

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 Open Up Resources (hereinafter "Contractor"), with its principal place of business at 1600 El Camino Real, Ste 155 Menlo Park, CA 94025.

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 training and professional development sessions to staff at various JCPS schools. Each school shall independently schedule training sessions with Contractor under Contract with services dates to be set by mutual agreement of the school and Contractor.

Each school shall enter into an Open Up Resources Purchase Agreement with Contractor, substantially similar to the attached form as Attachment A and incorporated herein. In the event of a conflict between the terms of any Open Up Resources Purchase Agreement and this Contract, the terms of this Contract shall prevail.

In the event that the Board determines that it is impractical or impossible for in person services to occur, Contractor may provide these Services remotely using video conferencing technology as necessary.

Notwithstanding Article XII, the Board acknowledges that the Contractor owns the copyrights to all tangible or electronic presentation materials, handouts, and/or program books ("materials") used in conjunction with the services performed under this Contract and that no materials will be developed specifically for the Board under this Contract. Contractor shall retain all copyrights owned prior to entering into this Contract, and the Board may not reproduce any materials not designated reproducible without the express written permission of the Contractor.

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 \$500,000
Progress Payments (if not applicable, insert N/A):	NA
Costs/Expenses (if not applicable insert N/A):	NA
Fund Source:	Various School Budgets

ARTICLE IV Term of Contract

Contractor shall begin performance of the Services on July 20, 2022 and shall complete the Services no later than June 30, 2023, 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 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. 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.

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 five (5) 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

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 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 July 20, 2022.

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

JEFFERSON COUNTY BOARD OF
EDUCATION

By: _____

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

Open Up Resources
CONTRACTOR

By: _____

Title: Jessica Sliwerski
CEO

DocuSigned by:
Jessica Sliwerski
8C9BF8EDB29743D...

6/1/2022

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

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

Academic Schools, AIS

School or Department

Signature of person making Determination

Date

Open Up Resources

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



Proposal for Partnership

Quote Number Q-
Account Name

Created Date
Expiration Date

Primary Contact

Prepared By Tabitha Savage
Email tabitha.savage@openup.org

Bill To

Ship To

Introduction

Open Up Resources is pleased to submit this proposal for partnership. We are poised to deliver a best-in-class solution that suits your approach to teaching and learning.

The following quote outlines pricing for the requested materials and services; please contact us should your needs change. We will confirm this order upon receipt of your purchase order(s).

Thank you!

Product	Product Code	Unit Price	Qty.	Total Price
OUR BL 1 DAY EL DESIGN WKSH	BLELLA1DESWK	\$4,500.00	2	\$9,000.00

Subtotal: \$9,000.00

Total: \$9,000.00

Terms & Conditions

Pricing Information:

- All prices are in US dollars and valid for 30 days from the date of this proposal. After this time period, prices, products, and services are subject to change without notice.
- Note: This is a cost proposal, not a formal contract.
- You agree to BetterLesson PersonalizedPD Terms and Conditions (see Attachment A) by signing this proposal, future quotes for additional solutions or by providing a purchase order.
- BetterLesson, Inc. is an intended third-party beneficiary of this quote with full recourse against your school or district for any nonpayment or violation of the PersonalizedPD Terms and Conditions (Attachment A).

Ordering Information:

Please submit your official purchase order, with authorized signature(s), electronically to your field specialist. Include:

- Your complete billing address.
- A primary contact name, email address, phone number, title, school, district, street address, city, state, and zip code.
- A copy of this proposal.
- Any additional special requirements for delivery.

Payment Information:

- We kindly request payment within 30 days. Open Up Resources is a 501C3 not-for-profit organization.
- Payment for BetterLesson services is required in advance of delivery.
- A 3% service charge will be applied for credit card payments.
- After 90 days, a fee of 1.5% per month will be charged on unpaid balances

Attachment A



PersonalizedPD Terms and Conditions

The following Terms and Conditions (the “**Terms**”) describe the terms under which BetterLesson, Inc., a Delaware corporation having a business address at 86A Sherman Street, Cambridge, Massachusetts 02140 (the “**Company**”) will make its PersonalizedPD professional development program available to the applicable school or school district or other organization (the “**Partner**”) referenced on an applicable agreement, purchase order, or signed quote that refers to and incorporates these Terms (such purchase order or signed quote, the “**Order Form**”). These Terms along with the Order Form shall constitute the “**Agreement**” between the Company and Partner. In the event of any conflict between these Terms and the Order Form, the Terms shall supersede the Order Form.

Description of Technology and Services. Subject to payment of all fees to Open Up Resources set forth in the Order Form, the Company hereby grants Partner access to the Company’s proprietary platform for teacher development called PersonalizedPD (the “**PersonalizedPD Platform**”), which may include one or more of the following: (i) access to in-person and/or virtual instructional coaching, (ii) access to the Company’s curated strategy content (the “**BetterLesson Content**”), (iii) access to the Company’s proprietary web-based and mobile workflow services (the “**BetterLesson Technology**”), and (iv) administrative analytics updates, as customized by the Company for Partner as described in the Order Form (access to the PersonalizedPD Platform, the BetterLesson Content and the BetterLesson Technology and such updates shall be collectively referred to herein as the “**Services**”).

Ownership. The PersonalizedPD Platform, including the proprietary methodologies contained therein, the BetterLesson Technology, and the BetterLesson Content, all are and shall remain the property of the Company. The Company grants to Partner and each of Partner’s participating teachers (each such teacher, a “**Participant**”) a nonexclusive, worldwide, and royalty-free license to access the Services for the timeframe set forth on the Order Form and solely in connection with the Company’s provision of the Services pursuant to an applicable Order Form. Partner shall neither (i) copy, modify, enhance, or create derivative works of the BetterLesson Technology or the BetterLesson Content, (ii) disassemble, decompile, or in any way attempt to reverse engineer any of the BetterLesson Technology, nor (iii) allow any third parties other than Participants to access the PersonalizedPD Platform or the BetterLesson Content.

Protection and Confidentiality of Partner Information. The protection of Partner's data and information is very important to the Company. The Company will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Partner Information. In addition, the Company will not (a) disclose the Partner Information except as compelled by law, or (b) access the Partner Information except to provide the Services. As used in this paragraph, the term "Partner Information" means all information disclosed by Partner or any Participant to the Company, including electronic data or information submitted by Partner to the Company, that is not available to the public and is not otherwise available to us on a non-confidential basis. In the event that Company or any Participant or any authorized user of the Company accesses the BetterLesson.com website to view, upload, or download lesson plan or other content, such access and the use of the BetterLesson.com website shall be governed by the Terms of Service applicable to the BetterLesson Platform located at https://betterlesson.com/public/terms_of_service.

Pupil Information. In the event that Partner uploads student work product or other materials or artifacts, including, without limitation, such information that could be considered "education records" under the Family Educational Rights and Privacy Act ("FERPA"), then the following provisions shall apply:

1. Pupil records obtained by the Company from Partner continue to be the property of and under the control of the Partner. Pupil records include any information directly related to a pupil that is maintained by the Partner or acquired directly from the pupil or the pupil's teacher through the use of software applications or other means in connection with the provision of the Services. Pupil records do not include deidentified information (information that cannot be used to identify an individual pupil).
2. In the event that a pupil wishes to retain possession and control of pupil-generated content, to the extent applicable, such pupil should make a formal request with Partner. Partner will verify and validate such request and then request the applicable content maintained by the Company to be returned to Partner. Partner will then provide such content to the applicable pupil or transfer such information to an applicable personal account.
3. In the event that a pupil wishes to review and correct personally identifiable information in the pupil's records maintained by the Company, to the extent applicable, such pupil shall make a formal request with Partner. Partner will verify and validate such request and then request from Company the applicable information for review and correction.
4. In the event of an unauthorized disclosure of a pupil's records, the Company will report the same to Partner who will promptly report such disclosure to the applicable pupil.
5. The Company will not use any information in a pupil record for any purpose other than those required or specifically permitted by the Agreement, including, without limitation, the

performance of the Services.

6. Following the termination of the Agreement, the Company and Partner shall either work to transfer the pupil records to Partner, or Company will destroy the same and certify such destruction with the Partner.

7. Partner agrees to work with the Company to ensure compliance with FERPA. To that end, Partner will take necessary steps to include a reference to the Company and the Services in its annual notification of FERPA rights for being a school official with a legitimate educational interest in pupil's records (including education records as defined under FERPA).

Term of Agreement. This Agreement shall commence as of the date written on the first Order Form and will remain in effect as long as there is an outstanding Order Form in effect between the parties.

Disclaimer and Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT. IN NO EVENT SHALL THE LIABILITY OF EITHER PARTY FOR ANY CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT EXCEED THE TOTAL FEES ACTUALLY PAID BY PARTNER TO THE COMPANY PURSUANT TO THIS AGREEMENT.

Miscellaneous. The Agreement shall be governed by the laws of The Commonwealth of Massachusetts, without regard to its conflict of law principles. The Agreement constitutes the entire agreement of the parties with respect to Partner's access to the Services. The relationship between the parties shall be independent contractors, and nothing in this Agreement shall create any employment, partnership, agency, or joint venture between the parties. Any notices required to be sent pursuant to this Agreement shall be sent by regular mail, hand delivery, facsimile, or electronic mail to the address indicated for each of the parties on the Order Form or as updated in writing from time to time. Partner hereby consents to the Company's use of Partner's name for promotional purposes. Except as otherwise expressly permitted in this Agreement, neither party may sell, transfer, or assign its rights and duties under this Agreement without the prior written consent of the other party, except that either party may assign this Agreement in whole or in part without consent of the other party to any entity controlling, controlled by, or under common control with the assigning party, or to any entity that acquires such party by purchase of stock or by merger or otherwise, or by obtaining substantially all of such party's assets. Subject to the foregoing, this Agreement shall inure to the benefit of the parties, their successors, and permitted assigns.