



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

Issue Paper

DATE:

August 14, 2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve the terms and conditions for QuaverEd for Ryland Heights Elementary.

APPLICABLE BOARD POLICY:

01.1 - Legal Status of the Board

HISTORY/BACKGROUND:

QuaverEd is a resource with an extensive selection of Health and PE movement videos, interactive activities and complete lessons that will help to satisfy the dance component of the AIM grant that was awarded to Ryland Heights Elementary.

FISCAL/BUDGETARY IMPACT:

\$1800.00 (AIM Grant Budget 2024-25)

RECOMMENDATION:

Approve the terms and conditions for QuaverEd for Ryland Heights Elementary.

CONTACT PERSON:

Dan Schacherer

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.



Quote

Ryland Heights Elementary

Date: 7/31/2024
Attn: Tammie Groeschel

License Length: 1 year (9/10/2024 - 7/1/2025)

Item Description	Quantity	Unit	Total
Quaver's K-5 Health•PE Curriculum Resources - <i>Limited Seating</i>	1	\$1,800.00	\$1,800.00
Quaver's K-5 Music Curriculum Resources	1	PILOT	\$0.00
Quarterly Content Updates			INCLUDED
Student Access to Student Resources			INCLUDED
24/7 Access to 50+ Hours of Online Resources/PD			INCLUDED
		SALES TAX	*SEE NOTE
		Total	\$1,800.00

**Sales Tax will be included on final invoice unless Tax Exempt Certificate is included at time of purchase.*

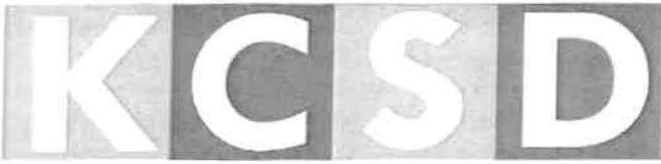
Includes all of the following elements:

- Lesson Plan Presenter
- Teacher GradeBook
- Auto-Graded Assessments
- Spanish Language Translation
- Virtual and in-person training options
- Parent Resources
- Community Resources
- Accessibility for Disabled Teachers and Students
- Whole School Solution
- Customizable Lesson Plans
- Unlimited Student Accounts

Proposal valid for 90 days.

QuaverEd.com
65 Music Square West
Nashville, TN 37203
866.917.3633

Eric Wormsbaker
Director of Sales
Eric@QuaverEd.com
812.454.9197



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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.

QuaverEd, Inc.

Vendor Name

65 Music Square West, Nashville TN, 37203

Vendor Address

(866) 917-3633

Vendor Telephone

privacydirector@quavered.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Jeffrey Bond - Privacy Director

Print Name

7/24/2024

Date

QuaverEd Terms & Conditions for Ryland Heights **Revised 7/24/2024**

This Agreement ("Agreement") is between QuaverEd, Inc. ("QuaverEd," "we") and Purchaser ("you", "your," "Licensee," "Customer," "District"). QuaverEd and you are each a "Party" and collectively the "Parties." This Agreement is effective on the date it is signed by both parties below ("Effective Date")

1. General Terms: QuaverEd is designed for PK-8th grade educators around the world. Each QuaverEd licensed user must create an individual educator account that is not to be shared with others. Educators, school administrators, school district personnel, or other responsible parties may create student accounts linked to the teacher account.

All QuaverEd resources comply with applicable law, including but not limited to the Family Educational Rights and Privacy Act (FERPA), Children's Online Privacy Protection Act (COPPA) and the Americans with Disabilities Act. In compliance with COPPA, QuaverEd never collects PII directly from any user under the age of 13 without the explicit consent of an authorizing adult such as the teacher, District representative, or guardian. If you believe that a child or student under the age of 13 has provided Quaver with personally identifiable information without your authorization, please notify PrivacyDirector@QuaverEd.com so that we can immediately delete the information from our servers. Unauthorized commercial or other misuse of QuaverEd curriculum resources may result in the suspension of the license.

2. Account Creation & Maintenance: In order to access QuaverEd resources, you are required to provide certain information (such as name, e-mail, school district, etc.). You agree that any information you provide will always be accurate and complete, and you agree to update any such information if it changes. Further, you agree that you will not register under more than one email address in an attempt to subvert our preview account access limits.

3. Email Permissions, White Listing: For the duration of your license term, you agree that QuaverEd can send you weekly emails with teaching tips and any tech updates related to your specific license, as well as important information related to your account, access, and functionality. Further, you agree that QuaverEd can send you periodic emails related to new services, curricula, and content available in support of providing high quality resources for skills based instruction for students in PK-8th grade. Email permissions can be updated by the Licensee. The Licensee agrees that it will request @QuaverEd.com be whitelisted to ensure that emails, codes, and accessibility are not hindered by District email filters. QuaverEd agrees that it will never sell your data or email to any other company, organization or person.

4. Confidentiality of Information: Except as otherwise provided in this Agreement, you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the QuaverEd resources and you are responsible for all activities that occur under your account(s). You are solely responsible for any consequences, losses, or damages that we may directly or indirectly incur or suffer to the extent caused by any unauthorized activities conducted by you. If you become aware of any unauthorized use of your password or of your account, you agree to notify QuaverEd immediately at info@QuaverEd.com.

5. License Term: The effective license duration for each Licensee (also referred to as the "Term") shall be noted on the User's invoice as well as within the site license User Information profile. In most instances, our license terms are July 1 – June 30, to correspond with the

academic year. The term of this Agreement will last for the duration of any active license in an ordering document such as an invoice.

6. Licensing Fee: The price for each Licensee's license "Licensing Fee" is referenced on the Licensee's invoice. The base License fees do not include i) sales or use taxes, ii) book depository fees, iii) credit card merchant fees (convenience payment fees), or iv) transaction fees. **Note:** Any additional fees or taxes incurred by QuaverEd will be added to the base license fee and separately stated on the price quote or invoice and borne by the Licensee. For subsequent renewals, QuaverEd reserves the right to increase pricing from year to year if the Consumer Price Index in the previous year increased by 5% or more. (The previous year being Jan 1 to Dec 31.) Any price increase, if necessary, will be announced on January 1.

7. Tax Exemption: Licensees of curriculum resources are generally understood to be schools, libraries, and other tax-exempt organizations. It is the duty of the Licensee to maintain its tax exempt status. Tax exempt certificates are requested at the time of purchase in order to verify Tax Exempt Status. If the Licensee is not tax-exempt, as stated above, QuaverEd will add the applicable taxes to the license fee.

8. Evaluation: You will have thirty (30) business days to evaluate all Services for compliance with this Agreement after QuaverEd makes them available to you for productive use. If the Services do not comply, you will inform QuaverEd, and QuaverEd will have ten (10) business days to resolve the non-compliance. If you determine that the Services and deliverables still do not comply with this Agreement, then you may either terminate this Agreement and obtain a refund or allow QuaverEd an additional opportunity to resolve the non-compliance. You owe no fees for Services that do not comply with this Agreement.

9. Data Integrations: While data integration (Single Sign On or Rostering) is not a requirement of using QuaverEd licenses, should you elect to enroll in our Single Sign On, Rostering, or Integrations services, QuaverEd provides robust support for such an integrated experience. It is important for Licensee to understand that the QuaverEd license can be completely accessed and utilized without any type of District integration. QuaverEd cannot control or dictate to District IT offices their workflow in making QuaverEd resources available within a District platform. Due to high volumes, requests for data integrations received between July and September can take 3–5 weeks to complete, so educators should also be aware that they can access their account natively (from the QuaverEd.com site). For more on available integrations visit this article: <https://help.quavered.com/integrating-with-quavered/>.

10. Data Integrations or Data Transfer Fee: QuaverEd licenses are fully functional without an integration into District SSO systems. For information on the integrations we support, you can visit <https://www.quavered.com/systems-integrations/>. For supported platforms, QuaverEd provides technical support both for District SSO integrations and student rostering. Should you require subsequent integrations (beyond the first integration, typically caused by a district changing service providers mid-license term) or a license holder request exports of data sets or special data sets, there may be a fee incurred. Our standard employee billing rate is \$150 / hour for technical services such as custom data extraction or integrations services beyond the initial service. We will communicate any conditions warranting a fee-for-service in advance of providing such service and obtain budget approvals and your written approval before beginning any work.

11. Training Fees: Licenses include *free* access to hundreds of on-demand training resources, recorded and live webinars and training sessions, blogs, weekly tips, social media ideas, and

other wrap-around-services to ensure users can make the most of their QuaverEd license. Custom training packages are available for purchase in addition to these offerings.

12. Customer Service Hotline: QuaverEd agrees to maintain a Customer Service Hotline, staffed by trained professionals, during the school year from 7AM CST to 6PM CST.

13. A Cloud-Based Software Product: Licensee acknowledges that the purchase of QuaverEd resources requires computer hardware, Internet with appropriate bandwidth/capacity, and projection or smartboard equipment that complies with the minimum standards to realize the full benefits for classroom use. System Requirements are available at <https://help.quavered.com/technical-support/system-requirements/>. The purchase of QuaverEd resources does not include any hardware or separate software products that may be shown in demonstrations, tutorials, or trainings, other than agreed otherwise in writing. Licensee agrees that they may need to work directly with their District IT office to whitelist Quaver sites in order to ensure better bandwidth prioritization by the District, and to ensure that emails, codes, and accessibility are not hindered by district filters.

Intellectual Property, Ownership, Creative Works

14. Intellectual Property: QuaverEd is the sole and exclusive owner of our curriculum resources—owning all legal rights, title, and interest in our creative works including ownership to all intellectual property rights worldwide. This includes art, graphics, songs, sounds, voiceovers, design, training videos, teaching videos, and the code and systems created to build, support, and upgrade our resources. Reproduction of such material outside the QuaverEd platform is prohibited. Attempting to license, sublicense, copy, duplicate, distribute, modify, publicly perform or display, transmit, publish, edit, adapt, create derivative works from, reproduce, sell, trade, or resell the QuaverEd resources (including, without limitation, the reproduction, sale, trading or resale of lessons or guides customized by other QuaverEd licensees) is strictly prohibited without our prior written agreement. Original QuaverEd songs used for school plays, recitals, or school (non-commercial) functions are permitted – so long as QuaverEd is credited in the school playbill, social media, or other avenues for crediting QuaverEd as the lawful intellectual property owner. We believe this is yet another teaching opportunity for students to understand that careers in creative works; coding, illustration, design, audio engineering, song writing, music making, and other forms have value. Crediting creators matters.

15. Song Downloads: As part of an active license for QuaverEd resources, licensees can download certain MP3 files for use only in rehearsals and live school-related performances. Not available for download are all copyrighted songs that QuaverEd has licensed for streaming purposes only. Once downloaded, the MP3 files can be used in school performances or for teaching content, but remain the property of QuaverEd. Upon the termination of the License, the Licensee agrees to delete all MP3 files that have been downloaded (see Unplugged Kits, above). Moreover, the Licensee agrees not to copy or share these files with any other persons or organizations.

16. Limited License of Certain Commercially-Available Songs: Among the thousands of original recordings, interactives and resources within QuaverEd curriculum resources, there are a handful of licensed commercially-available songs. Our license of these songs is consistent with their intended, classroom use. For teachers wishing to use these songs in a way other than their licensed use within our curriculum (such as for a school performance), an assignment may be required from the licensing entity. Please contact us at Info@QuaverEd.com for avoidance of

doubt in any school performances which may be recorded by parents.

17. Creation of New Resources by Licensed Users: Notwithstanding the foregoing, the QuaverEd platform includes functionality that allows Licensees to create new content, make recordings, edit original content, add, annotate or otherwise edit some QuaverEd resources. These activities are permitted to the extent they are enabled within the QuaverEd license, provided that such teacher-customized content is used solely for educational purposes. Unauthorized use of QuaverEd content may give rise to a claim for damages. No materials copyrighted by a third party are allowed to be imported into the QuaverEd resources without permission from that party (or through acceptable use of public domain works, as determined by the Licensee). QuaverEd is not responsible for any infringement of intellectual property by its users.

18. Ownership of Works Created by Licensed Users or Students: Licensee may use the QuaverEd platform to create assignments or request assignments from students. To the extent permitted by the platform functionality, the derivative work created which can be downloaded (for example ringtones, compositions, or mp3s) will remain the property of the Licensee or the student beyond the life of the license and the term of this Agreement.

19. Your Content: QuaverEd acknowledges that you or your users own all content and data uploaded to or created using the Service ("Your Content"). QuaverEd has a limited, revocable license to use Your Content as necessary to perform this Agreement and has no further rights in Your Content. QuaverEd grants you a perpetual, worldwide, non-exclusive, royalty-free, irrevocable license in the materials you download or use on the Service to reproduce, prepare derivative works of, publicly display, publicly perform, and distribute the materials and to sublicense any or all of the foregoing rights to third parties. Such materials may not include in any way intellectual property owned by QuaverEd.

20. Intellectual Property Claims of Others: Should QuaverEd be contacted by the owner of a song or other material uploaded by a licensed user into our platform concerning non-QuaverEd material, it is our policy to respond promptly to claims of intellectual property misuse. Our procedures for responding to alleged copyright infringement are consistent with the form suggested by the United States Digital Millennium Copyright Act, the text of which can be found at the U.S. Copyright Office web site <http://www.copyright.gov/legislation/dmca.pdf>. Please note that you will be liable for damages (including costs and attorneys' fees) if you make any material misrepresentations when making or countering a copyright infringement claim.

Modifications by QuaverEd

21. Modification of Resources for Technical Reasons: From time to time, QuaverEd will need to modify resources in order to ensure they are properly functioning with updates to operating systems, browser design, hardware changes, and other technical issues beyond our control. These modifications will be made and patched regularly to ensure the proper functioning of the QuaverEd resources. Any significant functionality changes will be accompanied by notice through our email and other communications channels, with training videos provided where applicable.

22. Other Modification of Resources or Content: QuaverEd will continually assess content through various educational lenses in an effort to ensure resources are free of bias or prejudice. Our commitment to equity, diversity, and inclusion—and details on our resource review process—are available at <https://www.quavered.com/equity-diversity-andinclusion/>. Any

resources removed or altered for these reasons will be announced through the QuaverEd blog with sufficient time provided for educators to make alternative arrangements in their teaching approach or practice prior to the removal of the resources. In order to reduce disruption to school-year plans, we endeavor to make any changes in content which necessitate removing resources from our platform in the summer. We will continue to add, increase, and enhance the quality and content available through QuaverEd licenses throughout the school year. We welcome feedback on this practice or further questions, which can be addressed to QuaverEd DEIA Committee and emailed to info@QuaverEd.com.

23. Modifications due to Change in Applicable Law: The Parties will negotiate in good faith any amendment required to this Agreement that is necessary to comply with changes in the law, including COPPA, FERPA, and any other relevant legislation, including but not limited to any state or federal privacy laws or other laws governing use of educational materials for minor children.

Acceptable Use

24. No Unlawful Activity: As a condition of use by the Licensee of the QuaverEd resources, you will not use the QuaverEd resources for any unlawful purpose. You will not upload any materials that are threatening, pornographic, obscene, harassing, hateful, racially or ethnically offensive or encourages conduct that would be considered a criminal offense, violate any law or is otherwise inappropriate for the profession of educating children in grades PK-8. You may not use the QuaverEd resources or platform in any manner that, in our sole discretion, could damage, disable, overburden, impair or interfere with any other licensed party's use of them. In addition, you agree not to use false or misleading information in connection with your licensed account, and acknowledge that we reserve the right to disable any Licensee's account with a profile which we believe (in our sole discretion) is false or misleading.

25. Messaging, Chat, Communications Features: The QuaverEd platform provides several communication tools, including video record (teacher and student record) and teacher-student chat mechanisms. By posting information or otherwise using any open communication tools as mentioned, you agree that you will not upload, post, share, or otherwise distribute any content that: (i) is illegal, threatening, defamatory, harassing, degrading, intimidating, fraudulent, racist, and pornographic or contains any type of inappropriate or explicit language; (ii) infringes any trademark, copyright, trade secret, or other proprietary right of any party; or (iii) attempts any type of unauthorized advertising. QuaverEd does not accept any liability for the unauthorized actions of licensed users. QuaverEd will not monitor or access chat or messaging features.

26. Data Privacy: The parties agree to execute a Data Services Agreement (DSA) to protect the districts data. This contemporaneously-executed document is incorporated into this Agreement. QuaverEd will process all your data in the United States.

27. Product Warranty, Disclaimer of Warranties: QuaverEd warrants to the Licensee that the Service purchased hereunder shall be free from defects in materials and workmanship and shall conform in all material respect to the specifications, provided the Service in question has been used in accordance with ordinary industry practices and conditions. QuaverEd will not be responsible for use of the Service by any devices not meeting the minimum technical requirements for internal memory, CPU power, or bandwidth, or for use of any device, operating system, or browser version that is unsupported by the manufacturer. QuaverEd also warrants that it owns or has licensed all copyrighted material or that the material is in the public domain.

Licensee acknowledges that his/her use may be interrupted or constrained by bandwidth restrictions by the school's Internet provider, firewalls, server malfunctions, and other problems related to the Licensee's network. Whenever possible, QuaverEd will forewarn all license holders of any planned outage for maintenance or acknowledged technical problems. QuaverEd will perform all service-interrupting planned maintenance after 8:00PM and before 4:00AM pacific time. The foregoing express warranties are limited to QuaverEd and are not transferable and are in lieu of any other warranty by QuaverEd with respect to Services furnished hereunder. Quaver grants no other warranty, or fitness for a particular purpose, either express or implied.

QuaverEd warrants that the Services and content on the Services do not and will not (1) infringe the rights of any third party, including any intellectual property rights or (2) contain any malware or viruses.

28. Service Level Agreement: QuaverEd will make the licensed Service available for your use at least 97.5% of the time for the period one hour before, all during, and one hour after regular school hours, measured monthly. We will endeavor to meet that requirement 24 hours per day. QuaverEd will use its best efforts to resolve any issues causing unavailability as quickly as possible.

29. Commitment to Continuous Improvement: We reserve the right to anonymously track and report any Licensee activity inside of the QuaverEd resources using non-personally identifiable information ("Anonymous Technical Data"). We utilize this data to continually improve our services, balance server loads, and for other technical needs such as browser configuration or anticipation of challenges presented to licensed users by hardware, software or other manufacturers supplying services to the Licensee. Anonymous Technical Data consists only of non-identifying technical Service usage data and does not include any of your Confidential Information, personal information, content, communications, data subject to FERPA or COPPA, or your intellectual property ("Excluded Data"). Notwithstanding anything else in this Agreement or documents incorporated into it, QuaverEd will not process any Excluded Data to generate Anonymous Technical Data.

30. Account Deactivation: In the event that a user does not log in to their QuaverEd account for a period of 12 consecutive months, QuaverEd may deactivate the user's account for security purposes. The account may be reactivated upon user's request to QuaverEd, provided that the license to which the account is registered has not expired.

31. Termination: We may, at our sole discretion, suspend or terminate the Licensee's access to all or part of the QuaverEd resources for breach of these Terms and Conditions. QuaverEd will notify users whose license has been terminated, and provide as much information as is legally permitted related to the reason for QuaverEd's termination of the Licensee's access.

32. Breach of Agreement: In the event that QuaverEd verifies any actions by a Licensee to intentionally and with malicious intent breach the Terms and Conditions of this Agreement, such actions will be grounds for immediate termination of the license(s) of the Licensee. Termination will become effective thirty (30) days after written notice from QuaverEd to the Licensee, if the Licensee has not cured the breach. No refunds or credit for the unused term of the license(s) will be granted. Further action by QuaverEd to recover additional costs of the breach may be initiated.

33. Failure of Quaver to Perform: In the event Licensee believes that QuaverEd has failed to perform under the Terms and Conditions of this Agreement, the Licensee is required to give written notice to QuaverEd with specific details on the allegation of failure and allow 30 days to correct the problem. If the problem is not corrected within 30 days, the Licensee will receive a refund for the unused portion of the license term and the Agreement is terminated.

Notwithstanding anything else in this Agreement, Customer may extend the termination date of this Agreement for up to thirty (30) days upon written notice to QuaverEd. During this period, QuaverEd will use good faith efforts to assist Customer in migrating its data off the Service. QuaverEd will on request provide Customer with a file of all the Customer's proprietary data in a standard file format at no charge. Customer will continue to pay monthly fees as provided under this Agreement for the duration of the transition.

34. Non-Payment: If the Licensee does not pay QuaverEd within 60 days of the due date of the payment for the Licensee's license, QuaverEd may suspend the license until such payment is made, unless you dispute the charge. Timely notice advance will be provided thirty (30) days by QuaverEd to you before any pending suspension for non-payment.

35. Bankruptcy: This Agreement shall terminate, without notice, (i) upon the filing by or against either party of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of either party's debts, (ii) upon either party making an assignment for the benefit of creditors, or (iii) upon either party's dissolution or ceasing to do business, (iv) in the event of QuaverEd's bankruptcy or insolvency, QuaverEd will endeavor to provide a server consisting of all currently licensed materials purchased by the Licensee in order to support the Licensee through the remainder of the license term.

Miscellaneous

36. Transfer of Rights to Successors: The rights and obligations of either Party shall not be transferable without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. All obligations of the Parties herein shall be binding upon their respective successors or assignees.

37. Jurisdiction for Disputes; Applicable Law: This Agreement is subject to Kentucky law without application of its conflict of law's provisions. Jurisdiction and venue for any dispute between the Parties shall be vested in Kenton County. Both parties will comply with all applicable laws related to their performance of this Agreement.

38. Indemnification: To the extent permitted by law, QuaverEd and Licensee hereby indemnify the other and save and hold the other harmless from any and all claims, causes of action, damages, liabilities, costs, losses, and expenses (including legal costs and reasonable outside attorneys' fees) arising out of or connected with any third party claim, demand or action which is inconsistent with any of the warranties, representations, covenants, or agreements such party has made in this Agreement including but not limited to any claim brought by a student user (or the student's family) or any third party as a result of a failure of Licensee to obtain a valid parental consent/waiver which duly authorizes the student's use of the Services and/or materials associated with the Licensee's license.

The Party seeking indemnification will promptly notify the other Party of its request, although the Party's failure to promptly notify will not change that Party's obligations to indemnify except to

the extent its ability to do so is prejudiced by the delay. The indemnified Party reserves the right, at its own cost, to assume the exclusive defense and control of any matter otherwise subject to indemnification, in which event the other Party will fully cooperate with the indemnified Party in asserting any available defenses. The Parties agree that the provisions in this section will survive termination of the Terms. Each Party may also be liable to the other Party for direct damages they cause to the other Party.

39. No Waiver: No waiver or breach of any term or condition of this Agreement shall be construed as a waiver of any other breach of such term or condition, or of any other term or condition, nor shall any failure to enforce any provisions hereunder operate as a waiver of such provision or any other provision hereunder.

40. Enforceability: In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, except in those instances where removal or elimination of such invalid, illegal, or unenforceable provision or provisions would result in a failure of consideration under this Agreement, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein.

41. Force Majeure Event: In the event of an event or circumstance beyond the reasonable control of a Party such as an act of God; strike, lock out or other industrial or trade disputes impacting service delivery (whether involving employees of the Party or a third party); war, threat of war, terrorist act, revolution, riot, civil commotion, public demonstration, sabotage, vandalism; cyber security attack which could not be prevented by generally-accepted industry best practices, attack to servers, power failure or explosion, governmental restraint of business operations by local, state or federal authorities, natural disasters or weather related emergency conditions (lightning, fire, storm, flood, earthquake)("Force Majeure Event"), a Party shall not be liable for failure to perform this Agreement during the period of the Force Majeure Event. Failure of a Party's vendor to perform is not a Force Majeure Event. The non-delayed Party may terminate this Agreement on written notice to the delayed Party if the Force Majeure Event lasts longer than thirty (30) days. The delayed Party will notify the non-delayed Party as soon as possible about any Force Majeure Event.

42. Notices. All notices or other communications that are required or permitted under this Agreement must be in writing and will be sufficient if delivered personally or sent by nationally recognized overnight courier or by certified mail, postage prepaid, return receipt requested, as follows. If to QuaverEd, to the address set forth on the Signature Page. If to Customer, to: the District Procurement Office. Either Party may change its notices address upon written notice to the other Party.

43. Subcontractors. Quaver will be responsible for the actions and inactions of its subcontractors and for conforming their actions to the requirements of this Agreement.

44. No Publicity. QuaverEd shall not use Customer's name or logo in marketing or publicity materials or for marketing or publicity purposes without their written consent.

45. Modification. The Agreement may only be modified by written, signed agreement of the parties. However, due to the risk of runaway inflation, QuaverEd reserves the right on multiyear contracts to terminate the contract at year's end, or to raise the price of the license if the inflation rate as measured by the CPI exceeds 8%. If that happens, the Licensee will be free to terminate

the license and receive a pro-rated refund if desired.

46. Conflicts. If there is a conflict between this Agreement and any invoice, order form or other ordering document, this Agreement will take precedence. If any provision of this Agreement is held illegal or unenforceable in a judicial proceeding, such provision shall be severed and shall be inoperative, and, provided that the fundamental terms and conditions of this Agreement remain legal and enforceable, the remainder of this Agreement shall remain operative and binding on the Parties. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to that subject matter.

47. Authorized Persons: The signatories below certify that they are authorized to bind their respective organizations to this agreement.

Addendum:

48. Opt-Out: Either party may opt out on this agreement. If Ryland Heights chooses to opt out, they need to pay a pro rata share of the license fee based on the month they opt out.

Agreed:

Kenton County School District

Signature: _____

Print Name: _____

Title: _____

Date: _____

QUAVERED

Signature:  _____

Print Name: Eric Wormsbaker

Title: Director of Sales

Date: 7/24/2024