



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

01/21/22

AGENDA ITEM (ACTION ITEM):

Consider/Approve the Terms of Use/Legal Agreement and Data Privacy Addendum with Riverside Assessments, LLC dba Riverside Insights for district access to assessment management, web based platforms, and online scoring beginning in February 2022 for one calendar year.

APPLICABLE BOARD POLICY:

01.1 "Legal Status of the Board"

HISTORY/BACKGROUND:

The Cognitive Abilities Test (CogAT) is utilized in the Kenton County School District (KCS D) to identify students for the Gifted and Talented program. The CogAT will be administered in February of 2022 to 3rd graders who have met the 70th percentile or higher on the Measures of Academic Performance (MAP) and any other students starting in the fourth grade or higher based upon teacher or parent recommendation. For the 2022 administration of CogAT, we have approximately 720 students that will participate in the CogAT assessment. The Terms of Use/Legal Agreement and Data Privacy Addendum with Riverside Insights will allow the KCS D to exchange student information with Riverside Insights for the creation of student barcodes and online scoring. Online scoring will take the place of our Gifted and Talented teachers hand scoring all 720 assessments. The agreement has been reviewed by our Board Attorney and our Director of Technology.

FISCAL/BUDGETARY IMPACT:

Gifted and Talented Budget - \$7,524.00

RECOMMENDATION:

Approval to the Terms and Use/Legal Agreement and Data Privacy Addendum with Riverside Assessments, LLC dba Riverside Insights for district access to assessment management, web based platforms, and online scoring beginning in February 2022 for one calendar year.

CONTACT PERSON:

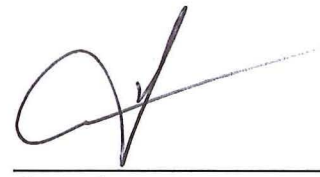
Mary Beth Huss and Lesley Smith




Principal/Administrator



District Administrator



Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda. Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent’s mailbox.



Riverside Assessments, LLC dba Riverside Insights

Terms of Use

Amended Terms of Use for Kenton County School District

[This document includes non-standard terms]

Riverside Assessments, LLC dba Riverside Insights ("Riverside," "We," or "Our") provides content for Our assessments (collectively, the "Products") and related assessment management features via Our web-based platforms, including Riverside DataManager, Online Scoring and Reporting for the Woodcock Assessment and Intervention Suite, BDI-2 DataManager, Riverside Score, and BDI-3 Mobile Data Solution (collectively, the "Platforms" and, together with the Products, the "Services").

These Terms of Use (the "Terms" or "Terms of Use") constitute a legal agreement concerning Riverside's Services and are between you, either as an individual or as an authorized representative on behalf of an organization ("You" or "Your"), and Riverside. Please note that different or additional terms may apply regarding your license of the Services where agreed to in writing between You and Riverside.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ACCESSING, USING, OR DISPLAYING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS OF USE AND TO THE COLLECTION AND USE OF YOUR INFORMATION AS SET FORTH IN RIVERSIDE'S ASSESSMENT PRIVACY POLICY (THE "PRIVACY POLICY"). DO NOT ACCESS, USE, OR DISPLAY THE SERVICES IF YOU DO NOT AGREE TO THESE TERMS AND THE PRIVACY POLICY.

1. Definitions

"**COPPA**" means the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6505, and the regulations promulgated thereunder, each as amended.

"**DFARS**" means the Department of Defense FAR Supplement, codified at 48 C.F.R. Parts 200-299.

"**Effective Date**" means the earlier of (i) the date You accept these Terms of Use (electronically or otherwise) or (ii) the date You first begin to use the Services.

"**FAR**" means the Federal Acquisition Regulation, codified at 48 C.F.R. Parts 1-52.

"**FERPA**" means the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, and the regulations promulgated thereunder, each as amended.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d *et seq.*, and the regulations promulgated thereunder, each as amended.



“PPRA” means the Protection of Pupil Rights Amendment, 20 U.S.C. § 1232h, and the regulations promulgated thereunder, each as amended.

“Term” means the term during which these Terms of Use are in effect, which will begin on the Effective Date and continue for as long as You have access to the Services, subject to the termination and survival provisions of Section 11 (Term and Termination).

2. Access to Licensed Services

In accordance with and subject to Your compliance with these Terms of Use and any accompanying user documentation, Riverside grants You a personal, limited, nontransferable, nonsublicensable, nonexclusive license to access and use the applicable Services during the Term. Riverside reserves the right, upon prior written notice to You, to discontinue versions of the Services. If a Service is discontinued, Riverside will notify you about whether a new version of such Service is available, and, if such version is available, You will be required to license the latest version of such Service in order to maintain access.

3. Access to the Platform

3.1 Required Computing Resources

Use of the Services requires, at a minimum, computing resources needed to access and browse the internet. Such computing resources may include, as specified in applicable user documentation: (i) a personal computer and/or mobile device; (ii) software, including browser software and operating system software; and (iii) other specified client-side computing resources (collectively, “Client-Side Computing Resources”). You are responsible for ensuring that You (a) have access to requisite Client-Side Computing Resources and (b) are sufficiently familiar with and trained regarding such Client-Side Computing Resources.

Riverside does not guarantee that the Services will operate with Your specific Client-Side Computing Resources. You are advised to carefully review each Service’s posted minimum system requirements to ensure compatibility.

3.2 Enrollment Responsibilities

Depending on the specific Services You are using and your role with respect to such Services, You may need to select the users who will have access to the Services and prepare the necessary files for import or manually enroll the users using features provided in the Services. For some Services, We may limit the number of users per subscription license.¹

3.3 Use of Passwords

Once enrolled, You will have the opportunity to create a password for Your assigned username (“Login Credentials”). All account users should have their own Login Credentials. Riverside will treat anyone who uses Your Login Credentials as “You.” Riverside will not be responsible for Your sharing or other misuse of Login Credentials, and Riverside will hold You responsible for the



activities of a person using Your Login Credentials. You agree to maintain Your Login Credentials in confidence and to notify Riverside immediately if You know or suspect that someone is using Your Login Credentials in an inappropriate manner.

4. Riverside's Intellectual Property

Riverside's Services, including derived scaled scores from number of questions answered correctly ("Score Conversions"), assessment score reports ("Reports"), and all related designs, layouts, appearances, and graphics therein, as well as the copyrights, trademarks, service marks, wordmarks, and logos contained within the foregoing, embody intellectual property rights owned by Riverside (or its licensors), including any rights under patent law, copyright law, trade secret law, and trademark law ("Riverside Intellectual Property"). All rights not expressly granted herein are reserved to Riverside and/or its licensors, as applicable.

5. Test Security; Use of Assessment Score Reports

Confidentiality is critical to the integrity, validity, and fairness of the testing process. Riverside restricts distribution of certain Products to qualified institutions and examiners. Under the *Standards for Educational and Psychological Testing* (2014) ("SEPT"), published by the American Educational Research Association, American Psychological Association, and National Council on Measurement in Education, educators and psychologists have a duty to protect the integrity of secured tests by maintaining the confidentiality of test questions and answers. Widespread dissemination of test protocols, which include substantial portions of the actual test items, would inevitably undermine this process. For this reason, Services are distributed only to recipients who agree to take appropriate steps to protect the confidentiality of the Services. Providing unauthorized third parties access to these Services, permitting notetaking by non-professionals during test administrations, or permitting the audio or video recording of test administrations would compromise test security and violate these Terms of Use, which may result in termination of Your rights to access and use the Services in Riverside's sole discretion.

You must use the Services in accordance with these Terms of Use and applicable federal, state, and local laws and regulations. You understand and agree that the Services are meant to be used as tools to support Your assessment process and are not intended or designed to replace Your professional judgment. You assume all responsibility for the use or misuse of the Services. You must use the Services in accordance with Riverside's Test Disclosure Policy and the SEPT (collectively, the "Policies and Standards").

6. Grant of Rights in Submitted Data and Feedback; Storage

By providing information to Riverside directly through Your use of the Services, including information about students/examinees and account usage data ("Submitted Data"), You grant Riverside a royalty-free, nonexclusive, transferrable, sublicensable, worldwide license to use the Submitted Data for all purposes contemplated under these Terms of Use as well as any user documentation. You acknowledge and agree that Riverside may use or disclose Submitted Data to provide maintenance and support for the Services and for communications relevant to your



use of the Services, such as product updates, planned outages, maintaining a sufficient number of licenses, and renewals. Riverside does not claim ownership in Submitted Data and retains only those rights in Submitted Data reasonably necessary or otherwise required to provide the Services and as otherwise contemplated under these Terms of Use and any user documentation. Submitted Data that Riverside receives from You is subject to Section 14 (Riverside's Use of Submitted Data and Feedback; De-Identified Information) regarding use of de-identified data and the [Privacy Policy](#).

In addition to the license You grant us for the Submitted Data, You grant Riverside a nonexclusive, worldwide, perpetual, royalty-free, irrevocable right to use, disclose, reproduce, modify, license, transfer, and otherwise distribute any comments, ideas, and suggestions for improvements or developments related to or associated with the Services that You provide ("Feedback") in any manner without compensation to You. Please do not submit Feedback if You do not wish to grant us the rights set forth in this Section.

By providing Submitted Data and/or Feedback, You represent and warrant that You own such Submitted Data and/or Feedback (including intellectual property rights therein), or that You have obtained sufficient authority and right to the Submitted Data and/or Feedback in order to grant the rights to Riverside contemplated under these Terms of Use and any user documentation.

YOU ARE ADVISED TO EXPORT AND SAFEGUARD SUBMITTED DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY. If You choose to provide Submitted Data to Riverside via the Services, Riverside will periodically back up the Submitted Data and will take reasonable steps to securely store said backups. Notwithstanding anything to the contrary, You hereby release Riverside from any claim or liability relating to any failure in Riverside's database system and backup practices.

After expiration of the Term, Riverside will return or delete Submitted Data, in whole or in part, promptly after receiving written request and instruction from You or Your authorized designee, unless retention is necessary in Riverside's determination to provide other services to You; fulfill any other obligation it may owe You; or comply with applicable laws, regulations, court orders, or other legal processes. Riverside will retain all data that is not returned or deleted pursuant to the foregoing process in accordance with its standard records retention policy.

Notwithstanding anything in this Section, Riverside may retain Submitted Data in accordance with its backup or other disaster recovery policies and procedures. You acknowledge and agreed that backed-up data cannot be recovered following deletion. You unconditionally release, waive, and discharge any right or entitlement, whether by contract, under operation of law, or otherwise, to bring any cause of action or claim against Riverside now or in the future in connection with any data deletion request You make. You assume any and all risk of loss, liability, damage, or costs that may occur as a result of Your data deletion request.

7. Platform Availability and Errors

Riverside will use commercially reasonable efforts to make the Services available to You without



significant interruption. There may be times when the Services are unavailable due to technical errors or for maintenance and support activities. We do not represent, warrant, or guarantee that the Services will always be available or are completely free of human or technological errors.

If a Service experiences a significant interruption that is not due to scheduled downtime, Riverside will use timely and commercially reasonable efforts to restore required functionality (the "Availability Commitment"). The Availability Commitment does not apply to downtime: (i) due to emergencies, (ii) that Riverside otherwise schedules, for example, to install software updates and patches, (iii) due to Your violation of these Terms; or (iv) due to Your failure to update or upgrade your Services when suggested by Riverside.

The Services may contain typographical mistakes, inaccuracies, or omissions, and some information may not be complete or current. We expressly reserve the right to correct any errors, inaccuracies, or omissions and to change or update information at any time without prior notice. We do not make any representation or warranty concerning errors, omissions, delays, or defects in the Services or any information supplied to You via the Services, or that files available through the Services are free of viruses, worms, Trojan horses, or other code that include or manifest contaminating or destructive characteristics.

You may contact Riverside's technical support team with questions about the Services at the hours listed on our [Support Page](#). In addition to taking reasonable steps to respond to reproducible errors or bugs in the Services commensurate with the severity of the error or bug, technical support may also provide You with information regarding Service availability.

8. Use Restrictions

You agree not to copy, duplicate, publish, distribute, display, modify, create derivative works of, or alter physical or electronic characteristics of the Services. You agree not to dismantle or reverse engineer or clone any part of the Services. You will not grant sublicenses to, assign, transfer, sell, or rent the Services or any sublicenses thereto without Riverside's prior written consent.

Because the Services, including Score Conversions and Reports, are Riverside Intellectual Property and are considered confidential information of Riverside, the Services will not be disclosed by You in response to requests made by third parties unless otherwise required pursuant to applicable law or valid court order, and then only after prior notice is provided to Riverside as well as an opportunity to prevent such disclosure. You agree that You will not otherwise, directly or indirectly, disclose any confidential information of Riverside without Riverside's prior written consent.

Subject to the restrictions in Section 5 (Test Security; Use of Assessment Score Reports), You may print, copy, display, and otherwise distribute Reports, but not any other parts of the Services, provided that such actions are in compliance with Your obligations under the Policies and Standards and are otherwise in compliance with all applicable laws, regulations, and professional standards and obligations. You represent and warrant that You have obtained the necessary permissions from parents/guardians, students/examinees and/or other applicable third parties



relating to Your use of the Reports. You hereby release Riverside from any claim or liability relating to Your use of the Reports.

Notwithstanding anything to the contrary, You will not under any circumstance import any external content into any Test Reports or copy, display, or reproduce any test question from the Services without Riverside's prior written consent.

Your use of the Services to generate Reports is based on quantities of student administrations (record forms, answer documents, other consumable test or response booklets, digital administrations, or digital licenses) that You license from Riverside. You are only entitled to assess one student/examinee per record form, answer document, other consumable test or response booklet, digital administration, or digital license; however, multiple different Reports may be generated from a single test administration.

You agree that when using the Services, You will not: introduce into the Services any virus, rogue program, time bomb, drop dead device, ransomware, back door, Trojan horse, worm, or other malicious or destructive code, software routines, denial of service attack, or equipment components designed to permit unauthorized access to the Services; otherwise harm other users, Riverside Intellectual Property, or any third parties; or authorize any third parties to perform such actions.

You will not use the Services to commit fraud or conduct other unlawful activities. You will not access or attempt to access any other person's account, personal information, or content without permission.

You will not use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information about the Services or any users thereof for any reason.

You will not decrypt, transfer, frame, display, or translate (except translations for limited personal use) any part of the Services.

You will not connect to or access any Riverside computer system or network without authorization.

You will not use the information in the Services to create or sell a similar service or use the Services for the purpose of soliciting, selling, or offering services, merchandise, or products.

9. Third Party Websites

The Services may integrate with or provide links to other content, including websites or open education resources, on the Internet that We do not control. This content may provide opinions, recommendations, or other information from various individuals, organizations, or companies. We are not responsible for the nature, quality, or accuracy of such content. Inclusion of any linked content in the Services does not imply or express an approval or endorsement thereof by us or of any of the opinions, treatments, information, products, or services provided in this content, even



if We receive a referral fee in connection with Your use of such third-party content.

10. Limited Warranty

Riverside warrants that the Services will not infringe any valid United States copyrights existing at time the Services are made available to You, provided that this warranty does not extend to any infringement arising out of: (i) the use of the Services in combination with systems, equipment, materials, or platforms not supplied by Riverside or any use of the Services outside of the United States; (ii) Your use of the Services in violation of these Terms of Use or the user documentation provided by Riverside; (iii) Your modification of the Services; (iv) Your failure to install or implement a released upgrade to the Services that would have avoided the infringement; or (v) any Submitted Data. If You promptly notify Riverside of any such infringement claim brought by a third party of which You have knowledge or notice, and accord Riverside the right, at its sole option and expense, to handle the defense of the infringement claim, Riverside will defend You against such infringement claim and pay any final judgment or settlement thereof. Notwithstanding the foregoing, Riverside will not indemnify for any infringement claim that arises out of the scenarios set forth in clauses (i)-(v) of this Section. If such an infringement claim arises, or if Riverside becomes aware of the possibility of such a claim, then Riverside may, at its sole discretion (a) acquire the right for You to continue to use the affected Services in accordance with these Terms, (b) furnish You with a non-infringing replacement as soon as commercially possible, or (c) terminate these Terms in whole or in part by refunding any pre-paid, unused fees You paid for use of the Services. The obligations set forth in this Section are Your exclusive remedy and Riverside's sole obligations with respect to any breach of this warranty.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION 10 (LIMITED WARRANTY), RIVERSIDE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES. THE SERVICES ARE PROVIDED "AS IS". RIVERSIDE DOES NOT WARRANT OR MAKE ANY PROMISES REGARDING THE CORRECTNESS, USEFULNESS, ACCURACY, AVAILABILITY, OR RELIABILITY OF (I) YOUR USE THE SERVICES OR (II) ANY ADVICE YOU GLEAN FROM THE SERVICES WHETHER PROVIDED BY US OR A THIRD PARTY. WE DO NOT PROMISE THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. EXCEPT AS EXPRESSLY STATED IN THIS SECTION, ANY AND ALL WARRANTIES OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. RIVERSIDE WILL HAVE NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION OR CONTENT.

11. Term and Termination

These Terms of Use are effective during the Term, subject to the termination and survival provisions of this Section 11 (Term and Termination).

Either party will have the right to terminate these Terms of Use if the other party breaches any of its obligations thereunder and fails to cure the same within thirty (30) days after receipt of written notice of default, except that there will be no cure period for Your breach of Riverside's rights under Section 4 (Riverside Intellectual Property); Section 5 (Test Security; Use of Assessment Score Reports), Section 6 (Grant of Rights in Submitted Data and Feedback; Storage), or Section 8



(Use Restrictions). Upon termination of these Terms of Use, any rights You have in the Services will terminate.

The provisions of Section 4 (Riverside Intellectual Property), Section 6 (Grant of Rights in Submitted Data and Feedback; Storage), Section 10 (Limited Warranty), Section 12 (Indemnification), Section 13 (Limitation of Liability), Section 14 (Riverside's Use of Submitted Data and Feedback; De-Identified Information), and Section 19 (General) will survive any expiration or termination of these Terms of Use. Riverside reserves the right to terminate these Terms of Use for convenience by providing You with reasonable notice and thereafter allowing You a reasonable opportunity (not to exceed 30 days) to export a copy of Your Submitted Data.

If these Terms of Use are terminated for any reason, Riverside may make a reasonable effort to allow You access to the Services for not more than thirty (30) days for the sole purpose of exporting Submitted Data (the "Submitted Data Retrieval Period"). Upon conclusion of the Submitted Data Retrieval Period, Riverside may destroy copies of Submitted Data in its possession.

If these Terms of Use expire, retention of Submitted Data will be governed by Section 6 (Grant of Rights in Submitted Data and Feedback; Storage).

12. Indemnification

EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, YOU AGREE TO INDEMNIFY, DEFEND, AND HOLD RIVERSIDE HARMLESS AGAINST ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH: (I) YOUR USE OF THE SERVICES COVERED BY THESE TERMS AND/OR (II) YOUR FAILURE TO COMPLY WITH THESE TERMS.

13. Limitation of Liability

RIVERSIDE'S TOTAL AGGREGATE LIABILITY FOR LOSSES OR DAMAGES RELATING TO THESE TERMS OF USE AND/OR THE SERVICES, OR YOUR USE OR INABILITY TO USE THE SERVICES, REGARDLESS OF THE FORM OF ACTION, WILL IN NO EVENT EXCEED THE GREATER OF: (A) ONE THOUSAND U.S. DOLLARS (USD \$1,000.00) OR (B) THE FEES ACTUALLY PAID BY YOU TO RIVERSIDE IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

IN NO EVENT WILL RIVERSIDE BE LIABLE TO YOU OR ANY THIRD PARTY, EITHER IN CONTRACT, TORT, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF FUTURE REVENUE, INCOME OR PROFITS OR LOSS OF DATA, EVEN IF RIVERSIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGE ARISING FROM YOUR USE OF THE SERVICES.

14. Riverside's Use of Submitted Data and Feedback; De-Identified Information

Riverside may, from time to time, anonymize Submitted Data so that it constitutes de-identified



Information (“De-Identified Information”). Riverside will only use De-Identified Information in accordance with HIPAA and FERPA and for lawful purposes, including quality assurance, product research, test development, norm development and validation, and other internal purposes to develop, evaluate, and provide improved educational and clinical Services. The De-Identified Information will not directly identify a person but may be linkable to a particular computer, device, operation system, platform, or software instance (via a unique device ID or otherwise) (“Usage Information”). You acknowledge and agree that Riverside will be free to use De-Identified Information in compliance with HIPAA and FERPA requirements and for the purposes described in these Terms of Use.

15. Protection of Student Personal Information

Please see the [Privacy Policy](#) governing your license of our Services for information about (i) Our practices related to collection, use, and deletion of personal information, including how You can access, review, and update personal information, and (ii) the security measures We have in place designed to safeguard your information.

16. Applicability of HIPAA

If You are a “Covered Entity” as defined under HIPAA, You and Riverside agree that the Business Associate Addendum will govern HIPAA-related matters (click [here](#) to review the Business Associate Addendum). If You are not a Covered Entity, this Section does not apply.

17. Federal Government Terms and Conditions

If You are the United States Government or any agency, subdivision, or instrumentality thereof (the “U.S. Government”), the Services (including any related databases, documentation, technical data, and programmer’s tools) delivered to the U.S. Government are “commercial computer software” or “commercial technical data” pursuant to the applicable FAR, DFARS, or other agency-specific supplemental regulations. As such, the use, duplication, disclosure, modification, and adaptation of the Services are subject to these Terms of Use, pursuant to FAR 12.212 (Computer Software) and 12.211 (Technical Data), as applicable. If You are the U.S. Government and subject to the DFARS, then the Services (including any related databases, documentation, technical data, and programmer’s tools) is provided subject to DFARS 252.227-7015 (Technical Data—Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation), as applicable. Should the Services be deemed to not constitute “commercial computer software” or “commercial technical data,” then they will be given to the U.S. Government with Limited or Restricted Rights, as applicable. In all cases, these Terms of Use supersede any conflicting terms or conditions in any government order document; provided, any provisions contained herein contrary to applicable mandatory federal laws will be treated as provided in FAR 52.212-4(u).

18. Consent Regarding Students’ Personal Information

Please note that FERPA requires parental/guardian consent before a service provider, such as Riverside, is given access to personal information contained in a student’s/examinee’s



educational records. Under FERPA, this parental/guardian consent requirement is met where the service provider acts as a type of "school official" by performing services for the school that would otherwise be performed by the school's own employees. Riverside fulfills FERPA requirements for qualifying as a school official by, among other steps, giving schools direct control with respect to the use and maintenance of the educational records at issue (including associated personal information) and refraining from re-disclosing or using this personal information except for purposes of providing the Services or as required by applicable laws, regulations, court orders, or other legal processes. Riverside will comply with access requests as required by FERPA.

19. General

THESE TERMS WILL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KENTUCKY, WITHOUT GIVING EFFECT TO CHOICE OF LAW OR CONFLICTS OF LAW PRINCIPLES THEREUNDER. The foregoing choice of law notwithstanding, copyright, trademark, and patent claims are subject only to U.S. Federal law and U.S. Federal court interpretation thereof. You agree that any action at law or in equity arising out of or relating to these Terms of Use will be filed in either the state courts of Kenton County, Kentucky or federal courts located in the Eastern District of Kentucky. These Terms will not be assignable by You, either in whole or in part. Riverside reserves the right to assign the rights and obligations under these Terms of Use for any reason and in Riverside's sole discretion. The [Privacy Policy](#) must be read in conjunction with these Terms of Use, and the provisions of the Privacy Policy are incorporated herein. These Terms of Use and the Privacy Policy constitute the entire agreement between You and Riverside concerning the Services, your use thereof, and any related activities, and supersede all discussions, proposals, bids, understandings, agreements, invitations, orders, and other communications, oral or written, on this subject. These Terms may not be waived, amended, or modified in any way without the prior written permission of Riverside. We may revise and update these Terms of Use from time to time and will post the revised terms of use to Our website and may also post links to them on Our Platforms. UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THESE TERMS OF USE, ANY CHANGES TO THESE TERMS OF USE WILL APPLY IMMEDIATELY UPON POSTING. We are not obligated to provide You with notice of any changes, and any changes to these Terms of Use will not apply retroactively to events that occurred prior to such changes. Your continued use of the Services will constitute Your agreement to any new provisions within the revised terms of use. You may print a copy of these Terms of Use and the Privacy Policy for Your records. If any one or more provisions of these Terms of Use are found to be illegal or unenforceable, the remaining provisions will be enforced to the maximum extent possible. To the extent any licensed order from You conflicts with or amends these Terms of Use in any way, these Terms of Use, as unmodified, will prevail. To the extent the Privacy Policy conflicts with or amends these Terms of Use in any way, the Privacy Policy will prevail.

Any license granted under these Terms of Use to You must be expressly provided herein, and there will be no licenses or rights implied hereunder, based on any course of conduct or other construction or interpretation thereof. All rights and licenses not expressly granted to You by Riverside are reserved.

¹ If you are a BDI-3 customer and have licensed a BDI-3 subscription, for example, you will be limited to 3 users per subscription license. Each user must consent to and abide by these Terms of Use.

DATA PRIVACY ADDENDUM
Riverside Assessments, LLC dba Riverside Insights

This Data Privacy Addendum (“Addendum”) is entered into for one calendar year, on February 7, 2022, between *Kenton County School District* (the “Customer”) with principal offices located at *1055 Eaton Dr. Fort Wright, KY, 41017* and Riverside Assessments, LLC dba Riverside Insights (“Vendor”) with principal offices located at One Pierce Place, Suite 900 W. Itasca, IL 60143 (each a “Party” and collectively, the “Parties”). This Addendum is made subject to and incorporates by reference the applicable Terms of Use (the “Agreement”) entered into by and between the Parties, attached hereto as Exhibit A. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall control; provided, this Addendum will not diminish or otherwise modify the limitations of liability in the Agreement.

Article I. Definitions

Unless otherwise explicitly defined herein, the capitalized terms in this Addendum shall have the meaning set forth in the Family Educational Rights and Privacy Act of 1974, codified at 20 U.S.C § 1232g, and its implementing regulations, 34 CFR 99.1 - 99.67, each as amended (“FERPA”).

“Customer Data” means any Personally Identifiable Information, or Education Record and all Personally Identifiable Information included therein or derived therefrom that is not intentionally made generally available by the Customer on public websites or publications but is made available directly or indirectly by the Customer to Vendor or that is otherwise collected by Vendor in connection with the performance of the services under the Agreement. For the sake of clarity, Customer Data does not include De-identified Data (as defined below).

Article II. Purpose of Addendum

The Parties agree that the purpose of this Addendum is to detail the obligations of both Parties relative to the safety and confidentiality of Customer Data, which Customer Data may be provided to the Vendor in connection with Vendor’s provision of the services in accordance with the Agreement.

Article III. Term

- A. The term of this Addendum shall be effective upon execution by both Parties and shall terminate when all of the Customer Data collected, used, possessed, or maintained by the Vendor is deleted or destroyed or returned to the Customer, or, if it is infeasible to return or completely delete or destroy the Customer Data, protections are extended to such Customer Data in accordance with the provisions of this Addendum.
- B. In the event that the Vendor determines that returning or completely deleting or destroying the Customer Data is infeasible, the Vendor shall extend the protections of this Addendum to such Customer Data and limit further uses and disclosures of such Customer Data to those purposes that make the return or complete deletion or destruction infeasible. The Vendor shall not use or disclose such Customer Data and shall maintain its security pursuant to this Agreement for so long as the Vendor possesses or maintains such Customer Data.
- C. Notwithstanding any contrary language in this Article III, Vendor may retain Customer Data to the extent such data is permitted to be retained in accordance with applicable law or as otherwise retained by Vendor as part of its disaster recovery or backup retention policies and procedures.

Article IV. General Provisions

- A. All Customer Data provided or accessed pursuant to this Agreement is and remains under the control of the Customer. Vendor has a limited, non-exclusive license to access and use Customer Data for purposes of fulfilling its obligations under the Agreement. If a student, parent or guardian requests to review or delete Customer Data, Vendor agrees to refer that individual to the Customer and to promptly notify the Customer of such request. The Vendor agrees to work cooperatively with the Customer to permit a student, parent, or guardian to review Personally Identifiable Information in Customer Data that has been shared with the Vendor, and correct any erroneous information therein, and Vendor will not fulfill a request to delete Customer Data unless so authorized by Customer.
- B. Vendor may de-identify Customer Data (“De-identified Data”) and will own all right, title, and interest in and to any De-identified Data.
- C. Vendor will remain responsible for all subcontractors it engages to act on its behalf. Vendor will ensure such subcontractors agree to restrictions on use of Customer Data substantially similar to those set forth hereunder.

Article V. Security and Confidentiality of Customer Data

- A. The Customer and the Vendor shall ensure that they each comply with FERPA.
- B. Further, Vendor shall implement administrative, technical, and physical safeguards designed to protect Customer Data.
- C. Upon Customer’s written request, Vendor shall provide or make available to the Customer for review, the following, verifying Vendor’s administrative, physical and technical safeguards are in compliance with industry practice: (1) a third-party network security audit report, or (2) certification from Vendor indicating that a vulnerability or risk assessment of the Vendor’s data security program for services provided has occurred. If the foregoing report or assessment identifies a vulnerability, Vendor will remediate such vulnerability in accordance with its internal policies and procedures.

Article VI. Prohibited Uses of Customer Data

- A. The Vendor shall not use Customer Data for any purposes other than those authorized pursuant to this Addendum or the Agreement.
- B. The Vendor shall not sell, rent, or trade Customer Data, unless the sale is part of the purchase, merger, or acquisition of the Vendor by a successor entity and the successor entity agrees to be subject to the provisions of this Addendum.
- C. Vendor shall not use Customer Data for purposes of targeted advertising.

Article VII. Data Breaches

- A. Upon the discovery by the Vendor of a breach of security that results in the confirmed, unauthorized release, disclosure, or acquisition of Customer Data (a “Data Breach”), the Vendor shall promptly notify the Customer after such discovery (“Initial Notice”). The Initial Notice shall include the following information, to the extent known at the time of notification:

1. Date and time of the Data Breach;
 2. Names of individuals whose Customer Data was released, disclosed or acquired;
 3. The nature and extent of the Data Breach; and
 4. The Vendor's proposed plan to investigate and remediate the Data Breach.
- B. The Vendor agrees to cooperate with Customer with respect to investigation of the Data Breach and, subject to the limitation of liability set forth in the Agreement, to reimburse the Customer for legally required costs associated with responding to the breach, to the extent the Data Breach was the result of Vendor's failure to meet its obligations under this Addendum.

Article VIII. Miscellaneous

- A. **Choice of Law.** The parties agree that this agreement and any disputes arising from or relating to this Agreement, including its formation and validity, will be governed by the laws of the State of Kentucky without regard to or application of any principles or laws regarding conflicts or choice of law.
- B. **Choice of Forum.** The parties agree that any and all disputes arising from or relating to this Agreement, including its formation and validity, shall be settled in either the state courts of Kenton County, Kentucky or federal courts of the Eastern District of Kentucky. .
- C. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Vendor may assign this Addendum to an affiliated entity or as the result of a merger, acquisition, reorganization, or sale of all or substantially all of Vendor's assets without obtaining the consent of the Customer. Any assignment of this Addendum that violates this Section will be null and void.
- D. **Waiver.** No delay by either Party in enforcing an alleged breach of this Addendum against the other Party of any provision of this Addendum will be a waiver or prejudice any right of that Party.
- E. **Amendment.** This Addendum may be changed, amended, or superseded, only upon an agreement in writing executed by both Parties hereto.
- F. **Severability.** A court finding of invalidity for any provision of this Addendum does not invalidate other provisions or applications that are not affected by the finding.
- G. **Notices.** All notices required under the Addendum shall be in writing and shall be effective (i) upon personal delivery, or (ii) 3 calendar days after mailing when deposited in the United States first-class mail, postage prepaid, or (iii) when delivered, as such delivery is evidenced by a mailing tracking number, if mailed with an overnight or other tracked service (such as USPS Priority or ESPTS Express, FedEx, or UPS), or (iv) when sent by electronic mail, or (v) when transmission is confirmed by facsimile. Notices shall be sent to the Parties' respective addresses on the cover page. Notice by paper letter mail or personal delivery shall be effective at all times. Notice by email or facsimile shall be effective only if the Parties agree and designate in writing email addresses or facsimile numbers for that purpose. Each Party may change their respective notice address and other information without amending this DPA by sending a notice to the other Party, designating the new notice address and information.

H. **Counterparts.** This Addendum may be executed in one or more counterparts, each of which is an original, but all of which together shall constitute one and the same instrument. Photocopies, scans, and facsimiles of executing signature are valid evidence of execution.

Kenton County School District

By (signature): _____ Date: _____

Name printed: _____

Title: _____

Riverside Assessments, LLC dba Riverside Insights

By (signature): _____ Date: _____

Scott Olson, Manager of Proposal Services



Quote

Prepared For

Kenton County School District

Kenton County School District

1055 Eaton Dr

Ft Wright KY 41017-9655

United States

For the Purchase of:

CogAT 7Bar Codes and Data Plus Scoring

For additional information or questions, please contact:

Paulette Black

paulette.black@riversideinsights.com

RIVERSIDE INSIGHTS

Attention:
Angie Henderson
angela.henderson@kenton.kyschools.us

Riverside Insights
One Pierce Place Suite 900W
Itasca, IL 60143
PHONE: 800-323-9540
orders@service.riversideinsights.com

Quote For Kenton County School District

Material No	Title	List Price	Sale Price	Quantity	Purchase/ Amount
1496936	CogAT 7 Barcode Labels	\$0.95	\$0.95	720	\$684.00
1483586	Cognitive Abilities Test (CogAT), Form 7 Complete Data Plus Scoring Package Levels 9-17/18	\$9.50	\$9.50	720	\$6,840.00
Subtotal					\$7,524.00

Thank you,
Paulette Black | Assessment Consultant |
paulette.black@riversideinsights.com

Subtotal Purchase Amount:	\$7,524.00
Shipping & Handling:	\$68.40
Sales Tax:	\$0.00
Total Cost of Quote (PO Amount):	\$7,592.40

RIVERSIDE INSIGHTS

Attention:
 Angie Henderson
 angela.henderson@kenton.kyschools.us

Riverside Insights
 One Pierce Place Suite 900W
 Itasca, IL 60143
 PHONE: 800-323-9540
 orders@service.riversideinsights.com

Quote For Kenton County School District

Total Cost of Quote (PO Amount) : \$7,592.40

Thank you for considering Riverside Insights as your partner. We are committed to providing an excellent experience and delivering ongoing, high-quality service to our customers. To meet these goals, we want to ensure you are aware of the below Terms of Sale. These terms help us process your order quickly, efficiently, and accurately, ensuring successful delivery and implementation of our solutions.

- Please return this Quote with your signed purchase order that matches product, price and shipping charges.
- Provide the exact address for delivery of print materials. The shipping address may be your district warehouse or individual school sites, but it is essential that this is accurate.
- Please supply the name of each important district point of contact for all aspects of the solution including their direct contact information (email/phone):
 - Point of Contact for Print Materials
 - Point of Contact for Digital Materials
 - Point of Contact for Scheduling Professional Development
- Please confirm that we have the correct Ship to and Bill to information on the Quote.

Ship To:
Kenton County School District
1055 Eaton Dr
Ft Wright KY 41017-9655
United States

Bill to:
116584
Kenton County School District
1055 Eaton Dr
Ft Wright KY 41017-9655
United States

- Please provide funding start and end dates.
- Please note that all products and services will be billed upon the processing of your purchase order.
- Our payment terms are 30 days from the invoice date.
- Our standard shipping terms are FOB Shipping Point. The shipping terms for your Quote are FOB Shipping Point.
- Should any of these Terms of Sale conflict with any preprinted terms on your purchase order, the Riverside Insights Terms of Sale shall apply.
- Make check, money order, or valid purchase order payable to Riverside Assessments, LLC.

Thank you in advance for supplying us with the necessary information at time of purchase. Our goal is to ensure your success throughout the duration of this agreement, which starts with a highly successful delivery of our solution. For greater detail, the complete Terms of Sale may be reviewed here at: <http://www.riversideinsights.com>

Date Of Quote: 1/19/2022

Quote Expiration Date: 4/19/2022

RIVERSIDE INSIGHTS

Attention:
Angie Henderson
angie.henderson@kenton.kyschools.us

Riverside Insights
One Pierce Place Suite 900W
Itasca, IL 60143
PHONE: 800-323-9540
orders@service.riversideinsights.com