



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

# Issue Paper

**DATE:**

7/12/2023

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve a sales contract with eSpark for Beechgrove, Hinsdale, River Ridge, and Ryland Heights for the 2023-24 school year.

**APPLICABLE BOARD POLICY:**

01.1-Legal Status of the Board

**HISTORY/BACKGROUND:**

eSpark allows teachers to identify students current academic achievement levels and supplement classroom instruction in both reading and math. This program is able to be differentiated to students' current level of reading and math achievement to target specific skills to close gaps and focus on growth.

**FISCAL/BUDGETARY IMPACT:**

\$31,213.65 (School Instructional Funds)

**RECOMMENDATION:**

Approval a sales contract with eSpark for Beechgrove, Hinsdale, River Ridge, and Ryland Heights for the 2023-24 school year

**CONTACT PERSON:**

Tina Wartman

A handwritten signature in blue ink that reads "Tina Wartman".

Principal/Administrator

A handwritten signature in blue ink, appearing to read "Dawn Haunz".

District Administrator

A handwritten signature in blue ink, appearing to read "J. A. [unclear]".

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.



## Quotation

Quote #: Q-02098  
Date: Jun 14, 2023  
Expires On: Aug 11, 2023

### eSpark Learning

2045 W Grand Ave, Ste B #39739, Chicago, Illinois 60612, United States  
Phone: +1 312-894-3100 Fax:  
Email: [contracts@esparklearning.com](mailto:contracts@esparklearning.com)

**Prepared For**  
Tina Wartman  
Kenton County School District  
20 Kenton Lands Rd.  
Erlanger, KY 41018  
United States  
(859) 331-7742  
[tina.wartman@kenton.kyschools.us](mailto:tina.wartman@kenton.kyschools.us)

**Bill To**  
Kenton County School District  
20 Kenton Lands Rd.  
Erlanger, KY 41018  
United States

SALESPERSON	EXT	EMAIL	DELIVERY METHOD	PAYMENT TERMS
Matt Robinson	x	<a href="mailto:mattr@esparklearning.com">mattr@esparklearning.com</a>		Net 30

QTY	PRODUCT NAME	DESC	Start Date	End Date	LIST PRICE	NET UNIT PRICE	EXTENDED
4.00	Road to Success PD - Whole School	3 Live, customized 60 min training with up to 20 teachers & support staff throughout School Year	8/1/2023	7/31/2024	\$1,200.00	\$1,114.80	\$4,459.20
2,595.00	eSpark Licenses - Legacy		8/1/2023	7/31/2024	\$11.10	\$10.31	\$26,754.45
<b>SUBTOTAL:</b>							\$33,604.50
<b>DISCOUNT:</b>							\$2,390.85
<b>TOTAL:</b>							\$31,213.65

### Terms & Conditions

This quote incorporates and is subject to the terms & conditions on our website at [www.esparklearning.com/terms](http://www.esparklearning.com/terms), and constitutes a binding contract entered into between eSpark Inc. and the entity listed above. This agreement will automatically renew annually at full price before discount unless either party gives written notice of termination at least ninety days prior to expiration of the current term.

Signature: \_\_\_\_\_

Effective Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name (Print): \_\_\_\_\_

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

Please sign and email to Matt Robinson at [mattr@esparklearning.com](mailto:mattr@esparklearning.com)

**THANK YOU FOR YOUR BUSINESS!**

# Privacy and Terms

[Privacy Policy](#)[Terms of Service and Master Service Agreement](#)[DMCA Takedown Request](#)[eSpark Activity Link Checker](#)

## Terms of Service and Master Service Agreement

### Terms of Use

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eSpark reserves the right to make changes at any time to the Site or these Terms of Use. Any modifications to the Terms of Use will be effective upon posting. Your continued use of the Site following posting of any revised Terms of Use will constitute acceptance of the modified Terms of Use.

### Your Acceptance Of The Terms

Please be aware that these Terms constitute a binding legal agreement between you and eSpark outlining your legal rights, obligations, and remedies arising from your use of the Services. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority and are able to form this contract binding your

employer, or the applicable entity, to these terms conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. By accessing or using the Services, you (the "User") signify that you have read, understand, and agree to be bound by these Terms, and by the terms of eSpark's Privacy Notice <https://www.esparklearning.com/privacy>, which provides information concerning our collection and use of your personal information. These Terms apply to anyone who accesses or uses the Services. By using the Services you are indicating your acceptance of the terms and conditions of the Terms and Privacy Notice, including any dispute resolution, arbitration, limitation of damages, and choice of law provisions.

PLEASE READ THESE TERMS OF USE CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BECOME BOUND BY THESE TERMS OF USE IN THEIR ENTIRETY. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS INCLUDED WITHIN THESE TERMS, THEN YOU MAY NOT ACCESS OR USE THE SERVICES.

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The Site may include information regarding eSpark and its products, services, publications and presentations which are proprietary to eSpark, and links to other eSpark-owned or third party websites. You may download, view, copy and print information, materials and any other aspect of this Site (i) solely for your personal, informational purposes; and (ii) provided that neither the materials, nor any proprietary notices or disclaimers therein, are modified or altered.

You agree you will not interfere, in any way, with others' use of or access to the Site and will not attempt to gain unauthorized access to the account or computer system of any other Site user. You further agree not to take any other action in connection with your use of the Site which violates any treaty, law or regulation and to fully comply with all applicable treaties, laws and regulations in your use of the Site.

You agree to access the Site through a web browser, and specifically agree not to use any third party applications to access the Site or any other page of the Site. You further agree that you will not use any robot, spider or other automatic device, manual process or application or data mining or extraction tool to access, monitor, copy or use the Site. You agree not to take any other action that imposes an unreasonable or disproportionately large load on the Site.

Except as expressly provided herein or elsewhere on the Site, you may not use, download, upload, reproduce, copy, duplicate, print, display, perform, republish, sell, license, post, transmit, disseminate, redeliver using "framing technology," otherwise distribute, or commercially exploit in any way the Site or any portion thereof or any information or content on the Site, without the prior written permission of eSpark. In addition, you agree not to link to any page of the Site other than the home page located at [www.esparklearning.com](http://www.esparklearning.com).

## **Unauthorized Use of the Site**



eSpark reserves the right to investigate and take legal action against any illegal and/or unauthorized use of the Site, including but not limited to: unauthorized access to the Site through a third party application, robot, spider, automated device, or data mining or extraction tool or other unauthorized means; interference with the Site; action that imposes an unreasonable load on the Site; or any link to any page of the website other than the home page. eSpark's decision not to pursue legal action for any violation of the Terms of Use shall not be construed as a waiver of these Terms of Use or eSpark's legal rights.

## **Account Registration**

As a condition to using the Site, you may be required to register and select a password and username or provide additional contact information (hereafter referred to as the "Registration Data").

You must provide eSpark with accurate, complete, and updated Registration Data. You may not select or use as a Company User ID a name of another person with the intent to impersonate that person. You will not provide any false information or create an account for anyone other than yourself without permission.

Upon completion of the Registration Data, you certify: that you are 18 years of age or older, if signing up for a parent or teacher account; to provide true, accurate, current, and complete information about yourself and any other users of the account as required by the eSpark's registration form to maintain and promptly update the Registration Data to keep it true, accurate, current, and complete.

eSpark reserves the right to refuse registration of or cancel Registration Data in its discretion.

You shall be responsible for maintaining the confidentiality of your password and will not share with anyone or let anyone else access your account. You may not transfer your account to anyone.

## **Privacy**

The terms of the eSpark Privacy Notice (<https://www.esparklearning.com/privacy>) are hereby incorporated as part of these Terms of Use.

## **Disclaimer of Warranties and Limitation of Liability**

By using the Services, you expressly represent and warrant that you are legally entitled to enter into this Agreement. If you reside in a jurisdiction that restricts the use of the Services because of age, or restricts the ability to enter into agreements such as this one due to age, you must abide by such age limits and you must not use the Services. By using the Services, you represent and warrant that you have the right, authority, and capacity to enter into this Agreement and to abide by the terms and conditions of this Agreement. If you are using the Services on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by

these Terms on behalf of such entity, organization, or company. When using the Services, you agree to comply with all applicable laws from your home nation and the country, state and city in which you are present while using the Services.

YOU EXPRESSLY AGREE THAT YOUR USE OF THE SITE, AND ANY INFORMATION, CONTENT, PRODUCTS, SERVICES AND MATERIALS CONTAINED IN, ACCESSED VIA, OR DESCRIBED ON THE SITE, IS AT YOUR OWN RISK, AND THAT ALL SUCH INFORMATION, CONTENT, PRODUCTS, SERVICES AND MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, eSPARK MAKES NO, AND HEREBY DISCLAIMS ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE AVAILABILITY, OPERATION AND USE OF THE SITE OR THE INFORMATION, CONTENT, MATERIALS, PRODUCTS OR SERVICES ON OR ACCESSED VIA THE SITE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. IN ADDITION, eSPARK DOES NOT REPRESENT OR WARRANT THAT THE INFORMATION ACCESSIBLE VIA THE SITE IS ACCURATE, COMPLETE OR CURRENT, AND IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THEREIN OR FOR ANY ADVERSE CONSEQUENCES RESULTING FROM YOUR RELIANCE ON ANY ASPECT OF THE SITE. FURTHER, eSPARK MAKES NO REPRESENTATIONS AND WARRANTIES THAT THE SITE WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS.

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You agree to indemnify and hold the eSpark Parties harmless from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys' fees, disbursements and court costs) arising from or in connection with (i) use of the Site or any content, information, materials, products or services contained, displayed or available therein by you or any other person

accessing the Site under any password, user ID or other access method assigned to you; (ii) your violation of these Terms of Use; or (iii) your violation of any rights of any third party.

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## **Free Teacher Trial Terms**

A limited number of teachers are selected to be eligible for a free trial for one academic year. We may ask teachers for help sharing eSpark with other teachers or their admins in order to receive a full year of access. If a teacher used eSpark 10 or more times on a trial in a previous year they are no longer eligible.

A limit of 3 teachers per school can use the free trial. If a school has more than 3 teachers using eSpark, the school **needs to purchase**.

At any point, eSpark may offer teachers opportunities to unlock a second year of eSpark trial access.

## **Links to Other eSpark-Owned Sites/Third Party Sites/Third Party Advertisements**

eSpark may provide links on the Site to other eSpark-owned websites. The use of such other eSpark-owned websites, and privacy policies related thereto, are governed by separate terms and conditions of use and privacy statements, which can be found at those websites.

You acknowledge that, from time to time, eSpark may provide links to the websites of third parties. eSpark is not responsible for the content of any linked site which is not owned by eSpark, or any link contained in a linked site. The display of any link to a third party website does not imply endorsement by eSpark of the linked site or any information or content therein. If access to these websites is blocked within your or your students' network, you grant eSpark permission to provide access to this content through our system. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Services.

You acknowledge that, from time to time, eSpark may serve videos to students from third party websites that our team has curated. If access to these websites is blocked within your or your students' network, you grant eSpark permission to provide access to this content directly through our servers. You agree that it is your responsibility to take reasonable precautions in all actions and interactions with any third party you interact with through the Services.

IN NO EVENT WILL eSPARK BE LIABLE, DIRECTLY OR INDIRECTLY, TO ANYONE FOR ANY DAMAGE OR LOSS ARISING FROM OR RELATING TO ANY USE, CONTINUED USE OR RELIANCE ON ANY ADVERTISEMENT DISPLAYED ON THE SITE, OR ANY PRODUCTS, SERVICES OR OTHER MATERIALS RELATING TO ANY SUCH ADVERTISEMENT, ANY LINKED THIRD PARTY SITE, OR ANY LINK CONTAINED IN A LINKED SITE.

## **Feedback**

Except where otherwise expressly provided by eSpark, all comments or feedback which is solicited by or provided to eSpark regarding your experiences with, preferences for, opinion of or suggestions regarding this Site or eSpark products or services (collectively, "Feedback") shall be considered non-confidential and eSpark's property. By submitting such Feedback to eSpark, you agree that you assign to eSpark, without charge, all worldwide rights, title and interest, including copyrights and other intellectual property rights, in and to such Feedback, and that eSpark shall be free to use such Feedback in any manner or media whatsoever, on an unrestricted basis and without any attribution, compensation or royalties to you.

## **eSpark Does Not Endorse Comments of Users**

eSpark does not endorse, support, sanction, encourage, verify, or necessarily agree with the comments, opinions, or statements of third parties displayed on or transmitted via the Site ("Third Party Content"). Any Third Party Content placed on the Site are the views and responsibility of those who post the statements, and do not necessarily represent the views of eSpark.

## **Modification or Discontinuance of the Site by eSpark**

At any time, without notice to you, and for any or no reason, eSpark may modify or discontinue the Site. eSpark shall in no way be held liable for any consequence which results from eSpark's decision to modify or discontinue providing the Site.

## **Governing Law**

The laws of the State of Illinois will govern these Terms of Use, without giving effect to any principles of conflicts of laws. You agree that any action arising out of the Terms of Use or your use of the Site shall be brought in state or federal court in Chicago, Illinois, and you consent to the jurisdiction of such courts.

## **Notice and Procedure for Making Claims of Intellectual Property Infringement**

eSpark respects the intellectual property rights of others. We will promptly process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable Intellectual Property laws. Upon receipt of notices complying or substantially complying with the DMCA, we may act expeditiously to remove or disable access to any material claimed to be infringing or claimed to be the subject of infringing activity and may act expeditiously to remove or disable access to any reference or link to material or activity that is claimed to be infringing. We may terminate access for Users of the Services who are infringers.

To provide eSpark with notice of an infringement, you must provide a written communication to the attention of "eSpark: DMCA Notification Department" at <https://www.esparklearning.com/dmca-takedown> that sets forth the information specified by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is infringing your copyright.

**An electronic or physical signature of the person authorized to act on behalf of the owner of the intellectual property interest;**

**A description of the intellectual property right that you claim has been infringed;**

**A description of where the material that you claim is infringing is located on the Site;**

**Your address, telephone number, and e-mail address;**

**A statement by you that you have a good faith belief that the disputed use is not authorized by the intellectual property owner, its agent, or the law;**

**A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the intellectual property owner or authorized to act on the intellectual property owner's behalf.**

## **Providing eSpark with Counter-Notification**

If we remove or disable access to content in response to an infringement notice, we may make reasonable attempts to contact the owner or administrator of the affected content. If your material has been removed and you feel that your material does not constitute infringement, you may provide us with a counter notification by written communication to the attention of "eSpark: DMCA Counter Notification Department" at <https://www.esparklearning.com/dmca-takedown> that sets forth all of the necessary information required by the DMCA (which may be available at: <http://www.copyright.gov/title17/92chap5.html#512>). Please note that you may be liable for damages (including costs and attorneys' fees) if you materially misrepresent that an activity is not infringing the copyrights of others. If you are uncertain whether an activity constitutes infringement, we recommended seeking advice of an attorney.

eSpark's agent for notice of claims of copyright infringement or other intellectual property infringement on the Site can be reached as follows:

### **Intellectual Property Agent**

eSpark, Inc.

2045 W Grand Ave Ste B #39739

Chicago, IL 60612

312-894-3100

[info@esparklearning.com](mailto:info@esparklearning.com)

## **Email Notifications**

As part of your use of the Services, you elect to receive email notifications from eSpark and its partners. These messages may include event updates and other promotions. Your election to receive such messages represents your express written consent to receiving emails from eSpark related to the Services. You may opt-out of receiving certain notifications in association with the Services by completing the opt-out process provided to you with each email message. By opting out of receiving notifications, you understand that we may not be able to communicate important information to you. Please note we may still need to contact you regarding certain important service announcements or notifications.

## **Notices**

You consent to receive from eSpark all communications, including notices, agreements, legally required disclosures or other information in connection with the Services (collectively, "Notices") electronically. eSpark may provide such Notices by posting them on or within the



Services, by electronic mail to your email address on record in eSpark's account information, or by written communication sent by first class mail or pre-paid post to your address on record. You agree that we may communicate with you regarding eSpark and other entities by electronic means to your mobile device and that certain information about your usage of the Services may be communicated to us.

## **Miscellaneous**

You may not assign or otherwise transfer these Terms of Use or any rights or obligations hereunder. eSpark's failure to act on any breach of any provision hereof shall not be construed as a waiver of the enforcement of any provision unless eSpark agrees to such waiver in writing.

If any portion of these Terms of Use is deemed unlawful, void or unenforceable, that portion will be deemed severable and will not affect the validity or enforceability of the remaining provisions. These Terms of Use set forth the entire understanding between you and eSpark with respect to the subject matter hereof and supersede any prior or contemporaneous communications, representations, or agreements, whether oral or written, between you and eSpark with respect to such subject matter.

## **Denial of Access**

eSpark may prohibit you from using or accessing the Site for any or no reason, at any time, in its sole discretion, without notice to you.

# **Proposal Term & Termination**

## **Term**

These Terms commence on the date an Proposal Form is executed by both parties and shall continue until the expiration of the Service Term for all of the Services.

## **Termination for Cause**

A party may terminate these Terms for cause: (i) upon thirty (30) days written notice of a material breach to the other party, provided such breach remains uncured at the expiration of the notice period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

## **Outstanding Fees**

Termination shall not relieve Client of the obligation to pay any fees accrued or payable to eSpark prior to the effective date of termination.

## **Marketing**

eSpark shall be permitted to use Client's name and logo on the eSpark website, in testimonial content, in press releases, and within marketing materials. With Client's prior consent, eSpark may issue press releases relating to these Terms.

## **Fees**

Client shall pay the fees as specified in the Proposal Form, in any signed and approved additional Proposal Forms. All fees are quoted in United States Dollars. Fees are non-refundable.

## **Overdue Payments**

Any payment not received from Client by the due date may accrue, at eSpark's discretion, late charges at the rate of two percent (2%) of the outstanding balance per month, or at the maximum rate permitted by law, whichever is lower; from the date such payment was due until the date paid.

## **Taxes**

eSpark's fees are exclusive of all local, state, federal, and foreign taxes, levies, or duties of any nature ("Taxes"), and Client is responsible for payment of all Taxes, excluding only United States taxes based on eSpark's income. If eSpark has the legal obligation to pay or collect taxes for which Client is responsible, the appropriate amount shall be invoiced to and paid by Client, unless Client provides eSpark with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **Technology Requirements**

WiFi is required in order to implement eSpark. For the best eSpark experience, devices must have a minimum WiFi connection of 5MB.

eSpark will provide your technology team with a list of hosts, ports and domains which will need to be whitelisted. Additionally, we recommend installing an ad-blocker on your students' eSpark devices.

## **If I have questions, who do I contact?**

eSpark, Inc. is located in the United States of America. Questions regarding these Terms should be directed to us via any of the following methods:

**Mailing address:** 2045 W Grand Ave Ste B #39739, Chicago, IL 60612

**Telephone number:** (312) 894-3100

**E-mail address:** [info@esparklearning.com](mailto:info@esparklearning.com)

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## Contact Us



**Addendum: Governing Law for Kenton County School District Contract**

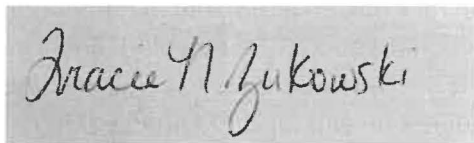
In consideration of Kenton County School District as a unique client, and notwithstanding the above-stated Governing Law provision in eSpark's Terms of Use, the following specific provision applies to Kenton County School District:

The laws of the State of Kentucky, specifically those of Kenton County, shall govern this addendum to the Terms of Use with regard to any and all dealings, contracts, actions, or incidents between eSpark Learning and Kenton County School District without giving effect to any principles of conflicts of laws. Kenton County School District agrees that any action arising out of the Terms of Use, this addendum, or the use of the Site shall be brought in state or federal court in Kenton County, Kentucky. Kenton County School District consents to the jurisdiction of such courts.

This addendum is specifically applicable and exclusively applies to Kenton County School District. It does not affect the Governing Law provision stated in the original eSpark Learning Terms and Use or any relationship between eSpark Learning and its other users or clients.

eSpark, Inc

Vendor Name

A rectangular box containing a handwritten signature in black ink. The signature appears to read "Tracie N. Zukowski".

\_\_\_\_\_  
Signature by Vendor's Authorized Representative

Tracie N Zukowski

Print Name

7/12/2023

Date



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.

eSpark, Inc.  
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Vendor Email Address

Tracie N Zukowski  
Signature by Vendor's Authorized Representative

Tracie N Zukowski  
Print Name

4/25/2023  
Date