DATE:
05/15/24

AGENDA ITEM (ACTION ITEM):
Consider/Approve the agreement of a 12-month renewable premium Read & Write subscription for use by all students and staff within the Kenton County School District with take-home access from Texthelp Inc.

APPLICABLE BOARD POLICY:
01.1 Legal Status of the Board

HISTORY/BACKGROUND:
The Kenton County School District has consistently purchased a 12-month renewable subscription for students and staff from Texthelp Inc. Once the subscription is renewed, all schools and students will have full access to the program across all Windows, Google Chrome, and Mac domains. The subscription also provides support within KCSD's LMS instructional domain, Schoology. While this subscription is for all students, it is especially beneficial for students identified as special education and/or English Language Learners. This program will allow students to be more independent in accessing core instruction and specially designed instruction within their IEPs. This program will decrease the need for adult readers, increase student reading skills, and build student confidence and self-advocacy.

FISCAL/BUDGETARY IMPACT:
$28,751.44 with annual renewal paid out of Special Education: IDEA B funds

RECOMMENDATION:
Approval to the agreement of a 12-month renewable premium Read & Write subscription for use by all students and staff within the Kenton County School District with take-home access from Texthelp Inc.

CONTACT PERSON:
Danielle Rice, Director of Special Education

_____   _____   _____
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.

texthelp

Billing Address

To	Kenton County Schoo
Street	Attn: Accounts Payak
City	Fort Wright
State	Kentucky
Country	USA
ZIP / Postcode	41017

Sales Contact
Primary contact at your organisation

First Name	Danielle
Last Name	Rice
Email	danielle.rice@kenton

Payment Method	PO
PO Number	tbd

Finance Contact
This is where we will send your invoice

Email	nancy.hoffman@kent
Tax Number	B470

(Your registered sales tax ID in your billing country e.g. VAT number in the UK, GST number in Australia, TIN in the USA, etc.)

Tax Exempt	Yes

File Uploaded: Tax Exempt form for Institute for Texthelp.pdf

Contract Details

Contract Start	14 July 2024
Renewal Date	14 July 2025

Qty	Item	Type	Description	Unit Price $	Price $
14488	Read&Write	Unlimited	12 month renewable premium Unlimited (Domain-wide)	1.98	28,751.44

Qty	Item	Type	Description	Unit Price $	Price $
			Read&Write subscription for use by all students and staff within the school/district/specified domain, with take home access. Includes access to all supported platforms including Windows, Mac, Google Chrome, Edge, iPad and Android provided all technical requirements are met and provides supports within Canvas, Schoology, and D2L Brightspace. Read&Write subscription also includes access to a subset of features in OrbitNote which were formerly included with Texthelp PDF Reader.		

| | | | | **Total** | 28,751.44 |

Payment Instructions
ACH/Wire
Routing: 211070175
Wire: 011500120
Account: 1109500715

Check Remittance
Texthelp Inc

PO Box 845862

Boston, MA 02284-5862

The following Amendments shall apply. The terms of this Amendment supersede provisions in the Terms of Use only to the extent that the terms of this Amendment and the Terms of Use expressly conflict. Unless expressly amended herein, all provisions of the Terms of Use remain intact and in full effect.

Clause 10.3(b) intentionally omitted from the terms Clause 16.13 intentionally omitted from the terms Clause 16.14 intentionally omitted from the terms

Terms & Conditions of Use - Important please read carefully:

The following terms and conditions, together with any Quotations and Schedules incorporated by reference, constitute an agreement (**Agreement**) between Texthelp, Inc. (**Texthelp**), a Delaware corporation with its principal place of business located at Corporation Service Company 251 Little Falls Drive, Wilmington, DE, 19808, and the person or entity who has executed a Quotation (together with its Affiliates, the **Customer**). This Agreement governs access to, and use of Texthelp's Product(s) and associated Support.

EXECUTING A QUOTATION INDICATES ACCEPTANCE OF THIS AGREEMENT AND BINDS CUSTOMER TO THE TERMS AND CONDITIONS HEREIN. THEREFORE, PLEASE READ THIS AGREEMENT, AND THE QUOTATION(S) CAREFULLY BEFORE EXECUTING THE SAME AND USING THE PRODUCT(S). IF CUSTOMER DOES NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, CUSTOMER SHOULD NOT EXECUTE A QUOTATION, ACCESS, OR USE THE PRODUCT(S). If the individual entering into this Agreement) is doing so on behalf of a company or other legal entity, said individual represents and warrants that he or she: (i) has the authority to bind said entity and its Affiliates to the terms and conditions herein; (ii) has read and understands this Agreement; and (iii) agrees, on behalf of said legal entity and its Affiliates, to this Agreement.

Throughout this Agreement, Texthelp and the Customer may each be referred to, individually, as a "**Party**," and collectively, as the "**Parties**".

1.   Definitions

1.1   The defined terms are set out in Section 17 of this Agreement.

2.   Introduction

2.1   Texthelp agrees to provide the Customer with the Product(s) (and associated Support) as set out in the Quotation. The Quotation must be in writing and reference this Agreement to be valid. The Quotation shall be governed by this Agreement and any contrary or additional terms are deemed null and void and of no effect unless agreed by ticking the "accept" box prior to acceptance of the Quotation.

3.   Term and Termination

3.1   The term of this Agreement is effective from and shall be in force: (i) from the Commencement Date specified in the Quotation until terminated in accordance with this Section 3; or (ii) where the Quotation specifies a fixed term, the duration specified therein (as applicable) (the **Initial Term**). Where the Quotation specifies a fixed term, this Agreement shall automatically renew for successive twelve (12) month periods (each a **Renewal Term**) unless the Customer provides written notice of termination at least 30 days prior to the end of the Initial Term or the then current Renewal Term (as applicable).

3.2   Without affecting any other right or remedy available to it, either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

(a) the other Party is in material breach of the Agreement and fails to cure such breach within thirty (30) days of receipt of written notice. For clarity, material breach shall include the Customer's failure to pay, undisputed invoices on the due date for payment and remaining in default not less than 45 days following the due date for payment; or

(b) the other Party suffers an Insolvency Event.

3.3 Notwithstanding, and in addition to the foregoing, Texthelp may suspend the Customer's access to the Product(s) and/or terminate this Agreement if the Customer's use of the Product(s) is at any time in breach of Section 4, or is otherwise unlawful.

3.4 Texthelp may discontinue:

(a) a functionality of a Product from time to time provided that such discontinuation does not result in a material detrimental reduction to the Customer's use of the Products to which it is subscribed to (as set out in the Quotation);

(b) a functionality of a Product that is dependent on a third party service provider, in the event such third party service provider terminates or modifies its services in a way that materially impacts Texthelp's ability to provide the Product; and

(c) a Product or a material functionality of a Product from time to time provided that prior to any discontinuation Texthelp will provide at least twelve (12) months' advance notice to the Customers that may be affected pursuant to this paragraph 3.4, except that this notice will not be required if the twelve (12) month notice period: (i) poses a security or IPR risk to the Product, (b) is materially economically or technically burdensome or (c) would cause Texthelp to contravene any applicable law.

3.5 On termination of this Agreement for any reason: (a) all licenses granted under this Agreement, and Support provided by Texthelp, shall immediately terminate; (b) each Party shall return and make no further use of Confidential Information belonging to the other Party; (c) all undisputed Fees committed or owed by the Customer to Texthelp as at the effective date of termination will become immediately due and payable; (d) Texthelp shall retain and/or destroy or otherwise dispose of any of the Customer Data in its possession in accordance with its data retention policy; and (e) any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced.

4. License

4.1 Subject to the terms and conditions of this Agreement, Texthelp hereby grants to the Customer a limited-term, non-exclusive, non-transferable license, without the right to grant sublicenses, to permit the Authorized Users to use the Product(s) specified in the Quotation and/or any Documentation, while this Agreement remains in effect, solely for the Customer's internal business operations.

4.2 The restrictions set forth in this Agreement represent conditions of the Customer's license. Accordingly, the Customer hereby agrees that: (i) the maximum number of Authorized Users it authorizes to access and use the Product(s) shall not exceed the number of Authorized Seats it has purchased at any time; (ii) it will require each of its

Authorized Users to keep a secure password for their use of the Product(s) (if applicable), to change such password (if applicable) at regular intervals and in accordance with any security requirements that are imposed by the Customer, and to keep their password secured and confidential; and (iii) it shall permit Texthelp or Texthelp's designated auditor to audit the Customer's data processing facilities to confirm compliance with this Agreement (**Audit**). If an Audit reveals that the Customer has underpaid Product Fees to Texthelp, then without prejudice to Texthelp's other rights, the Customer shall pay to Texthelp an amount equal to such underpayment as calculated in accordance with the prices set out in the relevant Quotation within 10 Business Days of the date of the relevant Audit.

4.3   The Customer shall, and shall ensure its Authorized Users shall, not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Products that:

> (a)   is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
>
> (b)   facilitates illegal activity;
>
> (c)   depicts sexually explicit images;
>
> (d)   promotes unlawful violence;
>
> (e)   is discriminatory based on race, gender, religious belief, sexual orientation, disability; or
>
> (f)   is otherwise illegal or causes damage or injury to any person or property,

and Texthelp reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to or remove any material that breaches the provisions of this paragraph 4.3.

4.4   The Customer shall not (except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under this Agreement): (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Product(s) in any form or media or by any means; de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Product(s); (b) access all or any part of the Product(s) in order to build a product or service which competes with the Product(s); (c) sub-license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Product(s) available to any third party except the Authorized Users, (d) attempt to obtain, or assist third parties in obtaining, access to the Product(s), other than as provided under this Section 4; and/or (e) introduce or permit the introduction of, any Virus into Texthelp's network and information systems.

4.5   The Customer shall use commercially reasonable efforts to prevent any unauthorized access to, or use of, the Product(s) and, in the event of any such unauthorized access or use, promptly notify Texthelp.

4.6   Customer agrees to abide by the third party copyright notices applicable to the Products, which are available on <u>our support site</u>, and incorporated by reference within this Agreement.

4.7   Where the Product(s) are deployed to Customer's students or employees, Customer shall make this Agreement and the Texthelp Product Privacy Policy available to its end-users and hereby accepts the respective terms and conditions on their behalf.

5.   Support

5.1   Texthelp shall provide Support to the Customer in accordance with Schedule 1.

6.   Compliance with Data Privacy Laws

6.1   Texthelp does not offer goods or services to citizens outside of the United States, including, without limitation to citizens of the European Union, and is therefore not subject to the European Union's General Data Protection Regulation (**GDPR**). Customer hereby represents and warrants that none of its Authorized Users are Data Subjects, as that term is defined within the GDPR. To the extent Customer has a need to provide the Product(s) to Authorized Users outside of the United States, it may enter into a separate agreement with one of Texthelp's international Affiliates.

6.2   It is Customer's sole responsibility to assess and determine whether it is subject to any federal or state laws protecting the privacy and security of personally identifiable information, including without limitation the California Consumer Privacy Act (as amended by the California Privacy Rights Act), Connecticut's "An Act Concerning Personal Data Privacy and Online Monitoring," and similar federal or state laws governing data privacy or data breach notification in any jurisdiction (collectively, the **Applicable Data Protection Laws**).

6.3   Each Party shall comply with all applicable requirements of the Applicable Data Protection Laws. This Section 6 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Applicable Data Protection Laws.

6.4   If Customer is: (i) considered a "controller" pursuant to the Applicable Data Protection Laws (or analogous term); (ii) providing Customer Personal Data to Texthelp to process on Customer's behalf; and (iii) required to enter a data processing agreement with Texthelp (or analogous form of agreement) in order to comply with the Applicable Data Protection Laws, Customer must promptly notify Texthelp. Under such circumstances, for the purposes of the Applicable Data Protection Laws: (x) Customer is the controller (or analogous term) and Texthelp is the processor (or analogous term); and (y) the parties shall negotiate the terms of a data processing agreement to comply with the Applicable Data Protection Laws in good faith. If, however, the parties are unable to mutually agree on the terms of such an agreement, either party may terminate the applicable Quotation or this Agreement without cause by providing two (2) business days' notice to the other party.

6.5   If Customer is subject to the provisions of the Family Educational Rights and Privacy Act (**FERPA**), then to the extent Texthelp has access to data protected by FERPA (**FERPA Data**): (i) Texthelp is designated as a "school official" with "legitimate educational

interests" in the FERPA Data, each term as defined under FERPA and its implementing regulations; (ii) Texthelp agrees to abide by the limitations and requirements imposed on school officials under FERPA; and (iii) Texthelp agrees to use FERPA Data only for the purpose of fulfilling its obligations under this Agreement, and will not monitor, share, or disclose such FERPA Data to any third party except as provided by this Agreement, as required by law, or as authorized in writing by Customer.

6.6   If Customer is an individual, Customer hereby represents that Customer is at least 18 years old. If Customer is an entity which allows Authorized Users under the age of 13 to submit personal information as defined in the Children's Online Privacy Protection Act (COPPA) to Texthelp in connection with its use of the Service, Customer agrees that it will be responsible for obtaining verifiable parental consent prior to making the Products available to such Users, and for providing a copy of the terms and conditions set forth in this Agreement to the Authorized User's parent or guardian. Texthelp shall comply with COPPA and any rules or regulations promulgated thereunder.

7.   Texthelp's obligations

7.1   Texthelp warrants that the Product(s) will perform materially in accordance with the Quotation and applicable Documentation, and any Support will be performed with reasonable skill and care.

7.2   The warranty in paragraph 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Product(s) contrary to Texthelp's Documentation or other instructions, or modification or alteration of the Product(s) by any party other than Texthelp or Texthelp's duly authorized contractors or agents.

7.3   For any breach of the warranty in paragraph 7.1 while this Agreement remains in effect, Texthelp shall (at Texthelp's sole option and expense) correct, repair or replace the Product within a reasonable time period or provide or authorize a refund of any pre-paid, unused Product Fees, in which case the Agreement shall terminate, provided that: (i) Customer promptly notified Texthelp in writing of the Product's non-conformance with the warranty in paragraph 7.1; and (ii) Texthelp confirmed the issue subject to paragraph 7.2 above.

7.4   EXCEPT FOR THE WARRANTY SET FORTH IN PARAGRAPH 7.1, TEXTHELP HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TEXTHELP SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 7.1, TEXTHELP MAKES NO WARRANTY OF ANY KIND THAT TEXTHELP IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. Furthermore, Texthelp shall not be held responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the

Product(s) and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

7.5 This Agreement shall not prevent Texthelp from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

7.6 Texthelp warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.

7.7 Texthelp shall perform daily back-ups of the Customer Data. In the event of any loss or damage to Customer Data, Texthelp shall use commercially reasonable efforts to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Texthelp. Notwithstanding anything in this agreement to the contrary, the foregoing constitutes Customer's sole and exclusive remedy arising from or related to any loss or damage to Customer Data. Texthelp shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Texthelp to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable.

8. Customer's obligations

8.1 The Customer shall:

(a) provide Texthelp with all necessary: (i) co-operation in relation to this Agreement; and (ii) access to such information as may be required by Texthelp in order to provide the Product(s), including but not limited to Customer Data, security access information and configuration services;

(b) without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;

(c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, Texthelp may adjust any agreed timetable or delivery schedule as reasonably necessary;

(d) ensure that the Authorized Users use the Product(s) in accordance with the terms of this Agreement and shall be responsible for any Authorized User's breach of this Agreement;

(e) obtain and shall maintain all necessary licenses, consents, and permissions necessary for Texthelp, its contractors and agents to perform their obligations under this Agreement, including without limitation the Product(s); and

(f) ensure that its network and systems comply with the relevant specifications provided by Texthelp from time to time.

9. Customer Data

9.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9.2 Without prejudice to the foregoing, the Customer expressly acknowledges that Texthelp does not create or validate any Customer Data processed or used in conjunction with the Product(s) and/or any associated outputs created or generated by the Customer in using, or via, the Products (**Outputs**). The Customer assumes sole responsibility for any results obtained from the use of the Products, Support and/or for any conclusions drawn from such use, and Texthelp disclaims all liability for any loss or damage caused by errors or omissions in any Outputs.

10. Product Fees and Payment

10.1 The Product Fees are stated in the Quotation. The Customer shall pay the Product Fees to Texthelp in accordance with this Section 10 and the Quotation. No refunds will be made except as provided in paragraph 7.3 and paragraph 13.3. Product Fees shall be payable in the currency as set out in the Quotation and are exclusive of applicable sales and use taxes, which shall be added to Texthelp's invoice(s) at the appropriate rate.

10.2 The Customer shall, on the Commencement Date, provide to Texthelp valid, up-to-date and complete payment details and any other relevant valid, up-to-date and complete contact and billing details and Texthelp shall:

    (a) invoice or bill (as applicable) the Customer on the Commencement Date for the Product Fees payable in respect of the Initial Term; and

    (b) subject to paragraph 3.1:

        (i) bill the Customer using the relevant payments details on; or

        (ii) invoice the Customer at least 30 days prior to,

    each anniversary of the Commencement Date for the Product Fees payable in respect of the next Renewal Period (as applicable).

10.3 If Texthelp has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of Texthelp:

    (a) Texthelp may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Product(s) and Texthelp shall be under no obligation to re-activate access to any or all of the Product(s) while the relevant invoice(s) remain unpaid; and

    (b) Intentionally omitted.

10.4 Texthelp shall increase the Product Fees in line with the then current prices of Texthelp and its suppliers, including (without limitation) on an annual basis: (i) automatically increasing Product Fees by 5% for a non-profit "Education" Customer and (ii) having the right to increase Product Fees by up to 10% for a "Workplace" Customer (as determined by Texthelp at its sole discretion) provided Texthelp serves the relevant Customer with 30 days' prior written notice of such revised Product Fees. Any changes to the Product

Fees pursuant to this clause 10.4 shall take effect upon expiration of the 30 day notice period.

11. IPR Ownership

11.1 The Customer acknowledges and agrees that Texthelp and/or its licensors own all existing and future IPR in the Product(s), Documentation and any Support provided (together, the **"Texthelp IP"**). Except as expressly stated herein, this Agreement does not grant the Customer any rights or licenses to, under, or in, the Texthelp IP. The Customer agrees to inform Texthelp promptly of any infringement of the Texthelp IP that comes to the Customer's attention.

11.2 Texthelp confirms that it has all the rights in relation to Texthelp IP as is necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

12. Confidentiality

12.1 Each Party shall safeguard and maintain the confidentiality of the other Party's Confidential Information and shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to ensure that the other Party's Confidential Information is not disclosed or distributed by its Representatives or otherwise in violation of the terms of this Agreement

12.2 Subject to paragraph 12.5, neither Party shall disclose the other Party's Confidential Information to any third party unless the other Party consents in writing to the disclosure of such Confidential Information and such third party enters into a confidentiality agreement on terms equivalent to those contained in this Agreement.

12.3 Subject to this Section 12, each Party shall only use the other Party's Confidential Information disclosed to it for the purposes of this Agreement including the purpose of exercising or performing its rights and obligations under this Agreement.

12.4 The provisions of this clause shall not apply to any Confidential Information that: (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its Representatives in breach of this clause), (b) was available to the receiving Party on a non-confidential basis before disclosure by the disclosing Party, (c) was, is or becomes available to the receiving Party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality Agreement with the disclosing Party or otherwise prohibited from disclosing the information to the receiving Party; (d) the Parties agree in writing is not confidential or may be disclosed; or (e) is developed by or for the receiving Party independently of the information disclosed by the disclosing Party.

12.5 A Party may disclose the other party's Confidential Information to those of its Representatives who "need to know" such Confidential Information in order to perform their obligations pursuant to this Agreement, provided that the disclosing Party: (a) informs such Representatives of the confidential nature of the Confidential Information before any disclosure is made, (b) is at all times responsible for such Representatives'

compliance with the confidentiality obligations set out in this clause and (c) keeps a written record of those persons.

12.6   A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice and opportunity to object to such disclosure as possible.

12.7   Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach of this Section 12 and that an affected Party shall be entitled to the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Section 12

12.8   Neither Party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

13.   Indemnity

13.1   Subject to paragraph 13.2, Texthelp shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Product(s) or Documentation in accordance with this Agreement infringes any United States or United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

(a)   Texthelp is given prompt notice of any such claim by the Customer within ten (10) days of receiving written notice of any threat or claim;

(b)   the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to Texthelp in the defense and settlement of such claim, at Texthelp's expense; and

(c)   Texthelp is given sole authority to defend or settle the claim; and

(d)   the Customer mitigates its losses insofar as is reasonable in the circumstances.

13.2   In no event shall Texthelp, its employees, agents and sub-contractors be liable to the Customer pursuant to clause 13.1 or otherwise to the extent that the alleged infringement is based on:

(a)   any content, material or information (including Customer Data) that has been uploaded, embedded or otherwise displayed or stored on the Product(s) by a Customer;

(b)   a modification of the Product(s) or Documentation by anyone other than Texthelp; or

(c)   the Customer's use of the Product(s) or Documentation:

    i   in a manner not in accordance with this Agreement or the Documentation, if the third party claim would have thereby otherwise been avoided;

    ii   with other software, services or products not provided by Texthelp, if the actual or alleged claim in question would have been avoided by the independent use of the relevant Product; or

    iii   after notice of the alleged or actual infringement from Texthelp or any appropriate authority.

13.3   If, during the Term, Texthelp reasonably believes that a Product infringes any third parties IPR, then, Texthelp may (at its sole discretion): (a) procure the right for the Customer to continue using the relevant Product, (b) replace the Product or (c) modify the Product so that it becomes non-infringing. If none of the aforementioned remedies are commercially reasonable, Texthelp may terminate the license for the allegedly infringing Product and refund all of the Customer's un-used, pre-paid, Product Fees from the date a third party claim arose for the allegedly infringing Product to the then-current date, whereupon this Agreement shall automatically terminate.

13.4   This clause 13 sets out the Customer's sole and exclusive rights and remedies, and Texthelp's (including Texthelp's employees', agents' and sub-contractors') entire obligations and liability, for any third party IPR claims for infringement.

14.   Limitation of liability

14.1   Except as expressly and specifically provided in this Agreement:

(a)   the Customer assumes sole responsibility for results obtained from the use of the Product(s) and the Documentation by the Customer, and for conclusions drawn from such use. Texthelp shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Texthelp by the Customer in connection with the Product(s), or any actions taken by Texthelp at the Customer's direction;

(b)   the Product(s) and the Documentation are provided to the Customer on an "as is" basis.

14.2   IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, COVER, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER A PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES

OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT SHALL EITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE LESSER OF EITHER ONE MILLION DOLLARS ($1,000,000) OR THE TOTAL PRODUCT FEES PAID FOR THE AUTHORIZED SEATS DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

14.3   Nothing in this Agreement excludes the liability of Texthelp:

(a)   for death or personal injury caused by Texthelp's negligence; or

(b)   for fraud or fraudulent misrepresentation.

14.4   Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of Texthelp's IPR.

15.   Notices

15.1   Any notice given to a Party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company). Without prejudice to the foregoing, any notices required to be given to Texthelp or questions concerning this Agreement can be sent via email to info@texthelp.com.

15.2   Any notice shall be deemed to have been received:

(a)   if delivered by hand, at the time the notice is left at the proper address; or

(b)   if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

15.3   This Section 15 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.   General Provisions

16.1   Neither Party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond such Party's reasonable control including (without limitation) fire, flood, riots, natural catastrophes, terrorist acts, governmental intervention, declared emergencies, failing to grant a necessary license or consent or other act of god (each, a **"Force Majeure Event"**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 40 continuous days, the Party unaffected by the Force Majeure Event may terminate this Agreement by giving 7 days' written notice to the affected Party.

16.2   Texthelp may modify or amend this Agreement, and any attachments hereto, in its sole discretion. Texthelp shall provide any such modifications or amendments to Customer

via the contact email address provided by Customer when submitting the Quotation. Each such amendment shall become effective on the date it is delivered to Customer as set forth above, and Customer's continued use of the Product(s) constitutes acceptance of any such amendment. The current versions of this Agreement will be posted on Texthelp's website (text.help/TOU).

16.3   A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

16.4   A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16.5   Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

16.6   The invalidity or unenforceability of one or more provisions of this Agreement will not affect the validity or enforceability of any of the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provision(s) were omitted. If any provision of this Agreement is deemed omitted under this paragraph 16.7, the parties shall negotiate in good faith to agree upon a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.7   This Agreement, along with any Quotation(s), Schedules and attachments, each of which is incorporated herein by reference and made a part hereof, constitute the entire agreement between Texthelp and Customer with respect to Customer's use of the Product(s), and supersedes all other prior or contemporaneous proposals, understandings, representations, warranties, covenants, and any other communications (whether written or oral) between Texthelp and Customer relating thereto and is binding upon them and their permitted successors and assigns. In the event of any conflict or inconsistency among the foregoing documents, the order of precedence shall be: (1) the main body of this Agreement, (2) the applicable Quotation; (3) the applicable Schedule or attachment; and (4) the Documentation. Notwithstanding the foregoing, a Quotation may modify or amend certain provisions of the main body of this Agreement by making specific reference to the provision to be modified and setting forth the controlling provision, provided the Quotation is signed by both Parties.

16.8   Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement. Nothing in this clause shall limit or exclude any liability for fraud.

16.9   This Agreement shall be binding upon and for the benefit of Texthelp, Customer, and their permitted successors and assigns. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without Texthelp's prior written consent. Texthelp may, at any time, freely assign any of its rights or obligations under this Agreement.

16.10 Texthelp and Customer are independent contractors with respect to each other. Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorize either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16.11 Nothing contained in this Agreement is intended or shall be construed to confer upon any other legal entity or person any rights, benefits, or remedies of any kind or character whatsoever, or to create an obligation of a party to any such legal entity or person.

16.12 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each Party has delivered to the other at least one executed counterpart.

16.13 Intentionally omitted

16.14 Intentionally omitted

16.15 The following provisions shall survive any termination of this Agreement: paragraph 3.5, and Sections 6, 9, 10, 11, 12, 13, 14 and 16.

17. Definitions & Interpretation

17.1 The capitalized terms used in this Agreement have the meanings ascribed to them below, and this Agreement is to be interpreted and construed in accordance with the rules set forth below.

Applicable Data Protection Laws: has the meaning given to it in paragraph 6.2

Audit: has the meaning given to it in paragraph 4.2.

Authorized Users: those employees, agents and independent contractors of the Customer who are authorized by the Customer to use the Product(s), as further described in paragraph 4.2.

Authorized Seats: means the authorized seats purchased by the Customer as set out in an agreed Quotation, which entitles Authorized Users to access and use the Products in accordance with this Agreement.

Business Day: a day except any Saturday, Sunday, any federal legal holiday in the United States, or any day on which banking institutions in the State of Delaware are authorized or required by law or other governmental action to close.

Commencement Date: means the date specified in an agreed Quotation.

Confidential Information or CI: means all information disclosed by one party hereto to the other party, whether orally or in writing, that: (a) is designated as proprietary or confidential; or (b) reasonably should be understood to be confidential given the nature of the information and the circumstances of the disclosure. Each party's Confidential

Information also includes the terms and conditions of this Agreement, all Quotations (including pricing), trade secrets, know-how, inventions, techniques, processes, software programs and other IT related information, documentation, schematics, procedures, contracts, databases, business information, financial information, budgets, sales, marketing, insurance information, and compliance data, ideas, strategies, designs, projections, business plans, strategic expansion plans, products and product designs, sourcing information, potential product labeling and marking ideas, unpublished information relating to the IPR of either Party, and all communications between the Parties and other non-public information relating to the Parties' business.

Contract Year: each successive 12 month period while this Agreement remains in effect, the first commencing on the Commencement Date, and subsequently commencing on the corresponding anniversary of the Commencement Date.

Customer Data: means any data, documentation or Customer Confidential Information that is provided by the Customer, Authorized Users, or Texthelp on the Customer's behalf, for the purpose of using the Products.

Customer Personal Data: means any personal data which Texthelp processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.

Documentation: the document(s) made available to the Customer by Texthelp from time to time which sets forth, among other things, the user instructions for the Product(s), applicable installation guides, service descriptions, technical specifications and online help files.

Initial Term: has the meaning given in paragraph 3.1.

Insolvency Event: means in relation to any Party, if that Party:

  (a) Files for protection under bankruptcy or insolvency laws, makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due;
  (b) becomes or is declared insolvent, has a liquidator, receiver or administrative receiver appointed or passes a resolution for winding up (otherwise than for the purpose of a solvent consolidation or restructuring) or if a court makes an order to that effect;
  (c) by reasons of financial difficulties suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  (d) is the subject of any events or circumstances analogous to any of the events described in paragraphs (b) and (c) in this definition in any applicable jurisdiction.

Intellectual Property Rights or IPR means patents, rights to inventions, copyright, trade marks and service marks, business names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how), trade secrets and all other similar or equivalent rights to any of the foregoing situated anywhere in the world, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights.

Normal Business Hours: 8:00 am to 5:00 pm Eastern Standard Time, each Business Day.

Product means Texthelp's online proprietary software applications and tools to enhance Authorized Users learning and working styles as is set out in the Quotation, together with any necessary fixes, updates or enhancements thereto but not including any additional products or services that Texthelp may make commercially available from time to time.

Product Fees: means all applicable fees payable by the Customer to Texthelp for the Authorized Seats as set out in the applicable Quotation.

Quotation: means Texthelp's standard Quotation to be signed by the Customer in accordance with this Agreement, and which sets out the details of the Customer's order for Products and/or Support from Texthelp.

Representatives: means, in relation to a Party, its employees, officers, contractors, subcontractors, representatives and advisors.

Renewal Term: the period described in paragraph 3.1.

Support: means any support, training and/or maintenance services that are provided by Texthelp to the Customer pursuant to an agreed Quotation as further described in Schedule 1.

Virus: any thing or device (including any software, code, file, application or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any application, program or data, including the reliability of any application, program or data (whether by re-arranging, altering or erasing the application, program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

17.2 Section, Schedule and paragraph headings are for convenience and are not to be given any meaning when construing or interpreting this Agreement.

17.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

17.4 A reference to a company shall include any company, corporation or other business entity, wherever and however incorporated or established.

17.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

17.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

17.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement, and as amended from time to time.

17.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.

17.9 A reference to **writing** or **written** excludes fax but not email.

Schedule 1 – Support

1. Support Services

1.1 Texthelp shall, during the Term, provide the Product(s) and make available the Support to the Customer on and subject to the terms of this Agreement.

1.2 Texthelp shall use commercially reasonable efforts to make the Product(s) available 24 hours a day, seven days a week, except for:

    (a) planned maintenance carried out during the maintenance window of 10.00 pm to 4.00 am Eastern Time; and

    (b) unscheduled maintenance performed outside Normal Business Hours, provided that Texthelp has used reasonable efforts to give the Customer at least 6 Normal Business Hours' notice in advance.

1.3 Texthelp will, as part of the Product(s) and at no additional cost to the Customer, provide the Customer with Texthelp's standard customer support services during Normal Business Hours in accordance with this Schedule in effect at the time that the Product(s) are provided. Texthelp may modify the Support services in its sole and absolute discretion from time to time.

1.4 If any performance issues arise, the Customer may contact Texthelp:

    (a) **By Phone**

    Support is available via phone from 9am to 5pm British Standard Time, Monday through Friday. For support via phone: UK toll-free 0800-328-7910, North America toll-free 888-248-4947, Rest of World +44 2894428105.

    (b) **By Email**

    The Customer can also communicate any issues to Texthelp by email. When emailing Texthelp about an issue, the Customer shall insert the name(s) of the relevant Product(s) that is/are experiencing issues within the subject line of the email. Support is available via email from 9am to 5pm British Standard Time Monday through Friday. For Maintenance and Support via email: support@texthelp.com

1.5 Training Materials / Technology Support Tools

Texthelp shall provide the Customer with, and access to, any new training materials and technology support tools for Products(s), developed by Texthelp from time to time.

1.6 Critical Hosting Service Interruption

Texthelp may deliver the Product(s) either from its own servers or through a bona fide 3rd party hosting service. Any third party hosting service shall be required to provide continuity of service

guarantees in line with industry standards for delivery of streamed speech. Texthelp reserves the right to change the hosting service from time to time.

2. Service Levels

2.1 Texthelp shall use commercially reasonable efforts, being no less than prevailing industry standards in this regard, to ensure the Product(s) is/are available to the Customer 99.50% of the time in any calendar month. If it is not, the Customer may be eligible to receive the Service Credits described below.

2.2 In order to receive any of the Service Credits described above, the Customer must notify Texthelp by email or otherwise in writing within thirty (30) days from the time the Customer becomes eligible to receive a Service Credit.

2.3 The aggregate maximum number of Service Credits claimable for any and all Downtime Periods in a single Contract Year shall not exceed thirty days of Service Credit. Service Credits may not be exchanged for, or converted to, monetary compensation.

2.4 **Exclusions**: The service levels set forth in this Schedule 1 will not apply to any performance issues: (i) caused by factors outside of Texthelp's reasonable control; (ii) that resulted from any actions or inactions of the Customer or any third parties; or (iii) that resulted from Customer's equipment and/or third party equipment (not within the primary control of licensor). This Service Credits described herein shall be the Customer's sole and exclusive remedy for any failure by Texthelp to provide the Product(s) as a result of downtime.

3. Definitions

- **"Downtime"** means that the Product(s) is/are not responding.
- **"Downtime Period"** means the amount of time the Product(s) is/are not available and must be 10 consecutive minutes or more.
- **"Monthly Uptime Percentage"** means the total number of minutes in the calendar month minus the number of minutes of Downtime suffered from all Downtime Periods in the calendar month, divided by the total number of minutes in the calendar month.
- **"Scheduled Downtime"** means those times where Texthelp gives notification of periods of Downtime five (5) days prior to the commencement of such Downtime. There will be no more than twelve (12) hours of Scheduled Downtime per calendar year. Scheduled Downtime is not considered Downtime for purposes of this Agreement and will not be counted towards any Downtime Periods.
- **"Service Credit"** may be provided according to the following schedule:
  - **One day Credit**: Includes One (1) day of Product(s) to be added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 99.5% and 97.0%;
  - **One week Credit**: Includes Seven (7) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is between 97.0% and 95.0%;

- **Two weeks Credit**: Includes Fourteen (14) days of Product(s) added to the end of the Term, at no charge to the Customer, if the Monthly Uptime Percentage for any calendar month is less than 95.0%.

Schedule 2 – Product Specific Terms & Conditions

1. Equatio

1.1 Definitions

"**Commercial Accessible Media Production**" means the creation of accessible instructional materials which are for commercial distribution.

"**Domain**" means a distinct subset of the Internet with email addresses sharing a common suffix or under the control of a particular school, college, university or other organization.

"**HE Disability Services Accessible Media Production**" means the creation of accessible instructional materials for use in Higher Education institutions.

1.2 License Types & Restrictions

Equatio utilizes certain third-party MathML conversion technology. Therefore, certain features utilizing such technology are available to Customer depending on the type of license purchased by Customer, as specified on the Quotation ("License Type"), and as more fully described below.

License Type	Description
Equatio Single License Subscription	Customer may install and use one copy of each of the Product(s) while this Agreement remains in effect. This license is restricted from use in connection with **Commercial Accessible Media Production** or **HE Disability Services Accessible Media Production**.

Equatio Group License Subscription	Customer may install and use one copy of each of the Product(s) for each Authorized User while this Agreement remains in effect. The number of Authorized Users within Customer's group license is specified in the Quotation. This license is restricted from use in connection with **HE Disability Services Accessible Media Production**, except for those Higher Education Institutional Customers that have purchased Group License for their entire campus (all students). The foregoing exception applies only to a single campus. If the Customer's Domain is shared with one or more additional campuses, students and staff associated with those additional campuses are not granted access to the Product(s)
Equatio Unlimited License Subscription	Customer may install and use one copy of each of the Product(s) for an unlimited number of Authorized Users while this Agreement remains in effect, including the use of **HE Disability Services Accessible Media Production**
Equatio for Publishers License Subscription	Customer may install and use one copy of each of the Product(s) while this Agreement remains in effect. This license includes **Commercial Accessible Media Production**.

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**

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

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.

Texthelp Inc.
_____
Vendor Name
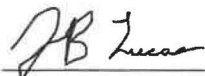
500 Unicorn Park Drive, Woburn MA 08101
_____
Vendor Address

888-248-0652
_____
Vendor Telephone

u.s.info@texthelp.com
_____
Vendor Email Address

_____
Signature by Vendor's Authorized Representative

Jeffrey B. Lucas, Paralegal & Compliance Specialist
_____
Print Name

May 14,2024
_____
Date