



FLOYD COUNTY BOARD OF EDUCATION
Danny Adkins, Superintendent
106 North Front Avenue
Prestonsburg, Kentucky 41653
Telephone (606) 886-2354 Fax (606) 886-4550
www.floyd.kyschools.us

Sherry Robinson- Chair - District 5
Dr. Chandra Varia, Vice-Chair - District 2
Linda C. Gearheart, Member - District 1
William Newsome, Jr., Member - District 3
Rhonda Meade, Member - District 4

Consent Agenda Item (Action Item): Approve the Floyd County School District to entering into an agreement with KidsChoose Inc. for Menu Preparation software.

Applicable Statute or Regulation: Board Policy 01.11 General Powers and Duties of the Board

Fiscal/Budgetary Impact: There is a \$1,200 for the initial year and \$2,400 for renewal if needed for the following year. This cost would be paid from school nutrition funding.

History/Background: This software is currently being paid by KDE and they will not be paying for the software for the 18-19 school year. The kitchen managers and the school nutrition director utilize this software for menu preparation and documentation.

Recommended Action: I recommend that the Floyd County School District would approve purchasing this software.

Contact Person(s): Dale Pack

Director

Superintendent

Date: May 18, 2018

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

CHOOSI & CN CENTRAL SCHOOL AGREEMENT

The Choosi website and Choosi mobile app (collectively, "Choosi") and CNCentral website and mobile app ("CN Central") (collectively across Choosi and CNCentral, the "Site") are operated by KidsChoose, Inc. ("KidsChoose"). KidsChoose developed Choosi to enable local educational authorities ("Schools") to provide to their students and the students' parents access to the Choosi mobile app and website with multiple features that connect parents and students with school food service departments and promote participation in child nutrition and wellness programs. KidsChoose also provides to Schools CNCentral to help plan menus and streamline food service operations (collectively across Choosi and CN Central, "School Programs"). Choosi and CN Central features, as selected by the School and defined in one or more Purchase Orders covered by this agreement (collectively, "Selected KidsChoose Features"), include one or more of the following items: (a) menus and nutritional information ("Menus & Meal Ratings"), (b) customization and preordering of meals ("Preordering"), (c) menu compliance and planning ("Menu Planning"), and (d) point of sale operation ("Point of Sale"). The Choosi & CN Central School Agreement (the "Agreement") will govern the relationship between KidsChoose and School. Accordingly, please read all the provisions of this Agreement carefully and thoroughly.

1. **Choosi & CN Central Subscription.**

1.1. ***User License; Restrictions.*** Upon purchase of a Choosi &/or CN Central subscription through KidsChoose, KidsChoose hereby grants to School a limited, non-exclusive, non-transferable license to provide to their enrolled students, their enrolled students' parents and/or legal guardians, and employed staff access to and use of Choosi &/or CN Central according to the terms of the executed Purchase Order(s). Individual users must agree to each site's Terms & Conditions upon initial use. School agrees that it has no right, power, or authority to (a) sell, lease, or sublicense Choosi or CN Central; (b) make any modifications to or unauthorized copies of Choosi or CN Central; (c) decompile, disassembler, or reverse engineer the Choosi or CN Central software, in whole or in part; or (d) provide, disclose, divulge, or make available to, or permit the use of Choosi or CN Central by any third party without KidsChoose's prior written consent.

1.2. ***License Fees, Charges, and Taxes.*** Upon execution of a Purchase Order, School shall pay all license fees and charges as defined within the Purchase Order. Multiple Purchase Orders may be executed under and covered by this Agreement.

1.3. ***Ownership.*** This is a single-user, with the user being defined as the School, license agreement, and not an agreement for sale. KidsChoose or its affiliates retain exclusive ownership of the copyrights in the software (including source code) and other intellectual property rights of Choosi and CN Central delivered to School. Choosi and CN Central are protected by the United States Copyright Act and other intellectual property laws. KidsChoose and its affiliates retain all rights not expressly granted to School in this Agreement.

2. **Information Collected.**

2.1. ***Type of Information Collected from School.*** In order to provide the Selected KidsChoose Features, KidsChoose seeks access to data directly related to the School Programs. This data includes school menus and nutritional information (collectively, "Menu Data" or "Data").

Expressly excluded from the Data are student health and medical records, and any other information protected under the Health Insurance Portability and Accountability Act of 1996. For a complete copy of the Choosi Privacy Policy, please visit <https://getchoosi.com/app/#/home-page/privacy-policy>.

2.2. ***Section Deleted.***

2.3. ***Consent Required.*** To provide the Selected KidsChoose Features and collect Data, including Personal Information, KidsChoose requires consent from the School. By executing this Agreement, KidsChoose obtains affirmative

consent by School, and is authorized to act as a school official to access the selected Data from School directly, the student directly, and/or using an automated method from third-party data system(s) for the sole purpose of providing Selected KidsChoose Features.

2.4. **Ownership of Data.** The ownership of and title to Data as intangible property obtained from School by KidsChoose continues to be the property of and under the control of School, its students, or otherwise required by applicable law. The parties acknowledge the applicability of title 2 of the CFR section 200.315 Intangible Property with the School as a sub-grantee using federal funds for child nutrition programs.

2.5. **Prohibition on Use and Disclosure of Data.** The use of Data is limited to the extent required to manage participating students' activities in the School Programs and for no other purpose. Further, Personal Information will only be disclosed to third parties to the extent necessary for the support of internal operations of Choosi and CN Central. No Personal Information, or any other information protected by applicable law, will be used by KidsChoose or third-parties that support Choosi's or CN Central's internal operations to engage in targeted behavioral advertising to student participants of Choosi or for any other purpose other than the purpose of this Agreement. Any communication to student participants will be defined by the Choosi Privacy Policy and the Choosi Terms and Conditions on the Site.

2.6. **Security of Data.** KidsChoose maintains strict administrative, technical, and physical procedures to ensure the security and confidentiality of Data, which may be stored in KidsChoose's secured servers. Access to information is limited to KidsChoose personnel who require it to perform their job functions. KidsChoose has taken reasonable and appropriate measures to prevent the loss, misuse, or alteration of Data once KidsChoose receives it (such as, without limitation, using encryption software such as Secure Sockets Layer ("SSL") technology). Other security safeguards include, without limitation, data encryption, firewalls, and physical access controls to building and files.

2.7. **Notification Procedures for Unauthorized Disclosure.** In the event of an unauthorized disclosure of Data, KidsChoose shall notify School and affected individuals as prescribed by applicable law, and adhere to the procedures outlined in its Data Breach Incident Plan. Any unauthorized disclosure of Data is protected by an insurance policy held by KidsChoose.

2.8. **Retention and Deletion of Data.** KidsChoose certifies that Personal Information shall be retained or available to KidsChoose for only as long as is reasonably necessary to fulfill the purpose of this Agreement. All other Data collected shall only be retained pursuant to KidsChoose's Data Retention Policy, or as otherwise required by law. When Choosi or CN Central deletes Data from its system, it will use reasonable measures to protect against unauthorized access to, or use of, the Data in connection with its deletion.

3. **KidsChoose's Representations and Warranties.** KidsChoose represents and warrants that it will (as applicable) (a) provide access to the Site and any required functionality for Selected KidsChoose Features as of the Term Start Date, as defined in the Purchase Order, by student participants or school staff; (b) provide to School marketing materials and other information to support the promotion of Choosi; (c) include language on the Choosi Terms & Conditions and elsewhere on the Choosi Site that information presented may not be accurate at all times and is intended only as a guideline; and (d) work with School to ensure compliance with the Family Educational Rights and Privacy Act ("FERPA") and the Children's Online Privacy Protection Act ("COPPA").

4. **School's Representations and Warranties.** School represents and warrants that it will (a) promote Choosi through various acts, including, without limitation, the following: (i) include links on School website and/or mobile apps to the Choosi website and mobile app download; (ii) mount Choosi posters in visible and noticeable locations such as cafeterias; and (iii) promote awareness to and collaboration with students, parents and legal guardians, and community organizations through their standard communication channels; and (b) provide accurate and complete Data to the best of School's ability with regards to the Selected KidsChoose Features and: (i) authorize access to Roster Data by KidsChoose, and instruct and authorize any third-party data system provider to share Roster Data with KidsChoose to the extent required to provide Selected KidsChoose Features; (ii) authorize access to Menu Data by KidsChoose, and instruct and authorize

any third-party data system provider to share Menu Data with KidsChoose to the extent required to provide Selected KidsChoose Features; and (iii) authorize access to POS Data by KidsChoose, and instruct and authorize any third-party data system provider to share POS Data with KidsChoose to the extent required to provide Selected KidsChoose Features.

5. **Reservation of Rights.** In compliance with applicable law, KidsChoose reserves the right to (a) enroll parents or legal guardians who execute a separate, written Choosi Subscriber Agreement; (b) promote additional Choosi features beyond the Selected KidsChoose Features upon proper notice and verifiable parental or legal guardian consent in compliance with COPPA; and/or (c) engage school volunteer support organizations to assist with the marketing efforts of Choosi.

6. **Term and Renewal.** This Agreement shall become effective on September 1, 2018 (the "Effective Date"). Every executed Purchase Order covered by this Agreement, which are each incorporated herein by this reference, will include a Term Start Date and Term that applies to the Selected KidsChoose Features covered by that Purchase Order. Unless terminated in accordance herein, the Agreement shall continue to remain in full force and effect throughout the length of all Purchase Order Terms. Unless a party gives the other party at least sixty (60) days written notice to cancel this Agreement (and all associated Purchase Orders) or an individual Purchase Order prior to the end of any Term, this Agreement and each Purchase Order will automatically renew for another Term. This renewal procedure shall be followed in each successive Term.

7. **Termination.**

7.1. **Methods of Termination.** Either party may terminate this Agreement (which terminates all associated Purchase Orders) or any individual Purchase Order under the following circumstances:

7.1.1. **For Convenience.** Either party may terminate this Agreement or any individual Purchase Order after the expiration of sixty (60) days following written notice to the other party by means provided in this Agreement and on the Site. Upon termination, the Selected KidsChoose Features will continue to be available to School throughout the length of the Term, but will not automatically renew. There are no refunds for partially completed Terms.

7.1.2. **For Breach.** Either party may terminate this Agreement or any individual Purchase Order in the event of a breach by the other party of any material provision of this Agreement, including, without limitation, the other party's representation and warranties and the non-payment of fees as set forth in any Purchase Order, which remains uncured after thirty (30) days following written notice thereof. Such termination for breach shall be effective immediately and automatically upon the expiration of the applicable notice period to cure, without further notice or action by either Party.

7.1.3. **For Cause.** Either Party may terminate this Agreement effective immediately upon written notice in the event of any willful violation by either party of federal, state, or local laws, rules, ordinances, or regulations.

7.2. **Effect of Termination.** Upon termination or expiration of this Agreement as outlined above, all obligations of the parties hereunder shall cease, except for obligations that expressly or by their nature survive such termination or expiration.

8. **Limitations on Liability.** KIDSCHOOSE, ITS AFFILIATES, AND ITS AND THEIR RESPECTIVE PARTNERS, OFFICERS, DIRECTORS, OWNERS, SHAREHOLDERS, MEMBERS, MANAGERS, EMPLOYEES, REPRESENTATIVES, AND AGENTS SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND INCLUDING, WITHOUT LIMITATION, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES, ARISING OUT OF THE USE, INABILITY TO USE, OR RESULTS OF USE OF CHOOSI OR THE SERVICES PROVIDED. THIS LIMITATION SHALL APPLY REGARDLESS OF WHETHER THE DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY (INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR SATISFACTORY QUALITY), MISREPRESENTATION, OR ANY OTHER LEGAL THEORY OR FORM OF ACTION. IN NO EVENT WILL THE LIABILITY OF KIDSCHOOSE ARISING OUT OF ANY CLAIM RELATED TO THIS AGREEMENT EXCEED THE

FEE PAID BY THE SCHOOL TO USE CHOOSI. THE FOREGOING LIMITATIONS OF LIABILITY DO NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9. **No Warranty.** THE SITE, CHOOSI, CN CENTRAL, AND ANY SOFTWARE (INCLUDING SOURCE CODE) IS PROVIDED TO SCHOOL ON AN "AS IS" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, KIDSCHOOSE AND ITS AFFILIATES DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

10. **Nature of Relationship of the Parties.** Nothing herein shall be interpreted as creating a partnership, agency, joint venture, or employee-employer relationship. It is expressly understood that neither party is granted any right or authority, express or implied, to assume or create any obligation or responsibility, to negotiate or enter into any contract or to make any representation or warranty, on behalf of or in the name of the other party, or to bind the other party in any manner whatsoever.

11. **Indemnification.**

11.1. **Indemnification by KidsChoose.** KidsChoose agrees to indemnify, defend, and hold harmless School, its affiliates, and its and their respective partners, officers, directors, owners, members, shareholders, managers, employees, representatives, and agents, from and against any and all actions, claims, causes of action, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from and in connection with (a) reckless or willful misconduct by KidsChoose, (b) breach of this Agreement, or (c) failure to comply with applicable federal, state, and local ordinances, laws, rules, and regulations, including, without limitation, FERPA and COPPA. KidsChoose shall promptly notify School of any such claim or demand to indemnify and shall cooperate with the other in a reasonable manner to facilitate the defense of such claim. School reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by KidsChoose. Without KidsChoose's prior written consent, School will not enter into any settlement that (a) would be in KidsChoose's name, (b) imposes any liability or obligation, or an admission of fault or guilt, on KidsChoose, or (c) enjoins KidsChoose. This indemnification obligation will survive termination of this Agreement and the use of the Site.

11.2. **Indemnification by School.** School agrees to indemnify, defend, and hold harmless KidsChoose, its affiliates, and its and their respective partners, officers, directors, owners, members, shareholders, managers, employees, representatives, and agents, from and against any and all actions, claims, causes of action, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from and in connection with (a) reckless or willful misconduct of School, including, without limitation providing inaccurate or incomplete Data and/or Personal Information upon which KidsChoose relies; (b) breach of this Agreement; or (c) failure to comply with applicable federal, state, and local ordinances, laws, rules, and regulations. School shall promptly notify KidsChoose of any such claim or demand to indemnify and shall cooperate with the other in a reasonable manner to facilitate the defense of such claim. KidsChoose reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by School. Without School's prior written consent, KidsChoose will not enter into any settlement that (a) would be in School's name, (b) imposes any liability or obligation, or an admission of fault or guilt, on School, or (c) enjoins School. This indemnification obligation will survive termination of this Agreement and the use of the Site.

12. **Dispute Resolution.**

12.1. **Applicable Law.** It is the intention of the parties that the laws of the State of Kentucky shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereunder, without regard to its internal conflicts of law principles.

12.2. **Mediation.** The parties shall attempt in good faith to resolve any dispute, claim, or controversy ("Claim") by mediation in the federal judicial district of School arising out of or relating to this Agreement or the breach, termination, enforcement, collection of payment, and interpretation or validity thereof. Either party may commence mediation by

providing to the other party and the American Arbitration Association ("AAA"), or its successor, a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with AAA and with one another in selecting a sole mediator from the AAA's panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith, that they will share equally in its costs, and that they will each pay their own attorneys' fees, unless otherwise required by applicable law.

12.3. **Arbitration.** Unless prohibited by applicable law, if the matter is not resolved by mediation or a party refuses to mediate in good faith, any Claim arising out of or relating in any way to this Agreement or the breach, termination, enforcement, collection of payment, application, interpretation, or validity thereof shall be **FINALLY and EXCLUSIVELY** resolved by binding individual arbitration conducted by the AAA under its Consumer Arbitration Rules. This arbitration agreement is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act (9 U.S.C. 116). **ARBITRATION OF YOUR CLAIM IS MANDATORY AND BINDING. NEITHER PARTY WILL HAVE THE RIGHT TO LITIGATE THAT CLAIM THROUGH A COURT. IN ARBITRATION, NEITHER PARTY WILL HAVE THE RIGHT TO A JURY TRIAL OR TO ENGAGE IN DISCOVERY, EXCEPT AS PROVIDED FOR IN THE AAA CONSUMER ARBITRATION RULES.** For a copy of the AAA procedures, to file a Claim or for other information about these organizations, contact AAA as follows: at 800.778.7879 or at www.adr.org. All determinations as to the scope, interpretation, enforceability and validity of this Agreement shall be made final exclusively by the arbitrator, which award shall be binding and final. Judgment on the arbitration award may be entered in any court having jurisdiction. **NO CLASS ACTION, OR OTHER REPRESENTATIVE ACTION OR PRIVATE ATTORNEY GENERAL ACTION OR JOINDER OR CONSOLIDATION OF ANY CLAIM WITH A CLAIM OF ANOTHER PERSON OR CLASS OF CLAIMANTS SHALL BE ALLOWABLE.** This arbitration provision shall survive the termination of the Agreement. If any portion of this arbitration provision is deemed invalid or unenforceable, the remaining portions shall remain in force.

13. **General Provisions.**

13.1. **Survival.** All rights and obligations of School and KidsChoose that expressly or by their nature extend beyond the Term of this Agreement, such as the provisions of this Agreement relating to the representation and warranties, and indemnities shall survive the termination of this Agreement and continue to bind School and KidsChoose and their representatives, successors, and assigns until such rights and obligations are satisfied in full or by their nature expire.

13.2. **Amendment.** This Agreement may be modified or amended only by subsequent written agreement signed by the authorized representative of each of the parties.

13.3. **Assignment.** This Agreement may not be assigned without the prior written consent of the parties; provided, however, that KidsChoose may assign this Agreement without School's consent in connection with the sale of all or substantially all of KidsChoose's shares or assets.

13.4. **Severability.** If any part of this Agreement is determined to be invalid or unenforceable pursuant to applicable law, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of this Agreement shall continue in full force and effect.

13.5. **Notice.** Unless otherwise provided in this Agreement, any and all notice, tender, or delivery to be given under this Agreement by either party to the other must be in writing and are effective by registered or certified mail, postage prepaid, return receipt requested to the addresses provided below; or by electronic mail as follows:

To School	To KidsChoose
Contact Individual: Dale Pack	Contact Individual: Jason Jolly
Mailing Address: 106 North Front Ave., Prestonsburg, KY 41653	Mailing Address: KidsChoose, Inc. PO Box 2410

	Santa Monica, CA 90407
Email Address: Dale.pack@Floyd.kyschools.us	Email Address: kcinfo@kidschoose.com

Such notice will be deemed "delivered" hereunder: (a) upon receipt, if sent by electronic mail; or (b) three (3) days after dispatch, if sent by first class mail in accordance with this provision. A party may change its designated address for notice hereunder by giving notice to the other party pursuant to this Section.

13.6. No Waiver. No waiver of any provision of this Agreement shall be binding except as set forth in writing signed by its duly authorized representative of the parties.

13.7. Counterparts. This Agreement may be executed in one or more counterparts, including electronic signatures, digital signatures, or signatures by facsimile, each of which shall be an original as against any party who signed it, and all of which shall constitute one and the same document.

13.8. Entire Agreement. This Agreement (including any executed Purchase Orders, which are incorporated herein by this reference) is the entire agreement between School and KidsChoose relating to the use and promotion of Choosi, CN Central, and School Programs and use of the Site, and supersedes any prior agreements or understandings between School and KidsChoose with respect to the subject matter of this Agreement, which are hereby expressly canceled.

Floyd County ("School")

KidsChoose, Inc. ("KidsChoose")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

PURCHASE ORDER 1

School District ("School"): Floyd County

This Purchase Order is pursuant to the Choosi & CN Central School Agreement between School and KidsChoose dated 5/9/2018.

Selected KidsChoose Features

inTEAM Software	Quantity
CN Central	11-24 schools
Menu Planning	11-24 schools

Pricing

List Price	\$2,400
Less Discounts	-\$1,200
Total Bundled Price	\$1,200

Term

Term Start Date: September 1, 2018

Term: 1 Year.

Total payment due within 30 days after Term Start Date. Renews automatically unless canceled 60 days before end of Term.

NOTE: Professional Services are provided by inTEAM Associates, LLC, and are not included in Renewal unless specified.

Floyd County ("School")

KidsChoose, Inc. ("KidsChoose")

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____