

**MILWAUKEE BOARD OF SCHOOL DIRECTORS
PROFESSIONAL SERVICES CONTRACT**

This Contract is being entered into this 1st day of October 2021, by and between **Proximity Learning, Inc.** (“Contractor”) and Milwaukee Board of School Directors (“MPS”). This Contract is the result of an open competitive procurement, specifically Request for Proposal (RFP) 1047.

1. SCOPE OF SERVICES

Contractor shall specifically perform the following tasks:

As requested by MPS and in accordance with the Scope of Services of RFP 1047, which is hereby incorporated by reference, Contractor shall:

Contract shall provide a vendor hosted Online Interactive Learning Course System for World Languages for grades K-12 (hereinafter referred to as the “System”) for the minimum following languages: American Sign Language (ASL); Chinese/Mandarin; French; German and Spanish. MPS reserves the right to utilize other language courses that are offered in the Contractor’s catalogue based on the needs of the District.

The “interactive courses” shall be defined as direct-to-student online courses with provision of layered levels of support for each course such as teacher-to-student, student-to-teacher, student-to-student, teacher-to-teacher and teacher-to-paraprofessional interaction. All courses will be administered by a Licensed Content Certified Instructor. The anticipated number of students that will be serviced during the 2021-2022 school year is approximately, 10,264 including in schools, Credit Recovery, Summer School, and Summer Camp. MPS seeks online interactive World Language courses due to changes in graduation requirements which now include two years of a World Language which all high school students must fulfill.

The System applies to all subject areas as well as grade bands and must include the following specifications:

1. The System must support students in successful intermediate mid-level for the World Language Readiness Standards (ACTFL/NCSSFL) and proficient for the MPS standards.
 - a) ACTFL: 27TUhttps://www.actfl.org/publications/all/world-readiness-standards-learning-languages.U27T
 - b) MPS standards:
 - Interpretive Communication: Learners understand, interpret, and analyze what is heard, read, or viewed on a variety of topics.
 - Interpersonal Communication: Learners interact and negotiate meaning in spoken, signed, or written conversations to share information, reactions, feelings, and opinions.
 - Presentational Communication: Learners present information, concepts, and ideas to inform, explain, persuade, and narrate on a variety of topics using appropriate media and adapting to various audiences of listeners, readers, or viewers.
 - Intercultural communication: Learners initiate conversation, understand, and respond to what is communicated, using culturally appropriate language and behavior in each context.
2. MPS students will be using Chromebooks and therefore, the Online Interactive Learning System must be fully compatible with Chromebooks.
3. Visible structure and format at-a-glance features should signal the organization of content.
4. Chapter or unit title and/or frames.
5. Typographic cues such as bold, italics, or changes in size of type.
6. Divisions of content such as color cues, video cues, or visual signposts.
7. Scaffolded video module that could be locked and unlocked by the implementer when necessary.

RFP 1047 (including all exhibits and addenda) and Contractor’s Response to RFP 1047, are incorporated herein by reference. All minimum respondent qualifications of the RFP are material terms of this Contract with which Contractor must comply.

Contractor shall provide, at its own expense, all personnel required to perform the services under this Contract.

2. TERM

This Contract shall be in effect from October 1, 2021 through September 30, 2022 (the “Initial Term”), with the option to extend for two additional one-year terms upon written mutual consent of the parties. MPS will base its renewal decision on the following performance metrics to be rated by MPS personnel. MPS will base its renewal decisions on compliance with the following Performance Objectives, to be rated by MPS personnel. Compliance with the Performance Thresholds does not guarantee

(ATTACHMENT 2) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR053022
 Contract Number: B0001476
 Vendor Number: V023619

renewal. Contractor shall provide these survey results to be eligible for annual contract renewal; however, provision is not a guarantee of contract extension. Survey results must demonstrate a minimum satisfaction level of 75% and a response rate of 50%.

Performance Objective	Measurement Mechanism	Performance Threshold
Contractor shall report to MPS’s Office of Academics program outputs, or deliverables, on the number of students, by school, who have participated in a self-learning course.	These reports shall be delivered to MPS’s Office of Academics once a year during each contract year, at each scheduled communication with MPS.	Contractor shall provide these reports to be eligible for annual contract renewal; however, provision of reports is not a guarantee of contract extension.
Contractor shall report to MPS’s Office of Academics program outputs, or deliverables, on the number of students, by school, who have achieved successful partial proficiency of the ACTFL and MPS standards.	These reports shall be delivered to MPS’s Office of Academics once a year during each contract year, at each scheduled communication with MPS.	Contractor shall provide these reports to be eligible for annual contract renewal; however, provision of reports is not a guarantee of contract extension.
Contractor shall report to MPS’s Office of Academics program outputs, or deliverables, on the number of professional development sessions held for MPS staff.	These reports shall be delivered to MPS’s Office of Academics twice a year during each contract year, at each scheduled communication with MPS.	Contractor shall provide these reports to be eligible for annual contract renewal; however, provision of reports is not a guarantee of contract extension.
Contractor shall measure MPS staff and administration satisfaction with the program via an MPS-supplied survey of five questions (See Sample of Exhibit 2, in Bonfire Files Section). These questions may be included as part of lengthier Contractor survey but will be measured and evaluated separately.	Survey results shall be reported to the Office of Academics by April 1st of each year.	Contractor shall provide these survey results to be eligible for annual contract renewal; however, provision is not a guarantee of contract extension. Survey results must demonstrate a minimum satisfaction level of 75% and a response rate of 50%.

No work shall commence before a Contractor receives a fully executed Contract and has been given approval to proceed. Any work performed by the Contractor prior to obtaining a fully-executed Contract with approval to proceed shall not be compensated pursuant to this Contract. Any continuation of the Contract beyond this term must be set forth in writing and signed by the original signatories to the Contract.

3. COMPENSATION

Total compensation under this Contract shall not exceed \$1,000,000.00 in the Initial Term. Contractor will be paid on a per course (with remote licensed teacher), per year basis rate of \$200.00 per student. Contractor will be paid \$9.00 per student for Content Library. Contractor shall be compensated at a rate of \$10,000.00 for Software Development to ensure System can interact with MPS’s Data Warehouse and Infinite Campus. Contractor shall provide 50 hours of school-based Professional Development at no additional charge. Each additional hour of school-based Professional Development shall be billed by the Contractor at a rate of \$100.00. Contractor shall provide 1,000 hours of district level Implementation Services at no additional charge. Contractor will not charge for any additional Implementation Services.

MPS reserves the right to determine in its sole discretion whether services have been adequately and fully delivered; to withhold payment until services are fully and adequately delivered; or to disallow a pro rata share of payments for services not fully and adequately delivered.

Milwaukee Public Schools does not pay in advance for services. No payment shall be made until a properly submitted invoice is approved. Invoices shall be submitted to:

Milwaukee Public Schools
 ATTN: Solmaris Gonzalez – World Language Immersion Curriculum Specialist
 Dept of Bilingual Multicultural Education – Rm 265
 5225 W. Vliet Street
 Milwaukee, WI 53208

(ATTACHMENT 2) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR053022
Contract Number: B0001476
Vendor Number: V023619

A properly submitted invoice must include a detailed description of the dates and times worked, and the tasks performed. As a matter of practice, MPS attempts to pay all invoices in 30 days. It is mutually agreed that State Prompt pay law does not apply to this Contract.

Unless otherwise specified, MPS shall not pay invoices submitted more than 60 days after actual work. In the case of grant funding, no payments shall be made after grant close out. Final invoices must be marked as such.

4. NON APPROPRIATION OF FUNDS

This Contract is contingent upon the appropriation of sufficient funds by appropriate MPS officials. If funds are not appropriated, Contractor agrees to take back any commodities furnished under the Contract, terminate any services supplied to MPS under the Contract, and relieve MPS of any further obligations under the Contract.

5. NON-DISCRIMINATION

In the performance of work under this Contract, Contractor shall not discriminate in any way against any employee or applicant for employment on the basis of a person's sex, race, age, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, disability, or socio-economic status. This prohibition includes but is not limited to employment; promotions, demotions and transfers; recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor is required to include a similar provision in all subcontracts to this Contract.

If MPS determines Contractor has violated this non-discrimination policy, MPS may terminate this Contract without liability for undelivered services or materials. MPS may also deem the Contractor ineligible to participate in future contracts with MPS.

6. INDEMNITY

Notwithstanding any references to the contrary, Contractor assumes full liability for all of its acts or omissions in the performance of this Contract, as well as the acts or omissions of its subcontractors. Contractor shall indemnify and hold harmless MPS, its agents, officers and employees against all liabilities, losses, judgments, decrees, costs, and expenses that may be claimed against MPS as a result of granting of this Contract to said Contractor, or that may result from the carelessness or neglect of said Contractor, its agents, or employees. If judgment is recovered against MPS in suits of law or equity for any reason, including by reason of the carelessness, negligence, or acts or omissions of the Contractor, against such persons, firms or corporations carrying out the provisions of the Contract for the Contractor, the Contractor assumes full liability for such judgment, not only as to any monetary award, but also as to the costs, attorneys' fees or other expenses resulting therefrom.

In accordance with applicable laws, MPS shall be responsible for defending and paying judgments on behalf of its officers, employees and agents while acting within the scope of their employment or agency for any claims that may arise out of MPS's negligence for acts, policies, or directives that affect the activities covered by this Contract.

7. BACKGROUND CHECKS

Contractor will conduct, at Contractor's expense, a criminal information records background check, (hereinafter referred to as "background check"), through the Wisconsin Department of Justice and other appropriate states' agencies, on all current and potential administrators, board members, officers, and employees who have, or who are anticipated to have, "direct, unsupervised contact" with MPS students in the performance of this Contract.

An out of state background check should be completed in the state(s) in which the individual resided for at least six months within the last two years and was eighteen years or older at the time.

Contractor will submit to MPS's Department of Employment Relations (DER), (via mail to Milwaukee Public Schools Background Checks, Attn: Department of Employment Relations, Room 116, 5225 West Vliet Street, Milwaukee, WI 53208, or via email at 564@milwaukee.k12.wi.us), all completed background checks. Such records will be reviewed and MPS will notify Contractor of any individual(s) who, based on MPS standards, are unfit and should not have contact with MPS students. All determinations made by MPS with regards to whether an individual is fit to provide services pursuant to this Contract are made in MPS's sole discretion.

The following will each be a material failure to comply with the terms of this Contract and cause for immediate termination of this Contract by MPS: failure to perform background checks as outlined in this Section 7; failure to submit background checks to MPS as outlined in this Section 7; allowing services to be provided by an individual who has not be subjected to a background check; and allowing services to be performed by an individual who has been determined to be unfit by MPS as outlined in this Section 7.

8. INSURANCE AND PROOF OF FINANCIAL RESPONSIBILITY

Contractor understands and agrees that financial responsibility for claims or damages to any person, or to Contractor’s employees and agents, shall rest with the Contractor. Contractor and its subcontractors shall effect and maintain any insurance coverage, including, but not limited to, Workers’ Compensation, Employers’ Liability, General Liability, Contractual Liability, Automobile Liability and Umbrella Liability to support such financial obligations. The indemnification obligation, however, shall not be reduced in any way by existence or non-existence, limitation, amount or type of damages, compensation, or benefits payable under Workers’ Compensation laws or other insurance provisions.

The minimum limits of insurance required of the Contractor by MPS shall be:

Workers’ Compensation	Statutory Limits
Employers’ Liability	\$100,000 per occurrence
General Liability	\$1,000,000 per occurrence/\$2,000,000 aggregate
Auto Liability	\$1,000,000 per occurrence
Umbrella (excess) Liability	\$1,000,000 per occurrence

The Milwaukee Board of School Directors shall be named as an additional insured under Contractor’s and subcontractors’ general liability insurance and umbrella liability insurance. Evidence of all required insurances of Contractor shall be submitted electronically to MPS via its third party vendor, EXIGIS Risk Management Services. Waivers and exceptions to the above limits will be in the sole discretion of MPS and shall be recorded in the EXIGIS system, which records are incorporated into this Contract by reference. The certificate of insurance or policies of insurance evidencing all coverages shall include a statement that MPS shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any of Contractor’s insurers providing the coverages required by MPS for the duration of this Contract.

9. SHIPPING /TAXES

If goods are provided pursuant to this Contract, please note that MPS is exempt from Federal Excise and Wisconsin Sales Taxes. All vendor quotes, bids and invoices must include delivery FOB destination to the MPS location receiving the goods and freight must be prepaid. This means any freight, shipping, processing, handling or like charges must be part of a unit price. Any separate line items for freight, shipping, processing, handling or like charges listed on an invoice will be deleted and NOT PAID.

All textbook purchases shall be governed by the terms and conditions in the Milwaukee Board of School Directors’ Textbook Contract, which provides that textbooks shipped to MPS or its schools must be done at no additional charge to MPS or its schools.

MPS reserves the right to reject any items that do not conform to the bid, quote or Purchase Order. All return freight charges associated with the rejected materials shall be borne by the vendor.

10. IRREPARABLE HARM

It is mutually agreed the breach of this Contract on Contractor’s part shall result in irreparable and continuing damage to MPS for which money damages may not provide adequate relief. Therefore, the breach of this Contract on Contractor’s part shall entitle MPS to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

11. TERMINATION BY CONTRACTOR

Contractor may, at its option, terminate this Contract upon the failure of MPS to pay any amount, which may become due hereunder for a period of sixty (60) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

12. TERMINATION BY MPS - BREACH BY CONTRACTOR

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, MPS shall thereupon have the right to terminate it by giving five (5) days written notice before the effective date of termination of the Contract, specifying the alleged violations, and effective date of termination. The Contract shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation with five (5) days. In the event of termination, MPS will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Contract.

(ATTACHMENT 2) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR053022

Contract Number: B0001476

Vendor Number: V023619

13. TERMINATION BY MPS

MPS further reserves the right to terminate this Contract at any time for any reason by giving Contractor written notice by Registered or Certified Mail of such termination. MPS will attempt to give Contractor 20 days' notice, but reserves the right to give immediate notice. In the event of said termination, Contractor shall reduce its activities hereunder, as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination, including any retainage. This section also applies should the Milwaukee Board of School Directors fail to appropriate additional monies required for the completion of the Contract.

14. INDEPENDENT CONTRACTOR

Contractor agrees and stipulates that in performing this Contract, it is acting as an Independent Contractor, and that no relationship of employer and employee, partnership or joint venture is created by this Contract. Contractor has exclusive control over work hours, location, and other details of such services, and MPS's sole interest is to ensure that said service shall be performed and rendered in a competent, safe, efficient, timely and satisfactory manner in accordance with the terms of this Contract.

Contractor has the sole obligation to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income. Contractor specifically covenant not to file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of MPS during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against MPS on Contractor's behalf, Contractor will request such agency or court to dismiss such matter. MPS shall not be charged any obligation or responsibility whatsoever of extending any fringe benefits which may be extended to MPS employees, including any insurance, or pension plans.

Contractor further agrees that MPS is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans which may be extended to employees of MPS from time-to-time and further agree to indemnify and hold harmless MPS and all its employees, officers and agents from any liability for personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

15. ASSIGNMENT LIMITATION

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

16. PROHIBITED PRACTICES

- A. Contractor during the period of this Contract shall not hire, retain or use for compensation any member, officer, or employee of MPS to perform services under this Contract, or any other person who, to the knowledge of Contractor, has a conflict of interest.
- B. Contractor hereby attests it is familiar with MPS's Code of Ethics, providing in pertinent part, "[a]n employee of Milwaukee Public Schools may not accept any gift or gratuity in excess of \$25.00 annually from any person, persons, group or any firm which does business with or is attempting to do business with MPS."
- C. No person may enter into this Contract for services that the MPS employee would otherwise perform as an employee.
- D. No current or former MPS employee may perform services on a professional services contract without the prior written consent of the MPS Chief Human Capital Officer or his/her designee.
- E. If the Contract is for apparel for \$5,000.00 or more, the Contractor agrees to provide only items manufactured by responsible manufacturers. Contractor is required to include a similar provision in all subcontracts to this Contract.

17. LIVING WAGE REQUIREMENT

Contractor shall comply with, and ensure its subcontractors performing work under this Contract comply with, Milwaukee Board of School Directors' Administrative Policy 3.09(17), which requires that employees be paid a "living wage."

18. NOTICES

Notices to either party provided for in this Contract shall be sufficient if sent by Certified or Registered mail, postage prepaid, addressed to the signatories on this Contract, or to their designees.

(ATTACHMENT 2) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR053022
Contract Number: B0001476
Vendor Number: V023619

19. WAIVER

The waiver or failure of either Party to exercise in any respect any rights provided for in this Contract shall not be deemed a waiver of any further right under this Contract.

20. INTEGRATION / SEVERABILITY

This Contract and its exhibits and addenda, if any, RFP 1047 and Contractor's Response to RFP 1047, constitute the entire Contract among the Parties with respect to the subject matter hereof and supersede all prior proposals, negotiations, conversations, discussions and Contracts among the Parties concerning the subject matter hereof. No amendment or modification of any provision of this Contract shall be effective unless the same shall be in writing and signed by both Parties.

The District shall not be bound by any terms and conditions included in of Contractor's packaging, service catalog, brochure, technical data sheet or other document which attempts to impose any conditions at variance with or in addition to the terms and conditions contained herein.

If any term or provision of this Contract should be declared invalid by a court of competent jurisdiction or by operation of law, the remaining terms and provisions of this Contract shall be interpreted as if such invalid Contracts or covenants were not contained herein.

21. CHOICE OF LAW & FORUM

The state courts of Wisconsin shall be the sole forum for all disputes arising of this Contract. The validity, construction, enforcement and effect of this Contract shall be governed solely by the laws of the State of Wisconsin.

22. TIMING

Time is of the essence in this Contract.

23. CERTIFICATION REGARDING DEBARMENT OR SUSPENSION

Contractor certifies that neither Contractor or its principals; its subcontractors or their principals; the sub-recipients (if applicable) or their principals are suspended, debarred, proposed for debarment, voluntarily excluded from covered transactions, or otherwise disqualified by any federal department or agency from doing business with the Federal Government pursuant to Executive Orders 12549 and 12689. Contractor specifically covenants that neither the Contractor or its principals, its sub-contractors or their principals, or the sub-recipients (if applicable) or their principals are included on the Excluded Parties List System ("EPLS") maintained by the General Services Administration ("GSA").

24. FORCE MAJEURE

MPS will not be liable to pay Contractor for any work that the Contractor is unable to perform due to act of God, riot, war, civil unrest, flood, earthquake, outbreak of contagious disease or other cause beyond MPS's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

25. STUDENT DATA

Contractor acknowledges that student data is protected by both federal and state law. *See* Wis. Stat. § 118.125; 20 U.S.C. § 1232g(b); 34 C.F.R. § 99.1 *et seq.* If MPS determines that Contractor has disclosed any student record information in violation of either federal or state law, without prejudice to any other rights or remedies the MPS may have, MPS shall be entitled to immediately terminate this and every other existing Contract without further liability. Moreover, MPS may bar Contractor from future MPS contracts for varying periods up to and including permanent debarment.

26. NON-DISCLOSURE

Absent prior written consent of the person listed in Section 3 or his/her designee, Contractor shall not: (1) disclose, publish, or disseminate any information, not a matter of public record, that is received by reason of this Contract, regardless of whether the Contractor is or is not under contract at the time of the disclosure; or (2) disclose, publish, or disseminate any information developed for MPS under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of the same information.

All information and any derivatives thereof, whether created by MPS or Contractor under this Contract remains the property of MPS and no license or other rights to such information is granted or implied hereby. For purposes of this Contract, "derivatives"

(ATTACHMENT 2) ACTION ON THE AWARD OF PROFESSIONAL SERVICES CONTRACTS

Contract Requisition Number: CR053022
Contract Number: B0001476
Vendor Number: V023619

shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

Within ten business days of the earlier of receipt of MPS' written or oral request, or final payment, Contractor will return all documents, records, and copies thereof it obtained during the development of the work product covered by this Contract.

27. MPS LOGO/PUBLICITY

No Contractor shall use the MPS Logo in its literature or issue a press release about the subject of this Contract without prior written notice to and written approval of MPS's Executive Director of Communications & Outreach.

28. ORDER OF PRIORITY

In the event of a conflict among the documents constituting this Contract, the order of priority to resolve the conflict shall be: 1) this Contract; 2) RFP 1047 (including all exhibits and addenda); and 3) Contractor's Response to RFP 1047.

29. PUBLIC RECORDS

Both parties understand that the Board is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor acknowledges that it is obligated to assist the Board in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that the Contractor must defend and hold the Board harmless from liability under the law. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Contract.

30. CONTRACT COMPLIANCE REQUIREMENT

The HUB requirement on this Contract is 0%. The student engagement requirement of this Contract is 400 hours. The Career Education requirement for this Contract is 10 hours. Failure to achieve these requirements may result in the application of some or all of the sanctions set forth in Administrative Policy 3.10, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the parties here to have executed this Contract on the day, month and year first above written.

CONTRACTOR (Vendor #: V023619)

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: Evan Erdberg
Authorized Representative

By: Martha Kreitzman
Martha Kreitzman
Chief Financial Officer

Date: 8-27-2021
Proximity Learning, Inc.
800 Kings Highway N, Suite 405
Cherry Hill, NJ 08034
(512) 600-5233

Date: 8-30-2021
By: Keith P. Posley
Keith P. Posley, Ed.D.,
Superintendent of Schools

SSN / FEIN: XXXXXXXXXX

Date: 9-3-21

Budget Code: GEN-0-0-INV-DW-ECTS

By: Robert E. Peterson
Robert E. Peterson, President
Milwaukee Board of School Directors

Date: 9.14.21

Reviewed by Risk Management:
By: [Signature]

Date: 10-11-2021