

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 Instructure, Inc. (hereinafter "Contractor"), with its principal place of business at 6330 South 3000 East, Suite 700, Salt Lake City, UT 84121.

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. However, this Contract is supplemented by (a) the Board's Procurement Regulations currently in effect (hereinafter "Regulations"), (b) the Certica/TE21 Quote/Order Agreement (the "Quote"), and (c) the Master Terms and Conditions ("Master T&Cs") referenced in the Quote—each of which is incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision in this Contract and any provisions of the Master T&Cs, this Contract shall prevail. 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 Case Assessments in the MasteryConnect platform, an assessment and curriculum platform designed to show student learning in an intuitive, visual way. Additional information on the Services is provided in the attached Quote.

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 is due in advance within thirty (30) days of the approved invoice. 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:	Shall not exceed \$172,330.00
Progress Payments (if not applicable insert N/A):	NA
Costs/Expenses (if not applicable insert N/A):	NA
Fund Source:	CARES

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on July 28, 2021, and shall complete the Services no later than July 30, 2022, unless this Contract is modified as provided in Article VIII.

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 shall indemnify and defend Customer from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging that the Service infringes or misappropriates the intellectual property rights of that third party. Notwithstanding the foregoing, Contractor shall not be obligated to indemnify Customer if such infringement or misappropriation claim arises from: (a) the Customer Content; (b) Customer's or User's misuse of the Service; or (c) Customer's or User's use of the Service in combination with any products, services, or technology not provided by Instructure. If a claim of infringement or misappropriation is made, Contractor may, in its sole discretion: (i) modify the Service so that it becomes non-infringing; (ii) obtain a license permitting continued use of the Service; or (iii) terminate the Agreement with no liability to the Board, other than Contractor's obligation to indemnify hereunder, and return the unused portion of any prepaid Fees. The Board shall, to the extent permitted by law, indemnify and defend Contractor from and against any and all losses, liabilities, and claims (including reasonable attorneys' fees) arising out of any claim by a third party alleging: (z) the Customer Content infringes or misappropriates the intellectual property rights of that third party; or (y) use of the Service by the Board in violation of this Contract. This provision survives termination of this Contract.

The party seeking indemnification (the "Indemnified Party") shall provide the other party (the "Indemnifying Party") with prompt written notice upon becoming aware of any claim subject to indemnification hereunder and shall provide reasonable cooperation to the Indemnifying Party in the defense or investigation of any claim, suitor proceeding. The Indemnifying Party, at its option, will have sole control of such defense, provided that the Indemnified Party is entitled to participate in its own defense at its sole expense. The Indemnifying Party shall not enter into any settlement or compromise of any such claim, suit, or proceeding without the Indemnified Party's prior written consent, except that the Indemnifying Party may without such consent enter into any settlement of a claim that resolves the claim without liability to the Indemnified Party and without impairment to any of the Indemnified Party's rights or requiring the Indemnified Party to make any admission of liability.

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 and shall not be entitled to a refund of any prepaid fees.

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. 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

RESERVED

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 at a date and time and with a scope mutually agreed upon by the parties in writing. Contractor shall employ commercially reasonable good faith efforts to 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. 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.
- E. At all times during the term of this Contract, Contractor shall comply with the Family Educational Rights and Privacy Act of 1974, where applicable. 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.
- F. 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.

- G. 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 July 28, 2021

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

JEFFERSON COUNTY BOARD OF EDUCATION CONTRACTOR

By: _____

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

DocuSigned by:
By: Enoch Remick
FD43EE65624D9 ...

Enoch Remick
Title: VP Pricing & Licensing

Cabinet Member: Robert Moore _____

(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. Nathan Meyer

Print name of person making Determination

Accelerated Improvement Schools

School or Department

Signature of person making Determination

Date

Click or tap here to enter text.

Name of Contractor (**Contractor Signature Not Required**) Instructure, Inc.

Click or tap here to enter text.

Requisition Number

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



QUOTE/ORDER AGREEMENT

TE21, Inc.

1184 Clements Ferry Rd, Suite G
Charleston, SC 29492
Phone: (843) 579-2520
Fax: (843) 849-2951

VALID UNTIL: 07-15-2021

Quote Number: Q-008151

Quote Name: Jefferson Co KY - BA IB - 21-22 - 04/09/2021 13:48

Business Partner: LEARNING PARTNERS, LLC

Roger Choate ~ roger@yourlearningpartners.com ~ (270) 210-8907
475 Calvert Drive, Paducah, KY 42003

Customer:	Jefferson Co School District KY		
Address:	PO Box 34020, Louisville, KY 40232		
Contact Name:	Nate Meyer	Title:	Asst Supt of School Turnaround
E-mail:	nathan.meyer@jefferson.kyschools.us	Phone:	(502) 485-3011
Sales Rep Contact:	Todd Wirt • E-mail: twirt@certicasolutions.com • Phone		

PRODUCTS/SERVICES ORDERED:

QTY	UNITS	PRODUCT	DESCRIPTION	PRICE LEVEL	SALES PRICE	TOTAL PRICE
9,110	Students	KY-ElemBA	CASE Assessments - KY Elementary School Benchmarks for State Tested Subjects	District Pricing - Full Pkg	\$8.00	\$72,880.00
5,466	Students	KY-MiddBA	CASE Assessments - KY Middle School Benchmarks for State Tested Subjects	District Pricing - Full Pkg	\$8.00	\$43,728.00
3,159	Students	KY-HighBA	CASE Assessments - KY High School Benchmarks for State Tested Subjects	District Pricing - Full Pkg	\$8.00	\$25,272.00
17,735	Students	StudentRpt	Individual Student Reports	Custom Pricing	\$0.00	\$0.00
1	Package	PD-StartUp>3000	Start Up Services Package - two full days onsite and virtual services	TE21 Base Pricing	\$5,495.00	\$5,495.00
722	Students	CASE CP	CASE College Prep Assessment	TE21 Base Pricing	\$10.00	\$7,220.00
17,735	Students	BA Online MC	Online Student Access - MasteryConnect Platform	Custom Pricing	\$1.00	\$17,735.00
					Total:	\$172,330.00

This Order Agreement is governed by the Master Terms and Conditions located at <https://www.instructure.com/master-terms-conditions>, which are hereby incorporated by reference (this Quote/Order Agreement and such Master Terms and Conditions, collectively, the "Agreement"). In the event of any conflict between any provisions of the Master Terms and Conditions and this Order Agreement, the provisions of this Order Agreement shall control to the extent of the conflict.

NOTE: Customer will receive separate quote and invoice from software platform provider for online product delivery. This order is for CASE Assessment/CASE Item Bank content only. Customer will be responsible for purchasing and set up of delivery platform directly from platform vendor for online product delivery and is separate from this quote.

Additional details of your order follow.

Elementary Assessment Order Detail				
Subject	Ordered?	# of Tests per Year	Online?	Grade Level
ELA	Yes		Yes - Delivery Platform Cust	K (2BA) 1-5 (3BA)
Math	Yes		Yes - Delivery Platform Cust	K (2BA) 1-5 (3BA)
Science	No			
SS	No			

Middle Assessment Order Detail				
Subject	Ordered?	# of Tests per Year	Online?	Grade Level
ELA	Yes		Yes - Delivery Platform Cust	6-8
Math	Yes		Yes - Delivery Platform Cust	6-8
Science	No			
SS	No			

High School Assessment Order Detail				
Subject	Ordered?	# of Tests per Year - Traditional	# of Tests per Semester - Block	Online?
Standard Package -- All Subjects	No			
Standard English	Yes			Yes - Delivery Platform Cust
Standard Math	Yes			Yes - Delivery Platform Cust
Standard Science	No			
Standard History	No			
Exceptions or Notes				

Additional Assessment Details						
Assessment Package	Option 7: Custom					
Exceptions to Assessment Package						
College and Career Ready Assessments						
Grades to Test		# of Students				
CASE Item Bank Subscription						
Grades to Access		# of Students				
Subscription Start Date		Subscription End Date				
New Subscription Notes						
Online Delivery Platform Vendor						
CASE Item Bank		Assessments				
		MasteryConnect				
Special Instructions						
<p>This quote is for CASE assessments for grades K-11 and CASE item bank for grades K-12 at CSI schools, all delivered via MasteryConnect platform (purchased separately). GradeCam for MasteryConnect is purchased on this quote, as well as student reports and standard new customer Startup training professional development.</p> <p>CASE Assessments will be developed as follows: ELA - Grades 2-5 will have four benchmark assessments of 10-15 questions (should include ERQ, SA, Literary and Informational passages) - One Per Module. Grades 6-Eng II will have two benchmark assessments of 20-25 questions (should include ERQ, SA, Literary and Informational passages). High School ONLY- Four unit-aligned benchmarks of 5-10 questions each, with a mix of literary and informational. Juniors will have ACT ELA</p>						



CERTICA



QUOTE/ORDER AGREEMENT

Benchmarks.

Math - For Grades 2-5, three benchmark assessments with max of 15 questions. One benchmark assessment after each Module 1, 2, & 3. For Grades 6-Geo, two benchmark assessments of 25 questions (Includes extended response and at least one short answer), one each in Fall/Spring. Juniors will have one ACT Math Benchmark in the fall.

Due to the customization requests for assessments, JCPS ELA and Math leads will serve as Review Partners for all assessments provided for their district. We will collaborate on ensuring alignment to district curriculum frameworks and priority standards through this partnership.

This order is for CASE content only. Customer will be responsible for purchasing and set up of delivery platform directly from platform vendor for online product delivery and is separate from this quote.



QUOTE/ORDER AGREEMENT

ASSESSMENT ORDERS:

For Paper/Pencil Assessment Delivery - Pre-coded answer documents and scanning provided for each benchmark; UPS Shipping Labels are provided for return of answer documents; School/District responsible for copying benchmarks. *For Online Assessment Delivery* - Enrollment and access information will be provided separately. Changes to delivery options on assessment orders within one month of scheduled test delivery may be subject to additional charges.

PRICING, TERM AND EXPIRATION: This Order is for the school year over which the purchased assessments referenced above are delivered. For CASE Item Bank, this Order is for a 12 month subscription term as detailed in the above order details. The details of this Quote/Order Agreement, including those related to pricing, are valid if executed by Customer on or before 07-15-2021.

PAYMENT TERMS: Pricing above reflects current Customer student enrollment. If actual Customer student enrollment is greater than 10% of the above enrollment, Customer agrees to pay for any increase in student enrollment at the time invoiced. All payment obligations are non-cancelable and all amounts paid are nonrefundable. TE21 shall be entitled to withhold performance and discontinue service until all amounts due are paid in full. Payment is due in accordance with invoicing terms, unless otherwise specified below.

Special Payment Terms:

PROFESSIONAL SERVICES: Professional development ("PD") will be performed by TE21 in accordance with its published descriptions at a mutually-convenient time. TE21 will not have any obligation to perform any PD that is not scheduled within 12 months of the Effective Date.

CASE ASSESSMENTS: CASE Assessments are the property of TE21, Inc. CASE Assessments delivered via paper/pencil format or online through any delivery platform are intended for use with students registered in your classroom this school year. Your right to use of this document is limited to its delivery in whole to your students as a formative assessment, and for review and instructional purposes for those registered students within your classroom in the year of assessment delivery. CASE Assessments cannot be shared, duplicated, modified, uploaded to a community site or database, publicly displayed or reproduced in part or in whole without written permission of TE21.

CASE ITEM BANK LICENSE: CASE Item Bank and all items are the property of TE21. TE21 grants to Customer a limited, non-exclusive, non-transferable right and license to access CASE Item Bank to registered students during subscription. CASE Item Bank shall be limited to use in Customer's classrooms and shall not include any right to reproduce questions from CASE Item Bank, distribute copies of the questions, export questions for inclusion in any other delivery platforms or electronic storage devices, upload any question to any platform partner "community boards", prepare derivative works of the questions, or publicly display the questions outside Customer's classrooms.

The parties acknowledge that they've read and understood the Master Terms and Conditions located at <https://www.instructure.com/master-terms-conditions> and have executed this Agreement as of the last date signed (the "Effective Date").

TE21, Inc.

Customer: Jefferson Co School District KY

Quote: Q-008151

By:

By (Authorized):

Name:

Lou Ann Little

Name:

Title:

Sr. Director of Finance & Operations

Title:

Date:

4/12/2021

Date:

Please provide or confirm the Main Contacts. Update as necessary. If correct, confirm by checking here: []

Role	Name	Title	Email	Phone
Main Contact Benchmarks	Nate Meyer	Other	nathan.meyer@jefferson.kyschools.us	(502) 485-3011
Main Contact Item Bank	Nate Meyer	Other	nathan.meyer@jefferson.kyschools.us	(502) 485-3011