this Article XII will affect Contractor's intellectual property rights in its products or services, which shall remain vested in Contractor. This provision only applies to materials (if any) specifically produced and delivered by Contractor for JCPS, and not to any pre-existing materials of Contractor or any works developed by Contractor that are intended for distribution to Contractor's other customers.

ARTICLE XIII Right to Audit

The Board shall have the right to inspect and audit all accounting reports, books or records which concern the performance of the Services. Inspection shall take place during normal business hours at Contractor's place of business. Contractor shall retain all records relating to the performance of this Contract for five (5) years after the end of the term of this Contract.

ARTICLE XIV Miscellaneous

- A. All Articles shall be construed as read, and no limitation shall be placed on any Article by virtue of its descriptive heading.
- B. Any notices or reports by one Party to the other Party under this Contract shall be made in writing, to the address shown in the first paragraph of this Contract, or to such other address as may be designated in writing by one Party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.
- C. If any part of this Contract is held to be void, against public policy or illegal, the balance of this Contract shall continue to be valid and binding.
- D. This Contract shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.
- E. No delay or omission by either Party in exercising any right under this Contract shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Contract.
- F. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974. If Contractor has access to student records,

Contractor shall limit its employees' access to those records to persons for whom access is essential to perform this Contract.

- G. If this Contract requires Contractor and/or any employees of Contractor access to school grounds on a regularly scheduled and continuing basis for the purpose of providing services directly to a student or students, all individuals performing such services under this Contract are required to submit per KRS 160.380 to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- H. Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of this Contract and shall reveal any final determination of a violation by the Contractor or subcontractor of the preceding KRS Chapters.

IN WITNESS WHEREOF, the Parties hereto have executed this Contract to be effective as of September 2, 2020.

Contractor's Social Security Number or Federal Tax ID Number: 84-3531648*

JEFFERSON COUNTY BOARD OF EDUCATION Savvas Learning Company, LLC
CONTRACTOR

By: _____ By: KS
Title: Martin A. Pollio, Ed.D. Title: Kevin Schutz
Superintendent Vice President & Senior Counsel

*Please note that Savvas Learning Company LLC is a disregarded entity for federal income tax purposes. The FEIN belongs to Gateway Education Holdings LLC, the entity that files the federal income tax return which Savvas' income is reported. Savvas also has its own FEIN for other purposes such as employment taxes, which is 82-4606641.

Cabinet Member: Dr Carmen Coleman _____
(Initials)



Jefferson County Public Schools
**NONCOMPETITIVE NEGOTIATION
DETERMINATION AND FINDING**

1. An emergency exists which will cause public harm as a result of the delay in competitive procedures (Only the Superintendent shall declare an emergency.) —

State the date the emergency was declared by the superintendent: _____

2. There is a single source for the items within a reasonable geographic area —

Explain why the vendor is a single source: _____

3. The contract is for the services of a licensed professional, education specialist, technician, or an artist —

State the type of service: Education Specialist: Software License

4. The contract is for the purchase of perishable items purchased on a weekly or more frequent basis —

State the item(s): _____

5. The contract is for proprietary item(s) for resale: This can include the buying or selling of item(s) by students when it is part of the educational experience —

State the type(s) of item(s): _____

6. The contract is for replacement parts when the need cannot be reasonably anticipated and stockpiling is not feasible —

State the item(s): _____

7. The contract or purchase is for expenditures made on authorized trips outside the boundaries of Jefferson County Public Schools —

State the location: _____

8. The contract is for a sale of supplies at reduced prices that will afford Jefferson County Public Schools a savings (Purchase must be approved by Director of Purchasing) —

Explain the logic: _____

9. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids —

State the items: _____

I have determined that, pursuant to K.R.S. 45A. 380, the above item(s) should be obtained by the Noncompetitive Negotiation Methods since competition is not feasible.

Aaron G. Isaacs

Print name of person making Determination

Technology Division

School or Department

Signature of person making Determination

Date

Savvas Learning Company, LLC

Name of Contractor (**Contractor Signature Not Required**)

Requisition Number

Explanation of Noncompetitive Negotiation Methods can be found under K.R.S. 45A.380 and on page 15 in the Procurement Regulations

F-471-1

Revised 05/2011

EXHIBIT A
to the Contract for the Procurement of Professional Services between
Jefferson County Board of Education (the “Board”) and
Savvas Learning Company LLC (the “Contractor”)

1. **Definitions.** For purposes of this Exhibit A, the following definitions shall apply:
 - 1.1 “Blended Product” means a product offered by Contractor that consists of a combination of materials delivered in tangible form (such as printed textbooks and workbooks or other tangible learning materials) and content delivered digitally through online services or platforms.
 - 1.2 “Customer” means the entity with which Contractor has entered into the Contract for the purpose of providing its Products and Services (i.e., the Board), provided, however, that where relevant, the “Customer” may also refer to individual schools within the Board’s district that purchase products from Contractor under the Contract.
 - 1.3 “Digital Product” means a product offered by Contractor that consists solely of content or courseware delivered digitally through online services or platforms.
 - 1.4 “Documentation” means all instruction manuals, user guides and other information which Contractor generally makes available to users of its Products, whether in printed or electronic form, to aid in the use of such Products.
 - 1.5 “Intellectual Property Rights” means all current and future worldwide patents and other patent rights, copyrights, mask work rights, trade secrets, trademarks, and all other intellectual property rights and the related documentation or other tangible expression thereof, applicable to the Products which are owned by or licensed to Contractor.
 - 1.6 “Order” means an order for specific Products and Services being placed by Customer pursuant to a purchase order, which will generally be in response to a price quotation, bid or similar document (the “Quotation”) provided by Contractor, which Quotation sets forth the prices and other terms for such purchase. The Contractor may reject any Order for which the Customer’s purchase order does not match the Quotation.
 - 1.7 “Print Product” means a product offered by Contractor that consists of tangible, printed products such as textbooks and workbooks, and associated materials delivered therewith.
 - 1.8 “Product” means a Blended Product, Digital Product or Print Product.
 - 1.9 “Services” means training, professional development, consulting, or other professional services offered by Contractor. Services are often, but not always, tied to the delivery of particular Products.
 - 1.10 “Third Party Product” means a Product that is offered by Contractor for sale to the Customer, but for which a third party is actually the publisher of such Product. Contractor acts as the sales agent for such Third-Party Products on behalf of the publisher.
2. **Purchase of Products and Services.** The Customer agrees to purchase, and Contractor agrees to provide, the Products and/or Services set forth in applicable Orders accepted by Contractor, all in accordance with the terms of the Contract and this Exhibit A.
3. **Intellectual Property.**
 - a. The Products, as well as any Documentation and any materials supplied by Contractor to the Customer in connection with the delivery of Services (such Products, Documentation and other materials being collectively referred to herein as the “Materials”), are proprietary to Contractor and/or its licensors, and

are protected by copyright and other Intellectual Property Rights. While title to Print Products, and to the print component of Blended Products, will pass to the Customer, such title passes only with respect to the specific physical copies of such Products purchased and not to the underlying Intellectual Property Rights inherent in such Products. It is acknowledged that for Digital Products, or for the digital component of Blended Products, any reference to the Customer “purchasing” or Contractor “selling” such Products is understood to mean that the Customer is purchasing and Contractor is selling a license to use such Products for a specific term as set forth in Contractor’s applicable Quotation that is the subject of an Order. Title to Digital Products or to the digital component of Blended Products never passes to the Customer. Contractor and its licensors retain all Intellectual Property Rights in and to the Materials, and any enhancements, derivatives, updates or other modifications thereto.

b. Notwithstanding the foregoing, Contractor acknowledges that it obtains no ownership rights to any personally identifiable data regarding the Customer’s students or other users. As an example, if Contractor prepares a Customer-specific report as part of a consulting service for the Customer, Contractor retains all Intellectual Property Rights in the report template, but does not have any ownership rights with respect to any Customer-specific data included in the report. In addition, Contractor will not use any Customer data in a way such data is attributable to the Customer without the Customer’s permission. Contractor does, however, reserve the right to use de-identified data collected regarding the Customer’s users use of its Products, in a form that is no longer attributable to the Customer and aggregated with similar de-identified data collected from Contractor’s other customers, for the purposes of improving existing products, developing new products, evaluating and communicating product effectiveness and outcomes, and other related purposes.

4. **Returns of Print Materials.** If a Print Product, or the print component of a Blended Product, is received in damaged or defective condition, Contractor will replace it at no charge to the Customer if the Customer promptly returns the damaged or defective Product in accordance with Contractor’s return procedures. Any other return of print materials must be in accordance with Contractor’s then-current return policy, which, as of the date of the Contract, allows for print materials to be returned for a refund or credit under the following conditions: (a) materials must be returned to Contractor in new, unused condition, suitable for resale by Contractor (note that any barcoding, stickering, stamping or similar marking on any print materials renders them unsuitable for resale); (b) materials must be returned within six (6) months from the date of purchase; (c) the Customer must obtain a Return Materials Authorization (“RMA”) from Contractor prior to returning the materials, and must ship the materials back to Contractor within thirty days of receiving the RMA; (d) all materials sold in a set or package must be returned complete as originally sold; and (e) any materials provided by Contractor to the Customer on a no-charge basis in consideration of the Customer’s purchase must be returned in proportion to the purchased materials that are being returned for a refund or credit.

5. **Terms Applicable to Digital Materials.** For Digital Products, or the digital component of Blended Products, the following terms shall apply:

5.1 Contractor is committed to maintaining data privacy and security practices that are consistent with applicable law and industry standards. Contractor will maintain all personally identifiable information regarding the users of its Products in accordance with its then-current Privacy Policy applicable to such Products, a copy of which is available upon request.

5.2 The Customer will not, and will not permit its end users to, (i) attempt to decompile, disassemble, or reverse engineer any such Products; (ii) frame or utilize framing techniques to enclose any part of the Products; (iii) gather, obtain, use, access or otherwise copy any materials delivered through the Products by using any bot, spider, crawler, spyware, engine, device, software or any other automatic device, utility or manual process of any kind; (iv) allow third parties (i.e., individuals who are not students, instructors, or others in an educational relationship with the Customer’s students) to access such Products; or (v) attempt to interrupt, disable, damage or otherwise impair any such Products. The Customer’s end users will be subject to the applicable terms of use or other end user agreement made available on the Product log-in page and/or at the time of Product registration.

5.3 Contractor cannot assure that the performance of the digital component of any Product will be uninterrupted or error-free, or that all Product problems will be corrected, despite Contractor's reasonable efforts to do so. Contractor does, however, warrant that, throughout the Customer's license term, the digital component of any Product will substantially conform to the applicable description and specifications contained in the Documentation delivered with such Product. The foregoing warranty shall not apply to any Product that has been modified in any way by the Customer, damaged, or used in a manner that does not conform to the instructions and specifications contained in the Documentation for such Product (including any recommended system requirements published by Contractor for such Product, which are available upon request). In the event that the digital component of any Product does not meet the requirements of this warranty, the Customer shall be responsible to so notify Contractor in writing and provide Contractor with sufficient detail to allow Contractor to reproduce the problem. After receiving such notification, Contractor will undertake to correct the problem by programming corrections, reasonable "work-around" solutions and/or Documentation corrections. If Contractor is unable to correct the problem after a reasonable opportunity, then, at the Customer's option, the Customer may elect to terminate its license to such Product upon written notice to Contractor, and Contractor will refund a prorated portion of the license fees paid for such Product, computed from the date of termination through the end date of the Customer's subscription. The foregoing states the complete and entire remedies that the Customer has under this warranty.

6. **Services.** For Services, the following terms shall apply:

6.1 Contractor warrants that the Services will be performed by qualified personnel in a good and workmanlike manner consistent with industry standards.

6.2 Services are scheduled at mutually agreed upon times. The Customer is advised that services should ordinarily be scheduled at least thirty (30) days in advance to ensure availability of Contractor personnel.

7. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE ARE NO WARRANTIES IN RELATION TO THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT MATTER OF THE CONTRACT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR OTHER IMPLIED WARRANTIES OR CONDITIONS OTHERWISE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

8. **LIMITATION OF LIABILITY.** CONTRACTOR AND ITS LICENSORS SHALL NOT BE LIABLE TO THE CUSTOMER FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; OR LOST PROFITS, LOST FUNDING, LOST SAVINGS, OR LOST OR DAMAGED DATA; OR FOR CLAIMS OF A THIRD PARTY; ARISING OUT OF THE CONTRACT, OR THE PRODUCTS AND SERVICES PROVIDED HEREUNDER, OR THE USE OR INABILITY TO USE ANY OF THE FOREGOING, EVEN IF CONTRACTOR OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY ARE FORESEEABLE. IN ANY EVENT, IN RESPECT OF ANY CLAIM, DEMAND OR ACTION ARISING OUT OF THE CONTRACT, THE CUSTOMER SHALL BE LIMITED TO RECEIVING ACTUAL AND DIRECT DAMAGES IN A MAXIMUM AGGREGATE AMOUNT EQUAL TO THE CHARGES PAID BY THE CUSTOMER TO CONTRACTOR HEREUNDER FOR THE APPLICABLE PRODUCT OR SERVICE ON WHICH THE CLAIM IS BASED.

9. **Third Party Products.** Contractor is not the publisher of Third-Party Products and as such, makes no warranties or guarantees with respect to such Third-Party Products. If any Third Party Product includes a digital component, then the Customer will be subject to the terms of use or license agreement provided by the publisher of such Third Party Product, and to the privacy practices of such publisher, which are available upon request.