

6

**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 Nearpod, Inc. a Delaware corporation (hereinafter "Contractor"), with its principal place of business at 1855 Griffin Road, A290, Dania Beach, FL 33004.

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. Pursuant to this Contract, the Contractor will provide its Services to individual schools in the Board's district via sales orders. 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 software licenses to various schools for Nearpod which focuses on engaging students in the classroom. Purchase orders for licenses shall be entered by each participating school. Nearpod software license pricing shall be as reflected in the applicable sales order with each school.

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 delivery 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:	Contract amount shall not exceed \$70,000
Progress Payments (if not applicable, insert N/A):	Each Sales Order and Purchase Order shall be treated as a separate transaction, and paid promptly in full upon receipt of invoice by the Board and/or individual school.
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	Various School Budgets

ARTICLE IV Term of Contract

This Contract shall begin on January 20, 2021 ("Effective Date") and terminate on January 21, 2022. Following the Effective Date of this Contract, Contractor shall begin performance of the Services on the Service Start Date, as reflected in the applicable sales order with each school, and shall complete the Services no later than the Service End Date as reflected in each applicable sales order, unless this Contract is modified as provided in Article VIII. The Service End Date shall be prior to January 21, 2022.

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.

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 third-party claims or losses accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, based upon the intentional or negligent acts or omissions of the Contractor in connection with the performance of this Contract, except to the extent such claim is based on the intentional or negligent acts or omissions of Board or its members, agents, and employees. Contractor also agrees to hold harmless, indemnify, and defend the Board and its members, agents, and employees from any and all third-party 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. 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. Notwithstanding anything to the contrary in this Agreement or otherwise, any and all fees due or owing by the Board are non-cancellable and non-refundable.

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 default, the Board may secure the required services from another contractor. If the cost to the Board exceeds the cost of obtaining the Services under this Contract, Contractor shall pay the additional cost. 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.

ARTICLE XI

Disputes

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 XII

Contractor's Work Product

Subject to the Board's strict compliance with this Agreement and payment of all applicable fees, any additional terms that may be mutually agreed, and the Board's payment of any applicable subscription fees, Contractor grants the Board a limited, non-exclusive, non-sublicensable, non-transferable, revocable, and non-assignable license and right to access, use, reproduce, distribute, publicly perform, and display the Contractor Services and Content, to the extent permitted within the Contractor Materials' functionalities. The license does not give the Board any ownership or interest in any intellectual property of the Contractor Materials or Content and the Board cannot otherwise use the Content or Contractor Materials, without our express, prior, written consent. Contractor and/or its licensors hereby reserve all rights in and to the Contractor Services or Content (as the context may require) not expressly granted in these Terms and Conditions. Except as expressly permitted in these Terms and Conditions or with Contractor's prior express written consent, no part of the Contractor Materials or Content may be used, copied, reproduced, distributed, uploaded, posted, publicly displayed, translated, transmitted, sold, licensed, or otherwise used for any reason whatsoever.

Although the Board and any account owner is and remains the owner of any data, including student content, submitted through the Contractor Materials, the Board grants Contractor a perpetual, irrevocable, worldwide, sub-licensable, royalty-free, and transferable right and license to use, reproduce, publish, display, modify, make derivative works of, transmit and copy the Board's anonymized content and to additionally distribute and publicly perform the Board's content in connection with the Contractor Materials and Contractor's (and its successor's) business, in any media formats and through any media channels for the purposes of delivering the services to the Board, provided such right and license to use complies with the Data Sharing/Use Agreement between the Parties effective November 11, 2020 (the "DSA"). The Board also hereby grants to each user of the Contractor Materials a non-exclusive license to access and view its anonymized User-Generated Content as permitted by the functionality of the Contractor Materials and these Terms and Conditions. For the avoidance of doubt, such anonymized User-Generated Content shall not include any personally identifiable information. Notwithstanding anything to the contrary in this Contract or otherwise, any information or data exchanged between Contractor and the Board shall be subject to the DSA. In the event of a conflict between this Article XII and the DSA regarding the exchange of data and information, the DSA shall prevail.

The Board will not attempt to: (i) license, sublicense, copy, duplicate, distribute, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, reproduce, sell, trade, or resell the Contractor Materials or Content (including, without limitation, the reproduction, sale, trading or resale of Contractor Materials or Content customized by other Contractor users) without Contractor's prior written agreement; (ii) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any software component of the Contractor Materials are compiled or interpreted, and the Board acknowledges that nothing in this Article will be construed to grant the Board any right to obtain or use such code; (iii) create any derivative product from of the foregoing, without Contractor's prior consent; (iv) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, or pledge as security or otherwise encumber, the Board's rights under this Agreement; (v) remove any title, trademark, copyright, or restricted rights notices or labels from the Contractor Materials or related documentation; or (vi) share accounts. Contractor takes privacy seriously. As such, if the Board (or in the case of a school, district, or multi-seat license account, as administrator) learns that the license users are sharing accounts, the Board shall take reasonable efforts to promptly notify the user that they are not to share accounts or passwords. If the user continues to share their account or password with someone else, the Board must notify Contractor via email at privacy@nearpod.com within seven (7) days. Notwithstanding anything to the contrary in this section or otherwise, the Contractor Materials may include functionality that will allow the Board to create new content slides, delete slides and certain other editing functionality. These activities are permitted to the extent enabled within the Nearpod Materials, provided that such edited content is used solely for private educational purposes of the user. Contractor reserves the right to modify or discontinue the Contractor Materials or any version(s) thereof at any time in its sole discretion, with or without notice. The Board will be responsible for (i) internet connectivity needed to access the Contractor Materials; (ii) the Board's (and in the case of a school, district, or multiple user seat license the Board's employees, agents, members, contractors, or representatives') compliance with these Terms and our Privacy Policy (www.nearpod.com/privacy-policy); and (iii) the Board's User-Generated Content (and in the case of a school, district, or multiple user seat license) the Board's employees, agents, members, contractors, or representatives' user-generated content, as more particularly described above. The Board may not use the Contractor Materials in any manner that in Contractor's reasonable discretion could damage, overburden, impair, or interfere with any other party's use of them. The Board may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Contractor Materials. The Board agrees not to scrape or otherwise use automated means to access or gather information from the Contractor Materials, and agrees not to bypass any robot exclusion measures we may put in place. In

addition, the Board agrees not to use false or misleading information in connection with the Board's user account, and acknowledge that Contractor reserves the right to disable any user account with a profile which we believe (in our sole discretion) is false or misleading (including a profile that impersonates a third party).

In connection with the Board's User-Generated Content, the Board further agrees that it will not: (i) use material that is subject to third party intellectual property or proprietary rights, including privacy and publicity rights, unless the Board is the owner of such rights or have permission from their rightful owner to post the material and to grant Contractor all of the license rights granted herein; (ii) use material that is unlawful, defamatory, libelous, threatening, pornographic, obscene, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, violate any law or is otherwise inappropriate; or (iii) post advertisements or marketing content or solicitations of business, or any content of a commercial nature.

Contractor may provide various open communication tools on the Contractor Materials for educator users, such as blog comments, blog posts, chat forums, message boards, and the like. By posting information or otherwise using any open communication tools as mentioned, the Board agrees that it will not upload, post, share, or otherwise distribute any content that: (i) is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and pornographic or contains any type of inappropriate or explicit language; (ii) infringes any trademark, copyright, trade secret, or other proprietary right of any party; (iii) attempts any type of unauthorized advertising; or (iv) violates any applicable law or regulation.

ARTICLE XIII 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.

ARTICLE XIV 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 XV 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 January 20, 2021.

Contractor's Social Security Number or Federal Tax ID Number: _____ 0

JEFFERSON COUNTY BOARD OF
EDUCATION

Nearpod, Inc.
CONTRACTOR

By: _____

By:  _____

Title: Martin A. Pollio, Ed.D.
Superintendent

Title: Jose Carrera
CEO

Cabinet Member: Amy Dennes

(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.

Dr. Lisa Revel

Print name of person making Determination

Technology Division

School or Department

Signature of person making Determination

Date

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