

**DATE:**

8/26/22

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve The sales contract with Proven Learning for Simon Kenton High School to purchase a site license for the Gradecam product for the 22-23 school year.

**APPLICABLE BOARD POLICY:**

01.1 Legal Status of Board

**HISTORY/BACKGROUND:**

Gradecam school license 5th renewal. Includes Core (streamlined, data-driven tools: Advanced Administrator Reports, Helpdesk, and Advanced Teacher Drill-down) and Student Portal Allows for paperless testing on devices I addition to the traditional paper with cameras). Includes free technical support, online training resources and all updates.

**FISCAL/BUDGETARY IMPACT:**

\$5619 – School Allocation

**RECOMMENDATION:**

Approval to sign the sales contract with Proven Learning for Simon Kenton High School to purchase a site license for the gradecam product for the 22-23 school year.

**CONTACT PERSON:**

Craig Reinhart

  
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.

**Proven Learning**

1067 N. Main Street #266  
Nicholasville  
KY  
UNITED STATES 40356

**Quote**

Valid Until: Oct 31, 2022  
Quote Number : PLQ7903

**BILL TO:**

Kenton County Schools - KY  
Accounts Payable  
1055 Eaton Drive  
Ft. Wright  
KY

41017

**SHIP TO:**

Kenton County Schools - KY  
Simon Kenton High School  
1132 Madison Pike  
Independence  
KY

41051

Account Name:Kenton County Schools - KY  
Contact Name:Michelle Hickey

**S.No. Product Details**

1. -GradeCam Go! - 1 YR School License 5th Renewal (NP205) 11240

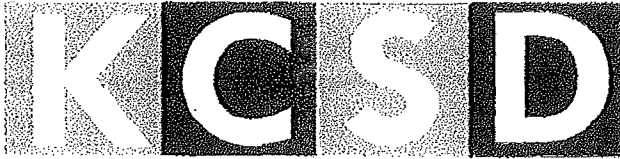
Qty	List Price	Total
1873	\$ 3.00	\$ 5,619.00

GradeCam School License 5th Renewal. Includes Core (streamlined, data-driven tools: Advanced Administrator Reports, Helpdesk, and Advanced Teacher Drill-down) and Student Portal (Allows for paperless testing on devices in addition to the traditional paper with cameras). Includes free technical support, online training resources and all updates.

Sub Total	\$ 5,619.00
Tax	\$ 0.00
Adjustment	\$ 0.00
<b>Grand Total</b>	<b>\$ 5,619.00</b>

**Terms and Conditions**

Questions? Contact Gary Fleck at 859-351-8585 (gary.fleck@provenlearning.com) Please fax POs to (888)431-4690 or email them to my address.  
Proven Learning is the sole source provider of GradeCam in Kentucky.



Kenton County School District | It's about ALL kids

## THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)

Dr. Henry Webb, Superintendent of Schools

### VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

#### Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

### **Student Data Security**

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

### **Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act**

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

GRADECAM, LLC

Vendor Name

1154 STEALTH STREET, LIVERMORE, CA 94551

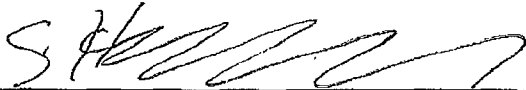
Vendor Address

866.472.3339

Vendor Telephone

ACCOUNTING@GRADECAM.COM

Vendor Email Address



Signature by Vendor's Authorized Representative

SCOTT HICKSON

Print Name

8/25/22

Date

GRADECAM, LLC

# Terms of Service

## **GRADECAM TERMS OF SERVICE**

Please read these Terms Of Service carefully, as they constitute an agreement by and between GradeCam Corporation, a California corporation ("GradeCam") and each customer of GradeCam's online service ("You"). By clicking "Accepted and Agreed," You agree to these terms of service.

**Definitions.**

- a. "Account" refers to the Service plans and features used by You through GradeCam's customer portal at the time of enrollment and accepted by GradeCam, as such plans and features may change by mutual consent of the parties, as recorded by GradeCam through such portal.
- b. "Effective Date" refers to the date of commencement of the Service as listed in Your Account, or in the case of a school or school district, the effective date of an agreement between GradeCam and You.
- c. "Materials" refers to written and graphical content provided by or through the Service, including, without limitation, text, photographs, illustrations, designs, and software code.
- d. "Your Data" refers to data in electronic form input or collected through the Service by or from You.
- e. "Student Data" is a subset of Your Data, and is any data that contains personally identifiable information of a student as defined in the Family Educational Rights and Privacy Act ("FERPA"), 34 CFR § 99.3.
- f. "Privacy Policy" refers to GradeCam's privacy policy, posted at <https://gradecam.com/privacy/>, including any amendments.
- g. "Service" refers to GradeCam's webcam exam-grading service. The Service includes such features as are provided on GradeCam's website (gradecam.com), as GradeCam may change such features from time to time, in its sole discretion.

**Service & Payment.**

- a. Service. GradeCam will provide the Service to You pursuant to its policies and procedures then in effect.
- b. Payment. You will pay GradeCam such monthly Service fees as are required in Your Account, due on the day before the start of the calendar month of Service.

**Materials, Software, & IP.**

- a. Materials. You recognize and agree that: (i) the Materials are the property of GradeCam or its licensors and are protected by copyright, trademark, and other intellectual property laws; and (ii) You do not acquire any right, title, or interest in or to the Materials except the limited and temporary right to use them as necessary for Your use of the Service.
- b. IP in General. GradeCam retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all logos and trademarks reproduced through the Service, and these Terms of Service does not grant You any intellectual property rights in or to the Service or any of its components.

**Acceptable Use.**

- a. You agree to:
  - i. only use the Service in compliance with all applicable laws, rules, and regulations, including FERPA and any rules promulgated by Your school, Your school district, the United States Department of



Education, or other educational authority regarding the sharing of student information with GradeCam;

ii. allow GradeCam to re-share information with third parties, when You so designate (e.g., with online gradebook services);

iii. only use the Service for its intended purpose, which is to grade educational examinations;

iv. only use the service according to the terms of the pricing plan that You signed up for;

v. not provide access to the Service to third parties that are not authorized to use it;

vi. not access any computer or communications system without authorization, including the computers used to provide the Service;

vii. not attempt to penetrate or disable any security system, either within the Service itself or by using the System to disable a third party security system;

viii. not intentionally distribute a computer virus, launch a denial of service attack, or in any other way attempt to interfere with the functioning of any computer, communications system, or website;

ix. not attempt to access or otherwise interfere with the accounts of other users of the Service;

x. not in any way defraud to deceive either GradeCam, the Service, or any user of the Service.

b. In the event of Your material breach any of the provisions of section 4(a), GradeCam may suspend or terminate Your access to the

Service, in addition to such other remedies as GradeCam may have at law or pursuant to these Terms of Service. These Terms of Service do not require that GradeCam take any action against You or any other customer for violating any provision of section 4(a), but GradeCam is free to take any such action it sees fit.

c. Privacy Policy. The Privacy Policy applies only to the Service and does not apply to any third party site or service linked to the Service or recommended or referred to through the Service or by GradeCam's employees.

#### **Each Party's Warranties.**

a. Your Identity. You warrant: (i) that You have accurately identified Yourself in Your Account and will maintain the accuracy of such identification; and (ii) that You are an individual 18 years or older or a corporation or other business entity authorized to do business pursuant to applicable law.

b. Right to Do Business. Each party warrants that it has the full right and authority to enter into, execute, and perform its obligations under these Terms of Service and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by these Terms of Service.

#### **DISCLAIMER OF WARRANTIES.**

Except for the express warranties specified in section 5, the service is provided "AS IS" and as available, and GradeCam makes no warranties, either express or implied, including without limitation any

implied warranties of merchantability, fitness for a particular purpose, or noninfringement of intellectual property rights. Without limiting the generality of the foregoing, (i) GradeCam has no obligation to indemnify or defend You against claims related to infringement of intellectual property rights; and (ii) GradeCam does not warrant that the Service will perform without error or immaterial interruption, nor does it guarantee any particular amount of “uptime” or availability.

#### **LIMITATION OF LIABILITY.**

In no event: (A) will GradeCam’s liability arising out of or related to this agreement exceed the amount paid by You in the twelve months preceding any claim or lawsuit; and (b) will GradeCam be liable for any consequential, indirect, special, incidental, or punitive damages. The liabilities limited by this section 7 apply: (i) to liability for negligence; (ii) regardless of the form of action, whether in contract, tort, strict product liability, or otherwise; (iii) even if GradeCam is advised in advance of the possibility of the damages in question and even if such damages were foreseeable; and (iv) even if Your remedies fail of their essential purpose. If applicable law limits the application of the provisions of this Section 7, GradeCam’s liability will be limited to the maximum extent permissible.

#### **Data Management.**

Access, Use, & Legal Compulsion. Unless it receives Your prior consent, GradeCam: (i) will not access or use Your Data other than as necessary to facilitate the Service; and (ii) will not give any third party

access to Your Data. However, You hereby consent to GradeCam sharing information with third party service providers where You indicate that You so consent, for example where the GradeCam Service provides data, including Student Data, with other services for keeping of grades and school records, whether such service be provided as a stand-alone computer application or as an online, Internet-based service. Notwithstanding the foregoing, GradeCam may disclose Your Data as required by applicable law or by proper legal or governmental authority. GradeCam will give You reasonable notice of any such legal or governmental demand and reasonably cooperate with You in any effort to seek a protective order or otherwise to contest such required disclosure, at Your expense.

**Your Rights.** You possess and retain all right, title, and interest in and to Your Data, and GradeCam's use and possession thereof is solely as Your agent.

**Retention & Deletion.** GradeCam may retain all Your Data until erased pursuant to Your request. However, GradeCam is primarily a grading service and not a data storage service. You are responsible for maintaining separate backups of all Your Data and GradeCam has no responsibility if GradeCam, for any reason, erases or no longer possesses Your Data.

### **Term & Termination.**

**Term.** These Terms of Service will continue for such time as You continue to use the Service, or until terminated pursuant to this

section.

Termination for Cause. Either party may terminate these Terms of Service for material breach by written notice, effective in 30 days.

Termination For Failure to Abide By Acceptable Use Policy.

GradeCam may terminate this Agreement immediately if, in its sole discretion, it determines that You have violated one or more of the terms of Section 4(a).

Effects of Termination. The following provisions will survive termination of these Terms of Service: (i) any obligation by You to pay for Service rendered before termination; (ii) Sections 3 through 8 and 10 of these Terms of Service; and (iii) any other provision of these Terms of Service that must survive termination to fulfill its essential purpose.

#### **Miscellaneous.**

a. Notices. GradeCam may send notices pursuant to these Terms of Service to the email address You used to sign up for Your Account (or other email address(es) You provide to GradeCam in Your Account), and such notices will be deemed received two business days after they are sent. You may send notices pursuant to these Terms of Service to support@gradecam.com, and such notices will be deemed received two business days after they are sent.

b. Amendment. GradeCam may amend these Terms of Service from time to time by posting an amended version at its website and notifying You of the amendment, either via email or by a message

when You log into the Service. Such amendment will be deemed accepted and become effective 30 days after such notice (the “Proposed Amendment Date”). However, changes addressing new functions for a Service or changes made for legal reasons (e.g., changes in the law or changes in interpretation of the law) will be effective immediately. If You do not agree to the modified terms for a Service, You should discontinue Your use of that Service.

c. Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other and neither may bind the other in any way.

d. No Waiver. Neither party will be deemed to have waived any of its rights under these Terms of Service by lapse of time or by any statement or representation other than (i) by an authorized representative and (ii) in an explicit written waiver. No waiver of a breach of these Terms of Service will constitute a waiver of any prior or subsequent breach of these Terms of Service.

e. Force Majeure. To the extent caused by force majeure, no delay, failure, or default will constitute a breach of these Terms of Service.

f. Assignment & Successors. Neither party may assign these Terms of Service or any of its rights or obligations hereunder without the other’s express written consent, except that either party may assign these Terms of Service to the surviving party in a merger of that party into another entity. Except to the extent forbidden in the previous sentence, these Terms of Service will be binding upon and inure to the

benefit of the respective successors and assigns of the parties.

g. Choice of Law & Jurisdiction. These Terms of Service will be governed solely by the internal laws of the State of California, without reference to such State's principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Alameda County, California.

h. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of these Terms of Service invalid or otherwise unenforceable in any respect. In the event that a provision of these Terms of Service is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of these Terms of Service will continue in full force and effect.

i. Entire Agreement. These Terms of Service sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof. Neither party has relied upon any such prior or contemporaneous communications.

**Addendum to  
the Gradecam Inc. Terms of Service between  
the Kenton County Board of Education and Gradecam, Inc.**

**WHEREAS**, the Kenton County Board of Education ("KCBOE"), and Gradecam, Inc. ("Gradecam") are parties to a Service Agreement composed of Gradecam's Terms of Service, accessible at <https://gradecam.com/terms-of-service/>. The KCBOE and Gradecam may be individually referred to as the "Party" or collectively referred to as the "Parties."

**WHEREAS**, the Parties agree to modify the terms contained in the Terms and Conditions of Use, pursuant to the terms and conditions of this Addendum.

**WHEREAS**, all additions made herein shall be valid as if part of the Gradecam's Terms of Service.

**NOW, THEREFORE**, the amendments are as follows:

Miscellaneous Section g: is amended to read, as follows:

g. Choice of Law & Jurisdiction. These Terms of Service will be governed solely by the internal laws of the Commonwealth of Kentucky, without reference to such State's principles of conflicts of law. The parties consent to the personal and exclusive jurisdiction of the federal and commonwealth courts of Kenton County, Kentucky within the city of Covington, Kentucky,

**Kenton County Board of Education:**

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Gradecam, Inc.:**

Signed:  \_\_\_\_\_

Name: SCOTT HICKSON

Title: CEO

Date: 8/25/22