



**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 Pear Deck, Inc. (hereinafter "Contractor"), a Delaware corporation, with its principal place of business at 2030 E Maple Ave., Suite 100, El Segundo, CA 90245. "Contractor Parties" means Contractor, its affiliates, licensors, and suppliers, and their respective officers, directors, employees, shareholders, agents and representatives.

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. Contractor's Terms of Service (available at <https://www.peardeck.com/terms-of-service>) as may be amended from time to time are hereby incorporated by reference into and made a part of this Contract. In the event of a conflict between any provision of the Terms of Service and this Contract, this Contract shall prevail. In the event of a conflict between any provision of the Terms of Service and 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 districtwide software licenses for Pear Deck which focuses on student engagement and formative assessment. The cost for a one year license for Pear Deck will be \$147,000 for 100,000 students.

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:	\$147,000
Progress Payments (if not applicable, insert N/A):	N/A
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	ESSER

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 28, 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, with Contractor engaging with subcontractors to aid in the completion of the Services, for example, a database provider like Google Cloud Platform. Contractor will enter into written agreements with subcontractors engaged in the completion of the Services, whereby the subcontractors will be bound by terms consistent with the terms of this Agreement and the Data Sharing Agreement.

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 ("Board indemnified Parties") from any and all claims or losses actually incurred accruing or resulting from injury, damage, or death of any person, firm, or corporation, including the Contractor himself, up to and not to exceed in

aggregate, twice the amount of Fees paid to Contractor under this Contract for the Services giving rise to such claim in the calendar year in which such claim arose, from third party claims against Board Indemnified Parties attributable to Contractor's material breach of the terms of this Contract. All of the foregoing obligations are conditioned on Board notifying Contractor promptly in writing of such action, Board giving Contractor sole control of the defense thereof and any related settlement negotiations, and Board cooperating and, at Contractor's reasonable request and expense, assisting in such defense. Contractor agrees that that Board is not responsible for any payment or reimbursement of suppliers, contractors, or subcontractors engaged by Contractor in connection with this Contract. Any indemnification obligations of Contractor under the Data Sharing Agreement by and between the Parties are excluded from indemnification obligations in this Article V.

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 Limitation of Liability

To the extent allowed by law, (A) NEITHER PARTY (INCLUDING CONTRACTOR PARTIES) SHALL BE LIABLE TO THE OTHER OR ANY ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER IN AN ACTION OR ARISING OUT OF BREACH OF CONTRACT, TORT OR ANY OTHER CAUSE OF ACTION EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) EACH PARTY'S (INCLUDING CONTRACTOR PARTIES') LIABILITY TO THE OTHER SHALL NOT, IN THE AGGREGATE, EXCEED TWICE THE AMOUNT OF FEES PAID BY BOARD TO CONTRACTOR FOR THE SERVICES GIVING RISE TO SUCH CLAIM IN THE CALENDAR YEAR IN WHICH SUCH CLAIM AROSE. THE PARTIES MAY RECOVER UNDER EITHER THE PARTIES' DATA SHARING AGREEMENT OR THIS CONTRACT (I.E., NO DOUBLE DIPPING).

ARTICLE VII 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 VIII 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 IX 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 X 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.

ARTICLE XI Termination for Default

Either party may, by written notice of default to the other party, terminate the whole or any part of this Contract, if the other party 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 comparable 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 reasonable 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 XII 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 to the extent permitted by law.

ARTICLE XIII Contractor's Work Product

Board and Contractor agree that this Article XIII (Contractor's Work Product) shall not apply as to Contractor.

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 XIV 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 in Article XII (Disputes) herein. 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 XV Right to Audit

With prior, reasonable advanced notice, the Board shall have the right to reasonably inspect and audit all accounting reports, books or records which concern the performance of the Services. If an audit cannot be resolved first through remote questions and answers, 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 three (3) years after the end of the term of this Contract.

ARTICLE XVI 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 and Board 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 July 28, 2021.

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

JEFFERSON COUNTY BOARD OF EDUCATION Pear Deck, Inc.

EDUCATION

CONTRACTOR

By: _____

By: Michael Jonas _____

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

DocuSigned by:
8CD8C493E767445...
Michael Jonas
Title: Chief Financial
Officer

Cabinet Member: Dr. Kermit Belcher

(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

Pear Deck

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

ORDER FORM

QUOTE # Q-152312
 DATE 6/24/2021
 EXPIRATION DATE 7/30/2021



Bill To
 Jefferson County Schools
 3332 Newburg Rd
 Louisville, Kentucky 40232
 United States

Ship To
 William Pierce
 Jefferson County Schools
 3332 Newburg Rd
 Louisville, Kentucky 40218-2414
 United States
 (502)485-3011
 william.pierce@jefferson.kyschools.us

PearDeck, Inc.
 2030 E. Maple Ave
 El Segundo, CA 90245
 United States

Founded by educators, Pear Deck is a platform for engaging every student, every day. Our mission and methods are backed by our experience in the classroom and our understanding of how schools and districts use technology. Pear Deck makes it easy for your teachers to connect with students and deliver powerful learning moments with formative assessments and interactive questions that let them see, in real time, how every student in the class is doing.

Description	Line Notes	Start Date	End Date	Discount	Line Total
Pear Deck Subscription		8/1/2021	7/31/2022	0%	\$147,000.00
TOTAL (USD):					\$147,000.00

Additional Notes:

Includes 5 webinar training sessions.

Terms and Conditions

Terms By signing below, the undersigned agrees to be bound by the Pear Deck Terms of Service ("Terms of Service") which are incorporated by this reference herein. Current versions of the Terms of Service are located [here](#). The Terms of Service contain certain terms and conditions not set forth in this Order Form. Pear Deck's rights and responsibilities, and your rights and responsibilities, are as set forth in this Order Form and in the Terms of Service.

AUTHORITY

The undersigned represents and warrants that the undersigned has full power and authority to execute this Order Form and to bind the above-referenced school, district, or organization, as the case may be, to the terms of this Order Form and the Terms of Service.

INVOICES

At the election of the undersigned, invoices shall be sent on either a monthly or annual basis. Invoices shall be payable within 30 days of the Invoice date, and are considered late after that date. Late invoices incur a fee of 2% (or the highest rate permitted by law, if less) and Pear Deck services may be disabled after 60 days of non-payment.

AUTOMATIC RENEWAL

Pear Deck will automatically send me an invoice 1 month before my renewal date with a cap on fee increases of no more than 7% per year. Renewal may be cancelled anytime with ("60 days notice") to Pear Deck.

ORDER FORM



QUOTE # Q-152312
DATE 6/24/2021
EXPIRATION DATE 7/30/2021

Name :

Signature :

Date :

PO (optional) :

Next Step

Please send the signed quote to Jena Cooper at jcooper@mail.peardeck.com

FOR FOLLOW-UP QUESTIONS

Please contact our Finance Team at finance@peardeck.com

PRIVACY

Our Policy is [HERE](#). If you have a custom Privacy Rider, please send to Privacy@peardeck.com

W9 Form: <https://goo.gl/CcVw9m>

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