

**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 ExploreLearning, LLC (hereinafter “Contractor”), with its principal place of business at 110 Avon Street, Suite 300, Charlottesville, VA 22902.

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”), Contractor’s License Quote, and each existing and subsequent agreement for Contractor’s subscriptions and/or services 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 Gizmos which focuses on science and math. Purchase orders for licenses shall be entered by each participating school. Gizmos software license pricing is attached and incorporated herein by reference.

Use of the Gizmos product. Gizmos are interactive math and science simulations for grades 3-12. Over 400 Gizmos aligned to the latest standards help educators bring powerful new learning experiences to the classroom. Gizmos use an inquiry-based approach to learning that has been validated by extensive research as a highly effective way to build conceptual understanding.



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

ARTICLE III
Compensation

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

Contract Amount:	Not to exceed \$500,000
Progress Payments (if not applicable, insert N/A):	Each participating school will submit invoices after license is purchased and will be paid for by the school.
Costs/Expenses (if not applicable insert N/A):	N/A
Fund Source:	Various School Budgets

ARTICLE IV
Term of Contract

Contractor shall begin performance of the Services on August 31, 2022 and shall complete the Services no later than August 30, 2023 unless this Contract is modified as provided in Article VIII.

ARTICLE V
Performance of Services by Contractor

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, 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 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; and professional errors and omissions coverage with minimum limits of \$1,000,000. Contractor shall furnish certificates of insurance evidencing this coverage to the Contract Administrator.

ARTICLE VI Equal Opportunity

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

ARTICLE VII Prohibition of Conflicts of Interest

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

ARTICLE VIII Changes

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

ARTICLE IX Termination for Convenience of the Board

The Board may terminate this Contract in whole or in part at any time by giving written notice to Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the specified effective date. The Board shall compensate Contractor for Services satisfactorily performed through the effective date of termination. For the avoidance of doubt, all Contractor Services are performed in full upon activation of the annual license.

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

The Board acknowledges and agrees that the Services are existing, commercially available SaaS-based subscriptions, provisioned in a multi-tenant, shared database architecture, with ancillary training, texts and other materials, which Contractor offers and provisions to all of its educational customers under its standard limited license terms, and all ownership or other intellectual property rights of any kind in and to the Services and/or any associated materials developed, used or provided in the course of any services, or derivatives thereof, whether or not now or in the future acquired, filed, perfected, registered or recorded, are expressly reserved to and remain the property of Contractor and/or its licensors, as set forth in the license terms. All rights relating to the Services and/or materials not expressly granted by Contractor in the license terms for the Services are reserved. The parties acknowledge that elements of the Contractor Services constitute software and documentation and are provided as "Commercial Items" as defined at 48 C.F.R. 2.101, and are being licensed to government end users solely as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101 and 12.212. The parties do not anticipate or intend the creation by Contractor of any newly created intellectual property or "Works Made for Hire" ("New Work Product Deliverable") to be owned exclusively by the customer under the Agreement, and nothing will be deemed a New Work Product Deliverable hereunder unless the development of such New Work Product Deliverable is expressly agreed and individually identified as a New Work Product Deliverable to be owned exclusively by the customer in a ExploreLearning quote or a statement of work signed by a VP or above level representative of Contractor, on an individual case basis prior to creation.

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 August 31, 2022.

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

JEFFERSON COUNTY BOARD OF
EDUCATION

ExploreLearning, LLC
CONTRACTOR

By: _____

By: Julia M. Given

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

Title: Julia M. Given
VP Finance

Cabinet Member: Robert Moore	_____ (Initials)
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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.

Robert Moore

Print name of person making Determination

Chief of Schools

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

ATTACHMENT A

ExploreLearning Gizmos Price List

ExploreLearning Gizmos® are award-winning, interactive online simulations that drive inquiry and understanding of math and science in grades 3-12 as well as foundational science understanding in grades K-2 with the included Science 4 Us component for elementary subscriptions. Subscriptions give teachers and students access to a library of nearly 500 Gizmos.

Gizmos are:

- Complete with inquiry-based lessons, formative assessment, and real-time reporting.
- Correlated to state and provincial standards, as well as major textbooks.
- Great for small group work, flipped classrooms, whole group instruction, individual exploration.
- Optimized for classroom and virtual learning.
- Accessible by teachers and students anywhere there is an Internet connection.

Building-Level Annual Subscriptions for Gizmos

Department and site license options for schools purchasing (1, 2, and 3 year terms available)

License	Description	List Price (min/max)
Secondary site	For math and science, grades 6-12	\$8.25 per student (\$3,295 / \$11,500)
Secondary department	For math or science, grades 6-12	\$4.95 per student (\$2,195 / \$7,350)
Elementary site Gizmos + Science4Us bundle	For elementary math and science	\$2,995 per site (K-5) \$3,995 per site (K-6+)

Revised 05/2011