



Issue Paper

DATE:

07/12/2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve The sales contract with Business U LLC for Simon Kenton High School to purchase up to 75 licenses for the Accounting 1 software.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

BusinessU is a web based software that has been utilized at Simon Kenton for a number of years. This software will be utilized for our Accounting I classes within the PLTS department. BusinessU is a simulation software that allows the students to learn to complete accounting assignments on a simulated software program similar to what would be utilized in businesses today. In addition, this program provides summative and formative assessments to verify student mastery of the topics and prepares them for various Kentucky CTE pathway assessments. This purchase will allow up to 75 students and one teacher access to this simulation software and curriculum/ assignments that align to the Kentucky Standards.

FISCAL/BUDGETARY IMPACT:

\$1895 – School allocation

RECOMMENDATION:

Approval to the sales contract with Business U LLC for Simon Kenton High School to purchase 75 student licenses and 1 teacher account for the Accounting 1 product.

CONTACT PERSON:

Jeffrey Bonlander, Therese Dukes, Heather Piper, 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.

BusinessU

P.O. Box 234
Lexington, KY 40588
(800) 921-5310
sales@businessu.org
www.businessu.org

**Quotation****ADDRESS**

Therese Dukes
Simon Kenton High School
11132 Madison Pike
Independence, KY 41051
United States

QUOTATION**DATE****SKKY230317****03/17/2023**

| PRODUCT | PRODUCT DESCRIPTION | QTY | RATE | AMOUNT |
|----------|--|-----|----------|----------|
| BU.Acct1 | Accounting I - 51-75 Students (1-Year License) | 1 | 1,895.00 | 1,895.00 |

Please email Purchase Orders to sales@businessu.org, or fax PO's to 800.906.6087.

TOTAL**\$1,895.00**

Accepted By

Accepted Date

If you have any questions, please contact sales@businessu.org.

**Addendum to
the Business U Terms of Use between
the Kenton County Board of Education and Business U, LLC.**

WHEREAS, the Kenton County Board of Education ("KCBOE"), and Business U LLC. ("BusinessU") are parties to a Service Agreement composed of Business U's Terms of Use, accessible at <https://businessu.org/terms-of-use/>. The KCBOE and Business U 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 Enterprise Terms of Service, pursuant to the terms and conditions of this Addendum.

WHEREAS, all additions made herein shall be valid as if part of the Business U Terms of Use.

NOW, THEREFORE, the amendments are as follows:

Section 8. Miscellaneous. Paragraph 6 is amended to read, as follows:

Controlling Law and Venue. This Agreement shall be construed and controlled by the laws of the Commonwealth of Kentucky, without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Agreement. Courts located in Kenton County, within the city of Covington, Kentucky, shall be the exclusive forum for any litigation arising out of this Agreement. You waive any objections to venue, personal jurisdiction, or forum non conveniens.

Section 9. Cancellations and Refund. Paragraph 1 is amended to read, as follows:

Cancellation and Refund. No cancellation will be accepted, and no refund issued, if it is more than thirty (30) days beyond the date of purchase for the license referenced in the Sales Contract. For cancellations and refunds of the license tendered under this Sales Contract to be accepted, the Seller must receive written notification of the cancellation within 30 days of purchase. Cancellations requested outside of the 30-day period will not be refunded and the Purchaser will be responsible for completing the purchase as stated in the Sales Contract

Kenton County Board of Education:

Business U LLC.:

Signed: _____

Signed: Michael Lewis

Name: _____

Name: Michael Lewis

Title: _____

Title: President

Date: _____

Date: 05/04/2022

Terms of Use

Last Updated Date: 4/15/19

These Business U LLC ("BU") terms of use ("Agreement") govern your use of our BU software, products, and/or services (collectively, referred to as "Product" or "Products") and any information or content appearing on or through the Products (collectively referred to as "Content"). By accessing or using the Products, you agree to the terms of this Agreement. If you have entered into another agreement with BU concerning specific Products, then the terms of that agreement controls where it conflicts with these terms. BU reserves the right, at any time, to modify, alter, update or remove portions of this Agreement. Please check this Agreement (as well as our privacy policy ("Privacy Policy")) from time to time as your continued use of the Product signifies your acceptance of any changed items.

1. YOUR LICENSE TO USE OUR PRODUCTS

Subject to the terms and conditions of this Agreement and any agreement entered into by your institution relating to the Products, BU grants you a limited, non-exclusive, non-transferable, license to access and use the Products. You shall not (a) copy the Product or any part, feature, function or user interface thereof (b) use the Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights (c) attempt to gain unauthorized access to the Product or its related systems or networks; and/or (d) reverse engineer the Product (to the extent such restriction is permitted by law).

You agree, further, not to use or attempt to use any engine, software, tool, agent or other device or other mechanism (including without limitation browsers, spiders, robots, avatars or intelligent agents) to navigate or search the Products or Content.

2. PRIVACY

BU's current Privacy Policy (located at <https://businessu.org/privacy>) is incorporated herein by reference and made part of this Agreement. You understand that through your use of the Products, you consent to the collection and use (as set forth in this Agreement, the Privacy Policy and any agreement entered into by your institution relating to the Product) of your information for hosting, processing and use by BU.

3. BU's RIGHTS

All right, title, and interest in and to the Products and all underlying ideas, concepts, procedures, processes, principles, know-how, methods of operation, images, source code, and specifications related thereto, together with any updates, enhancements, modifications, improvements or derivatives works thereto, in each case including all copyrights, trade names, trademarks and other intellectual property rights therein (collectively, the "BU IP"), is, and shall remain the sole and exclusive property of BU. Certain BU IP is protected by United States copyright laws (and other laws relating to intellectual property). The Products are licensed, not sold, to you hereunder and, except for the express limited license rights granted to you in accordance with the terms of this Agreement, no right, title or interest in or to the BU IP is granted or otherwise transferred by BU in connection with this Agreement. BU shall have, and you hereby grant to BU, a royalty-free, perpetual, worldwide, non-exclusive, irrevocable right to use or incorporate into the Products and/or any specifications, without restriction or obligation, any suggestions, enhancements, recommendations or other feedback provided by you with respect to the Products.

4. TERMINATION

BU may suspend or terminate your account or cease providing you with access to our Products, without notice, for any conduct that BU, in its sole discretion, believes is in violation of any applicable law or the terms of this Agreement. The sections titled "Privacy," "Your Content," "BU's Rights," "Termination," "Indemnification", "Limitation of Liability, "Disclaimer of Warranties," "Indemnification," "Miscellaneous" shall survive any termination of this Agreement.

5. INDEMNIFICATION

You agree to indemnify, defend and hold harmless BU and BU's officers, directors, employees, agents, and representatives, from and against any and all claims, damages, expenses, judgments, fines, and amounts paid in settlement in connection with any proceeding arising from your breach of this Agreement or your use of the Products (except for any gross negligence on the part of BU).

6. DISCLAIMER OF WARRANTIES & LIMITATION OF LIABILITY

YOU EXPRESSLY UNDERSTAND AND AGREE THAT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, YOUR USE OF OUR PRODUCTS IS AT YOUR SOLE RISK, AND OUR PRODUCTS ARE PROVIDED "AS-IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, QUALITY, PRODUCTIVENESS OR CAPACITY, OR THAT THE OPERATION OF THE SOFTWARE INCLUDED WITHIN THE PRODUCTS WILL BE ERROR FREE. ALL OTHER WARRANTIES RELATING TO THE PRODUCTS OR THIS AGREEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY BU. BU MAKES NO WARRANTY OR REPRESENTATION THAT (A) THE PRODUCTS WILL MEET YOUR REQUIREMENTS; (B) YOUR USE OF THE PRODUCTS WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE OR (C) ANY ERRORS IN THE PRODUCTS WILL BE CORRECTED.

IN CONNECTION WITH USING OUR PRODUCTS, YOU MAY PURCHASE OTHER PRODUCTS AND/OR SERVICES FROM, AND/OR PARTICIPATE IN PROMOTIONS OF, THIRD PARTIES. TRANSACTIONS RELATING TO ANY SUCH THIRD PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND ANY TERMS ASSOCIATED THEREWITH, ARE SOLELY BETWEEN YOU AND THE RELEVANT THIRD PARTIES. BU DOES NOT SUPPORT, ENDORSE OR MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING, ANY SUCH THIRD PARTY PRODUCTS, SERVICES AND/OR PROMOTIONS, AND IN NO EVENT WILL BU HAVE ANY LIABILITY WHATSOEVER IN CONNECTION THEREWITH.

IN NO EVENT WILL BU, ITS DEVELOPERS, OR ITS SUPPLIERS BE LIABLE FOR ANY LOST PROFITS, LOST OPPORTUNITY, LOST SAVINGS, LOSS OF GOODWILL, LOST BUSINESS, LOSS OF ANTICIPATED

BENEFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF OR DAMAGE TO DATA, COMPUTER FAILURE OR MALFUNCTION, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR AS A RESULT OF THIS AGREEMENT, THE USE OF OR INABILITY TO USE THE PRODUCTS OR THE PROVISION OF SERVICES, EVEN IF BU HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL BU, ITS DEVELOPERS' OR SUPPLIERS' ENTIRE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR AS A RESULT OF THIS AGREEMENT EXCEED THE GREATER OF TWENTY FIVE DOLLARS (\$25) OR THE AMOUNT YOU ACTUALLY PAID BU IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS DO NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

7. Digital Millennium Copyright Act Notice

We respect the intellectual property rights of others, and require that the people who use the Products do the same. We may terminate the use privileges of users who are infringers of intellectual property rights. Accordingly, you may not store any material or content on, or disseminate any material or content over, the Products in any manner that constitutes an infringement of third party intellectual property rights, including rights granted by U.S. copyright law. Owners of copyrighted works who believe that their rights under U.S. copyright law have been infringed may take advantage of certain provisions of the Digital Millennium Copyright Act of 1998 (the "DMCA") to report alleged infringements. If you believe in good faith that your work has been copied in a way that constitutes copyright infringement, please forward the following information (or any statement in conformance with the DMCA) to the contact information that is provided below:

1. Your name, address, telephone number, and email address;
2. A description of the copyrighted work that you claim has been infringed;

3. A description of the allegedly infringing material and information reasonably sufficient to permit us to locate the material;
4. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
5. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyright that is allegedly infringed; and
6. A statement by you that the above information in your notice is accurate and, under penalty of perjury, that you are the copyright owner or authorized to act on the copyright owner's behalf:

Business U LLC Attn: Copyright Agent / Contracts Department Address:
14600 Woodbluff Trace, Louisville, KY 40245 Phone: 800.921.5310 Email:
support@businessu.org

8. MISCELLANEOUS

Force Majeure. BU shall not be liable for any delay or failure to perform any obligation hereunder due to causes beyond its control, including without limitation, war, riot, insurrection, civil commotion, terrorist activity, fire, industrial disputes of whatever nature, acts of nature, computer crimes, epidemics, acts or omissions of third party vendors or suppliers, equipment failures, public enemies of government, failure of telecommunications, system malfunctions, fire, or other casualty.

Waiver and Severability. Waiver by BU of any default or breach by you of any provision contained in this Agreement does not constitute a waiver of any subsequent default or breach of the same or any other provision of this Agreement. If any part of this Agreement shall be held invalid, illegal, in conflict with any law, or otherwise unenforceable by a court of competent jurisdiction, the remainder of this Agreement will nevertheless remain in full force and effect.

No Third Party Beneficiaries. The parties do not intend to confer any right or remedy on any third party.

Entire Agreement. Except where you or your institution have entered into a specific agreement with BU and/or for particular Products, this Agreement and our Privacy Policy contains the entire understanding and the entire and exclusive agreement between BU and you regarding the subject matter of this Agreement, and this Agreement supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between BU and you with respect to the subject matter of this Agreement.

Assignment. You may not assign this Agreement to any third party without the prior written consent of BU. Any such purported assignment shall be null and void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, and permitted assigns, if any. BU may assign its rights and obligations under this Agreement to a third party without your consent.

Controlling Law and Venue. This Agreement shall be construed and controlled by the laws of the Commonwealth of Kentucky, without giving effect to principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed and shall not apply to this Agreement. Courts located in Louisville, Kentucky, shall be the exclusive forum for any litigation arising out of this Agreement. You waive any objections to venue, personal jurisdiction, or forum non conveniens.



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

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.

Business U LLC

Vendor Name

401 West Main Street, Unit 317, Lexington, Kentucky 40507

Vendor Address

800-921-5310

Vendor Telephone

office@businessu.org

Vendor Email Address



Signature by Vendor's Authorized Representative

Michael Lewis

Print Name

05/04/2022

Date